STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON ASSOCIATION OF EDUCATIONAL OFFICE PERSONNEL, Complainant, vs. RENTON SCHOOL DISTRICT, Respondent.	CASE NO. 4067-U-82-639 DECISION NO. 1608 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pat Kelly, Labor Representative, appeared on behalf of the complainant.

Montgomery, Purdue, Blankenship & Austin, by George Akers, Attorney at Law, appeared on behalf of the respondent.

On May 3, 1982, the complainant, Renton Association of Educational Office Personnel (RAEOP), filed an unfair labor practice complaint against Renton School District (district). The complaint alleges that the district violated RCW 41.56.140 by unilaterally modifying the salary schedule in the collective bargaining agreement through transfer of an employee into the bargaining unit at a salary greater than provided in the agreement. The hearing on this matter was held on October 27, 1982, in Renton, Washington, before Examiner Katrina I. Boedecker. Final briefs were filed by January 26, 1983.

FACTS

Secretary/clerk employees of Renton School District are governed by a collective bargaining agreement between the district and Renton Association of Educational Office Personnel. The agreement establishes the salary schedule for secretary/clerks. The highest salary for this position is $14,176. Executive secretaries are not covered by the collective bargaining agreement.

LaVera Curry has been employed by Renton School District for at least nine years. Before October 1, 1982 she held an executive secretary position. Due to declining resources the district eliminated the executive secretary position that Curry held and reassigned her to a secretary/clerk position in the Department of Instruction.

Curry was not a member of the bargaining unit in her position as an executive secretary. Once in her position as a clerk/typist, she became a part of the bargaining unit. The district did not negotiate with the association regarding Curry's salary prior to or after her placement in the unit.

Curry's transfer to secretary/clerk became effective on October 1, 1981. At that time the union learned that Curry was transferred into the bargaining unit. At no time did the union ask the district to bargain over Curry's placement in the unit or her salary. The collective bargaining agreement between the parties contains a provision dealing with involuntary transfers. The pertinent language is found in Article III Sec. P (3). This section states:

> If the employee is involuntarily transferred to a classification position of lower pay, he/she shall suffer no loss of pay or benefits for a short term transfer and no loss of pay or benefits in the case of a permanent transfer that happens during the fiscal year. Those who are involuntarily transferred or reclassified to a lower level will be kept at their previous rate for the remainder of the fiscal year.

After her reassignment Curry continued to receive her previous salary of $18,223.

In correspondence from the district to the association dated November 24, 1981, the district formally notified the association of Curry's transfer. The district also informed the association that Curry's salary was being grandfathered at her previous salary of $18,223. The union did not respond to the district's letter until February 12, 1982. In that correspondence, the association informed the district that, according to the collective bargaining agreement, Curry needed to pay her union dues or "her services should be discontinued".

POSITION OF THE PARTIES

RAEOP contends the district's action of failing to bargain Curry's salary in her new position, now covered by the collective bargaining agreement of secretary/clerk, is a unilateral modification of the salary schedule and constitutes an unfair labor practice.

The district contends that there was no unilateral change of the salary schedule, arguing that Article III Sec. P (3) of the collective bargaining agreement allows employees to maintain their current rate of pay when involuntarily transferred to a lower position. The district stresses that the association never asked to bargain regarding Curry's salary and that the

concern expressed by the association to the district was with the amount of union dues Curry owed rather than her placement on the salary schedule. Therefore, the district seemingly argues, RAEOP waived it's right to bargain the salary level. Finally, the district contends that the dispute centers on the interpretation and application of the collective bargaining agreement and should be deferred to arbitration rather than be processed as an unfair labor practice.

DISCUSSION

It is undisputed that the district took action without bargaining. It placed Curry in the bargaining unit and grandfathered her salary at her previous level of $18,223, which is $4,047 in excess of the highest negotiated salary contained in the collective bargaining agreement between the parties. Unilateral action by an employer usually constitutes an unfair labor practice. South Kitsap School District, Decision No. 472 (PECB, 1978). But, if an affirmative defense to such action exists, no unfair labor practice violation will be found.

As an affirmative defense to its unilateral action, the district relies on the fact that RAEOP never requested bargaining over Curry's salary. As to the district's initial conduct, this defense is without merit. The district's action of grandfathering Curry's salary at $18,223 for her placement in the position of secretary/clerk was presented to RAEOP as a fait accompli. Consequently, the association did not have to request bargaining. City of Vancouver, Decision No. 808 (PECB, 1980), page PD-808-7.

