STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EDMONDS EDUCATION ASSOCIATION, Complainant, vs. EDMONDS SCHOOL DISTRICT NO. 15 Respondent	CASE NO. 194-U-76-13 DECISION NO. 207 EDUC

Judith A. Lonnquist, General Counsel, Washington Education Association, appearing for Complainant.

Perkins, Coie, Stone, Olsen & Williams, Attorneys At Law, by J. David Andrews and Lawrence B. Hannah, appearing for Respondent.

MEMORANDUM OF DECISION

Background

The Edmonds Education Association (hereinafter referred to as "Association" or "Complainant") filed a charge with the Public Employment Relations Commission on March 3, 1976, alleging that Edmonds School District No. 15 (hereinafter referred to as "District" or "Respondent") refused to negotiate certain aspects of the school calendar, thereby violating the Educational Employment Relations Act (hereinafter referred to as "Act"), Chapter 41.59 RCW. Specifically, the Association charged that the District violated RCW 41.59.140(1)(a) and (e), 1/ by refusing to bargain the subject of school calendar. The District responded that the school calendar is not a mandatory subject for collective bargaining under the Act, thereby relieving it of any obligation to bargain the subject.

1/ RCW 41.59.140(1) provides:
It shall be an unfair labor practice for an employer:
(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060.
(e) To refuse to bargain collectively with the representative of its employees.

By way of counterclaim, Respondent alleges that the Association has violated RCW 41.59.140(2)(c) 2/ by continuing to request bargaining on an alleged non-mandatory subject. The parties were notified of the hearing in this matter, said hearing being held in Seattle, Washington, on August 19 and 20, 1976. At Hearing, Complainant and Respondent waived the twenty (20) day notice requirement of WAC 391-08-170. Complainant also waived the ten (10) day answer provision of WAC 391-30-516. All parties were afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs.

Respondent provides basic educational services to some 23,000 students within the District. It employs approximately 1,700 persons, some 1,100 of which are certificated staff employees. It deals with several labor organizations, in addition to the Association. Bus drivers are represented by the Teamsters Union; secretarial employees by the Edmonds Association of Educational Secretaries; and food and custodial employees by the Service Employees International Union. 3/

The present dispute did not arise with the effective date of Chapter 41.59 RCW, 4/ but has had a relatively involved history. It is a matter of some dispute whether the District was unwilling to meet, confer, or negotiate with the Association under the

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2/ RCW 41.59.140(2) provides:

> It shall be an unfair labor practice for an employee organization:
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> (c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

The Association is the exclusive bargaining representative under Chapter 41.59 RCW for certificated employees of the District.

3/ Respondent also engages in some form of discussion with the Edmonds Principals Association; Edmonds Mid-Management Association, the teacher aides, and supervisors.

4/ Most sections of Chapter 41.59 RCW had an effective date of January 1, 1976. See, RCW 41.59.940.

provisions of Chapter 28A.72 RCW 5/ between 1966 and 1971. In 1971, the Association initiated an action in the Superior Court of Snohomish County because of the District's unilateral adoption of a school calendar. The court held that the District was obligated to meet, confer, and negotiate with the Association over the school calendar. 6/ As a result of this decision, the parties did negotiate the calendar from 1971 until the effective date of Chapter 41.59 RCW. 7/

The present dispute became solidified shortly after the Act became effective. Prior to the February 17, 1976 meeting of the District Board of Directors, the Superintendent indicated to various groups and the public that the District's proposal for the 1976-77 school calendar would be on the agenda at that meeting. During this meeting, the calendar was given a "first reading." That is, the District provided a general notice of its suggested calendar to its constituents, anticipating that interested persons or groups would offer comments prior to a "second reading" and adoption. At the appropriate time during this meeting, the Association's Executive Director, Mr. James Wright, raised the issue of school calendar with the Superintendent. The Superintendent indicated to Mr. Wright that the District would negotiate the question of non-instructional days, but would not negotiate instructional days. 8/ During the interim

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5/ RCW 28A.72.030 provided:
> Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent the certificated employees within its school district, shall have the right, after using established administrative channels, to meet, confer and negotiate with the board of directors of the school district or a committee thereof to communicate the considered professional judgment of the certificated staff prior to the final adoption by the board of proposed school policies relating to, but not limited to, curriculum, textbook selection, in-service training, student teaching programs, personnel, hiring and assignment practices, leaves of absence, salaries and salary schedules and noninstructional duties.

