STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WENATCHEE, an affiliate of PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,	)	CASE 7425-U-88-1542
Complainant,	)	DECISION 3240-A - PECB
vs.	)	
WENATCHEE SCHOOL DISTRICT,	)	DECISION OF COMMISSION
Respondent.	)	

Eric T. Nordlof, Attorney at Law, appeared on behalf of the complainant.

Johnson and Johnson, P.S., by Phillip R. Johnson, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a timely petition of Wenatchee School District for review of a decision issued by Examiner Jack T. Cowan.

BACKGROUND

Public School Employees of Wenatchee, an affiliate of Public School Employees of Washington (PSE), is the exclusive bargaining representative of "full-time and regular part-time school bus drivers" employed by the Wenatchee School District. A collective bargaining agreement existed between the parties for the period from September 1, 1987 through August 31, 1990.

On two occasions in early 1988, the employer submitted a special levy for voter approval.[1] The levy failed to pass on both occa-

[1] The levy elections were held on February 22 and again on March 29, 1988.

sions, requiring the employer to reduce its budget for 1988-89 by $1,650,000. The employer's administrative team adopted a goal of making cuts that would least impact the educational program provided its students. Prior to recommending specific budget cuts to the school board, the employer sought input from the unions representing its employees and from other concerned parties as to how a reduction in cost and service could best be accomplished while minimizing any adverse impact on the students. One recommendation generated by the Curriculum Department was to convert from half-day to full-day kindergarten, thus eliminating the need for mid-day kindergarten bus runs and saving the wages and related benefits for the bus drivers who had previously driven those runs.

After meeting with representatives of the various bargaining units on April 13, 1988, the superintendent submitted a compilation of recommended budgetary reductions to the school board on April 18, 1988. That report included a Transportation Department reduction of $30,011, which was the calculated cost savings of converting to full-day kindergarten.

Prior to receipt of the superintendent's April 18 report, PSE had not been aware of the possible elimination of the mid-day bus runs. On April 21, 1988, the union sent a letter to the superintendent:

> PSE of Wenatchee/Trans. [sic] hereby demand to bargain the decision to layoff (cut routes) and effects of that decision. PSE has proposals for cost savings both within and without the Trans. department which we feel remove the necessity on cutting routes and going to a full day kindergarten to achieve that. Please make available to the association all documentation which has been used to arrive at the projected cut amounts, with an adequate amount of time to study before our first bargaining session.

The employer agreed to set a date for negotiations.

Following a public meeting on April 25, 1988, the superintendent submitted revised recommendations to the school board on April 27, 1988. The next day, the union and employer met, at which time the union repeated its demand to bargain. The union also asked for specific information concerning the budget cuts referred to in the superintendent's original reduction plan. The record does not indicate the substance of the issues was negotiated.

On April 29, 1988, the school board adopted a "Reduced Education Program" ("REP"), which included the recommended conversion from half-day to full-day kindergarten.

The union and employer next met on May 2, 1988. The length and nature of that meeting is in dispute. PSE Negotiator David Fleming described the meeting as brief; lasting 10 to 15 minutes. Assistant Superintendent Dean Mack estimated the meeting lasted over an hour. During the meeting, PSE presented the following written proposal:

> Public School Employees of Wenatchee/Trans. has demanded to bargain the decision and effects of the proposed layoffs of the bus drivers. PSE makes the following proposals in furtherance of that right;
>
> 1. That instead of eliminating half-day kindergarten, the wages of regular drivers continue at the 87-88 amount during the 88-89 school year.
> 2. That the parties re-open Schedule A effective 3/1/89.
> 3. That the District cease from chartering all but a few extra-trips where chartering may be unavoidable. That the parties discuss a method of extra-trip savings.

The parties reviewed each of the proposed items, and employer negotiators responded to each. According to union negotiators, the meeting ended abruptly, when one of the employer's assistant superintendents got angry and left. The employer's negotiators testified that they ended the meeting when the union continued to

insist on bargaining what the employer regarded as program decisions reserved to the school board. According to the employer's negotiating team, they indicated a willingness to bargain the impact or effects of the program changes adopted by the school board, but not the program changes themselves.

