STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LAKE WASHINGTON VTI FEDERATION OF TEACHERS, LOCAL 3533, WFT/AFT, AFL-CIO, Complainant, vs. LAKE WASHINGTON SCHOOL DISTRICT, Respondent.	CASE NOS. 5890-U-85-1096 5975-U-85-1115 DECISION NO. 2483 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Barbara Otterson, Staff Representative, Washington Federation of Teachers, appeared on behalf of the complainant.

Livengood, Silvernale, Carter & Tjossem, by Robert P. Tjossem, Attorney at Law, appeared on behalf of the respondent.

On July 3, 1985, Washington Federation of Teachers Local 3533 filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Lake Washington School District had circumvented the union and violated RCW 41.59.140(e) and (a), by means of a memorandum directed to bargaining unit employees on June 28, 1985. (Case No. 5890-U-85-1096.) On September 12, 1985, Local 3533 filed an additional complaint charging unfair labor practices, alleging that the employer had committed additional circumvention unfair labor practices by means of a "news release" made by the employer on September 10, 1985. (Case No. 5975-U-85-1115.) The two cases were consolidated for hearing and J. Martin Smith was designated

as examiner.[1] A hearing was conducted at Kirkland, Washington, on April 1, 1986. The parties submitted memoranda of legal authority to complete the record.

BACKGROUND

The Lake Washington School District operates the Lake Washington Vocational-Technical Institute. The LWVTI is housed in a new complex of buildings in the Kirkland area, separate from the facilities used for the regular K-12 curriculum offered by the school district.[2] LWVTI's director is Dr. Donald W. Fowler. Additional administrative support is provided by labor relations staff and other administrators from the district's central offices.

The Washington Federation of Teachers (the union) represents the staff instructors at the LWVTI through its Local 3533. The union represents about 135 teachers, all of whom are certificated employees. A succession of collective bargaining agreements have been executed. The bargaining history between the union and the district has been somewhat rocky, with several requests for mediation and several unfair labor practice cases filed over the past few years. Pertinent to these cases, the parties had an agreement which was due to expire on August 31, 1985.

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1 The same complainant filed a third complaint, docketed as Case No. 5976-U-85-1116, which was dismissed by the Executive Director under WAC 391-45-110 for failure to state a claim under Chapter 41.59 RCW. See: Lake Washington School District, Decision 2317 (EDUC, 1985).

2 Certificated employees in the district's K-12 program have a separate bargaining unit and exclusive bargaining representative.

In June of 1985, the parties were in negotiations to replace their expiring contract. On or about June 5, 1985, the district made a comprehensive offer for settlement. Essentially, the district had proposed to extend the existing workday (from six-hours and 20-minutes to seven hours and 20 minutes), while increasing annual earnings by 17.3% across-the-board. Two letters circulated to the members of the bargaining unit in late June, 1985 set up the situation involved in the first of these cases.

Paul Axtell, the president of Local 3533, sent a memo to union members under date of June 25, 1985. That memo stated, in pertinent part:

> The district's offer would lead you to believe that you would have the opportunity to put a little extra money in your pocket...
>
> QUESTION: Why should you work extra time to get what should already have been yours?
>
> ANSWER: You shouldn't ... Your negotiating team is not supporting this proposal and recommends that you do not either. Your team will return to the bargaining table on Wednesday with our counter-proposal ...

A copy of the district's June 5th proposal was attached to Axtell's memo.

On June 28, 1985, LWVTI Director Don Fowler replied in a memo sent to the LWVTI faculty. Fowler indicated that Axtell's memo had been "misleading" in places, and went on to say:

> The District negotiations offer presented on June 5, 1985 was to provide one additional paid hour per day effective January 1, 1986.

> The salary difference would be as shown on the reverse side. ... The additional hour will be used to perform the duties which are traditionally performed by professional vocational instructors.
>
> The District's offer also increases the contract year by adding seven non-instructional hours to be paid at the per diem rate. ... In bargaining last year, the District attempted to increase annual earnings by 18% which included state appropriated salary adjustment money of 7% and an additional 11% for increasing the work day. This offer was rejected by the Federation. Therefore, only the state salary adjustment money (7%) was passed on for 1984-85.

