STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON EDUCATION ASSOCIATION, Complainant, vs. COLFAX SCHOOL DISTRICT, Respondent.	)	CASE 20720-U-06-5280 DECISION 9940 - PECB
COLFAX SCHOOL DISTRICT, Complainant, vs. WASHINGTON EDUCATION ASSOCIATION, Respondent.	)	CASE 20914-U-07-5331 DECISION 9941 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

Eric R. Hanson, Staff Attorney, for the union.

Stevens ~ Clay ~ Manix, by *Gregory L. Stevens*, for the employer.

On October 23, 2006, the Colfax Educational Support Personnel, which is affiliated with the Washington Education Association, (union) filed a complaint charging unfair labor practices against the Colfax School District (employer). The union represents classified employees of the employer including teaching assistants, food service workers, bus drivers, and custodians. On November 28, 2006, a preliminary ruling was issued. On February 8, 2007, the employer filed a complaint charging unfair labor practices against the union. A preliminary ruling was issued on March 27, 2007. The two cases were consolidated and Examiner Emily Martin held an

evidentiary hearing on April 10 and 11, 2007. The parties filed post hearing briefs and reply briefs.

ISSUES

A. Union Charges: Did the employer commit unfair labor practices;

1. by falsely asserting an inability to afford the union's proposal?

2. when it made its opening proposal?

3. through school board and bargaining team member Alan Morgan's comments at the bargaining table?

4. when Superintendent Michael Morgan allegedly said that the employer was hoping bargaining would continue for a year?

5. by conditioning the scheduling of another face-to-face negotiation session on "an agreement to negotiate appropriately?"

6. by escalating its bargaining demands?

7. by misrepresenting that the union's bargaining team had agreed that the new agreement would have a term of three years?

8. through an October 10, 2006 memorandum sent to the bargaining unit which criticized the union's staff?

B. Employer Charges: Did the union commit unfair labor practices;

9. when it changed its bargaining team spokesperson?

10. with its refusal to meet with Alan Morgan on November 16, 2006?

11. when it allegedly rejected a tentative agreement about the grievance mediation form?

12. with its letter published in a local newspaper on December 7, 2006?

13. by inducing the employer into committing unfair labor practices?

The employer committed unfair labor practices through its escalation of its bargaining demands through a regressive bargaining proposal, and through comments made in its October 10, 2006 memorandum to the bargaining unit. The union committed an unfair labor practice with its refusal to meet with Alan Morgan. The remainder of the charges made by both parties are dismissed.

APPLICABLE STANDARDS

The Public Employee's Collective Bargaining Act, Chapter 41.56 RCW, which includes under its jurisdiction classified employees in school districts, prohibits certain collective bargaining conduct and authorizes the Commission to adjudicate and remedy such unfair labor practices under RCW 41.56.160. Under the Commission's rules, a party who files an unfair labor practice complaint is responsible for the presentation of its case and has the burden of proof. WAC 391-45-270(1)(a). Therefore, each complainant and counter-complainant in these cases must prove that the facts occurred as alleged and that those facts constitute an unfair labor practice.

Under RCW 41.56.1.140(4), it is an unfair labor practice for an employer to refuse to engage in collective bargaining. Likewise, a union that refuses to engage in collective bargaining commits an unfair labor practice under RCW 41.56.150(4). Collective bargaining is defined in RCW 41.56.030(4) as "the performance of the

mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times and to confer and negotiate in good faith."

The obligation to engage in good faith bargaining does not require that a party make concessions or reach an agreement, but it does include a duty to engage in full and frank discussions on disputed issues and to explore possible alternatives, if any, that may accommodate the other parties' interests. *Mansfield School District,* Decision 4552-A (EDUC, 1994). Parties must come to the bargaining table with a readiness to listen to the concerns of the other side, and a willingness to work toward an agreement.

The union has also alleged that the employer committed the unfair labor practice of interference. Under 41.56.140(1), it is an unfair labor practice for an employer "to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter." Unlike a failure to bargaining in good faith violation, interference violations do not require that the offending party have an ill intent but only that the employer's conduct could reasonably be perceived by employees as a threat of reprisal or force, or a promise of a benefit, deterring them from participating in lawful union activity. *Grant County Public Hospital District* 1, Decision 8378-A (PECB, 2004).

Additionally there are two other claims; the union alleges employer domination of the union and the employer alleges union inducement of the employer to commit unfair labor practices. Under RCW 41.56.140(3), it is an unfair labor practice for an employer to "control, dominate or interfere with a bargaining representative." Under RCW 41.56.150(2) it is an unfair labor practice for a union to induce an employer to commit an unfair labor practice. To induce an employer to commit an unfair labor practice, a union must

be asking an employer to something which is unlawful. *City of Issaquah*, Decision 9255 (PECB, 2006).