On May 31, 1988, the union filed the complaint in this case alleging, inter alia, that the employer had refused to bargain the decision and effects of partial layoffs. While the complaint remained pending, the parties began negotiating a wage/benefit reopener in the collective bargaining agreement for the 1988-89 school year. Included among the union's proposals for that reopener was a provision that all drivers receive pay for a minimum of four and one-half hours per day for morning and after-noon runs. That proposal was rejected by the employer. After negotiating sessions held on June 21, July 7 and July 27, 1988, the employer did agree to "grandfather", as to insurance coverage, all drivers affected by the reduction of kindergarten routes, i.e., to pay for the 1988-89 school year the same dollar amount received during the 1987-88 school year. The agreement between the parties on the re-opener was ratified by the school board on August 8, 1988.

Examiner Cowan held a hearing on the union's unfair labor practice complaint in October of 1988. In his decision issued in July of 1989, the Examiner concluded that the employer had violated RCW 41.56.140(1) and (4), by failing or refusing to bargain with PSE concerning the effects of an employer decision to cut back certain employee work hours. That issue has been brought before us by the union's timely petition for review.

ISSUES FOR REVIEW

The employer's petition for review cited 14 errors by the Examiner. Its brief in support of the petition for review framed issues as to

whether the employer was required to negotiate the "effects" of the decision before it made the decision, as to whether the employer did bargain the "effects" of the decision, and as to whether the Examiner's remedy was appropriate under the circumstances. The employer's brief made the following specific points:

1. The employer had no duty to bargain the budget decision involved here;

2. The employer had no duty to bargain the educational program decision involved here;

3. The bus drivers were not affected by the decision until four months after the decision was made;

4. The decision and its effects are separate events that need not have been bargained together;

5. The effects of the decision were bargained (or at least the employer was always willing to do so);

6. The Examiner's decision is unclear as to the "decision" and "effects"; and

7. The employer could not bargain the effects without first making the decision on what changes were to be made.

The employer particularly challenges paragraph 6 of the Examiner's findings of fact, calling attention to the fact that the effects of the decision to go to full-day kindergarten were not felt immediately following the April 29, 1988 decision, but rather four months later. The employer claims the situation had been resolved through bargaining by that time.

PSE did not cross-petition for review. It disputes the points made by the employer, and asks that the Examiner's decision be affirmed.

DISCUSSION

This is a case in which it is easy, at first glance, to conclude there was a refusal to bargain. We can understand why the Examiner

did so. The critical issue, however, is the one that the Examiner did not clearly resolve, i.e., whether the employer was under a duty to bargain the decision to convert from half-day to full-day kindergarten.

The Kindergarten Program Change

Interpretation of the statutory language setting forth the duty to bargain has led to a distinction between "mandatory" and "permissive" subjects of bargaining.[2] The scope of mandatory bargaining includes matters that directly impact the wages, hours or working conditions of bargaining unit employees.

> Managerial decisions that only remotely affect "personnel matters," and decisions that are "managerial prerogatives," are classified as nonmandatory subjects.

IAFF, Local 1052 v. PERC, 113 Wn.2d 197, 200 (1989).[3]

The case law is clear, and the union acknowledges, that the employer had no duty to bargain the decision to reduce its budget. Spokane Education Assn. v. Barnes, 83 Wn.2d 366 (1974); Federal Way School District, Decision 232-A (EDUC, 1977), affirmed Federal Way Education Assn. v. PERC, WPERR CD-57 (King County Superior Court,

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[2] See: Federal Way School District, Decision 232-A (EDUC, 1977), citing NLRB v. Wooster Division of Borg Warner, 356 U.S. 342 (1958). This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. RCW 41.56.030(4) includes "wages, hours and working conditions" as subjects of collective bargaining.

[3] The case is referred to herein as "Richland". In Richland, the Supreme Court remanded City of Richland, Decision 2448-B (PECB, 1987), for reconsideration by this Commission. We remanded the case to the Examiner for further proceedings consistent with the Supreme Court's decision. The case was then withdrawn by the complainant, so that the Commission will not have the opportunity to rule on the merits of the issue remanded.

1978). This Commission has also held that decisions concerning curriculum and basic educational policy are reserved to the employer, without need for notice to or bargaining with unions representing school district employees:

> The educational program is the basic service of a school district. In the private sector and elsewhere in the public sector, the decision as to what service or product or educational program should be offered by an employer is generally accepted by the NLRB and the various state labor boards as a prerogative of management and, as such, a nonmandatory subject of bargaining. We also conclude that the educational program is a matter of basic managerial policy which is properly classified as a nonmandatory subject for bargaining.

Federal Way School District, Decision 232-A, at PD 113.

The same decision dealt with the distinction between a "decision" and its "effects", noting that an employer may have bargaining obligations concerning the effects of a management decision that is not subject to the duty to bargain.

The union contends here that the change in the kindergarten program was nothing more than one effect of the budget decision; an "effect" over which bargaining is required. The employer views the kindergarten change as a non-bargainable program decision.

The employer's decision to convert its kindergarten program to full day came from the employer's Curriculum Department, and was clearly a decision regarding the educational program to be offered. Weighing the extent to which that decision relates to the employer's curriculum prerogative against its relationship to the wages, hours and working conditions of employees, we conclude, as in Federal Way, supra, that the kindergarten change is the kind of

program decision properly classified as a nonmandatory subject for bargaining. Richland, supra.[4]

The decision to convert to a full-day kindergarten program was clearly motivated, at least in major part, by a desire to reduce costs, but that fact does not transform the program decision into a mandatory subject of bargaining. Decisions regarding the product or services to be offered by employers are often triggered by cost considerations, just as they often impact the wages and hours of employees. The same is true of general budget reductions. As the Supreme Court noted in Richland, supra, an employer need not bargain regarding an economically motivated nonmandatory subject of bargaining; it need only bargain over the effects caused by that decision.

> Thus, for example, while an employer need not bargain with its employees' union concerning an economically motivated decision to terminate a services contract (a nonmandatory subject), it must bargain over how the layoffs necessitated by the contract's termination will occur.

Richland, supra, at 4 (citing, with approval, First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981)).

Our holding does not mean that a school district should not, in the exercise of its sound discretion, seek the advice and views of the unions representing its employees.

> The fact that it has no mandatory duty to negotiate upon a particular subject matter does not mean that it would not be in the best

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[4] Decisions to layoff bargaining unit employees are a mandatory subject of bargaining. Federal Way School District, supra. In this case the hours of four bus drivers were reduced, but the Examiner found that a layoff had not occurred. That finding was not challenged.

> interest of the school district to do so in a given case. ...
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> Were school boards to understand that bargaining does not require capitulation but is calculated to bring about harmony and build morale, they would seldom reject a proposed subject on the ground that it is not within the mandatory area of bargaining.

Spokane Education Assn. v. Barnes, supra, pp. 376-77.

The employer might be well advised to consider bargaining unit concerns, but we hold it cannot be compelled pursuant to Chapter 41.56 to bargain its decision to change the kindergarten day. That was a policy decision concerning the employer's basic educational program. So long as the school district remained willing to negotiate the impact of a change in its educational program, we find no breach of the duty to bargain.

Effects Bargaining

The decision to change to full-day kindergarten was to take effect at the beginning of the following school year, i.e., in late August or early September, 1988. At that point, the elimination of mid-day bus runs would result in a reduction of hours for four of the employer's 18 bus drivers, and a concomitant impact on their wages and health/retirement benefits. The union argues that the bargaining which took place after May 2, 1988 did not satisfy the employer's obligation to bargain "effects". We disagree.

The "REP" adopted by the employer maintained a reserve fund to use for subsequent negotiations.[5] After the kindergarten change was adopted by the school board, the parties had four months in which to bargain before that decision had any impact upon members of the bargaining unit. Thus, there was an adequate opportunity to negotiate the effects of the employer's budget and program

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[5] Exhibit 12.

decisions before those effects were felt. We find no unfair labor practice arising from the failure to bargain the effects contemporaneously with the program decision.

The question that remains is whether the employer was willing and did in fact bargain effects. The employer has claimed that it was always willing to do so. Describing this as "the crux of this case", the union contends that bargaining on a routine wage and benefit reopener during the summer of 1988 did not satisfy the employer's duty to bargain the effects of the kindergarten change.

The union has characterized its May 2 proposals as the first and only proposals directed at the effects of the employer's "REP".[6] The union asserts that the employer's representatives refused to bargain those effects at the May 2, 1988 negotiating session. Employer witnesses insist they did not refuse to bargain the effects of the "REP", but concede they rejected any proposals that they viewed as an attempt to bargain the change to full-day kindergarten. Those contradictory assertions can probably be explained by the parties' differing perceptions as to what were bargainable effects and what were not.