Fowler's letter reiterated the June 5th offer of 17.3% per year salary increase coupled with the one-extra-hour provision. Case No. 5890-U-85-1096 was filed five days later, on July 3, 1985.

The parties believed they were at impasse by July 29, 1985. The docket records of the Public Employment Relations Commission show that Local 3533 requested mediation services on July 29, 1985, and that a member of the Commission staff was assigned as mediator for the dispute. (Case No. 5915-M-85-2430.) A large number of bargaining team members were on vacation during the month of August, and no meetings were planned until September. A mediation session was scheduled for September 4, 1985. In the meantime, Axtell met on two occasions with the school district's deputy superintendent, Curtis Horn, and superintendent, L. E. Scarr.

The first meeting occurred on August 29, 1985. Scarr asked Axtell for a meeting because he felt "communications were breaking down" and that perhaps informal discussions without chief negotiators being present might break the deadlock. Superintendent Scarr introduced Axtell to Horn, who was new to

the district. Axtell spent 20 minutes with Scarr and over two hours with Horn. Axtell had declined to discuss new "concepts" further with District Negotiator Reid Stevens, but agreed to meet informally with Horn. In their meeting, Horn set out some new "concepts" to Axtell. Horn set ground rules for the discussions: First, nothing was to be written down. Second, Axtell was to listen to the entire "package" concept since a refusal on any item was to be a rejection of the entire package. Axtell listened to the presentation, indicating that he had authority of his bargaining team to at least listen and report the contents to them. No written proposal was forthcoming based upon these "verbal concepts" discussions.

Axtell met again with Scarr the next morning. Scarr indicated that the "concepts" discussed the previous day were only available for two more days, and he encouraged Axtell to "talk to his people" about a response.

Scarr called Axtell four days later. Axtell's indication at that time was that the August 29th "concepts" were not acceptable to Local 3533 and its bargaining team.

At the mediation session held on September 4, 1985, the district apparently reverted to the bargaining position which it had taken as of June 29, 1985. Soon thereafter, the union took a strike vote, and indicated that it would begin picketing on September 11, 1985.

On or about September 10, 1985, the employer circulated a "news release" to the members of the bargaining unit. Although it appears that the document was not actually released to the press or electronic media, the memorandum took the form of a news release printed on school district letterhead. The document began by stating that the school district was going to mediation

on September 10th "under the threat of imminent strike". The memo also stated:

> The school district has proposed increasing the work day for vocational and adult education instructors from 6 hours, 20 minutes to 7 hours, 20 minutes, and compensating them by increasing their salaries 16.67 percent. The district further proposed an immediate additional 2 percent salary increase authorized and funded by the 1986 legislature for increases for kindergarten through 12th grade teachers. The district will also increase instructors' rates in 1986-87 and 1987-88 as authorized and funded for K-12 teachers plus an additional 2 percent for each of those school years. . . (emphasis supplied)

The additional 2% increases detailed in the September 10, 1985 memorandum had been among the "concepts" discussed during the meetings between the union local president and top management officials late in August, but had never been made as formal bargaining proposals which were available for the members of the bargaining unit to accept or reject. The union thereupon decided to file additional unfair labor practice charges, which brings us to the second of the cases presented here for decision.

POSITIONS OF THE PARTIES

Local 3533 argues that the employer's June 28th memorandum was an attempt to circumvent the exclusive bargaining representative, not to clarify the issues, and hence violated RCW 41.59.140. It argues, further, that the employer's September 10th memorandum was another attempt to circumvent the exclusive bargaining representative (as well as mediation process), and that it contained misleading information which undermined the credibility

of the bargaining team and cast the exclusive bargaining representative in a negative light, in violation of RCW 41.59.140.

The district urges the Commission to reject the charges on the grounds that no coercive or misleading information was contained in either memorandum, even if made directly to the union membership. The employer also contends that the September 10th memorandum accurately stated that an offer was made on August 30th, and that the union, by its failure to accept the offer within four days, had in effect rejected the proposal. The district argues that such communications are protected by the "free speech" provision found at RCW 41.59.140(3).

