Mason General Hospital, Decision 7203 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1504-H,	)	
Complainant,	)	CASE 14799-U-99-3724
vs.	)	DECISION 7203 - PECB
MASON GENERAL HOSPITAL,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW
Respondent.	)	AND ORDER

David M. Kanigel, Legal Counsel, appeared for the complainant.

Settle & Johnson by Benjamin H. Settle, Attorney at Law, appeared for the respondent.

On September 24, 1999, Washington State Council of County And City Employees, Local 1504-H (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The union alleged that Mason General Hospital (employer) committed unfair labor practices in violation of RCW 41.56.140(1) and (4), by unilaterally implementing changes of hours and working conditions for certain employees represented by the union.[1]

A preliminary ruling was issued under WAC 391-45-110, on October 29, 1999. The Executive Director concluded that the complaint

[1] The union also alleged that the disputed employer actions violated the parties' collective bargaining agreement, but it provided conflicting statements as to whether a grievance had been filed.

stated a cause of action predicated upon a unilateral change of a term or condition of employment not governed by the parties' collective bargaining agreement, but also noted that the complaint did not state a cause of action for an asserted contract violation.[2] The Commission's precedents concerning "deferral to arbitration" were pointed out, and the employer was directed to specify, in its answer, whether deferral was requested.

The answer filed by the employer did not request deferral. A hearing was held on June 19, 2000, before Examiner Vincent M. Helm. The parties filed briefs on August 21, 1999.

On the basis of the evidence presented at the hearing and upon consideration of the parties' briefs, the Examiner rules that the disputed employer action did not constitute a unilateral change of employee wages, hours or working conditions. The complaint is dismissed.

BACKGROUND

The parties have had a collective bargaining relationship for over 20 years, for a bargaining unit which includes nurses aides, unit secretaries, housekeeping personnel and janitors, diet and linen aides, cooks and cook assistants, central service and monitor technicians, and group leaders. This case involves action taken by the employer with respect to two housekeeping aides during a hiatus period between the expiration of a collective bargaining agreement

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[2] Under City of Walla Walla, Decision 104 (PECB, 1976) and numerous subsequent decisions citing that precedent, the Commission does not assert jurisdiction to determine or remedy contract violations through the unfair labor practice provisions of Chapter 41.56 RCW.

covering the bargaining unit and the signing of a new collective bargaining agreement.

Past Practices Regarding Scheduling

Weekends for day and evening shift employees are agreed by the parties, and defined by contract, to consist of Saturday and Sunday. The historical pattern for housekeeping aides is as follows: Most employees are hired as on-call employees who are not included in the bargaining unit; some of the on-call employees eventually become part-time employees included in the bargaining unit; when full-time openings occur, part-time employees are assigned to them. The parties are also in substantial agreement that most employees categorized as "on-call" or "part-time" are primarily concerned with working as many hours as possible, rather than about which days they have off, and that full-time employees usually have one or two weekend days off each week.

A dispute exists as to additional elements of the scheduling practice for housekeeping aides:

- The union claims that another standard practice developed over the years, by which the most senior housekeeping aides worked set schedules with either all weekend days off or the same weekend day off each week. In the union's view, the four to five most senior employees among approximately 16 full-time housekeeping aides maintained such set schedules.

- Claudia Hawley, Director of Human Resources, denies the existence of such a practice. Keith Geary, who has been the employer's plant engineer since 1998 with responsibilities that include oversight of the housekeeping aides, testified

that he did not attempt to make "a good faith effort" to schedule employees off at least two weekends per month prior to August of 1999. Geary testified that most employees preferred to work Sundays through Thursdays or Tuesdays through Saturdays, which provided two consecutive days offs (including one weekend day) each week, although he acknowledged that some employees did receive two weekends off per month.

Further evidence and analysis concerning the "past practice" issue are set forth in the discussion section, below.

Negotiations Regarding Schedules

The parties' negotiations for a successor collective bargaining agreement began with the union's presentation of a written proposal on April 1, 1999. During the contract negotiations in 1999, Brock Logan, a union staff representative, acted as the principal spokesperson for the union while Claudia Hawley was the employer's chief spokesperson.

The union's initial proposal included modification of the contract to provide that: (1) new schedules and work assignments would be offered based upon seniority; (2) employees would be scheduled off at least two of four consecutive weekends; (3) employees would not be scheduled for more than two different shifts during a month; and (4) there would be a minimum of one day off between shift changes. In explaining the union's proposal regarding mandatory weekends off, Logan asserted that the employer had not been making a good faith effort to schedule part-time employees off on two weekends per four consecutive weekends, with the result that most part-time employees were working at least one weekend day every week.