APPLICATION OF STANDARDS

The disputes at issue in this case arise out of both parties' bargaining behavior for a successor collective bargaining agreement. Formal collective bargaining began in May 2006. However, before May 2006, the parties engaged in months of informal discussions to accelerate the collective bargaining process by resolving minor language issues and to "clean up" but not to change the intent of the agreement. The parties' failure to reach an early agreement on these issues set a stage for contentious formal negotiations thereafter.

According to the testimonies of both superintendent Michael Morgan and the 2005-2006 union president, Morgan and the union's executive team met from January through April 2006 to "clean up" language and reached an agreement on some changes. The union's executive team took the proposed changes back to the entire union for consideration shortly before formal collective bargaining began.

Meanwhile the union selected its bargaining team and changed its leadership. Tammie Harder became the union president. Harder and Anna Schluneger were appointed to the bargaining team along with Tom Kammerzell who was appointed as the bargaining team's spokesperson. Initially, union staff member Pat Clark assisted as a consultant but was not a member of the union's bargaining team.

Issue 1 - Asserting an Inability to Pay

The union argues that the employer falsely asserted that it was not able to afford the union's proposal to increase the employees' wages by 3.3 percent. Ten days before the first bargaining

session, on May 8, 2006, Clark sent an e-mail about the employer's finances. No record was made as to whom the e-mail was sent. Morgan responded with a May 11, 2006 e-mail to the union's bargaining team in which he sharply contested Clark's assertions and criticized the union's research. In these unfair labor practice proceedings, the union alleges that in this and in a subsequent e-mail the employer asserted that it was unable to afford the union's opening wage proposal. At the hearing, the employer stipulated that it was able to afford the union's wage proposal, so an assertion to the contrary by Morgan would have been false.

The general message of Clark's e-mail was that Andrea Hardy, of the union's research department, had reviewed the employer's budget and that "there is no financial crisis" in the employer's budget. Specifically, Clark asserted that the ending fund balance of the employer's budget would be on the high end of the range of projected estimates, that the employer could have taken actions to get approximately $200,000,000 more in levy equalization funding from the state government, and that student enrollment was up. Clark later admitted that her e-mail contained errors. The levy equalization amount was around $200,000 rather than $200,000,000. Student enrollment was higher than projected in the employer's budget but overall student enrollment was declining. The union's analysis did not predict that the employer's ending fund balance would have been on the higher end of the estimated range.[1]

Upon seeing Clark's e-mail, Morgan reacted on May 11, 2006, with his e-mail to the union's bargaining team. Morgan challenged Clark's assertions about the fiscal health of the district and

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[1] The employer's state funding depends on student enrollment.

wrote about difficulties that the employer had in maintaining an appropriate fund balance and getting more levy funds. He expressed his reaction to the union's research by stating:

> Their inaccuracy has created a level of dishonesty in the administration with your membership. I will remember that in the future. I don't really see where there is a need to meet with Pat Clark if this is the quality of data we are to expect. I have better things to do with my time now.

On May 15, 2006, Hardy responded with a memorandum regarding Morgan's e-mail. Hardy acknowledged that Clark's e-mail had contained errors, but she also asserted that the union and employer had different interpretations about some of the budget information. Hardy said that the difference in the interpretations was a reflection of a difference in their spending priorities.

An employer can violate its duty to bargain in good faith by arguing an inability to pay when in fact it has the funds. For example in *Shelton School District*, Decision 579-B (PECB, 1984):

> While any employer is constrained to negotiate within the limits of its resources, it will not do to have an employer arbitrarily refrain from using an available resource and then, in effect, plead inability to pay. The Shelton School District had the same access to special levies for maintenance and operation as any other school district. It at least should have bargained in good faith over wages, hours, terms and conditions of employment and then consider its fiscal alternatives, including a special levy (although this does not mean a levy is mandatory). That it did not choose to avail itself of this resource was not the problem of the exclusive bargaining representative or a defense to good faith bargaining.

The Examiner finds that Morgan's comments about the employer's finances did not communicate that the employer was unable to afford

the union's proposals. Furthermore, Morgan's e-mail was written before the beginning of bargaining. Even if Morgan was aware that the union planned to request a wage increase, the e-mail was sent before the union made its wage proposal, so Morgan could not have been communicating an inability to afford union's wage proposal.

The union also alleges that a second e-mail by Morgan also proves that the employer asserted an inability to pay. This e-mail was written on August 31, 2006, after the union requested mediation and before the first mediation session. On the morning of August 31, 2006, Kammerzell had e-mailed Morgan asking how the employer had calculated the cost of the union's wage proposal and whether the employer would agree to another face-to-face meeting before mediation.