DISCUSSION

The most efficient way of dealing with these two charges is to treat each of the disputed employer memoranda (and the effects, if any, of each) in separate discussions. Each discussion is, however, guided by the common body of case law established by the statute and Public Employment Relations Commission precedent (in light of the precedents of the National Labor Relations Board).

Washington does not legislate against an employer who chooses to communicate directly with its employees or the public, even during the course of bargaining. As respondent points out, RCW 41.59.140(3) cautions that:

> "The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit".

It would be a drastic re-write of the statute to infer that employees or union adherents were somehow excluded from the category of "general public", no matter how disseminated.[3]

The phrase "... no threat or reprisal or force or promise of benefit" found in RCW 41.59.140(3) must be interpreted in the same context as the identical language of Section 8(c) of the National Labor Relations Act. The right of free speech provided to employers in these statutes, like the constitutional guarantee of free speech and freedom of expression, has its reasonable limits.

Many communications directly from the employer's representatives to bargaining unit members are protected by the statute, or otherwise do not approach the level of an unfair labor practice. In two cases, it was held that no unfair labor practice was committed when the union representatives contacted board members of municipal corporations and sought to discuss bargaining issues from a political or philosophical standpoint. Fort Vancouver Regional Library, Decision 2350-A (PECB, 1986); Sultan School District, Decision 1930-A (PECB, 1984).

The Commission has consistently held, however, that an employer under either Chapter 41.59 RCW or Chapter 41.56 RCW may not engage in communications with or meet with bargaining unit members concerning bargainable subjects without the participation of the exclusive bargaining representatives. Entiat School District, Decision 1361 (PECB, 1982); Wahkiakum School District, Decision 1443 (PECB, 1982); and Seattle-King County Health Department, Decision 1458 (PECB, 1982), all cited with approval

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[3] This is unlike the public employment bargaining law in our sister state, Oregon, at ORS 243.672(1)(i), which would prohibit such communications in either direction.

in Royal School District, Decision 1419-A (PECB, 1982). A school district cannot, during bargaining, prepare individual teacher contracts with an arbitrary salary figure written in, and mail such documents to bargaining unit members for acceptance or rejection on (apparent) surrender of job rights. Ridgefield School District, Decision 102-A (EDUC, 1977). Each of these activities tended to coerce the employees and to denigrate the bargaining representative by saying, in effect, "we could have a contract folks if it weren't for your union representative".

Several criteria can be used to determine whether an employer statement made during the course of collective bargaining is "free speech" or an unfair labor practice. NLRB precedent indicates that we should inquire as to the following factors:

1. Is the communication, in tone, coercive as a whole?

2. Are the statements made by the employer substantially factual or are they misleading in any material way?

3. Has the employer made new benefits available in the communication made to the employees?

4. Is there direct dealing or attempts to bargain with the employees?

5. Does the communication have a tendency or purpose to disparage, discredit, ridicule or undermine the union? Are the statements argumentative?

6. Did the union object to such communications during prior negotiations?

7. Did the communication appear to have placed the employer in a position from which it could not retreat?

See Endo Industries, 239 NLRB 1074 (1978).

In this case, there is good reason to rely less heavily upon criteria such as the inflammatory nature of the communication, since those tests appear to be more appropriate in situations where an employer right of free speech under 8(c) of LMRA is exercised in the context of a union organizational campaign, where rhetoric and emotionalism are typically at a high level. More apt here are the criteria directed to situations where the parties are attempting to negotiate a collective bargaining agreement.