The association's actions after Curry's transfer, however, raise an issue of waiver of its right to bargain over Curry's salary. City of Yakima, Decision No. 1124-A (PECB, 1981). For almost half the year after having knowledge of the transfer, RAEOP did not express concern to the district about any alleged unilateral modification of the salary schedule. Rather, RAEOP's actions showed it was only disputing the amount of union dues that should be deducted from Curry's salary. The association was notified by the district, in writing, on November 24, 1981 that Curry's salary would be grandfathered at her previous salary of $18,223. Yet the association did not respond to the district until February 12, 1982. The letter reads in its entirety:

> In compliance with the contract between RAEOP and the Renton School District, Article V, Section E, second paragraph, LaVera will need to pay up her dues to the Association from October 1, 1981 to date or her services should be discontinued.
>
> The Association's stand is she should be paying dues on the salary she is receiving, $18,223 annually.
>
> Thank you for your co-operation in clearing this matter. (Emphasis added.)

Thus, when the union did respond it acknowledged that Curry's salary was $18,223. The union's only concern was the amount of union dues Curry should pay.

The February 23, 1982 correspondence from the district to the association also reflects that the salary placement was not the issue in dispute:

> This memo serves to summarize our discussion today regarding Ms. Curry's representation fee. Referring to the RAEOP contract, concern was focussed on Article V, Section E, Item 1, Agency Shop.
>
> * * *
>
> As a result of today's mutually agreed to resolution of the final outstanding issue regarding LaVera Curry's reclassification the matter is closed. Your cooperation in reaching closure has been appreciated.

The settlement referred to in the February 23, 1982 letter was later rejected by the association. Not until nearly one month later, and almost six months after the initial placement of Curry in the bargaining unit occurred, did the union voice an objection regarding the modification of the salary schedule. The letter from the association to the district of March 16, 1982 states:

> ... It was the conclusion of the Association's Executive Board that the District is probably committing an unfair labor practice with respect to unilateral placement of Mrs. Curry into the bargaining unit at a salary beyond that which is allowed by our salary schedule. We have, accordingly, requested that our labor relations specialist prepare the necessary documents for PERC, if such filing should be necessary.

Even that letter went on, however, to discuss the appropriate amount of union dues for Curry to pay. The union's conduct demonstrates an acceptance of Curry's grandfathered salary and, consequently, a waiver of any right to bargain over Curry's salary. Since the union accepted the district's grandfathering of Curry's salary, it cannot later complain of a unilateral modification of the salary schedule by the district.

The dispute between the parties actually centers around the correct dues deduction from Curry's salary. This matter appears to be more properly an issue of contract interpretation. An unfair labor practice proceeding is not the proper forum for resolution of such a dispute. City of Walla Walla, Decision No. 104 (PECB, 1976); Tumwater School District, Decision No. 936 (PECB, 1976).

FINDINGS OF FACT

1. The Renton School District is an employer within the meaning of RCW 41.56.030(1). Barb Pettinger, Personnel Program Administrator; Charles E. Talmage, Director of Personnel; and Billy J. Fogg, Director of Employee Relations were agents of the district at all times pertinent hereto.

2. Renton Association of Educational Office Personnel is the bargaining representative within the meaning of RCW 41.56.030(3). Randy Daraskavich was an agent of the association at all times pertinent hereto.

3. The Renton School District recognizes the Renton Association of Educational Office Personnel to be the bargaining representative for a unit described as:

> All Secretary Clerks with Lead, Secretary Clerks, Typist Clerks, and Instructional Aides A, B, C.

4. The highest salary provided for secretary/clerk in the collective bargaining agreement is $14,176.

5. LaVera Curry was transferred from a non-represented executive secretary position to a secretary/clerk position within the bargaining unit on October 1, 1981. She retained her salary of $18,223. The Renton Association of Educational Office Personnel had knowledge of this action on October 1, 1981.

6. The Renton School District informed the RAEOP on November 24, 1981 of Curry's transfer and of the fact that her salary was being grandfathered at $18,223. The RAEOP filed no protest to this action, nor did it request bargaining over same.

7. Daraskavich wrote to Pettinger on February 12, 1982, acknowledging Curry's grandfathered salary.

8. For nearly six months following Curry's transfer into the unit, RAEOP's only concern was to the calculation of the amount of union dues Curry owed. RAEOP first raised the issue of correct salary placement in a letter to the district of March 16, 1982.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56 et seq.

2. The unit represented by Renton Association of Educational Office Personnel is an appropriate unit for purposes of collective bargaining within the meaning of RCW 41.56.060.

3. The RAEOP, by its actions, led the district to believe it approved Curry's salary after her placement in the bargaining unit. Consequently, the RAEOP waived any right to later request bargaining over Curry's salary. Therefore, the district committed no unfair labor practice in violation of RCW 41.56.140.

ORDER

The complaint charging unfair labor practices filed in this matter is dismissed.

DATED at Olympia, Washington, this 29th day of March, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner