STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WHITMAN COUNTY DEPUTY SHERIFFS' ASSOCIATION,	)	
Complainant,	)	CASE 15751-U-01-3995
vs.	)	DECISION 7735 - PECB
WHITMAN COUNTY,	)	RULING ON MOTION FOR SUMMARY JUDGMENT
Respondent.	)	

Garrettson, Goldberg, Feinrich & Makler, by *Mark J. Makler* and *Timothy W. Ching*, for the union.

Perkins Coie, by *Mary P. Gaston*, for the employer.

On April 5, 2001, the Whitman County Deputy Sheriffs' Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Whitman County (employer) as the respondent. A preliminary ruling was issued on June 13, 2001, finding a cause of action to exist on allegations summarized as:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative "interference" in violation of RCW 41.56.140(1)], by breach of its good faith bargaining obligations through delays in negotiations for a health insurance re-opener, conditioning bargaining in negotiations on a permissive subject of bargaining (health insurance coverage for LEOFF I retirees), and limiting negotiations to Washington Counties Insurance Fund (WCIF) plans only.

On June 12, 2001, the undersigned was assigned as Examiner in this case. The employer filed a response to the complaint on June 21, 2001, and included a request that this unfair labor practice case be deferred to arbitration. On June 29, 2001, the Examiner sent a deferral inquiry to the union.

In a letter filed on July 9, 2001, the union stated that it did not believe that deferral would be appropriate, that no contractual grievance had been filed in relation to the facts asserted in this case, and that the union desired to proceed to interest arbitration on the issue of health benefits coverage for employees.

A hearing was scheduled in this matter for August 28, 2001. At the request of the parties, the hearing was postponed, rescheduled for November 20, 2001, and then further postponed.

On January 9, 2002, the employer filed a motion for summary judgment and supporting memorandum. On January 28, 2002, the union filed its response to the employer's motion, opposing summary judgment. The employer filed a reply on February 20, 2002.

The Examiner has considered the employer's motion for summary judgment and the arguments advanced by both parties regarding that motion. Summary judgment is granted, and the complaint charging unfair labor practices filed by union is DISMISSED.

BACKGROUND

The employer provides customary governmental services, including law enforcement functions conducted through a sheriff's department. The union is the exclusive bargaining representative of a bargain-

ing unit of approximately 14 commissioned law enforcement officers employed by the employer. Because the employees involved are "uniformed personnel" within the meaning of RCW 41.56.030(7), the collective bargaining relationship between these parties is subject to the interest arbitration provisions of Chapter 41.56 RCW.

The complaint alleges, and the employer does not dispute, that the employer and union were parties to a collective bargaining agreement concluded during or about January of 2000, covering the period from January 1, 1999, through to December 31, 2001. This case concerns negotiations between the parties on a contract "re-opener" concerning health insurance benefits.

POSITIONS OF THE PARTIES

Following the standards set forth in WAC 391-08-230, the employer claims there are no genuine issues as to any material facts in this case, and that it is entitled to a judgment as a matter of law.

The union's response to the motion for summary judgment was limited to argument on the law as it would apply to the facts of the case, and the union did not dispute any of the factual assertions made by the employer.

DISCUSSION

Applicable Rule

The Commission's rules provide for summary judgments at WAC 391-08-230, as follows:

> SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the agency and served on all other parties to the proceeding.

Precedents concerning summary judgment were discussed in *City of Vancouver*, Decision 7013 (PECB, 2000), as follows:

> A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. *Monroe School District*, Decision 5283 (PECB, 1985). A motion for summary judgment calls upon the Examiner to make final determinations on a number of critical issues, without the benefit of a full evidentiary hearing and record. The granting of such a motion cannot be taken lightly. *Port of Seattle*, Decision 7000 (PECB, 2000). However, entry of summary judgment "accelerates the decision-making process by dispensing with the hearing where none is needed". *Renton School District*, Decision 3121 (PECB, 1989).

The rule concerning summary judgment was continued in effect in 1998 and 2000, following rules review processes conducted under Executive Order 97-02.

Undisputed Facts

Based upon review of the complaint filed by the union, the answer filed by the employer, and the arguments provided by the parties concerning the motion for summary judgment, it is apparent that

there are no genuine issues of fact to be heard in this case. The employer's answer filed on June 21, 2001, denied legal conclusions asserted by the union,[1] but essentially admitted all of the facts alleged by the union. This dispute is based upon the meaning and interpretation of the documents exchanged between the parties that were referenced in the union's complaint and in the employer's answer. Thus, the facts underlying this controversy are largely, if not entirely, undisputed:

- Sections 11.05 and 11.06 the agreement negotiated by the parties early in 2000 provided:

> 11.05 During the term of this Agreement the Association shall have the option to exercise a reopener on health care issues if the Association shops health care and finds a plan or plans that provide(s) substantially comparable benefits to Association members for less cost than the County is currently paying.
>
> 11.06 The County shall continue its payment into the employees' retirement program (LOEFF I and LOEFF II and PERS), as established by State law, for all bargaining unit employees defined in Section 2.02.

- On July 17, 2000, the union's attorney, Mark Makler, sent the following letter to the employer:

> Pursuant to Article 11, Section 11.05 of the current Collective Bargaining agreement between the WCDSA and Whitman County, this

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[1] Specifically: it denied an assertion in relation to the fiscal impact of its proposed options to the existing health care plan; it denied an assertion that its effort to seek a review of the union proposal which thus made it unable to agree within the time frame demanded by the union was a breach of good faith negotiations; and it denied an assertion that a letter from its current insurance provider was an attempt to tie the negotiations to a permissive subject of bargaining.

> letter is intended to exercise the Association's option to reopen health care. Section 11.05 allows the Association to reopen health care negotiations based upon the Association's belief that the Association has shopped and found a health care plan(s) that provides substantially comparable benefits for less cost than Whitman County is currently paying.
>
> . . . .

- The parties met on August 2, 2000, and the union presented the employer with two options for health insurance provided by Premera Blue Cross. The union stated that one option provided substantially comparable health care benefits to its members for less cost than the County was *obligated to pay* and thus, in its opinion, fulfilled the requirements of Section 11.05. According to the union, the other option provided substantially comparable health care benefits for approximately $4.00 more per employee per month than the employer was *obligated to pay*. The union asserted that the employer and the union would have to begin participation in a new plan by August of 2000, in order to take advantage of the plans. Union official John Guidance asserted that the union had been advised that the reopener contingency only required the union to find an insurance plan that was less expensive than the employer's "contingent liability" under the current plan, without regard to what the employer was actually paying for insurance. He further explained that the union had estimated the employer's "contingent liability" cost by determining what it would cost the employer if each covered employee was enrolled in the most expensive medical insurance plan offered by the current provider,[2] plus what it would cost if each employee with

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[2] The current provider was the Washington Counties Insurance Fund (WCIF).

dependents elected to pay for their coverage. The union thus calculated the employer's "contingent liability" as $6,518.50 per month or $78,224.00 per year.[3]

- On August 14, 2000, after meeting with the Board of County Commissioners, Human Resources Manager July Allan sent a letter to the union which recapped the events which had occurred since receipt of Makler's letter, as follows:

> The terms of our labor agreement, Article 11.05 provides that your association shall have the option to exercise a reopener on the negotiation of health care issues if the Association shops health care and finds a plan or plans that provide(s) substantially comparable benefits to Association members for less cost than the County is currently paying. By verbal notice, John Guidance informed me about July 15 that you wished to reopen contract negotiations in accord with this provision.
>
> On August 2, 2000 we met to review and consider a health plan that the Association had found and proposed that we negotiate into the contract. We reviewed the basic plan overview and agreed to meet again on August 8, 2000 as a part of the proposed contract reopener on health benefits under Article 11.05.
>
> While the County raised concerns that the plan proposed by the Association did not cost less than the plan in which members are currently enrolled (our estimate was that the overall cost would be more than $20,000 more than the County is currently paying), the County offered to discuss the development of an alternative lower cost family coverage plan (similar to your proposal with the County Trust (WCIF).
>
> We have been advised by WCIF that they would and could respond to our request, however, that we may not reasonably expect a complete

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[3] The employer estimated that this was $20,000 or more in excess of what it was currently paying.