The limits of free speech are defined by the obligation to bargain in good faith under Section 8(a)(5) of the NLRA and RCW 41.59.140. In this regard, Proctor and Gamble Company, 160 NLRB 334 (1966) is instructive. There, the company had been aggravated by 30 grievance arbitrations in a two-year period. It sought during the next negotiations to strengthen the management rights clause of the labor contract and to limit the types of disputes which could be submitted to arbitration. The company president wrote a long letter to union members outlining his reasons for the company's bargaining requests. The NLRB trial examiner and the NLRB agreed that the letter itself did not constitute an unfair labor practice, because the statements contained in the letter were: (1) non-coercive and merely presented information on the status of negotiations; (2) contained explanations of positions previously advanced by the company to the union either at the bargaining table or in connection with grievances; (3) refuted inflammatory charges openly made by the union; and (4) contained criticisms of certain bargaining strategies of the union leadership, which were the asserted reasons for the inability to reach settlement. The Board noted that copies of all literature sent by the employer to the members of the bargaining unit were also shown to the union. Further, the Board noted that in referring to positions taken at the bargaining table, the company never exceeded positions pre-

viously advanced in the bargaining context. The motivation for the employer's letters was found to be to give the company's version of the breakdown in negotiations, and not to subvert the bargaining representative.[4]

The June 28th Memorandum

Based upon the record as a whole, the examiner finds that the school district's June 28, 1985 memorandum entitled "negotiations" was a permissible communication within the meaning of RCW 41.59.140(3). Case No. 5890-U-85-1096 will be dismissed.

The communication of June 28th, written by Director Don Fowler, was in answer to a "negotiations" bulletin circulated by the union. It was not sent out as an "opening salvo" prior to an upcoming bargaining session. Its purpose was clearly informational, rather than persuasive or coercive. The information contained in Fowler's memo was merely rationale to explain the district's latest bargaining position, and no new bargaining proposal was set forth. The salary comparison data on the second page of the memo further explained the district's June 5th proposal. The communication did not undermine the union's bargaining team merely because they saw the memorandum at the same time as the bargaining unit members. Collective bargaining meetings are not trials in open court; the union could have remedied any lack of information by requesting data and discuss-

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4 Respondent's reliance on General Electric Co. v. NLRB, 150 NLRB 192, 57 LRRM 1491 (1964) is not persuasive. There, the NLRB found a violation when GE attempted to settle a national contract by buy-offs of several local union contracts, despite ongoing national negotiations. The Second Circuit affirmed the NLRB, but the court's dicta did not support GE's broad reading of Section 8(c). The court also affirmed the dismissal of a similar "coercive letter" violation based on a letter going to just four of 70,000 striking employees of the company. 57 LRRM at 1498.

ing cost-out worksheets at the next bargaining session. With respect to the union's claim that the June 28th memo is inaccurate in several respects, it is sufficient to say that the document was "substantially factual", and that neither party was totally certain as to whether all state revenues had been "passed through" as required by state law.

The September 10th "News Release"

The September 10, 1985 "news release" was written by Fowler, school district chief negotiator Reid Stevens and school district public relations officer Sylvia Sovold. The release was issued at an emotion-charged time during the 1985 negotiations. One mediation session had been held, a strike authorization vote had been taken, and a second mediation session was to be held within 24 hours of the release.

The union correctly points out that there are discrepancies among the documents issued by the employer. The June 28, 1985 memo made reference to a "17.3%" pay increase. The page of computations attached to the district's June 28 memo contained specific dollar amounts. In the September 10th statement, the district stated that annual salaries would increase "16.67%". Fowler testified that the increase in time worked was roughly 17.2%, and that the increase in wages for working an additional hour per day would be about 17.3%. Adding to the confusion, the district was asking in its June, 1985 proposals to the union for seven hours of non-instructional time per year above and beyond the increased instructional schedule. It is evident that some confusion resulted in the minds of bargaining unit members.

More damaging is the district's claim in the September 10 news release, without explanation, that it had offered an additional 2% per year across-the-board for 1986-87 and for 1987-88 in

addition to any extra monies supplied by the Washington Legislature in 1986. By implication, the district's news release told the employees that these sums had been offered, and that the union's bargaining team had rejected them. This statement must be compared to the evidence of record concerning the two meetings held between Axtell, Horn and Scarr on August 29 and 30, 1985.

Scarr did not testify in this proceeding. From hearsay testimony about his statements and actions, it appears that he only wanted to arrange a meeting between Axtell and either Horn or Stevens.