Morgan's reply e-mail demonstrated frustration with the negotiations. Morgan wrote "Does it matter anymore Tom?" He then said that the district was planning on offering a new wage proposal, one which had a lower total cost to the district. Morgan wrote "The cost of the last proposal would have been higher than we really could afford, especially with the enrollment being less than I had estimated." As the employer's proposal was less expensive then the union's proposal, the union argues that, through this e-mail, the employer asserted an inability to pay for the union's wage proposal.

The Examiner finds that interpreting this e-mail as an assertion of an inability to pay would distort the intent of the email. Morgan wrote:

> The problem that I have is that, as an Association, you don't really care about the district. You are too self absorbed and want everything without regard to the effect. I am not going take the time tonight to explain

> details. You can get them from WEA's exhaustive research. You don't believe me anyway and it appears to me to be a waste of my time.

The Examiner finds that to rely on this e-mail as evidence that the employer asserted an inability to pay would unjustly overemphasize the role that this e-mail had in communicating the employer's position about it finances because the main purpose of this e-mail was to communicate frustration.

Issue 2 - The Employer's Opening Proposal

The union argues that the employer failed to bargain in good faith when it made its initial bargaining proposal. At the first formal bargaining session on May 18, 2006, the union rejected the proposed "clean up" changes to the contract's language and put forth an initial proposal which focused on a single issue, a 3.3 percent cost of living wage increase for all bargaining unit members. The employer responded with a proposal which had a smaller wage increase as well as seeking flexibility and cost saving in other provisions.[2] The union views the employer's initial proposal as an attempt to decrease job security and the role of seniority.

The union argues that the employer violated its duty to bargain in good faith by proposing a spectrum of proposals which were predictably unacceptable to the union. Some of the employer's proposed changes included:

1. Adding language that would allow the employer to contract out bargaining unit work.

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[2] The employer's initial wage proposal did not have a uniform percentage increase for all classifications.

2. Weakening the role of seniority and allow the employer to make assignment decision based more on qualifications of employees.

3. Removing the option of employees who voluntarily move to new positions to return to their prior positions or a new vacancy within 60 days.

4. Removing language which said "Additional Hours assigned shall be by seniority within a job classification. The District will not reduce the number of full time jobs and will not reduce an employee's hours except by RIF." RIF refers to the reduction in force provisions.

5. Reducing standby pay for the bus drivers.

The union argues that the employer's initial proposal is comparable to proposals made by an employer in a decision which found a refusal to bargaining in good faith when an employer put forth knowingly unacceptable proposals. *Mansfield School District*, Decision 5442-A (EDUC, 1994). In *Mansfield*, the employer put forth proposals which were, on their face, intended to frustrate the bargaining process and was only willing to reach an agreement on what the examiner characterized as "minor" issues or language which restated external law. That employer refused to provide rationales for it proposals other than the issue was part of management's rights. The Commission found that the employer created a situation where continued bargaining by the union would be futile. *See also Snohomish County*, Decision 9834 (PECB, 2007).

Unlike the bargaining in *Mansfield* and *Snohomish*, the union in the present case did not prove that the employer remained rigid in its proposals throughout bargaining. Additionally, the employers in the *Mansfield* and *Snohomish* cases did not provide credible rationales for its proposals. Here, the union has not proven that

employer failed to provide plausible rationales. This situation is unlike *Snohomish* and *Mansfield* and the Examiner finds that union has failed to show that the employer put forth initial proposals with the purpose of frustrating bargaining. The allegations concerning the employer's opening proposals are therefore dismissed.

Issue 3 - Alan Morgan's Comments

The union argues that the employer committed an unfair labor practice through comments made by school board member Alan Morgan during bargaining sessions. Kammerzell testified that during one of the bargaining session in June and July 2006 Morgan, "leaned across the table, pointed his finger at me and stated that if it wasn't for the contract, we would have gotten rid - sold the buses, contracted it out, and had a lot less trouble." Kammerzell also testified that Morgan said "if he had it his way, bargaining would be over in five minutes." Superintendent Morgan admitted that Morgan made the comment about bargaining being "over in five minutes," but denied that he made the comment about contracting out of bus services.

The Examiner finds that even if Kammerzell had exaggerated the exact nature of Alan Morgan's comments about subcontracting, there is sufficient evidence to show that he made the comment about bargaining being over in five minutes. The Examiner also finds that Kammerzell is credible in testifying that Morgan made a comment that demonstrated frustration with bargaining during the subcontracting discussions. However, these comments are not sufficient evidence that the employer engaged in bad faith bargaining. Parties are encouraged to have full and frank discussions at the bargaining table and allowances must be made for honest reactions of frustration in difficult face-to-face negotiations. To hold otherwise would stifle negotiations.