> response until early October 2000. Thus, while we will continue to meet and discuss these issues with the Commissioners and regard ourselves making a good faith effort to negotiate over this issue, we cannot schedule our next session until we have the necessary information from WCIF from which we may base our counter-proposal.
>
> Your proposal to be paid $1,000 per month to cover your members' current out-of-pocket dependent costs pending the review by the Trust is unacceptable, unprecedented, and hereby rejected. Subject to a timely response from the Trust, we offer the following potential dates for further negotiations: 3:00 PM October 10, 17, or 24. If the Trust responds sooner than anticipated, we will certainly attempt to schedule a meeting earlier.

That letter was also signed on behalf of the employer by Director of Administrative Services Richard Brown.

- On August 30, 2000, Daryl S. Garrettson, a member of the same law firm as Makler, replied to the employer's letter, as follows:

> I am in receipt of your letter dated August 14, 2000. Pursuant to your letter, you propose to discontinue negotiations until October of 2000. Apparently the basis for your proposed hesitancy in negotiations relates to the coverage of LEOFF I individuals.
>
> I would remind you that the reopener in the contract relates specifically to the Association putting forth a new plan. By delaying negotiations you will have foreclosed and limited the ability of the Association to put forth that new plan. To tie the delay in negotiations to coverage of individuals outside the bargaining unit would constitute bad faith negotiations, and would constitute tying negotiations to a permissive subject. That constitutes an unfair labor practice.

> In addition, by delaying negotiations for the purpose of seeking a new plan from the trust is outside the scope of the reopener, and also constitutes bad faith bargaining violation of the Public Employees Collective Bargaining Act.
>
> Please consider this letter a demand that the County immediately return to the bargaining table for the purposes of negotiating insurance. Should the County continue in this refusal to bargain in good faith, the Association will have no alternative but to pursue the appropriate unfair labor practices, including a remedy which would enable the Association to secure the benefits it has put forth — benefits which may no longer be available as a result of the bad faith delay instituted by the County.

- An employer representative responded to the union on September 11, 2000, in the form of an e-mail message, as follows:[4]

> I am responding to your letter dated August 30, 2000 to Mr. Richard Brown. There are numerous misstatements and misrepresentations of the status of our negotiations which warrant instant clarification.
>
> You assert that the basis of the County's proposal to not schedule another negotiation session until October relates to the coverage of the LEOFF I individuals. This misstates what is patently clear in Mr. Brown's letter.
>
> First and foremost, there is not a single reference to LEOFF I individuals in the County's letter to Officer Chapman. More importantly, the County was presented with a proposal which would cost more than $20,000 per year than what the County is currently paying (paragraph 3). Mr. Brown, in the most unambiguous terms possible noted that in response to the WCDSA's proposal, that the

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[4] The author of that message, Mark R. Cassidy, was then a labor relations consultant based in Spokane, Washington.

County had requested that its carrier, the WCIF, develop and provide the County with a quote of an alternative lower cost family plan similar to your proposal. Paragraph 4 goes on to clarify that the WCIF has informed the County that it could not provide a response until early October.

The reopener is intended to provide the opportunity to consider the WCDSA's proposal for a plan coverage that would fall within the cost parameters of the County's current plans. It is preposterous to suggest that the County is engaging in bad faith bargaining when the County has explained that the delay in setting another time is for the sole purpose of seeking information from its current carrier in order to develop a counterproposal.

If the County had simply rejected, without a counter or further discussion, your initial proposal because [*sic*] did fall within contractually described intention for cost limitations of the reopener language, would you be making the same allegations of bad faith and failure to bargain? There is no legal basis that you can identify which suggests that the County's overall consideration of it [sic] financial circumstances and potential fiscal impact of a bargaining unit proposal on other employees is not a legitimate managerial concern.

The duty to bargain at reasonable places and times is clearly being met by the County. It has no control over when the WCIF can provide it with data responsive to its request for assistance in coming up with a meaningful counteroffer. The County is ready able and willing to meet and negotiate over the insurance. In the absence of the necessary information from its current carrier, there would not appear to be much of a opportunity for meaningful exchange at the table. However, if you have further information that you wish to provide, we are happy to meet and listen.

In the absence of additional information from the WCDSA and unless there is a reason to meet to consider further information from the

> WCDSA, the County is in the process of preparing its counter proposal and will propose the next meeting time to Deputy Chapman and you.

- The next correspondence on this matter was a brief memo sent by Allan to the union on October 5, 2000, indicating that she would get information from the insurance fund on October 18, and suggesting a meeting with the union to share this information on October 24, 2000.

- Allan and Brown met with union officials (including Makler) on November 3, 2000. At that meeting the employer officials informed the union that the WCIF had not been able to negotiate a low-cost family insurance plan. The union continued to argue that its proffered plans were less than the employer's "contingent liability" under the existing insurance plans. The parties also discussed the fact that the LOEFF I retirees from the department would not be separately eligible for insurance coverage through WCIF in the event that the bargaining unit employees left the WCIF plan. Makler asked for documentation regarding the employer's current insurance costs, a copy of the WCIF contract, the by-laws of the WCIF and proof that the WCIF would not separately insure the LOEFF I retirees.

- On November 17, 2000, Executive Director Kathleen Wallace of the WCIF wrote a letter to Allan, as follows:

> In accordance with your request, I am enclosing all of the documents available which refer to agreements between Whitman County and the WCIF: the revised trust agreement of 1979 and amended trust agreement of 1987.
>
> I understand that the Sheriff's Guild is considering leaving the WCIF coverages for benefits through another carrier. As a small group, they would not be experience rated

> based on their claims utilization. They appear to have been rated within a community pool composed of individuals and very small groups in you area of Eastern Washington. In addition, I understand the Guild has not acknowledged the department's retirees as they seek a rate quote.
>
> The Guild IS the Whitman County Sheriff's Department. With 14 active employees, it is the largest group of Whitman County law enforcement officers now insured through the WCIF. As far as Regence Blue Shield, Group Health Options and the WCIF are concerned, all retirees of a group or department must also leave if that group or department decides to leave the trust.
>
> What the Guild is trying to do is a disservice to its retirees, to Whitman County and to the other counties and Sheriff's Departments who are served by Washington Counties Insurance Fund.
>
> The WCIF will not continue to insure retirees of groups who leave the trust.

In turn, the employer provided a copy of this letter to Makler.

Even though the union opposed the employer's motion for a summary judgment, it limited its arguments to the legal standard that should be applied to the case, and it did not dispute any of the facts discussed in the employer motion. Thus, the standard from *Monroe School District, supra*, has been met in this case and the Examiner concludes that the complaint is appropriate for summary judgment.

Existence of a Duty to Bargain

The union's lead issue in this case is that it complied with language in the parties' collective bargaining agreement which

imposed upon the employer a duty to bargain the issue of employee health care coverage. The employer argues that it had no duty to bargain on the health care issues proposed by the union, because the re-opener in the parties' collective bargaining agreement was conditioned upon the union's presenting an alternative health care plan that would cost less than the employer was currently paying. Because the plans proffered by the union actually cost more than current costs, the employer asserts it was under no obligation to continue bargaining.

Contractual Duty to Bargain Inapposite -

The union's choice of recourse is a mistaken reliance on a contractually-imposed duty to bargain. In a long line of decisions the Commission has consistently refused to assert jurisdiction on issues of contract compliance. This Examiner reviewed those precedents in *City of Fircrest*, Decision 5669-A (PECB, 1997), as follows:

> The object of the collective bargaining process [as] defined by the Legislature is for an employer and [the] exclusive bargaining representative of its employees "to execute a written contract with respect to grievance procedures and collective negotiations on personnel matters". RCW 41.56.030(4). Collective bargaining agreements are enforceable in the courts, like any other contract. The Legislature has, however, endorsed the enforcement of collective bargaining agreements through non-judicial processes. A strong endorsement of the grievance arbitration process found in the statute which created the Commission:
>
> > Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpreta-

> tion of an existing collective bargaining agreement. . . .
>
> The Legislature specifically authorized the inclusion of procedures in collective bargaining agreements for "binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement". RCW 41.56.122(2). The Legislature has even made the Commission's staff available to arbitrate grievances without fees or charges to the parties. RCW 41.56.125. Importantly, what the Legislature has not done is to make "violation of a collective bargaining agreement" an unfair labor practice. As noted above, the Commission and the Executive Director have often stated and reiterated the principle that the Washington Public Employment Relations Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of Chapter 41.56 RCW. *City of Walla Walla*, Decision 104 (PECB, 1976). The union's remedy, if any, for its contractually-based "hours of work" claims in this case was through the contract itself.

Thus, under precedents dating back to 1976, the union's complaint cannot be processed to enforce any rights secured for the union by the parties' collective bargaining agreement.

Contractual Precondition to Statutory Bargaining Obligation - The Commission will interpret collective bargaining agreements for limited purposes relating to their impact on statutory obligations. The analysis in *City of Fircrest*, *supra*, continued as follows:

> The Commission occasionally considers and interprets collective bargaining agreements, but only as part of the decision making process on claims which independently state a cause of action for unfair labor practice proceedings. Thus:

> 1. Where "waiver by contract" defenses are asserted in unfair labor practice cases where a unilateral change is evident, the Commission will interpret the contract in the absence of viable grievance arbitration machinery. Under *City of Yakima*, Decision 3564-A (PECB, 1990), such contract interpretations will be deferred to arbitration if the parties' contract contains provisions for final and binding arbitration of grievances and there are no procedural impediments to arbitration.
>
> 2. Where contractual provisions are at issue in unfair labor practice cases where a union is alleged to have breached its duty of fair representation by aligning itself in interest against one or more bargaining unit members, the Commission will interpret the contract. *City of Redmond*, Decision 886 (PECB, 1980); *Elma School District*, Decision 1349 (EDUC, 1982).

The first of those conditions was invoked in the instant case, and it might have been appropriate to defer that particular aspect of the overall dispute to arbitration.

The union does not point to any contractual language as the basis for the "contingent liability" interpretation on which it relies, nor does it allege any bargaining history by which the "contingent liability" concept was discussed by the parties in negotiations for section 11.05 of the applicable collective bargaining agreement. The words "is currently paying" are unambiguous. Thus, on the undisputed facts of this case, the union did not fulfil the requirement of the plain language of the parties' collective bargaining agreement. Indeed, the plain "for less cost than the County is currently paying" language of the parties' contract contradicts any inference that the employer knowingly agreed to bargain based on a theoretical obligation far greater than it was currently paying, and, conversely, the plain language of the

parties' contract supports a conclusion that the union knowingly waived its bargaining rights on more costly insurance plans for the term of the contract. Therefore, the employer was never placed under a statutory duty to "re-open" an issue that had been settled with the earlier ratification of the entire agreement.

In its brief opposing the motion for a summary judgment, the union argues that the employer's participation in some negotiations on the re-opener precludes it from denying the validity of the re-opener. However, its assertion that the employer at no time in the 18 months of discussions between the parties on this issue formally challenged the validity of the union's demand to re-open the contract flies in the face of the letter that the employer sent the union on August 14, 2000, which stated in part:

> While the County raised concerns that the plan that the Association had found and proposed did not cost less than the plan in which members are currently enrolled (our estimate was that the overall cost would be more than $20,000 more than the County is currently paying), the County offered to discuss the development of an alternative lower cost family coverage plan (similar to your proposal) with the County Trust (WCIF).

Thus, the union's assertion that the employer should be estopped from arguing that the union's proposal did not meet the contractual standard is not consistent with the facts of this case. Moreover, a willingness to discuss possible alternatives to the contractual health benefits is not tantamount to re-opening the contact.[5] Instead of committing an unfair labor practice, the employer's

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[5] The union never alleges that the employer ever agreed to re-open the contract for discussions concerning health insurance, but only that the employer was willing to consider alternatives to the plans proposed by the union.

attempt to work with the union to solve a mutual problem was consistent with Commission precedents describing collective bargaining as "a process for communication between labor and management . . ." *See Pasco School District*, Decision 5384-A (PECB, 1996).

Similarly, the Examiner is not persuaded by the union's assertion that the employer's challenge to the health insurance re-opener is untimely. As the letter of August 14, 2000, clearly shows, the employer questioned the union's proposals early in the process.

Alleged Delays in Negotiations

The union argues that the opportunity to change to a more advantageous insurance plan was frustrated by the employer's unlawful delay of its response to the union's proposal to re-open the parties' collective bargaining agreement.[6] The employer argues that, even if it had a duty to bargain, the allegations of employer delay are insufficient.

The union's argument is based upon a deadline that the union itself sought to impose on the employer: That the employer had to accept one of the union's insurance options in approximately 29 days. The employer obviously did not meet that time line. However, the union's argument is based upon an unsupported and unnegotiated assumption that 29 days would be sufficient time in which to

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[6] Consistent with this theory, the union's remedy request is that the Commission should direct the employer to enter into an agreement with Premera Blue Cross for the level of benefits proposed by the union in August of 2000, with the employer paying the full cost of employee and dependent health care under those plans and for the employer to reimburse employees for all out of pocket health care expenses incurred since August of 2000.

bargain employee medical coverage plus an unsupported assumption that the employer was obligated to accept one of the options proposed by the union. The defect with the union's arguments lies in the absence of allegations or facts that the employer ever agreed to such a deadline, or to accept whatever proposal might be advanced by the union in statutory bargaining under the contractual re-opener. A party does not commit an unfair labor practice when it does not comply with a time line unilaterally imposed by the opposing party. As stated in *City of Yakima*, Decision 3564 (PECB, 1990):

> "Gotcha" has no place in labor relations, and is not conducive to the public interest in stable employment relationships.

Furthermore, the duty to bargain in good faith that is imposed by RCW 41.56.030(4) does not include a duty to agree. The contract language only compelled good faith negotiations on the subject; it did not mandate any particular result. The statute establishes interest arbitration procedures for situations where the parties disagree in bilateral negotiations and mediation. The union's position on this allegation is thus not persuasive, and would not support finding an unfair labor practice even if the contractual conditions for bargaining had been met.

Alleged Conditioning Mandatory Subject on Permissive Subject

The union argues that the employer committed an unfair labor practice when it conditioned bargaining on a mandatory subject of bargaining (i.e., medical benefits for current employees), with a permissive subject of bargaining (i.e., medical benefits for retirees).