6/ Cahill, et al. v. Board of Directors, of Edmonds School District No. 15, No. 108438, Superior Court for County of Snohomish, October, 1971. Complainant Exhibit No. 1.

7/ Brief of Respondent at 13.

8/ "Non-Instructional Days" are those days which teachers have a contractual obligation to report for work, but during which students are not in attendance.
"Instructional Days" are those days during which teachers are engaged in the direct education of students.
"Teacher Work Year" is the sum of Instructional Days and Non-Instructional days.

period between February 18 and March 1, 1976, the District received input from various groups and citizens. Of the interested labor organizations, only the Association chose to provide input to the Board on the calendar.

On February 25, 1976, the District and the Association held their first negotiating session, at which time the Association made proposals on various subjects including the teacher work year or school calendar. The Association proposal consisted of 180 student instruction days, two preparation (non-instructional) days, and the placement of these days on the calendar. This proposal differed from the District's calendar, in that the Association proposed a winter vacation between December 18 and January 2, as compared with the District's December 23 and January 2 dates; a state-wide curriculum day on March 1, an 88 day first semester and a second semester of 92 days compared with the District's equal semesters of 90 days. 9/ During this negotiation session, the District negotiator told the Association representatives that he could not negotiate the school calendar as it related to instruction days, thus, reiterating the position of the Superintendent at the February 17th Board meeting.

On February 26, the Board held a "work session" during which it considered the various suggestions relating to the school calendar. The Board then adopted the calendar at its March 1, 1976 meeting. The adopted calendar contained only one alteration from that "read" at the February 17th meeting; a beginning date for winter vacation was set for December 23rd, rather than December 24th. This change was prompted by a suggestion from the District Council of the Parent-Teacher-Student Association, reflecting their observation that students would be more receptive to learning after the holidays than before. On March 3, 1976, the Association filed an Unfair Labor Practice charge with the Public Employment Relations Commission.

9/ The school calendar at the "first reading" contained the reference to "182 contract days." Superintendent Woodroof testified this was a typographical error and the appropriate space should have remained blank, suggesting that non-instructional days are considered a bargainable subject.

Positions of the Parties

The Association argues that the school calendar, in total, is a mandatory subject of bargaining under the provisions of Chapter 41.59 RCW, as it is intimately related to wages, hours, and other terms and employment conditions of certificated employees of the District. It relies on decisions of the courts and National Labor Relations Board, as well as those of state courts and administrative agencies. It contends that the District has not bargained in good faith by its refusal to negotiate this mandatory subject. In addition, the Association argues that the District has violated the Act by unilaterally adopting the calendar, absent agreement or impasse, and by failing to vest its negotiator with authority to negotiate the calendar.

The District takes the position that the calendar is a non-mandatory subject of bargaining, thus relieving it of any obligation to bargain over this question. In support of its position, the District raises several policy considerations suggesting that calendar is not an appropriate subject for the bargaining table.

Direction Provided by the Act

It is important to note that certain aspects of the teacher work year have been pre-determined by the Legislature. Specifically, RCW 28A.01.020 establishes a school year for all districts beginning on July 1, and ending on June 30; RCW 28A.01.025 mandates a minimum of 180 school days within the school year; and RCW 28A.02.061 establishes school holidays. 10/

10/ RCW 28A.02.061 provides:

> The following are school holidays, and school shall not be taught on these days: Saturday; Sunday; the first day of January, commonly called New Year's Day; the third Monday in February, being the anniversary of the birth of George Washington; the last Monday in May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, commonly known as Thanksgiving Day; the day immediately following Thanksgiving Day; the twenty-fifth day of December, commonly called Christmas Day: Provided, That no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught.

In considering those bargainable subjects not predetermined by statute, direction is provided by the Educational Employment Relations Act, through the definition of collective bargaining:

> As used in this chapter . . . (2) The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in the light of the time limitations of the budget-making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: Provided, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.
>
> In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory. 11/

Thus, it must be determined whether the school calendar is encompassed by the phrase "wages, hours and terms and conditions of employment." 12/ If so, the parties are obligated to bargain over these items.

11/ RCW 41.59.020(2). This section should be compared with Section 8(d) of the National Labor Relations Act which provides:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . 29 U.S.C. § 158(d) (1970)

12/ Neither party has made substantial arguments as to the bargainability of individual calendar items either at the hearing or by way of brief, with the exception of Respondent's "Instructional/Non-Instructional" dichotomy.

National Labor Relations Act Precedents

The Act directs that the precedents of the National Labor Relations Board be considered by the Public Employment Relations Commission, if consistent with the provisions of Chapter 41.59 RCW. 13/ In attempting to regulate the bargaining process, the NLRB has, by its decisions, outlined items or subjects upon which the parties must bargain upon a request. Here the touchstone is the statutory phrase of the National Labor Relations Act, "wages, hours and other terms and conditions of employment." The refusal to bargain upon any single mandatory subject covered by this phrase has been treated as an unfair labor practice. 14/ Items or contract clauses outside of the statutory phrase have been denominated "permissive" subjects of bargaining under the National Labor Relations Act. 15/ The United States Supreme Court adopted the Board's distinction between mandatory and permissive bargaining subjects in NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958). That decision stands for the proposition that a party is compelled to bargain only over wages, hours, and other terms and conditions of employment which constitute mandatory subjects, and the refusal to so negotiate, even absent a showing of bad faith, is violative of the Act.

The mandated obligation to bargain over "hours of employment" has caused little difficulty. In cases involving "hours," the NLRB has maintained its position that any addition, subtraction, or rearrangement of working hours by an employer is a mandatory bargaining subject. 16/ Likewise, the fact that an employer's unilateral change

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13/ RCW 41.59.110(2). The National Labor Relations Board is the agency charged by Congress with the administration of the National Labor Relations Act. 29 U.S.C. § 153 (1970).

14/ See, e.g., Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948) cert. denied, 336 U.S. 960 (1949).

15/ Dalton Tel. Co., 82 NLRB 1001 (1949) aff'd, 187 F.2d 811 (5th Cir. 1951). See, Allis-Chalmers Mfg. Co. v. NLRB, 213 F.2d 374 (7th Cir. 1954).

16/ Timken Roller Bearing Co, 70 NLRB 500 (1946), enforcement denied on other grounds, 161 F.2d 949 (6th Cir. 1947). See also, Camp & McInnes, 100 NLRB 524 (1952), where without consultation with or notice to the Union, the Employer reduced the lunch period of its employees from one hour to 30 minutes, and changed the quitting time from 5:00 pm to 4:30 pm, the Board finding the Employer had violated Section 8(a)(5) of the Act.

in working hours results in the same number of hours worked per week does not remove the basis for a violation of the duty to bargain. 17/ Unilateral changes in such areas as holidays and vacations 18/ have also been found to violate the mandated duty to bargain. In Local 189, Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965), the Supreme Court was confronted with the applicability of the Sherman Antitrust Act to a clause in a collective bargaining contract which limited the operating hours of food store meat departments. In order to apply the labor exemption from the Antitrust Act, it was necessary to determine whether marketing hours are intimately related to wages, hours and working conditions. The Court noted:

> Contrary to the Court of Appeals, we think that the particular hours of the day and the particular days of the week during which employees shall be required to work are subjects well within the realm of 'wages, hours, and other terms and conditions of employment' about which employers and unions must bargain. 19/

The Court framed the factual issue in terms of whether or not night operations without butchers were feasible, and accepted the district court's finding that such operations would impact the workload of butchers. It is significant Jewel Tea attempted to demonstrate that it could operate meat departments without butchers, thereby suggesting no direct impact upon hours. Regardless, the Court found a sufficient impact upon the workload of butchers, even though butchers were not needed for the actual night operation. Pursuant to RCW 28A.67.010, and RCW 28A.87.135, it is not possible to have classes without certificated personnel indicating a more direct and immediate impact of the school calendar on the hours of teachers.

17/ Woodworkers, Local 3-10 v. NLRB, 380 F.2d 628 (CA DC, 1967); NLRB v. Little Rock Downtowner, Inc., 414 F.2d 1048 (CA 8, 1969), enforcing 168 NLRB 107.

18/ A. H. Belo Corp., 170 NLRB 1558 (1968), enforced 411 F.2d 959 (CA 5, 1969), cert. denied 396 U.S. 1007. (1970).

19/ 381 U.S. at 691.

State Decisions Regarding Calendar

The determinations of other states on the bargainability of the school calendar are helpful. However, their usefulness and applicability are limited in view of the differences in statutory language and expressed legislative intent, as well as the divergent approaches utilized by various state agencies and courts. Respondent offers several cases wherein states have determined the calendar to be a non-bargainable item.

In 1972, the Pennsylvania Labor Relations Board found that the school calendar was not a mandatory item. This case involved 23 items, one of which was the calendar. In Pennsylvania Labor Relations Board v. State College Area School District, 337 A.2d 262 (1975), the Pennsylvania State Supreme Court remanded the case to the administrative agency for reconsideration in light of its holding that an item was bargainable under Sections 701 and 702 of the Public Employe Relations Act 20/ if it related to the employee's interest in wages, hours, or other terms and conditions of employment, and if the impact of that item on the employee's interest was greater than the effect on the system as a whole. If the item was determined to be

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20/ Section 701 provides:

> Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession. Pa.Stat. Ann. tit. 43, §1101.701 (Supp. 1976).

Section 702 provides:

> Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives. Pa. Stat. Ann. tit. 43, §1101.702 (Supp. 1976).

one of inherent managerial policy but still affected the employee's wages, hours or other terms or conditions of employment, then the employer would be required to "meet and discuss" it with employee representatives. 21/ The Court also held that an item was excluded from bargaining by Section 703 22/ only if negotiating on that item was definitively and explicitly prohibited by existing laws. Basically, the Court developed its balancing test as a means of harmonizing the broad affirmative language of Section 701 with the limitations imposed by Sections 702 and 703. The applicability and persuasiveness of this approach is diminished as Chapter 41.59 RCW lacks language similar to that of Section 702 of the Pennsylvania Act.

The New Jersey Supreme Court likewise found that the board of trustees had no obligation to bargain with a teacher union on the calendar issue under that state's Employer-Employee Relations Act. 23/ Here, again, the court was faced with a statute appreciably different from Chapter 41.59 RCW. 24/ The Maine Supreme Judicial Court in City of Biddeford v. Biddeford Teachers Association, 304 A.2d 387 (1973), concluded that the commencement and termination of school and the scheduling and length of intermediate vacations during the school year are matters of "educational policy" not subject to collective

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21/ 337 A.2d at 268.

22/ Section 703 of the Public Employe Relations Act provides:

> The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters. Pa. Stat. Ann. tit. 43, §1101.703 (Supp. 1976).

23/ Burlington City College Faculty Association v. Board of Trustees, 311 A.2d 733 (N.J. 1973).

24/ The New Jersey Employer-Employee Relations Act provides, in relevant part:

> Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment. N.J.S.A. 34: 13A-5.3 (1974).

bargaining or the arbitration process. Under the Maine statute, 25/ however, the parties are directed to bargain mandatory subjects involving wages, hours, and working conditions, and then are admonished to meet and consult, but not negotiate on matters of "educational policy." It is noteworthy that the Act does not employ a bifurcated approach similar to that of Maine.

In West Hartford Education Association v. DeCourey, 295 A.2d 526 (1972), the Connecticut Court concluded that the school calendar was not a negotiable item, as the Connecticut Teacher Negotiations Act states that the board of education has a duty to negotiate regarding "salary and other conditions of employment." The Court found it highly significant that the statute omitted the phrase "hours of employment" in view of the other labor statutes adopted by the Connecticut Legislature, and the National Labor Relations Act. 26/

In Wisconsin, the Employment Relations Commission found that:

> . . . the school calendar is a mandatory subject of bargaining, since it established the number of teaching days, in-service days, vacation periods, convention dates, and the length of the school year directly affecting hours and conditions of employment. 27/

This determination was affirmed by the Wisconsin Supreme Court in City of Beloit v. Wisconsin Employment Relations Commission, 242 N.W. 2d 231 (1976). The Court found that the Wisconsin statute

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25/ Pursuant to the Maine statute the parties are directed to:
> Confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration . . . except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration. Me. Rev. Stat. Ann. tit. 26, §§965(1)(C) (1974).

26/ 295 A.2d at 534.