The union also alleges that Morgan's comments demonstrate interference. An independent interference violation can be found against an employer if a union proves that the employer's conduct could reasonably be perceived by employees as a threat of reprisal or force, or a promise of a benefit, deterring them from participating in lawful union activity. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). The Examiner finds that Morgan's comment that he would want bargaining to be over in five minutes would clearly not be perceived by an employee as a threat or promise, but rather as expression of general frustration. His other comment was related to subcontracting. His comment about subcontracting could potentially be seen as a threat if employees would reasonably perceive from its timing that the issue subcontracting was raised to quell to their exercise of collective bargaining activity. Morgan's comment did not introduce the topic of subcontracting as it was already being discussed during bargaining. His comment was more of another expression of frustration about the duration of negotiations rather than a threat.

From another perspective, Alan Morgan's comments, while argumentative, do not seem to put the employer into a position from which it could not back down. Thus his behavior does not fit the test as described in *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). Examined in the context of difficult face-to-face negotiation, there must be some allowance for argumentative statements. His comments did not lock the employer into a position regarding subcontracting as shown by the fact that the employer eventually dropped its subcontracting proposal.

Issue 4 - Superintendent Morgan's Comments to Randy Perkins

The union alleges that outside of bargaining sessions Superintendent Morgan made statements which also indicate unfair labor

practices. Kammerzell testified that in late July or early August 2006, he had a conversation with an administrator, Randy Perkins, who said that Morgan had told him that the employer was not going to give the union the cost of living increase. The record contained little context for this comment. Regardless of the reliability of Kammerzell's testimony concerning Perkins' statement, the Examiner finds that this statement does not indicate an unfair labor practice. The employer had already directly communicated to the union that it was not agreeing to a 3.3 percent cost of living increase and so the significance of Perkin's alleged comment is minimal.[3]

In its complaint, the union also alleges that Morgan had said that he hoped that the "district was hoping bargaining would continue for a year." However, the record contains no evidence that Morgan made such a comment. This allegation must be dismissed as the union has failed to carry its burden of proof.

Issue 5 - The Employer's Refusal to Meet Prior to Mediation

The union argues that the employer committed an unfair labor practice with its rejection of the union's offer to meet again in the weeks before the first mediation session. On August 31, 2006, Kammerzell e-mailed Superintendent Morgan and asked if the employer would be willing to have another face-to-face meeting before the mediation scheduled in September 2006. Morgan's e-mailed response included the following statements:

> Do you have any new proposals that help the district fiscally this year or are you interested in discussing

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[3] The employer submitted a declaration by Perkins along with its reply brief. Even if Perkins' declaration was material to the case, it would not have been given any weight by the Examiner as it was submitted after the Examiner closed the evidentiary record and the evidence therein was not subject to cross-examination.

> any of the proposals, combination of proposals, or slight modification of proposals presented? As I said to you the other day Tom, we are interested in getting done as much as you are but if there isn't something new or revised and the association is not willing to look at some modification to the salary schedule then I don't know if it is worth the time to meet before mediation. We are willing to meet if there is an agreement to negotiate appropriately.

While Morgan's e-mail demonstrated a negative reaction to the union's bargaining tactics and a resistance to another pre-mediation meeting, it did not cancel the parties' meditation session. Because he did not resist the scheduled mediation, Morgan did not refuse to bargain in good faith or interfere with the employees' bargaining rights and this allegation is dismissed.

Issue 6 - The Employer's Proposal at the First Mediation Session

The union argues that the employer committed an unfair labor practice by making a regressive proposal at the first mediation session. At this session, the employer introduced three new issues: removing language which required reductions in force to be "for economic reasons only"; changing new employees' probation period from six months to one year; and dropping the employer's responsibility for the cost of retraining employees who move into new positions. The union alleges that the introduction of these new issues at a late step in the negotiations was regressive bargaining and an unfair labor practice.

A "regressive" proposal in collective bargaining is a proposal which, when compared to the earlier proposal, widens rather than narrows the difference between the parties' positions. "Regressive" bargaining proposals that appear to punish the other party in negotiations raise an inference of bargaining in bad faith. *Spokane County Fire District 1*, Decision 3447-A (PECB, 1990). The

Examiner disagrees with the employer's defense that the proposed one year probationary period was a part of the parties' last agreement, because an examination of the prior agreement does not support this position. Additionally, the employer's assertion that under its prior agreement it was not obligated to pay for retraining of employees who were reassigned due to a layoff is also not supported by the language of the prior agreement.