As the result of subsequent negotiations, the union withdrew its proposals concerning: (1) offering of new schedules and assignments on a seniority basis; and (4) a minimum of one day off between shift changes. As to the proposal identified as (3), above, it was agreed that the employer would not schedule employees for more than two different shifts during the month, except by mutual agreement.

Logan testified that Hawley stated, during a negotiations session held on May 27, 1999, that the employer could agree to give all employees two weekends off out of four (item (2), above) only if full-time employees would be required to work rotating weekends. The union negotiators then held a caucus, decided to drop the union's proposal, and communicated that decision to the employer across the bargaining table. Hawley realized that it was very important to the union for employees who had been working set schedules to continue to have their weekends off.[3] Logan assumed that, by dropping its proposal, the union was guaranteeing no employees would have their schedules changed.

All substantial contract issues were resolved by August 15, 1999. The management rights language of the contract was carried over without change,[4] but the hours language was modified as follows:

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[3] Apart from her own acknowledgment in this regard, Hawley is quoted as stating during the May 27 meeting that she did not believe that the union wanted to impose rotating shift schedules on employees who had enjoyed set schedules in the past.

[4] The management rights language was as follows:

> ARTICLE IV - MANAGEMENT RIGHTS
> The management of the Hospital and the direction of the workforce is vested exclusively with the Employer, subject to the terms of this Agreement. All matters not specifically and expressly covered by the language of this agreement may be administered for its duration by the Employer in accordance with such policies and procedures as it from time to time may determine.

> ARTICLE VI - HOURS OF WORK AND OVERTIME
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> ...
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> SECTION 13 The Employer will make a good faith effort to schedule all employees two (2) weekends off out of each four (4) consecutive weekends. In the event an employee is required to work five (5) weekend days on three (3) consecutive weekends, the fifth (5th) and consecutive weekend days work will be paid for at the rate of one and one-half (1½) times the regular rate of pay. **The Employer will schedule employees for no more than two (2) different shifts during the month, except by mutual agreement.**

[Emphasis by **bold** indicates language added in 1999.]

The parties signed their new collective bargaining agreement on September 15, 1999.

The Disputed Change

In August of 1999, Geary met with housekeeping aides and nursing supervisors to ask them what was needed to help them in their work. Both groups responded that more housekeeping aides should be assigned to work weekends, and specifically that more experienced personnel should be scheduled on weekends. Those responses prompted Geary to make schedule adjustments.

On August 22, 1999, Geary issued a tentative schedule for September. The net effect of that schedule with respect to full-time employees was to change the schedule of Betty Irish (the fourth employee on the seniority list) from working Mondays through Fridays to working Sundays through Thursdays, and to change the schedule of Cheryl LaLonde (the ninth employee on the seniority list) from working Mondays through Fridays to working Sundays

through Thursdays. The schedules of the remaining eight full-time housekeeping aides continued unchanged.

On September 1, 1999, Logan sent a letter to Hawley, protesting the September schedule and contending that the changes constituted both unfair labor practices (based on a unilateral change in working conditions) and a violation of the collective bargaining agreement. Logan requested that the change be rescinded, and that the parties hold a meeting on the issue.

On September 9, 1999, Logan had a meeting with the employer's chief executive officer, G. Robert Appel. Appel refused to bargain the schedules for individual employees, asserting that the contract negotiations had been concluded and that there would be no bargaining obligation until it was time to bargain a successor agreement. This unfair labor practice complaint followed, on September 24, 1999.

POSITIONS OF THE PARTIES

The union contends the practice prior to August of 1999 was for senior full-time housekeeping aides to have set schedules with all weekend days off or with consecutive days off including one weekend day. It claims the schedule posted in August of 1999 constituted a substantial change in working conditions for bargaining unit employees, by imposing weekend work on a weekly basis for employees who had been scheduled for many years with at least two weekends off per month. The union argues that it protested this unilateral change in timely fashion, and that the employer refused to either negotiate the issue or rescind the changes. The union maintains the assignment of employees to work schedules is a mandatory

subject of bargaining, and that the employer was obligated to give notice and provide opportunity for bargaining prior to implementing changes. The union also contends that the bargaining history for the negotiations in 1999 shows that the union withdrew a proposal on work schedules based upon its belief that the employer had, in exchange, committed to maintain an existing practice which did not require senior employees to work weekends.

The employer maintains that the work schedule posted in August of 1999 was in compliance with its past practice. That practice is said to consist of attempting to harmonize the desires of the affected employees with the fluctuating work requirements of the employer. As a result, the employer contends that changes in work schedules of individual employees have occurred on a limited basis and have been implemented without prior negotiation with the union. Additionally, the employer argues that, even if its actions constituted a unilateral change, the impact was on so few employees that the change cannot constitute an unfair labor practice. The employer concedes that scheduling is a mandatory subject of bargaining, but contends that it satisfied its bargaining obligations with respect to work schedules in the parties' contract negotiations, so that the union waived its right to bargain on that subject area by the terms of the parties' contract. The employer thus contends that, for the duration of the contract, it is free to act except as limited by the provisions of the collective bargaining agreement. The employer finds additional support for its position in the management rights clause of the parties' contract, which it claims is specific enough to be controlling in this case. Finally, the employer asserts an "equitable estoppel" theory, noting the burden the union bears to supply clear and convincing evidence that the employer agreed not to change individual work schedules as an inducement for the union to drop

its proposals regarding scheduling. The employer contends that, in point of fact, it did not assure the union there would be no schedule changes, but only advised that acceptance of the union's proposal would leave the employer with no recourse but to alter the work schedules so as to require all employees to work some weekend days.

DISCUSSION

Relevant Legal Principles

Between them, the parties have cited the basic legal precepts which govern the disposition of this case. The issue really turns upon the application of precedent to the specific facts of this case. The variance in the perception of the parties as to the nature of the past practice and the secondary consequences thereof account for the dispute now before the Commission.

Shift schedules are a mandatory subject of bargaining. City of Moses Lake, Decision 6328 (PECB, 1998). Numerous Commission precedents establish that a party which desires to change the status quo on a mandatory subject of bargaining must first give notice of a contemplated change to the opposite party, must provide opportunity for bargaining before the change is implemented, and must bargain in good faith on the matter if bargaining is requested in a timely manner. The burden is on the plaintiff to establish a violation of statute. Yelm School District, Decision 2543 (PECB, 1986). There can be no finding of an unfair labor practice, however, where a change is consistent with past practice. North Franklin School District, Decision 5945-A (PECB, 1998). That is

true even if the employer conduct is not expressly authorized by contract. City of Bellevue, Decision 2543 (PECB, 1986).

A party may defend a unilateral change during the term of the collective bargaining agreement on a waiver by contract theory. This is based on the concept that where parties have a signed contract dealing with the matter, the bargaining obligation has been met and bargaining on the subject becomes permissive for the term of the contract. To establish a waiver by contract, it must be shown that the party demanding bargaining knew or reasonably could be expected to have known the impact of the contract language agreed to. City of Yakima, Decision 3564-A (PECB, 1991).[5] Waiver by contract is an affirmative defense, and the employer bears the burden of proof on that issue in this case. Lakewood School District, Decision 755-A (PECB, 1980).

RCW 41.56.123 mandates that, unless specifically agreed otherwise, any waivers by contract remain in effect (along with other contract terms) during a hiatus between contracts for up to one year after the contract expires. City of Kalama, Decision 6739 (PECB, 1998). After the expiration of that one-year period, the status quo must be preserved on mandatory subjects of bargaining unless and until the statutory bargaining obligation is fulfilled.

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[5] The Commission will defer to arbitration, where employer conduct at issue in a "unilateral change" unfair labor practice case is arguably protected or prohibited by an existing collective bargaining agreement. WAC 391-45-110. If there is no collective bargaining agreement in effect, or if the employer raises procedural defenses to arbitration, the Commission will decide the effect of the parties' contract on the unfair labor practice case.

The Past Practice Applicable in this Case

The Examiner does not find evidentiary support for the "past practice" asserted by the union in this case.

Exhibit 14 is deemed to be the most reliable and comprehensive documentation in evidence concerning scheduling practices. It is an employer-prepared compilation of work schedules for housekeeping aides for the period 1996 through August 1999. The union did not object to its admission in evidence, and neither party contended that actual days worked by particular employees during the time period covered by the exhibit varied significantly from the schedule.[6] Of the employees listed in the exhibit, 18 carried the full-time designation, 5 were designated as part-time, and 1 had no specific designation. As to current employees,[7] analysis combining information in Exhibit 14 with a seniority roster in evidence as Exhibit 12 yields the following:

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[6] Because this compilation was based on schedules prepared in advance of the respective periods, rather than upon time cards showing the actual days worked by employees, there are undoubtedly some variances.

[7] It is inferred that seven employees who are listed on Exhibit 14, but do not appear on the current seniority list (Exhibit 12), are no longer employed in this bargaining unit. Among those: Anita Love was scheduled to work weekends in 1996, and Saturdays only for three months and Mondays through Fridays for five months in 1997; Bory Cheng was only scheduled for one month in 1996, which was on a Mondays through Fridays basis; Jessica O. was scheduled during 1996 with mostly weekends off; Barbara Komm was scheduled to work Mondays through Fridays in 1996; Terry Childers and John Hardy were not scheduled for weekends while employed in 1996 and 1997; and Janie Fasio was scheduled to work Sundays through Thursdays for 20 months in 1998 and 1999.

- Vivian Banks, the most senior full-time employee, was to work on Mondays through Fridays throughout the period.

- Robin Montoya, the second full-time employee on the seniority list, was scheduled to work Sundays through Thursdays from January 1996 through June 1997.[8] During the balance of 1997, she was scheduled to work Wednesdays through Saturdays for two months, Mondays through Fridays for one month, and Sundays through Thursdays for three months. In 1998, Montoya was scheduled to work Mondays through Fridays for four and one-half months, Mondays through Thursdays for two months, and Tuesdays through Fridays for five and one-half months. During the first eight months of 1999, she was scheduled to work Tuesdays through Fridays for seven and one-half months and Mondays through Fridays for one-half month.[9]

- Sheryl St. John, the third employee on the seniority list, was scheduled to work Mondays through Fridays throughout the period.[10]

- Betty Irish, the fourth employee on the seniority list, was scheduled to work Mondays through Fridays, throughout the entire period.

- Sandra Moore, the fifth employee on the seniority list, was scheduled in 1996 to work Mondays through Thursdays for nine months and Mondays through Fridays for three months. She was scheduled to work Mondays through Fridays for nine months in

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[8] Montoya was on a leave of absence for three months in that period.

[9] It appears Montoya basically worked four ten-hour days per week, with minor exceptions, after mid-1998.

[10] St. John was on a leave of absence for two months in the period.

1997, and had varying schedules which provided for working one or two weekend days during the balance of that year. In 1998 and 1999, she was scheduled to work Mondays through Fridays.[11]

- Cathy Onisko, the sixth employee on the seniority list, was scheduled in 1996 to work Mondays through Fridays for six months and Sundays through Thursdays for one month.[12] In 1997, she was scheduled to work Sundays through Thursdays for nine months, with three months unaccounted for. In 1998, she was scheduled to work Tuesdays through Saturdays for four months, Mondays through Fridays for one month, and Sundays through Thursdays for the remaining months. She then continued on the Sundays through Thursdays schedule through August of 1999.

- Elvira Ramirez, the seventh employee on the seniority list, was hired in 1997.[13] She was scheduled to work Mondays through Fridays for two months in 1997, and for six months in 1998. She was scheduled to work Tuesdays through Saturdays one month in 1997, for two months in 1998, and for five months in 1999.

- Linda Anderson, the eighth employee on the seniority list, was also hired in 1997. She had a varied schedule through the balance of 1997, working many weekends during the only three months for which her schedule is listed. In 1998, she was scheduled to work Tuesdays through Saturdays for four months, Mondays through Fridays for one month, and Wednesdays through

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[11] It appears that Moore also worked four ten-hour days per week during much of the period.

[12] Onisko was on leave for two months, leaving one month unaccounted for.

[13] Ramirez was on a varied schedule for five months in 1997. She was on leave of absence for four months since her hiring, and there is no record of her work schedule for six months in 1997 through 1999.

Sundays for one month.[14] During the first eight months of 1999, she was scheduled to work Tuesdays through Saturdays for two months, Wednesdays through Saturdays for two months, and spent one month providing vacation coverage on weekends.

- Cheryl LaLonde, the ninth employee on the seniority list, was scheduled to work Mondays through Fridays with the exception of her first month as a full-time employee, in May of 1998.

- Aliene Olsen, the tenth employee on the seniority list, was scheduled to work on Saturdays for seven months in 1998 and 1999, after having been scheduled to work both weekend days for her first five months of employment in 1998.[15]

The foregoing analysis spans a period when three different collective bargaining agreements were in effect between the parties. In all, the 18 full-time housekeeping aides listed on Exhibit 14 collectively saw at least 68 changes in scheduled days off between January of 1996 and August of 1999. Included in that total are at least seven instances of changing employees' schedules from both weekend days off to one weekend day off per week. The only patterns which are consistent throughout the period are that full-time employees were usually scheduled for either one or two weekend days off each week.

Of the 10 full-time housekeeping aides employed as of September 1999, six had both weekend days off but four worked one weekend day. However, the schedules in effect from 1996 through August of 1999 were not consistent with the seniority ranking among the employees:

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[14] No information is available on Anderson for two months, and she was on leave of absence for one month in 1998.

[15] There is no record for one month in 1999.

- Those having both weekend days off were the first through fifth and ninth on the seniority list.

- While the first, third, and fourth employees on the seniority list had no schedule changes throughout the period covered by Exhibit 14, and always had both weekend days off during that period, the second employee on the seniority list had nine schedule changes during the same period and the fifth employee had seven schedule changes during that same period.

- Where the ninth employee on the seniority list had only two schedule changes (the second occurring in her second month of employment) employees with greater seniority had much more varied experiences: The sixth employee on the seniority list had five schedule changes; the seventh employee on the list had eight schedule changes, and the eighth employee on the list had nine schedule changes.

- The tenth employee on the seniority list had one more schedule change than the ninth employee on the list, but the three schedule changes for that employee came over a longer period than those of the ninth employee.

The schedule posted by the employer in August of 1999 was even partly consistent with a seniority approach, as the ninth employee on the seniority list was one of those given weekend assignments.

In view of the foregoing, the evidence supports a conclusion that the relevant practices concerning scheduling of employees included that the employer would change the schedules of particular employees from time to time, in order to meet workload requirements and without regard to the relative seniority of the employees. In addition to those practices affecting the working conditions for the bargaining unit as a whole, the ninth employee on the seniority

list had no evident basis to exercise a preference for the Mondays through Fridays schedule over the sixth, seventh and eighth employees on the seniority list, and the fourth employee on the seniority list had no evident basis to exercise a preference for consistency of work schedule over the second employee on the list. Instead, the prevailing concept for scheduling days off for full-time housekeeping aides has been to balance work requirements against employees' individual desires for scheduled days off.

The change of the work schedules for two employees which was announced in August of 1999 was consistent with the past practice. There is absolutely no evidence to substantiate the union's claim that employees' scheduled days off have not been changed in the past by the unilateral action of the employer. The union, therefore, has not met its burden of proof.

Refusal of Employer to Renegotiate the Contract

Although it is clear that the employer rejected the union's request for bargaining on the scheduling issue, the Examiner is not persuaded that the employer thereby violated the law.

As noted above, the parties' new contract was not signed until September 15, 1999, but both the action at issue in this case and the employer's rejection of a union demand for bargaining occurred after the parties had reached an agreement on the terms of a successor collective bargaining agreement. During the negotiations for the current contract, the union made four proposals on the subject of employee work schedules, of which only two are relevant here. One of those proposals would have required the employer to schedule all employees off duty for half of the weekends (two weekends off in four consecutive weeks); the other would have

required the employer to make schedule assignments according to seniority. Both of those proposals were withdrawn by the union, apparently long before the negotiations concluded. The only question before the Examiner in this case is whether the employer breached the good faith obligation.[16]

With respect to the union's contention that it relied upon the representations of an employer official at the bargaining table, the evidence does not support a conclusion that the employer should be estopped from implementing the schedule posted in August of 1999. In discussing the union's proposal concerning weekends off, the employer official said that acceptance of the proposal would require that all employees work some weekends during the course of the month, in order to provide each employee with two weekends off per month. The employer official did not tell the union that withdrawal of the union proposals would guarantee that no employee would have their existing days off changed in the future. Under this scenario, the union could not have reasonably believed it had received a verbal commitment not to change scheduled days off or to require an employee to work a weekend day where previously the employee had not worked either day of a weekend.

Inherent in the union's proposals was a recognition that the employer had discretion, both with respect to the amount of weekend work it would assign to employees and who it would select to perform such work. When the union dropped its proposals, it must be held to have understood that the employer's discretion with respect to the scheduling of employee work days would continue under the new labor agreement as it had existed under the expired

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[16] Reiterating what is suggested above, and in the preliminary ruling made at the outset of this proceeding, the determination and remedy of contract violations is for arbitrators under contractual grievance procedures.

labor agreement. Having dropped its demands during or about May of 1999, the union was not entitled to reopen the negotiations and revive those demands in August or September of 1999.