27/ City of Beloit, W.E.R.C., Decision No. 11831-C, page 22.

provides for two distinct categories: (1) wages, hours, and conditions of employment, which are bargainable subjects, and (2) management and direction of the governmental unit which is not bargainable. The Respondent here seeks to distinguish the Wisconsin decision by suggesting that the court was limited by its prior holding on the issue of calendar. 28/ Yet, a careful reading of Beloit as it relates to calendar indicates that rather than constrained by its prior decision, the court distinguishes the earlier decision involving a "meet and confer" statute. Having disposed of the constitutional impediment erected in Joint School District No. 8, the Beloit Court proceeds to find the school calendar a bargainable issue as it related primarily to "wages, hours, and conditions of employment." 29/

Finally, Respondent refers to the decision of the Oregon Public Employment Relations Board wherein it was determined that the school calendar was not a mandatory subject of bargaining under Oregon's Public Employees Collective Bargaining Law. 30/ This determination was affirmed by the Court of Appeals. 31/ However, there exists a

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28/ In Joint School District No. 8, City of Madison v. Wisconsin Employment Relations Commission, 155 N.W. 2d 78, 83, The Court stated:

> If the school calendar was subject to collective bargaining in the conventional sense in which that term is used in industrial labor relations under Sec. 111.02(5), Stats., there would be merit to the argument of the school board that its legislative function is being delegated or surrendered and thus the calendar could not constitutionally be a subject of negotiations although it fell within the broad terms of the statute. However, under Sec. 111.70 the school board need neither surrender its discretion in determining calendar policy nor come to an agreement in the collective-bargaining sense. The board must, however, confer and negotiate and this includes a consideration of the suggestions and reasons of the Teachers. . .

29/ 242 N.W. 2d at 240.

30/ The Oregon Public Employe Collective Bargaining Law provides:

> 'Collective Bargaining' means the performance of the mutual obligation of a public employer and the representatives of its employees to meet at reasonable times and confer in good faith with respect to employment relation. . .
>
> 'Employment Relations' includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedure and other conditions of employment. ORS 243. 650 (4) and (7).

31/ Springfield Education Association v. Springfield School District No. 19, 547 P.2d 647, reconsidered, 549 P.2d 1141 (Or. App. 1976).

relevant distinction between the Oregon statutory language and similar portions of Chapter 41.59 RCW. The Washington Act requires the parties to". . . bargain in good faith in an effort to reach agreement with respect to wages, hours, and terms and conditions of employment; . . . " The same section further provides:

> In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory. 32/

It is significant that the Legislature chose to omit wages and hours from the above provision. Such an omission could be construed as suggesting that the Commission lacks authority to determine bargainability when the issue involves wages or hours. However, this makes little practical sense. Rather, the omission indicates that when a disputed subject is found to constitute either wages or hours, the Commission is not to exercise discretion but is to find such subject a bargainable item. It is only in that less definite area of "other terms and conditions of employment" that the Commission may exercise some form of balancing approach should the given issues so warrant. Such reading of the Act gives full meaning to each word and clause, while at the same time taking note of the absence of certain terms. Thus, a finding that the school calendar constitutes hours of work for teachers would compel a conclusion that the calendar is a bargainable item under the Act. Here the type of balancing test similar to that relied upon in Oregon would be inappropriate and unnecessary.

Policy Considerations

Respondent advances a"political process" argument, beginning with the premise that the Board of Directors are statutorily charged to manage the educational program and establish basic educational policy. This is particularly the case where it is confronted with

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32/ RCW 41.59.020(2).

conflicting positions expressed by various groups and individuals. Respondent suggests that resolution of such positions is a basic political responsibility of the Board. 33/ Specifically stated, Respondent argues that teachers ought not have the right to bargain to impasse on such a basic and fundamental political/policy question as calendar. To do otherwise, it says, would provide to teachers more influence in the political process than other appropriate constituent groups.

The Legislature has, through Chapter 41.59 RCW, assigned to teachers a position statutorily different than that of other constituent groups. It is axiomatic that the Board must be politically responsive to its constituents, but it is also under a statutory duty to bargain on wages, hours, and other terms and conditions of employment with the Association. In resolving this paradox, the Act determines that as to wages and hours, the basic obligation to bargain is controlling as wages and hours are fundamental to the employment relationship. Furthermore, RCW 41.59.020(2) notes specifically: "The obligation to bargain does not compel either party to agree to a proposal or to make a concession." The District need only bargain in those instances where items are found to constitute "wages, hours and terms and conditions of employment."

Nor is RCW 41.59.930 of any help to Respondent. 34/ This provision is specifically limited to state and federal laws. I am not pursuaded that bargaining the school calendar interferes with Respondent's statutory duty to effectively and efficiently operate its educational program. Surely, the Legislature understood that the bargaining process by its very nature would limit the freedom and flexibility of the Board. Absent a definitive and explicit interference with a district's rights or responsibilities under state or federal law, bargainability must turn on the phrase "wages, hours, and terms and conditions of employment."