However, the employer did put forth a reasonable rationale for including new language to the reduction in force sections. Between the parties' July bargaining session and their September mediation session, the parties were involved in a grievance dispute regarding a reduction in force when the employer laid off five bargaining unit members. These layoffs were the first in the bargaining unit's history and according to several witnesses, it became apparent that the union and employer had conflicting interpretations about the meaning of the words "for economic reasons only." Thus the employer was attempting to clear up what it only recently recognized as conflicting interpretation of existing language.

If removing the "for economic reasons only" language was the only new issue sought by the employer at the first mediation session, it would be plausible to believe that employer was only attempting to resolve the parties newly unearthed dispute regarding their contract. The parties' first mediation session in September may have been an appropriate time to attempt to resolve such a dispute which developed over the summer. However, the employer also added the issues of lengthening the probation period and dropping the employer's responsibility for the cost of retraining and those proposals were regressive. The Examiner finds that the employer was not bargaining in good faith and that it committed an unfair labor practice with its two regressive proposals.

Issue 7 - The Three-Year Term

The seventh issue is about whether the employer committed an unfair labor practice by stating that the union had agreed that the new contract would have duration of three years. During a mediation session, the parties exchanged proposals which had three year durations. At a later mediation session on October 20, 2006, the employer misrepresented that the union had agreed that they were negotiating a three-year term. The union has alleged that this misrepresentation was an unfair labor practice violation.

The Examiner agrees with the union that during mediation, the parties did not agree about the length of the contract, and that the employer misrepresented to the union's bargaining team that the union's bargaining team had agreed to a three-year contact. However, the union did not present any evidence that this misrepresentation at the bargaining table harmed the union or the bargaining process. The union has not met its burden of proof on this issue and it is dismissed.

Issue 8 - Morgan's Memorandum as a Refusal to Bargain in Good Faith

The union argues that the employer committed an unfair labor practice on October 10, 2006, when Superintendent Morgan sent a memorandum to the bargaining unit about his frustration with the union and the collective bargaining process. The memorandum is related to three different unfair labor practice claims: a failure to bargain in good faith, interference, and employer domination of a union.

The union argues that this memoradum proves that the employer failed to bargain in good faith. In his memorandum, Morgan wrote that he was frustrated that it took mediation for the union to agree to changes that it had agreed upon in February and March

2006. Morgan wrote "there has been no concessions for higher needs kids, for decreases in services in some area, or for a desire to help the district by providing some flexibility. Instead we get grievances and threats of more mediation." Morgan also wrote that he personally did not feel that mediation or Clark's participation in mediation had helped the process. The memorandum also indicated that Morgan resented that the union's rejection of the proposed "clean up" language on the eve of formal bargaining because Morgan stated that the union had gone back on agreements referred the parties' informal discussions before they commenced formal collective bargaining. Morgan testified that he believed that the union rejected the language after Clark determined it was not in the best interest of the union.

Morgan's statement that the union went back on earlier agreements is an oversimplification of the parties' bargaining history. The union was not obligated to ratify changes that its executive team had reached with him even though the parties had an agreement to attempt to seek ratification on several "clean up" provisions However, Morgan's oversimplification of the earlier agreement is not evidence of a failure to bargain in good faith and this allegation is dismissed.

Issue 8 Continued - Morgan's Memorandum As Interference

The union also argues that the employer's memorandum interfered with the employees' collective bargaining rights. It asserted that the portions of this memorandum that criticize Clark support this claim. Morgan wrote that he did not think that Clark's participation was helping progress at mediation and criticized the union for filing grievances. Morgan also accused the union of threatening grievances rather than considering concessions that would help higher needs students. Because Clark had a role in the union's grievances, the Examiner finds that this is also an indirect criticism of Clark.

Employees have a right to the assistance of the staff from their union. With such an intense criticism of Clark, Morgan's memorandum could reasonably be perceived as a threat to employees that if they used the assistance of the union staff then they would have more difficulty in bargaining with the employer, or at the very least, a disparaging of the quality of the union's representation. Morgan's memorandum was sent to the entire bargaining unit. This type of communication could easily be interpreted as an attempt to undermine and ridicule the union and is therefore interference. Therefore, the Examiner finds that this memoradum is a violation of the statute as it interfered with the collective bargaining rights of the employees. *Grant County Public Hospital District* 1, Decision 8378-A (PECB, 2004).

Issue 8 Continued - Morgan's Memorandum and Employer Domination of the Union

The union also alleges that in this memorandum the employer attempted to dominate the union. The Examiner does not find that this memorandum is evidence of domination. Although Morgan's memorandum directly communicated his perspective to the employees, and included his arguments against the union's wage proposal, the memorandum falls short of interfering with the administration of the union because the employer did not attempt to control, dominate or interfere with the affairs of the union. This case is similar to *City of Seattle,* Decision 9420 (PECB, 2006) where negative comments about union activity was determined to fall short of the legal standard necessary to prove union domination. The claim of employer domination is therefore dismissed.

Issue 9 - The Union's Spokesperson

In the employer's charge of unfair labor practices it argues that the union committed an unfair labor practice by changing its spokesperson from Kammerzell to Clark. Clark did not join the

negotiations until the first mediation session, and eventually played a more vocal role. For example, Clark had a large role in the parties' discussions of the grievance process. However, Clark never officially took the title of union spokesperson and Kammerzell identified himself as the spokesperson to the employer at a mediation session in October 2006.

Absent circumstances that clearly endanger the collective bargaining process, each party has the right to independently select their own bargaining teams. *King County Fire District 4*, Decision 1369 (PECB, 1982). The union was within its right to utilize Clark as a more active member of its bargaining team, or as its spokesperson, as long as the union did not alter its bargaining team in order to frustrate bargaining. The Examiner finds that there is no evidence that Clark's role in their negotiations was in any way used to frustrate bargaining and this allegation by the employer is dismissed.

Issue 10 - The Union's E-mail about Alan Morgan

The tenth issue is related to an e-mail that the union's president Tammy Harder sent Superintendent Morgan on November 16, 2007, that said "Regarding bargaining, Tom and Anna are both open to bargaining face-to-face as long as a certain Board member is not present." Harder testified that she was referring to Alan Morgan. Although Harder was not the union's bargaining team spokesperson, she wrote the e-mail as if she was speaking on behalf of the team with her reference to the other bargaining team members rather than expressing just her individual viewpoint. The employer alleges that this e-mail indicates that the union violated its duty to bargain in good faith.

Both the employer and the union have the right to the representation of their own choosing absent circumstances that clearly

endanger the collective bargaining process. By refusing to meet with the employer's chosen representative, the union could commit an unfair labor practice. *King County Fire District 4*, Decision 1369 (PECB, 1982). Harder testified that the context for her e-mail was a personality conflict between Kammerzell and Alan Morgan. She testified that her e-mail was a response to a question from Superintendent Morgan about whether bargaining would go more smoothly without Kammerzell and Alan Morgan.

However, this explanation is inconsistent with the tone of her e-mail and so her explanation is not creditable. The Examiner finds that Harder's e-mail exhibits a refusal by the union to meet with a bargaining representative selected by the employer. Even if the union eventually agreed to meet with Alan Morgan, through this e-mail, the union improperly attempted to restrict the employer's ability to choose its bargaining representatives. The Examiner concludes that through this e-mail, the union failed to bargaining in good faith and committed an unfair labor practice violation.

Issue 11 - The Bargaining over the Grievance Mediation Form

The employer argues that the union rejected a tentative agreement regarding changes in the grievance form used to administer the collective bargaining agreement. The employer originally raised the issue because it wanted to amend the form to include documentation about whether or not grievance mediation had been exhausted. The union initially objected to changing the form to mediation, but eventually agreed to the concept. The union argues that it considered this agreement as part of a possible total package and not as a separate tentative agreement. The employer argues that it was a separate tentative agreement.

In support of its argument, the employer introduced two versions of its typed contract mediation notes. Both versions are about the

same mediation dates. These notes stated that an agreement on the grievance form as well as other issues have been reached. One of these documents also included handwritten notations. On the top of the pages, there is a handwritten notation that says a final copy of agreements was signed. A signed version of the agreement is not part of the record and so the terms are unknown. Furthermore, the employer's typed notes contain another handwritten notation which stated that the union withdrew the mediation form agreement. The other version of the employer's notes stated that the parties reached an agreement on the grievance form on September 21, 2006.

Morgan testified that the parties had a practice of the union reviewing the employer's notes for errors. He testified that he showed the second version of his notes to the union and the union failed to object to the reference to a grievance form agreement. However, no document in the evidentiary record defined the grievance form as tentative agreement nor was there a signed or initialed agreement by the union. If the employer had proven that the union and signed or initialed the notes, and that this was how the parties customarily documented tentative agreements, then the employer would have proven that the parties reached a formal tentative agreement. However, the union's failure to make a correction to the notes does not prove that the parties had a tentative agreement. The examiner finds that employer has not met its burden of proof to find a violation on this allegation and it is dismissed.

Issue 12 - The Union's Letter to the Editor

The employer argues that the union committed an unfair labor practice in December 2006, when the union authored a letter printed in a local newspaper, the Whitman County Gazette, regarding to the parties' negotiations. In this letter, the union argued that a 3.3 percent wage increase was fair because it was the wage increase

that the state legislature had intended though its funding of the employer's budget.

The employer alleges that through the letter the union misrepresented the employer's budget and fiscal situation. The employer claimed that the union's letter oversimplified the nature of state funding by failing to explain that the state funding is dependent on the number of employees that the state formula calculated is necessary, and not the actual number of employees working for the school district.

The union's letter is similar to "campaign puffery" which often occurs prior to an election. Puffery occurs when a party bolsters its own status or position through exaggeration and misleading statements that may seem offensive to individuals who oppose that point of view. *Community Collect District 10 (Green River)*, Decision 9835 (PSRA, 2007). In that case - which was about misrepresentation made in campaign material prior to a representation election - the Commission explained that it was unlikely to find misrepresentation to be a basis for overturning an election when a party's opponent has similar opportunity to promote its own point of view. In this case, the employer has not shown that it lacked the ability to response to with a similar public campaign. Therefore, this letter is evidence of a "hard bargaining" tactic and is analogous to campaign puffery and is not evidence of bargaining in bad faith.

Issue 13 - The Employer's Charge of Union Inducement

In its complaint, the employer also claims that the union induced the employer into committing an unfair labor practice. To induce an employer to commit an unfair labor practice, a union must be asking or manipulating an employer to something which is unlawful. *City of Issaquah*, Decision 9255 (PECB, 2006). The employer did

not specifically prove how the union had induced it into committing an unfair labor practice violation other than characterizing the union as being dishonest during bargaining. While the union may have had a role in creating a climate of bad faith bargaining, the employer has not proved that the union induced it to engage in bad faith bargaining.

Conclusion

The employer's behavior at bargaining, as evidenced by Michael Morgan's criticism of Clark and the employer's introduction of new issues at the first mediation meeting demonstrates interference and a failure to bargain in good faith and constitutes an unfair labor practice. Likewise, the union's attempt to exclude Alan Morgan from the employer's bargaining team indicates that the union also failed to bargain in good faith and that it also committed an unfair labor practice.

FINDINGS OF FACT

1. The Colfax School District is a "public employer" within the meaning of RCW 41.56.030(1).

2. The Colfax Educational Support Personnel, which is affiliated with the Washington Education Association, is a bargaining representative within the meaning of RCW 41.56.030(3). It represents a bargaining unit of the employer's classified personnel.

3. Michael Morgan is the employer's superintendent and Alan Morgan is a member of the employer's school board. Both served on the employer's bargaining team in bargaining with the support personnel.

4. In the early months of 2006, the parties engaged in informal discussions regarding changes to their collective bargaining agreement. Formal collective bargaining began in May 2006 and continued into 2007.

5. The first bargaining session occurred in May 2006. Before that session, union staff member Pat Clark authored an e-mail about the employer's budget that contained incorrect information about the employer's finances.

6. Superintendent Morgan responded to Clark's e-mail with a May 11, 2006 e-mail to the union's bargaining team. Morgan's e-mail criticized Clark's, and the union's, budgetary analysis.

7. In response to Morgan's e-mail, the union's budget expert, Andrea Hardy, wrote a memorandum acknowledging that Clark's e-mail contained misstatements and that the difference between how the parties viewed the employer's fiscal situation was a reflection of different spending priorities.

8. Superintendent Morgan's August 31, 2006 e-mail voiced frustrations with the length of the bargaining process. But in neither a May 11, 2006 e-mail nor an August 31, 2006 e-mail, did he assert an inability to afford the union's wage proposal.

9. The union's initial proposal rejected the proposed language changes tentatively agreed upon in the informal talks and focused on a single issue, a wage adjustment for all employees in the bargaining unit of 3.3 percent.

10. In the employer's initial bargaining proposal, the employer made a counterproposal to the union's wage proposal and sought concessions from the union to increase what it termed to be flexibility.

11. At a bargaining session in the summer of 2006, Alan Morgan made comments that showed his frustration with negotiations.

12. Prior to the first mediation session on September 21, 2006, the union asked Superintendent Morgan if he would be willing to have another face-to-face session. Morgan responded that he would only be willing to meet with the union if it was "willing to negotiate appropriately." He attended the scheduled mediation session.

13. The employer's bargaining team sought to expand the number of bargaining topics at the first mediation session. One new proposal was related to a recently discovered conflict regarding the parties' reduction in force language. Their proposals also sought new concessions related the probationary period and the cost of retraining employees. The latter proposals were regressive and intended to frustrate bargaining.

14. During mediation the employer incorrectly stated that the union had agreed to a contract duration of three years. The union did not prove that this misrepresentation harmed it or the bargaining process.

15. On October 10, 2006, Superintendent Morgan sent a memorandum to the bargaining unit regarding the negotiations. While his comment that tentative agreements had been made in March and April 2006 was imprecise, his comment was based on the fact

that the union's executive committee made tentative agreements that were later rejected by the bargaining unit.

16. Morgan's memorandum criticized Clark in saying that she was not helpful to the collective bargaining. This criticism would reasonably be interpreted as an attempt to undermine the union and frustrate the union's ability to utilize its staff.

17. An e-mail from the union on November 17, 2006, communicated that it would be willing to meet in a fact-to-face meeting with the employer, on the condition that Alan Morgan would not attend as one of the employer's representatives.

18. The union's December 7, 2006 letter to the editor published in the Whitman County Gazette contained a misleading statement about whether the state had funded a 3.3 percent wage increase for all school employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The employer's bargaining behavior as described in the findings of fact number 13 constitutes a failure to bargain in good faith and violates RCW 21.56.140(4)

3. The employer's bargaining behavior as described in the findings of fact number 16 constitutes interference and violate RCW 41.56.140 (1).

4. The union has not carried its burden of proof regarding its allegation that the employer dominated the union which would be a violation under RCW 41.56.140(3).

5. The union's bargaining behavior as described in the finding of fact number 17 constitutes a failure to bargain in good faith and a derivative interference violation and violates RCW 41.56.150(4) and (1).

6. The employer had not carried its burden of proof regarding its allegation that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

ORDER

Colfax School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Making regressive bargaining proposals.

   b. Undermining the union through criticism of the union's staff in memorandums to the entire bargaining unit.

   c. Interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter *41.56* RCW:

a. Give notice to and, upon request, negotiate in good faith with the Colfax Educational Support Personnel, which is affiliated with the Washington Education Association.

b. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the employer, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached to this order into the record at a regular public meeting of the Board of Directors of the Colfax School District, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the union, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the union with a signed copy of the notice attached to this order.

e. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time give the Compliance Officer a signed copy of the notice attached to this order.

The *Colfax Educational Support Personnel*, which is affiliated with the Washington Education Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

3. CEASE AND DESIST from:

   a. Refusing to bargain with the employer's designated bargaining representatives.

   b. Interfering with, restraining or coercing employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

4. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Give notice to and, upon request, negotiate in good faith with Colfax School District.

   b. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the union, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

   c. Notify the employer, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide

the employer with a signed copy of the notice attached to this order.

d. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 28th day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

EMILY MARTIN, 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.

Case 20720-U-06-5280

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employees' collective bargaining unit rights and failed to bargain in good faith as our bargaining behavior included making a regressive bargaining proposal, and undermining the union through criticism of the union's staff in a memorandum sent to the bargaining unit.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL bargain in good faith.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ Colfax School District

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

Case 20914-U-07-5331

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to bargain in good faith as our bargaining conduct included refusing to bargain with one of the employer's designated bargaining representatives.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL bargain in good faith.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ Colfax Educational Support Personnel/Washington Education Association

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 12/28/2007

The attached document identified as: DECISION 9940 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	20720-U-06-05280	FILED:	10/23/2006	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					

EMPLOYER: COLFAX S D
ATTN: MICHAEL MORGAN
1110 N MORTON ST
COLFAX, WA 99111-2133
Ph1: 509-397-3042

REP BY: GREGORY L STEVENS
STEVENS CLAY MANIX
PAULSEN CTR
421 W RIVERSIDE STE 1575
SPOKANE, WA 99201-0402
Ph1: 509-838-8330

PARTY 2: WASHINGTON EDUCATION ASSN
ATTN: JERRY PAINTER
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7020 Ph2: 253-946-7232

REP BY: ERIC R HANSEN
WASHINGTON EDUCATION ASSN
33434 8TH AVE S
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7024 Ph2: 800-622-3393

REP BY: TAMMIE HARDER
COLFAX EDUCATION ASSN
42621 SR 195
COLFAX, WA 99111
Ph1: 509-397-2181

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 12/28/2007

The attached document identified as: DECISION 9941 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	20914-U-07-05331	FILED:	02/08/2007	FILED BY:	EMPLOYER
DISPUTE:	UN MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Classified Support Staff				
COMMENTS:					

EMPLOYER: COLFAX S D
ATTN: MICHAEL MORGAN
1110 N MORTON ST
COLFAX, WA 99111-2133
Ph1: 509-397-3042

REP BY: GREGORY L STEVENS
STEVENS CLAY MANIX
PAULSEN CTR
421 W RIVERSIDE STE 1575
SPOKANE, WA 99201-0402
Ph1: 509-838-8330

PARTY 2: WASHINGTON EDUCATION ASSN
ATTN: JERRY PAINTER
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7020 Ph2: 253-946-7232

REP BY: TAMMIE HARDER
COLFAX EDUCATION ASSN
42621 SR 195
COLFAX, WA 99111
Ph1: 509-397-2181

REP BY: ERIC R HANSEN
WASHINGTON EDUCATION ASSN
33434 8TH AVE S
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7024 Ph2: 800-622-3393