Axtell's testimony about his 20-minute conference with Superintendent Scarr is straight-forward. Axtell preferred to meet with Horn, so that a "secret negotiations session" would not be inferred. Axtell also testified credibly that Horn made a lengthy presentation of "concepts", subject to the dual conditions that: (1) If Axtell agreed to the entire package, he was to take the package to his team and recommend approval, and (2) If Axtell could not approve all of it, the package would be withdrawn. Unrebutted testimony establishes that in this meeting outside of the context of normal negotiations, Horn did not want Axtell to write down any of the "concepts" on paper.

Horn testified that Scarr's request to Axtell was "are you willing to listen to an offer or proposal?" Horn testified further that he was prepared on August 29th "to make an offer or proposal", and that he "laid out" the offer after Axtell's assurance that he had authority to listen and could recommend an acceptable package. Horn acknowledged that he wanted Axtell to listen, and not to write down the concepts. Under cross-examination, Horn indicated he would have been willing to write down the concepts for Axtell later, based on a preliminary indication of their acceptance.

Turning to the substance of the concepts, it appears that Horn mentioned a "16.7%" salary improvement together with an additional 2% per year, as an apparent inducement to settlement.

Axtell wanted to think about the matter overnight. The next morning, Axtell told Scarr that some of the items were simply not acceptable, at least to him. Scarr then invited Axtell to take the matter to his team anyway, but indicated that the "concepts" he had been given were to be withdrawn by September 3rd (i.e., the day after the Labor Day weekend).

Having reviewed that evidence, the Examiner concludes that the district's September 10, 1985 effort to communicate with the union membership violated RCW 41.59.140(1) and (4). First, the employer mis-characterizes the August 29th "concepts" as a "proposal". Second, the "news release" inherently tended to disparage and undermine the union's bargaining team.

The employer initiated and established a setting for the meetings between Axtell and its officials which was outside of the normal setting for collective bargaining between the parties. In doing so, the employer treated the union bargaining team and the normal bargaining procedures of the parties as if they were an impediment to settlement. Having created this unusual setting, the most that the district can claim is that it presented its "concepts" to an individual officer of the union, not to the union's bargaining team or to the union as a whole.

Even if the examiner assumes that the district's intentions going into the August meetings with Axtell was to make an offer to the

union,[5] it is evident that the employer decided not to do so after August 29, 1986. To the extent that the superintendent held the concepts "open" until September 3, 1985, it was only an attempt to find out what the union president would accept before an offer was tendered to the union.[6] No bona fide collective bargaining proposal was made to the union's bargaining team. Hence, the September 10, 1985 "news release" was materially misleading in stating that an additional 2% in wages, per year, had been offered to (and, impliedly, rejected by) the union. Seeing this for the first time, the union membership understandably could feel distrustful of their elected representatives.

The caption "news release" used by the employer on the September 10th document is also misleading, since the record discloses that the press and electronic media never actually received it. The employees had to believe, however, that the document had been released as its format would indicate. The tendency to disparage the union bargaining team is all too clear; either an employee believed that a bona fide offer of 16.67% plus 2% per year had been offered to the bargaining team and was rejected, or the employee had to believe that the results of secret meetings had been concealed from the membership. Either way, the statement had the clear effect of raising the suspicions of the members. Further, the statement of the employer's position on the issues sounds like a first, best and final offer, giving an impression that any more bargaining on the union's part (even with the

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5 It is inferred from the complexity and level of sophistication of Horn's presentation to Axtell that a written rough draft of the "concepts" must have existed, from which Mr. Horn either made or had previously memorized the presentation he made August 29, 1985.

6 Having failed to make a bona fide offer to the union, it is not critical that acceptance was conditioned upon a time limit since the power of acceptance in the offeree (the union) was never created.

assistance of the mediator) would be futile. Further disparaging of the union, the "news release" gave the clear impression that the 2% additional amount had disappeared and, in fact, that offer was not made again.