33/ Respondent relies on: Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L. J. 1156 (1974).

34/ RCW 41.59.930 provides:

> Nothing in this chapter shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer's responsibilities to students, the public, and other constituent elements of the institution.

It is significant, though not determinative, that Respondent has bargained the calendar with the Association since 1971. 35/ The record discloses no instances where such bargaining appreciably limited the Board's basic right to manage the educational system. It may have proven inconvenient, but that is not sufficient interference. Respondent also suggests that calendar ought not be a bargainable item, as it might have to negotiate the subject with its other unions. It is significant, though not determinative, that during the time calendar was negotiated with the District, no other union made such a demand. Furthermore, to bargain calendar with other unions would pose a situation not distinguishable from that of negotiating a wage and benefit package with one union, and having other unions make "us too" demands.

The Remedy

It is undisputed that Respondent has refused to bargain those items of the school calendar dealing with instructional days. Under applicable National Labor Relations Act precedents, the school calendar constitutes "hours of work" and would thereby be a bargainable subject. Further, a consideration of state decisions regarding calendar, suggest that under a statutory scheme similar to Chapter 41.59 RCW, calendar is a mandatory bargaining item. Therefore, Respondent violated the provisions of RCW 41.59.140(1)(e), in that it refused to bargain the school calendar, a mandatory item. 36/ I am not pursuaded that Respondent's failure to vest its negotiator with authority to bargain calendar constitutes a separate violation of the Act, at least on the facts of this case. Respondent simply

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35/ Brief of Respondent at 13.

36/ It is assumed that Complainant's allegation of a violation of RCW 41.59.140(1)(a) is intended as derivative only. See, 3 NLRB Ann. Rep. 52 (1939).

instructed its negotiator to act consistent with its position that calendar is not a bargainable subject. One cannot assume that the negotiator ought have authority to bargain over an item that the Board did not wish negotiated.

Likewise, it is undisputed that Respondent unilaterally adopted a school calendar on March 1, 1976. This unilateral act, absent negotiations and impasse, constitutes a violation of RCW 41.59.140 (1)(e). 37/

DATED at Seattle, Washington, this 11th day of April, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: William G. Jeffery
William G. Jeffery
Examiner

37/ See, NLRB v. Katz, 369 U.S. 763 (1962).

EDMONDS EDUCATION ASSOCIATION v.
EDMONDS SCHOOL DISTRICT NO. 15

CASE NO. 194-U-76-13

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to a Formal Hearing conducted on October 19 and 20, 1976, before Hearing Examiner, William G. Jeffery, and said Examiner having considered the evidence and arguments, and being fully advised in the premises advanced, and pursuant to WAC 391-08-600, said Examiner now makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

I.

That at all times material, Edmonds School District No. 15 was a school district pursuant to the statutes of the State of Washington.

II.

That at all times material, Edmonds Education Association was the exclusive bargaining representative of certificated employees of Edmonds School District No. 15.

III.

That Edmonds School District No. 15 refused to bargain collectively those aspects of the school calendar involving instructional days.

IV.

That the school calendar involves the number of teaching days, in-service days, vacation periods, and the length of the school year.

CONCLUSIONS OF LAW

I.

That the Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

II.

That the school calendar constitutes hours of employment and is therefore a mandatory subject of collective bargaining pursuant to RCW 41.59.020(2).

III.

That by refusing to negotiate the school calendar, the Edmonds School District No. 15 violated RCW 41.59.140(1)(a) and (e).

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, and upon the entire record, Edmonds School District No. 15 is hereby ordered to:

A. Cease and desist from:

(1) Refusing to bargain collectively with the Edmonds Education Association on the subject of school calendar.

(2) Interfering with, restraining or coercing certificated public employees represented by the Edmonds Education Association in the exercise of their rights guaranteed by Chapter 41.59 RCW.

B. Take the following affirmative action which the Examiner finds will effectuate the policies and purposes of Chapter 41.59 RCW.

(1) Upon request, bargain collectively with Edmonds Education Association as the exclusive representative of all certificated employees employed by the Edmonds School District No. 15 on the subject of school calendar.

(2) Rescind the school calendar unilaterally adopted.

(3) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty days following the date of this order as to what steps have been taken to comply herewith.

DATED at Seattle, Washington, this 11th day of April, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: William G. Jeffery
William G. Jeffery
Examiner