Waiver by Contract Defense Rejected

The Examiner has considered, but rejects, the employer's arguments based upon the management rights clause of the parties' contract.

When the action at issue in this case occurred, the parties did not have a written collective bargaining agreement in effect. Apart from its statutory obligation to maintain the status quo with respect to mandatory subjects of bargaining pending agreement on a successor contract, RCW 41.56.123 kept in effect any waivers contained in the parties expired contract. The union took conflicting positions as to whether a grievance was filed concerning the schedule posted in August of 1999, and the employer never asserted this dispute should be deferred to arbitration. That theoretically leaves open the question of whether the disputed schedule was either expressly permitted, or not prohibited, by the parties statutorily-extended contract.

The management's rights clause was unchanged from the parties' expired (statutorily-extended) contract and their successor agreement. However, that language is too broad to predicate a waiver by contract with respect to the scheduling of employees.

Insignificance Defense Rejected

The Examiner has considered, and also rejects, the employer's defense predicated upon the disputed change having affected an insignificant number of employees.

No precedent is cited or found where the Commission has accepted a "de minimis" defense in an unfair labor practice case. Even if such precedents existed, scheduling is an activity of an ongoing nature and could have the potential to create limitless changes in employee working conditions in the future.

FINDINGS OF FACT

1. Mason General Hospital is a "public employer" within the meaning of Chapter 41.56 RCW.

2. Washington State Council of County and City Employees, Local 1504-H, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for an appropriate bargaining unit including, inter alia, housekeeping aides employed by Mason General Hospital.

3. The parties have had a collective bargaining relationship for over 20 years.

4. In August of 1999, the parties did not have a signed collective bargaining agreement in existence, but they had agreed on the terms of a contract to replace one which had expired on March 31, 1999.

5. Both the expired contract and the new contract contained identical language with respect to management rights. That language was not specific as to scheduling of time off.

6. Both the expired contract and the new contract contained language with respect to scheduling of employee work days.

That language required a good faith effort on the part of the employer to schedule employees off for two weekends during each four consecutive weeks.

7. Since January of 1996, at least 18 employees worked as full-time housekeeping aides. While so employed, they had at least 68 changes in scheduled days off. Those work schedule changes do not correlate with the respective seniority among the employees.

8. Between January 1996 and August 1999, full-time housekeeping aides were generally scheduled with either both weekend days off every week or one weekend day off each week as part of two consecutive days off. In at least seven instances, employees within that class were reassigned from two weekend days off each week to one weekend day off as part of two consecutive days off each week.

9. As of August 1999, six full-time housekeeping aides had both weekend days off, while four employees had one weekend day off each week. That arrangement of work schedules did not correlate with the respective seniority among the employees.

10. During the contract negotiations in 1999, the union made a proposal to require that all employees have two weekends off per four consecutive weekends. Responding to that proposal, an employer negotiator said that the employer would have to require all employees to work some weekends each month. The union negotiators held a caucus and withdrew the union's proposal.

11. During the contract negotiations in 1999, the union made a proposal to require that employee work shifts be assigned by seniority. The union also withdrew that proposal.

12. After consultation with both bargaining unit employees and supervisors with regard to ways to improve operations, the employer determined during or about August of 1999 that it needed to provide more housekeeping services on weekends and to add more experienced employees to its weekend complement of personnel.

13. In August of 1999, the employer then posted a work schedule for September of 1999 in which the schedules of two employees were changed from having both weekend days off to having one weekend day off as part of two consecutive days off each week. The employees affected were the fourth and ninth on the seniority list.

14. On September 1, 1999, the union protested the work schedule described in paragraph 14 of these Findings of Fact, asserting that the change was both a violation of the parties' collective bargaining agreement and an unfair labor practice.

15. In a meeting held on September 9, 1999, the employer refused to renegotiate the collective bargaining agreement in regard to the work schedule for September of 1999.

16. On September 15, 1999, the parties signed a written collective bargaining agreement reflecting the terms agreed upon in negotiations prior to the posting of the disputed work schedule.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The work schedule posted by the employer in August of 1999 did not constitute a change from past practice, so that no duty to bargain arose under RCW 41.56.030(4), and the employer did not make a unilateral change in violation of RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices is DISMISSED.

Issued at Olympia, Washington, on the 25th day of October, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.