Throughout these proceedings, the union has regarded the decision at issue to be the decision to shift to full-day kindergarten. Union counsel made that clear early in the hearing:

> The issue here is not the bargaining of the effect of the shift from half-day to full-day kindergarten, but the issue that's the subject of the Complainant [sic] is the District's failure to bargain the decision to shift.

Transcript, page 41:13-19.

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[6] Transcript, page 47:21-22.

Testimony by members of the union negotiating team also evidenced that when they sought to bargain "effects" they were actually seeking to bargain the decision to eliminate mid-day kindergarten bus runs. Union negotiator Fleming described an employer negotiator as saying there was no reason to meet because the employer wasn't going to bargain "it":

> Q And at this time you were wanting to bargain the Board's decision to make the cut in the Transportation Department weren't you?
>
> A Yes.

Transcript, page 64:10-14.

Susan Gold, a member of the union's negotiating team, testified:

> Q ... You have testified that Mr. Fleming on behalf of the Union demanded to bargain the affects of the layoff?
>
> A Yes.
>
> Q And my question is, is that all he demanded to bargain or did he also demand to bargain the decision to reduce -- or the decision to change kindergarten from half-day to full-day?
>
> A Well, that was certainly involved in the whole picture. I don't remember the exact words he put it in. But that was what we were getting at. That was what was affecting us.
>
> Q You wanted the District to continue to have half-day kindergarten?
>
> A You bet.

Transcript, page 98:420. [emphasis supplied]

All of the union's proposals to the employer on May 2, 1988 were linked in their presentation to the union's demand that the

employer not eliminate the half-day kindergarten. We concur with the Examiner's factual finding that the union's May 2 proposals "were more directed at the decision to modify the kindergarten program than to the effects of that decision".[7] We therefore view this as a case of the union having made undifferentiated bargaining demands, i.e., where a proposal contains mandatory and permissive subjects of bargaining that are intermingled.

A similar situation occurred in Renton School District No. 403, Decision 706 (EDUC, 1979). The union there sought to bargain a proposal that encompassed all of the school district's substitute teachers, including a large number of casual employees. After concluding that the Renton School District had no obligation to bargain regarding the casual employees, the Examiner found it had committed no unfair labor practice in refusing to respond to the union's proposal that encompassed a nonmandatory subject of bargaining.[8]

An undifferentiated bargaining demand was also at issue in Pierce County, Decision 1845 (PECB, 1984). There, the thrust of the union's demand was focused on a nonmandatory subject of bargaining, but two of the union's proposals could have been read as an attempt to address effects. The Examiner in that case held that the union did not request to bargain effects in a clear and coherent manner,

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[7] Paragraph 7 of the Examiner's findings of fact.

[8] Renton School District at page 706-9. The Commission subsequently overturned the Examiner's ruling in Renton, concluding that the proposal regarding substitute employees was sufficiently related to the interests of bargaining unit members to be a mandatory subject of bargaining. That is the risk an employer takes if it refuses to address a proposal. Renton School District No. 403, Decision 706-A, 706-B (EDUC, 1980). In the instant case, however, we are persuaded that the union's May 2nd proposals were focused on an educational program decision that the employer was not required to bargain.

and that no refusal to bargain occurred when the employer failed to "ferret out" the effects proposals.

This Commission has previously held that it will not condone shutting down of the bargaining process merely because a party does not like the issues raised or the positions taken by the other side. Walla Walla County, Decision 2932-A (PECB, 1988). It would have been preferable if the employer's representatives had been more patient and less defensive at the May 2 meeting, while the union sought to articulate its concerns about the kindergarten change. Nevertheless, we are unwilling to find an unfair labor practice based on the employer's impatience, when the union repeatedly sought to address a nonmandatory subject of bargaining.

The Examiner took issue with the fact that the employer's representatives terminated the May 2 meeting without getting into bargaining over "effects". The record is persuasive, however, that the absence of "effects" bargaining occurred because the union kept focusing on what we have found to be a permissive, not mandatory, subject of bargaining, i.e., the change to full-day kindergarten. As noted earlier, testimony by the union's own witnesses suggests that the union's focus was not on true "effects", but rather on the program decision.[9]

The Examiner described subsequent negotiations as starting from the premise that both the decision and effects were a "closed" matter, but the record does not support that finding. The employer did indicate that the kindergarten change was a closed matter, but it did not refuse to negotiate union proposals addressing the impact of that change.

On June 21, 1988, the union and employer met in a bargaining session where one of the proposals discussed was the union's

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[9] Transcript at pages 25, 41, 77, 91, 94, 98, and 185.

request for a guaranteed minimum number of hours for the drivers. The union's negotiator acknowledged this was partly a response to the cutback in the kindergarten runs:

> Q And you also are asking for guaranteed minimum hours?
>
> A Yes.
>
> Q That would not be wage and benefits would it?
>
> A That is partly a response to the cut back in the kindergarten runs.
>
> Q The thought being if there was a cut back in kindergarten, their working less hours, so you want to negotiate a minimum-guaranteed minimum level of hours regardless of whether those hours are actually worked or not?
>
> A That is correct.

Transcript, page 53:10-23.

When the employer rejected the union's minimum hours proposal, the union countered with a proposal that drivers receive a minimum of four and one-half hours per day, for insurance purposes.[10] This proposal, as initially worded, would have applied to all drivers, not just those whose hours were to be reduced as a result of the elimination of kindergarten runs.[11] The union then modified the proposal to affect ("grandfather") only the drivers whose routes were reduced, in return for dropping the unfair labor practice complaint. The employer accepted the "grandfather" provision if limited to the 1988-89 school year.[12] The union then accepted the employer's one-year limitation, but withdrew its offer to drop the

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[10] Exhibit 7.

[11] Exhibit 8.

[12] Exhibit 9.

unfair labor practice complaint.[13] We find these facts in the record do not support the contention that the effects of the kindergarten change were a closed matter. To the contrary, the record indicates certain effects were discussed in subsequent bargaining, and that an agreement reached at least in part as to one of them, i.e., health insurance.

The union argues that bargaining a routine wage and benefit reopener is not the same as bargaining over the effects that the "REP" decision had upon members of the bargaining unit. The fact that the parties would have engaged in bargaining in any event does not preclude the employer from meeting its bargaining obligation on "effects" through the same meetings. This is particularly true if the employer received and bargained in good faith regarding union proposals designed to address the "effects" problem. We find the record persuasive that this in fact occurred.

Not only did the parties discuss and reach agreement upon contract language specific to drivers affected by the elimination of mid-day kindergarten runs, they also discussed, albeit without agreement, resolution of this unfair labor practice case. The scope of those discussions thus exceeded what would normally have been addressed under the contract's reopener provision. To hold that a separate series of negotiations dedicated only to "effects" bargaining was required would exalt form over substance. The record indicates there was an opportunity to bargain the effects of the "REP" and kindergarten change, and we hold that the employer satisfied its

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[13] Exhibit 10. At the time of these negotiations, the parties apparently thought that a modification of the contract language was necessary to insulate affected drivers from any impact on their insurance benefits in the next school year. The parties subsequently learned that the employer's past practice had been to base the subsequent year's contributions entirely on an employee's work hours during the prior school year, so that no impact would be felt on insurance contributions until the 1989-90 school year. Transcript, page 62-66, 171.

bargaining obligation even though that bargaining occurred in the context of regular contract negotiations.

Conclusion

The record in this case indicates that the employer made a budget and program decision which it was not required to negotiate with the union. During the summer of 1988, wages, hours, and benefits were all negotiated, including issues specific to bargaining unit members detrimentally affected by the employer's program decisions, so that the effects of budget and program decision were negotiated before the budget and program changes took effect. Under these facts, we find no refusal to bargain. The decision of the Examiner is, therefore, reversed.

AMENDED FINDINGS OF FACT

1. Wenatchee School District is operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).

2. Public School Employees of Wenatchee, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit which includes "all full-time and regular part-time school bus drivers" of the Wenatchee School District.

3. In the spring of 1988, the employer experienced a double levy failure. It was determined that a budget reduction of $1,650,000 was necessary, of which approximately $30,000 was to come from the Transportation Department. The employer sought input from various sources on how the budget reduction could be accomplished. The employer's Curriculum Department originated a proposal to convert the employer's kindergarten

program from half-day classes to full-day classes, thereby eliminating the need for and costs associated with mid-day bus runs previously operated to transport kindergarten students.

4. On April 18, 1988, the superintendent of schools put forth a budget reduction plan which included a conversion of the employer's kindergarten program from half-day to full-day attendance, thereby eliminating the need for mid-day school bus runs. PSE was given notice of the proposal.