The posture of the district here is all the more untenable inasmuch as the parties were in mediation. Accepting that the August 29th "concepts" represented the position where the school district truly wanted to settle, and further accepting that the district was reluctant to put out those concepts in written form as a formal proposal, there is no explanation for the failure of the district to present its offer through the mediator. The testimony of the district's witnesses indicates that they felt a need to have a "side bar" meeting with Mr. Axtell because they felt that communications had been breaking down. The management was not alone in the perception as to the status of communications. The union had realized the same thing a month earlier, and had requested mediation pursuant to RCW 41.59.120. The first and foremost task of a mediator is to resurrect broken lines of communication, whether or not the parties have bargained in good faith. The statutory mediation process was not given the opportunity to work in this situation. Indeed, in sending the union president on a fishing expedition with only the aroma of the bait, the district circumvented the mediation process as well as the union's bargaining team and normal bargaining procedures.

The examiner concludes that the September 10th "news release" was an attempt by the employer to present a bargaining proposal directly to the union membership in words far different from the district's June 28th memorandum or anything actually offered to the union's bargaining team in the intervening period. What the district has done in this case is to prove that it fell within the test of Proctor and Gamble in sending out the June 28th memorandum answering a union bulletin, but that it has exceeded

the bounds of Proctor and Gamble and Endo Industries by virtue of the September 10th communication. A violation of RCW 41.59.140 (1) and (4) will be found in Case No. 5975-U-85-1115.

Remedy

At the root of the breakdown of negotiations in this case is a breakdown of communications (and perhaps a legitimate disagreement) concerning the amounts and utilization of state funds available for "pass-through" to LWVTI faculty members for each of the school years beginning with 1982-83. The parties reached an agreement, but the record does not establish precisely what became of that dispute. Should that dispute still exist, whether in latent or patent form, the air should be cleared in a manner which does not further the circumvention of the union which occurred in this case. Accordingly, provision is made in the attached remedial order for the parties to exchange the information, if necessary, to put those issues to rest.

FINDINGS OF FACT

1. Lake Washington School District is a school district organized and operated pursuant to Title 28A. RCW, and is an employer within the meaning of RCW 41.59.020(5). The district operates the Lake Washington Vocational-Technical Institute.

2. The Lake Washington Vocational-Technical Institute Federation of Teachers, Local 3533, an employee organization within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative of certificated employees of the Lake Washington School District employed at the Lake Washington Vocational-Technical Institute.

3. The parties had a collective bargaining agreement that terminated August 31, 1985. They negotiated for a successor agreement until June 25, 1985, when they declared themselves to be at an impasse.

4. On June 25, 1985, union President Paul Axtell sent a "negotiations bulletin" to the union membership, criticizing the district's request for an increase of employee work schedules by one hour per work day and the district's apparent unwillingness to "pass-through" state salary money provided by the legislature.

5. On June 28, 1985, LWVTI Director Don Fowler sent a memo to all instructors, in rebuttal to Axtell's bulletin, particularly claiming that the district had always passed through the money it was allocated for a six-hour, 20-minute teaching day. A second page of the memo converted the district's 17.3% salary offer into actual dollar values. Though meant to be persuasive to the bargaining unit as a whole, the memo was non-coercive, substantially factual and held out no new proposals.

6. On July 29, 1985, the union filed a request for mediation with the Public Employment Relations Commission. The Commission assigned a mediator, who scheduled mediation sessions with the agreement of the parties for September 4, 1985 and September 11, 1985.

7. On Thursday, August 29, 1985, union President Axtell was invited to discuss the pending negotiations with school district Superintendent L. E. Scarr outside of the normal setting for collective bargaining between the parties. During their meeting, Scarr suggested that Axtell meet with either of two other school district officials, also outside

of the normal setting for collective bargaining between the parties, to see if other ideas for settlement might surface. Axtell agreed to meet with school district deputy superintendent Curtis Horn.

8. During a private meeting on August 29, 1985 which lasted approximately 2 hours, Axtell was asked to listen without making notes while Horn presented "concepts" which the district was apparently willing to advance as a basis for settlement. Although Axtell related the topics of that discussion to his bargaining team, no bargaining session was scheduled or held and no actual offer or proposal was made by the district.

9. Axtell told Superintendent Scarr that he personally had reservations about several of the "concepts" set forth by Horn. When invited by Scarr to have his bargaining team listen to the concepts, Axtell reported back that they, too, would reject the package if proposed and could not recommend it to their membership. The "concepts" were never reduced to writing.

