STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT NO. 1 Complainant, vs. SEATTLE TEACHERS ASSOCIATION Respondent.	Case No. 959-U-77-122 Decision No. 629 EDUC ORDER DENYING MOTION TO AMEND COMPLAINT

APPEARANCES:

Perkins, Coie, Stone, Olsen & Williams, by Lawrence B. Hannah and Thomas E. Platt, Attorneys at Law, for the complainant.

Symone B. Scales, Attorney at Law, for the respondent.

The complaint charging unfair labor practices was filed in the captioned matter on June 23, 1977. The matter was processed by the Executive Director pursuant to WAC 391-30-510 and was assigned to an Examiner. On March 23, 1979, the complainant filed a written motion to amend its complaint, adding allegations relating to a time period which is different from that covered by the original complaint. The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-30-510.

The material allegations of the proposed amended complaint are set forth here in full. The proposed additional allegations are contained in the two underscored paragraphs.

> "4.A On March 15, 1977 Respondent Seattle Teachers Association (the 'STA'), the bargaining agent of the non-supervisory certificated employees of Complainant Seattle School District (the 'District'), presented to the District a bargaining proposal for, inter alia, a first student day of September 7, 1977 and Winter Recess of December 19, 1977 to January 2, 1978 for the 1977-78 school year. Bargaining between the parties over these and other matters then proceeded.
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> 4.B. Thereafter, the District thoroughly reviewed the STA calendar proposal, alternative calendars and community preferences. Then on May 11, 1977 the District made a written proposal to the STA that September 8, 1977 be the first student day of the 1977-78 school year and that the Winter Recess occur December 19, 1977 through the New Year's Day holiday, January 2, 1978.

4.C. At the May 18, 1977 bargaining session between the parties, the chief spokesperson for the STA, Warren Henderson, stated that the STA would not bargain further on the calendar and that the calendar would have to await agreement on all other items in dispute between the parties.

4.D. By letter to Mr. Henderson on May 20, 1977, the District expressly informed the STA of the reasons the District urgently needed to set tentatively a first student day and Winter Recess dates. The District cited needs of District planners, parents, students, employees and others. In accord with these needs, the letter proposed District conformance with the STA's dates and further proposed tentative approval of the STA's dates by the District's Board of Directors (the 'Board'), expressly subject to additional bargaining.

4.E. Despite the District's tentative acceptance of the STA's dates, Mr. Henderson objected to the District's utilization of those dates on a tentative basis and stated that the STA would not agree to any dates. By letter dated May 23, 1977, the STA reiterated its refusal to bargain on calendar.

4.F. In the above-cited period and through September 1977, the STA maintained its position that there would be no bargaining agreement without District concession on the bargaining status and content of the student calendar, whereby the STA conditioned bargaining of mandatory subjects upon bargaining of a permissive subject, including beyond a legal impasse, all in violation of RCW 41.59.140(2)(a)(i) and (c).

4.G. Through this course of conduct, the STA has engaged in bad faith, surface bargaining. The STA has refused to embrace its own proposals and has refused to bargain further on calendar. The STA's conduct evinces an intent to avoid good faith bargaining and to avoid reaching agreement, all in violation of RCW 41.59.-140(2)(a)(i) and (c).

4.H. Further, the STA is through its refusal to bargain on calendar attempting to block the lawful, timely opening of school in the fall of 1977 and thereby is insisting to impasse upon what amounts to an illegal proposal, namely, that the STA be permitted to engage in an unlawful strike. The STA refuses to bargain on calendar in order to promote and facilitate a strike, all in violation of RCW 41.59.140(2)(a)(i) and (c). Said conduct also constitutes an independent violation of the STA's duty fairly to represent employees under RCW 41.59.140(2)(a)(i).

4.J. Finally, the STA has through its conduct sought to impede the Board in the discharge of its legal responsibilities for calendar under, inter alia, RCW 28A.59.180(7) and RCW 41.59.930, all in violation of RCW 41.59.140(2)(a)(i) and (c).

4.K. Note: It is the District's position that the first student day and Winter Recess for a school year--as components of the student calendar--are permissive (or non-mandatory) subjects for bargaining. Accordingly, the District's unfair labor practice allegations are in the alternative insofar as the bargaining status of the student calendar is concerned.