5. On April 21, 1988 and April 28, 1988, PSE made demands for bargaining on the decision and/or the effects of the proposed conversion of the kindergarten program. PSE did not advance any specified proposals for concessions designed to deter the employer from acceptance of the proposal concerning the kindergarten program.

6. On April 29, 1988, the board of directors of the Wenatchee School District adopted the kindergarten program change recommended by the superintendent. The change had the effect of reducing, as of September 1, 1988, the hours of work, insurance, and retirement benefits for certain bargaining unit members who had been driving the mid-day kindergarten runs.

7. The parties met for negotiations on the matter on May 2, 1988, at which time the union advanced specific proposals. The union proposals were more directed at the decision to modify the kindergarten program than to the effects of that decision. The employer's representative terminated the meeting before negotiating of the effects of the program change.

8. During June and July, 1988, the parties held three negotiating sessions pursuant to a contract reopener. During those negotiations, the employer was available to and did negotiate proposals designed to address the effect upon members of the

bargaining unit of the change in the kindergarten program. On August 8, 1988, the parties reached agreement as to modifications of their collective bargaining agreement.

AMENDED 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. By the events described in the foregoing findings of fact, the Wenatchee School District has not failed to bargain collectively with Public School Employees of Wenatchee concerning the effects of its decision to adopt a reduced budget and full day kindergarten program.

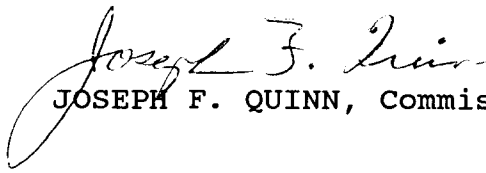
AMENDED ORDER

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

Issued at Olympia, Washington, the 12th day of September, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, Chairperson



JOSEPH F. QUINN, Commissioner

DISSENTING OPINION

I agree with the findings and conclusions of the Examiner in this case, and find no reason to reverse.

The issue as to whether there was a duty to bargain the decision of going to full-day kindergarten joins the arguments of bargaining "program" (a permissive subject) and bargaining "hours" of employment (a mandatory subject). Because the employer did research the impact of extending the school day on the young children, an action that reinforces the "program decision" argument, I agree that the employer did not commit an unfair labor practice by refusing to bargain that decision. Additionally, I do not find that the employer engaged in an unfair labor practice by failing to provide all of the information requested by the union.

I do find that the employer's actions at the May 2, 1988 meeting prevented the collective bargaining process from proceeding, and that the employer thereby committed an unfair labor practice under 41.56.140(4). This conclusion is based on a credibility finding favoring the union.

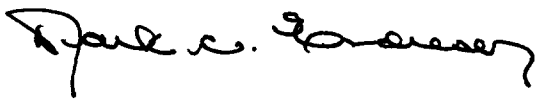
The union maintains that the employer's representatives refused to bargain either the decision or effects at the May 2 meeting, staying for only a brief time before walking out. The employer states that it negotiated with the union for well over an hour, and that it left because it felt that the union was willing to negotiate only over the decision, not the effects. In evaluating the union's description of the meeting, I found the testimony of union witnesses at pages 24, 48, 63, 93, and 185 of the transcript to be persuasive. The Examiner's findings of fact also reflect a credibility finding favoring the union.

Further, the employer acted as though there was no question that the decision was not subject to bargaining, and thus set an

improper tone for bargaining on effects. Presenting the union with a decision at the May 2 meeting that the school board had adopted on April 29, and then walking out of the May 2 meeting without taking the time to thoroughly discuss the mandatory/permissive arguments and the lack of potential savings in the union proposals, is not the kind of "good faith bargaining" activity that I believe this Commission should approve. The employer unilaterally cut off bargaining on May 2, and its later bargaining on the reopener does not excuse that behavior.

Past decisions of this Commission are instructive in reviewing the facts in this case. My colleagues in the majority note that this Commission held in Walla Walla County, Decision 2932-A (PECB, 1988), that "it will not condone shutting down the bargaining process merely because a party does not like the issues raised or the positions taken by the other side". In City of Bellevue, Decision 3007-A (PECB, 1989), the Commission found an unfair labor practice violation where the actions of an employer official discouraged collective bargaining. I would find a violation here.

For the reasons indicated, I DISSENT from the majority opinion in this case.



MARK C. ENDRESEN, Commissioner