10. On September 7th, the union voted to begin picketing September 11, 1985.

11. On September 10, 1985, the district circulated a "news release" to the members of the bargaining unit represented by Local 3533, mentioning the "imminent threat of a strike". The memo now characterized the school district's offer as "16.67% plus an additional 2%, inferring that such an offer had been made by the district and rejected by the union. So far as it appears, the document was never actually released to the press or electronic media. The "release" contains a critical re-characterization of the August 29th "concepts"

discussion as a bargaining proposal, tended to be coercive, tended to undermine and disparage the union and its bargaining team, and included a new bargaining proposal or promise of benefit made directly to the employees represented by the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

2. By sending its June 28, 1985 communication to its employees, clarifying the status of bargaining, the Lake Washington School District did not circumvent its duty to bargain with the union or interfere with employee rights, and so did not violate RCW 41.59.140.

3. The so-called "news release" issued by the school district to bargaining unit members on or about September 10, 1985 contained material misstatements of fact, was disparaging of the exclusive bargaining representative and its officials, and circumvented the union by making proposals directly to bargaining unit employees, in violation of RCW 41.59.140 (1)(a) and (e).

ORDER

I. The complaint charging unfair labor practices in Case No. 5890-U-85-1096 is dismissed on the merits.

II. Based upon the foregoing findings of fact and conclusions of law, and pursuant to RCW 41.59.150 of the Educational

Employment Relations Act, it is ordered in Case No. 5975-U-85-1115 that the Lake Washington School District, its officers and agents shall immediately:

A. Cease and desist from:

1. Refusing to bargain collectively in good faith with Lake Washington VTI Federation of Teachers Local 3533 as the exclusive bargaining representative of its certificated employees at Lake Washington Vocational-Technical Institute.

2. Sending news releases or direct mailings directly to bargaining unit members where an intent or foreseeable result is to mislead the members of the bargaining unit as to, or otherwise denigrate, the actions taken by the exclusive bargaining representative during collective bargaining.

3. Circumventing the exclusive bargaining representative, the collective bargaining process, and the dispute resolution procedures set forth in RCW 41.59.120.

B. Take the following affirmative action to remedy the unfair labor practice and to effectuate the policies of the Act:

1. Upon request, bargain collectively in good faith with Lake Washington Vocational-Technical Institute Federation of Teachers, Local 3533.

2. Upon request, prepare a report, not to exceed reasonable length, detailing: (1) the funds made available to the Lake Washington School District by the state of Washington since September 1, 1982, for pass-through to certificated employees at Lake Washington Vocational-Technical Institute, and (2) the other funds, if any, including local funds, that have been used for salary increases during the period since September 1, 1982 for employees in the bargaining unit here at issue. Said report is to be made available to union not later than sixty days following the receipt of a written request from the union pursuant to this paragraph.

3. Post, in conspicuous places at the Lake Washington Vocational-Technical Institute, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the district be and remain posted for sixty (60) days. Reasonable steps shall be taken by the district to ensure that said notices are not removed, altered, defaced or covered by other material.

4. Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this order as to what steps have been taken to comply herewith, and at the same time provide the

Executive Director with a signed copy of the notice by the preceding paragraph.

DATED at Spokane, Washington, this 22 day of August, 1986.

ISSUED at Olympia, Washington, this 27th day of August, 1986.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

J. MARTIN SMITH
Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

Appendix A

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.59, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

With reference to the "news release" issued by the district on September 10,1985:

WE WILL NOT refuse to bargain collectively in good faith with Lake Washington Vocational Technical Federation of Teachers, Local 3533 as the exclusive bargaining representative of certificated employees at the Lake Washington Vocational-Technical Institute.

WE WILL NOT circumvent the union, the collective bargaining process or statutory dispute resolution processes, or initiate communications to bargaining unit employees which are misleading or undermine the union in the view of its members.

WE WILL, upon the request of the union, prepare a report for delivery to the union, accounting for state and other funds made available to the Vocational-Technical Institute since September, 1982, for salary purposes.

LAKE WASHINGTON SCHOOL DISTRICT

By: _____
AUTHORIZED SIGNATURE

Dated: _____

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice of compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.