Relief Sought

That the STA be ordered to cease and desist from (a) refusing to bargain in good faith with the District; (b) insisting to impasse upon an asserted right to strike; (c) bargaining in a manner to further an asserted right to strike; (d) violating its

> obligations to fairly represent the members of its bargaining unit; and (e) seeking to impede the Board in the discharge of its legal responsibilities."

(Paragraph identification symbols have been added to the complainant's un-numbered text for ease of reference herein.)

Detailed review of this sequence of events is helpful. The key events alleged and of record are as follows: Collective bargaining on "school calendar" commenced as early as March 15, 1977. The parties were in disagreement as to the school calendar at least as of May 11, 1977. On June 14, 1977, the Association filed "refusal to bargain" unfair labor practice charges against the employer (docketed as Case No. 948-U-77-120) alleging unilateral adoption on or about May 25, 1977 of the first working day and Christmas vacation portions of the school calendar. The original complaint in the instant case was filed on June 23, 1977. The Association filed a mediation request with the Commission on June 29, 1977 pursuant to RCW 41.59.120. The mediation case involved the full range of issues which then divided the parties. The dispute was submitted to factfinding pursuant to a request filed on July 25, 1977. The parties remained in disagreement following the issuance of factfinder recommendations, and they re-entered mediation under the auspices of the Commission pursuant to WAC 391-30-736. An agreement was reached at the bargaining table on September 6, 1977. The "school calendar" unfair labor practice complaints of both parties were held in abeyance while older "school calendar" unfair labor practice cases were processed by the Commission sequentially in order of their filing. A preliminary ruling was issued on October 23, 1978 referring all allegations of both "school calendar" complaints to an Examiner and consolidating the matters for hearing. The hearing was opened on February 26, 1979 and was continued on February 27, 1979. The Association undertook to proceed first with the presentation of evidence, and had concluded its case-in-chief. Prior to the conclusion of evidence offered by the employer, the Association announced its desire to withdraw its complaint. The employer objected to the withdrawal and moved to amend its complaint. The Association objected to the employer's proposed amendments, and the Examiner adjourned the hearing indefinitely to receive written motions and arguments from the parties. The Association has made a conditional motion to withdraw its complaint, the condition being that the employer's motion to amend its complaint not be granted. On March 23, 1979, the employer filed the proposed amended complaint which is now before the Executive Director.

POSITION OF THE EMPLOYER (COMPLAINANT)

The employer contends that its original complaint enumerating "various specific unfair labor practices, including: (1) 'bad faith, surface bargaining'; (2) 'insisting to impasse upon what amounts to an illegal subject, namely, that the STA be permitted to engage in an unlawful strike'; (3) unfairly repre-

senting employees; and (4) impeding the District 'in the discharge of its legal responsibilities for calendar....'" should be interpreted as a statement of alternative theories. Thus, it contends that it has already alleged in (1), above, that the calendar is "perhaps" a permissive subject; and that (4), above, is "premised primarily upon the contention that the student calendar is a permissive subject..." It follows, according to the employer, that its proposed amendment merely expands on the previous allegations, with the focus of attention being on the allegation that the Association has interfered with the employer in the discharge of the employer's legal responsibilities for calendar under RCW 28A.59.180(7) and RCW 41.59.930, all in violation of RCW 41.59.140(2)(a)(i) and (c).

POSITION OF THE ASSOCIATION (RESPONDENT)

The Association acknowledges that its complaint against the employer is premised on the school calendar being a mandatory subject of bargaining, and that litigation of its complaint against the employer would involve a re-litigation of issues decided in Edmonds School District, Decision 207 (EDUC, 1977). It contends, however, that one could only assume from the language of the employer's original complaint against the Association that the employer was alleging that the Association had refused to bargain a mandatory subject. The Association contends that it should not now be required, more than 18 months after the filing of the employer's complaint (and only after it had moved to withdraw its own charges) to meet completely different charges. The Association therefore requests that the employer's motion to amend be denied.

DISCUSSION:

The interpretation placed on the employer's complaint by the Executive Director at the time the preliminary ruling was made comports with the interpretation proposed by the Association now. Upon re-examination of the employer's original complaint based on the "alternative theories" interpretation now advanced by the employer, that complaint is found to be defective in a number of respects.

There is no allegation in paragraphs 4.A., 4.B., 4.C., 4.D., 4.E. or 4.G. of the complaint that the parties were "at impasse" (as defined in WAC 391-30-552, or otherwise) during the March 15, 1977 - May 23, 1977 period. Indeed, the employer's own proposal alleged as of May 20, 1977 was to adopt the Association's proposed calendar "expressly subject to additional bargaining". Neither party had "declared impasse" to initiate the mediation and factfinding procedures specified in RCW 41.59.120. These allegations were and are interpreted as asserting that the Association had refused to bargain on school calendar while under a mandatory duty to bargain collectively on that matter. If advanced now as "insistence at impasse on a permissive subject" allegations, the pre-

liminary ruling under WAC 391-30-510 must be that the facts alleged are insufficient to conclude that such a violation could be found.

There is a reference to "insistence to impasse" in paragraph 4.H., but that reference is tied specifically to the strike threat. In view of the comments of the Commission in Spokane School District, Decision 310-B (EDUC, 1978) to the effect that the Commission will neither protect nor prohibit strikes via the unfair labor practice provisions of RCW 41.59, these allegations should perhaps have been stricken. The employer does not advance them now as a locus of any "permissive subject" alternative theory. They were not, and are not, interpreted as allegations that the school calendar is a permissive subject for bargaining. Those allegations are now stricken as failing to state a claim for relief.

The allegations relating to breach of a duty of fair representation do not establish the standing of the employer to complain, are vague and are conclusive. These, too, should perhaps have been stricken previously. They are neither asserted nor interpreted as allegations that the school calendar is a permissive subject for bargaining. They, too, are stricken as failing to state a claim for relief.

RCW 41.59.930 preserves certain employer responsibilities and rights, but the unfair labor practice provisions of RCW 41.59 do not provide any general remedy for infringements on the rights of the employer. The allegations of paragraph 4.J. state a cause of action as an unfair labor practice only as an alternative statement of the allegation that the Association has refused to bargain on a mandatory subject. Clearly, if the calendar were permissive and the exclusive bargaining representative had declined or refused to discuss the issue, the employer would not have been impeded at all by the Association's alleged refusal to bargain. If advanced as a "permissive subject for bargaining" allegation, the preliminary ruling under WAC 391-30-510 must be that the facts alleged are insufficient to conclude that a violation could be found.

Based on the foregoing interpretation of and action on the employer's original complaint, it is concluded that the proposed amendment to add paragraphs 4.F. and 4.K. should not be allowed. The school year involved has long since passed. The docket records of the Commission now also include a mediation case involving the same parties in their bargaining for the 1978-79 school year, and record of a lengthy strike stemming from those negotiations. On February 27, 1979 (and by a written motion filed on March 23, 1979) the employer proposed for the first time to expand the complaint in the captioned case to cover the bargaining which occurred during the three months following the filing of the original complaint. More than 17 months had passed since the settlement (without a strike) of the negotiations complained of before the employer made its first motion to amend.

RCW 41.59 contains no statute of limitations on the filing of unfair labor practice complaints. By contrast, Section 10(b) of the National Labor Relations Act contains a six month statute of limitations. The documents exchanged among interest groups and with the Commission during the preparation of rules for the administration of RCW 41.59 contain references to a proposal for a rule limiting the time for filing of an unfair labor practice case. The Commission declined to adopt an arbitrary rule of limitations, but its action in that regard is not interpreted as a rejection of the judicial doctrine of laches. Based on the foregoing, it is concluded that the complainant is barred from amending its complaint at this late date to alter both the nature of its complaint and the period of time to be considered. The employer has failed to do in a timely fashion what it ought to have done to protect or assert its rights.

Since the Association's withdrawal of its complaint was in fact a conditional act dependent on the outcome of the issue decided herein, the objections to that withdrawal are reserved for determination, if necessary, at a later time. The Association's motion to withdraw and it motion to strike record will be held in abeyance pending the disposition of any petition for review of this ruling.

NOW, THEREFORE, it is

ORDERED

The motion of Seattle School District No. 1 to amend the complaint of unfair labor practices in the above-entitled matter is denied.

Dated at Olympia, Washington this 20th day of April, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By: 

MARVIN L. SCHURKE, Executive Director