Contrary to the union's assertion that the employer refused to consider union proposals because of an unlawful linkage to health coverage for retired employees, the union's complaint asserted that the November 17, 2000, letter sent to the employer by a third party was the "first time during said negotiations" that a tie was established between health insurance for the current and former employees. In fact, a union attorney appears to have initiated discussion of the retirees much earlier, when responding to an employer letter that did not even mention the issue. Further, it is clear from the letter that the WCIF official was responding to the quotes that had been provided by the union. It is not at all clear that the employer ever insisted on including the retirees in the insurance plan. While it is clear from the letter that the WCIF linked employee coverage with retiree coverage, that linkage is not attributable to the employer. This letter in no manner confirms the union allegation concerning the linking of a mandatory subject of bargaining with a permissive subject of bargaining, and cannot stand as the basis for finding an unfair labor practice.

FINDINGS OF FACT

1. Whitman County is a political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. Whitman County Deputy Sheriffs' Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of approximately 14 deputy sheriffs employed in the Whitman County Sheriff's Department.

3. The employees in the above-referenced bargaining unit are uniformed personnel within the meaning of RCW 41.56.030(7),

and the parties' collective bargaining relationship between the employer and the union is subject to interest arbitration under RCW 41.56.430 through RCW 41.56.905.

4. Taken together, the complaint charging unfair labor practices filed by the union, the answer filed by the employer, the employer's motion for summary judgment, and the memoranda filed by the parties concerning that motion frame no genuine issues of material fact to be resolved in this proceeding.

5. A collective bargaining agreement between the parties, which was in effect between the parties from January 1, 1999, through December 31, 2001, contains a paragraph labeled Section 11.05 wherein the union could re-open the collective bargaining agreement if it found "a plan or plans that provide(s) substantially comparable benefits to Association members for less cost than the County is currently paying."

6. On July 17, 2000, the union wrote the employer and indicated that it wanted to re-open the collective bargaining agreement. On August 2, 2000, the union presented two plans for consideration by the employer, one of which was advanced as meeting the conditions imposed by Section 11.05. The union also stated that the employer and union would have to begin participating in either of the proposed plans by the end of August 2000.

7. At a meeting held by the parties on August 8, 2000, the employer responded that its analysis of the proffered health care plans was that both would cost the employer more than it was currently paying, and that the condition for re-opening the contract was not satisfied. In asserting that the re-opener conditions were satisfied, the union relied upon a

"contingent liability" computation that is not alleged to have any basis in the language of the parties' collective bargaining agreement or in the bargaining history leading up to the signing of that collective bargaining agreement. At that meeting, the employer offered to have its current carrier, the Washington Counties Insurance Fund, provide information concerning lower cost family benefits plans.

8. In a letter dated August 14, 2000, the employer explained to the union that the Washington Counties Insurance Fund research for an alternative lower cost family medical coverage would not be available until early October of 2000.

9. In October of 2000, the employer was informed that the Washington Counties Insurance Fund had not been able to negotiate a lower cost employee medical plan. That information was discussed with the union on November 3, 2000.

10. In November 2000, the parties discussed information received from the Washington Counties Insurance Fund that retirees from the bargaining unit would not be separately eligible for insurance through that fund if the current employees were to leave the existing plan.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.

2. Based upon the admissions contained in the answer and the motion filed by the employer, and the responsive briefs filed

by both parties, this matter is appropriate for summary judgment under WAC 391-08-230.

3. The Commission does not assert jurisdiction over allegations of a violation of a collective bargaining agreement under RCW 41.56.140(4), so that no remedy is available in this proceeding for violation of any contractual duty to bargain.

4. By the events described in the foregoing findings of fact, Whitman County has not refused to bargain collectively under RCW 41.56.140(4) with the Whitman County Deputy Sheriff's Association, and has not committed an unfair labor practice under that statute.

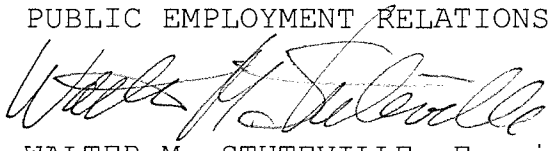
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 3rd day of June, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, 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.