STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF OF COUNTY AND CITY EMPLOYEES, Complainant, vs. SPOKANE COUNTY, Respondent.	CASE NO. 5557-U-84-1010 DECISION NO. 2377 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pamela G. Bradburn, Attorney at Law, appeared on behalf of the complainant.

Donald C. Brockett, Spokane County Prosecuting Attorney, by Garald A. Gesinger, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On November 19, 1984, Washington State Council of County and City Employees, Local 1135 filed a complaint with the Public Employment Relations Commission, wherein it alleged that Spokane County had committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4). Rex L. Lacy was designated as examiner to make and issue findings of fact, conclusions of law and order. A hearing was conducted on April 23, 1985 at Spokane, Washington. The parties submitted post-hearing briefs.

BACKGROUND

Spokane County provides a variety of governmental services to its residents through several departments, including a county road department. The road department is responsible for

maintenance and repair of the county's 1500 miles of paved and unpaved roads. County Road Department funds are essentially provided by two funding sources: Federal funds and gasoline taxes. Counties are entitled to spend $800,000 or 15% of the county road construction budget, whichever is greater, for local road projects. Robert Turner is county engineer, Ronald Hormann is operations manager. Charles Wright is the county's personnel director.

Washington State Council of County and City Employees, Local 1135, an affiliate of the American Federation of State, County and Municipal Employees, AFL-CIO, is the recognized exclusive bargaining representative of all road department employees except those designated as temporary employees. John Cole is the staff representative for the Council. Jerry Hester is president of Local 1135.

The parties have entered into a series of collective bargaining agreements during the past 30 years. The latest agreement between the parties was effective from January 1, 1982 through December 31, 1982. Negotiations for a successor agreement had not been concluded at the time of the hearing in this matter.

Spokane County has historically contracted out some road construction work to private firms. Turner, who was hired in 1955 and assumed the county engineer position in 1969, testified that considerable amounts of construction work had been contracted out to private enterprise. Additionally, road maintenance projects have been contracted to private firms during the past 30 years, especially when emergencies and unusually bad weather necessitated unusual amounts of road maintenanace.

The county is divided into four districts for the purposes of road maintenance. Employees of each district are involved in

plowing snow and sanding roads during the winter months; repairing winter damage by filling in holes, retrieving gravel and placing it on road beds in the spring; seal-coating, oiling, asphalting and rebuilding roads in the summer; and grading and preparing for the winter during the fall months.

In 1980, after the Mount St. Helens eruption, the county received a substantial amount of federal money to assist in removing and covering up the extensive ash residue which dropped in Spokane County. The greatest ash problems existed in county road districts #2 and #3. During that emergency, the county contracted with a number of private contractors for work that the county's own road workforce could not handle. There is no indication that the union objected to that contracting out of work.

About April 12, 1984, the union became aware that the county was contemplating contracting out gravelling (reballasting) of roads located in the Espanola area of maintenance district #3. Between April 12 and April 30, 1984, Cole contacted Hormann to discuss a grievance filed by Hester and to confirm whether the county was preparing to contract out the gravelling of roads in the Espanola area.

Cole met with Hormann on April 30, 1984 at the county road department office. Hormann confirmed that bids for gravelling work (about ten miles of reballasting on the Espanola job) had been requested in March, 1984, and that the county expected to receive bids on the project and to award a contract "within 30 days" after the bids were requested. At the same time, Hormann informed Cole that the county was considering contracting out other work in maintenance district #3. The meeting lasted about 30 minutes.

After the meeting with Hormann on April 30, 1984, Cole submitted a written proposal to the employer on that same day for a supplemental agreement, as follows:

> The County of Spokane may subcontract work within the Road Department if the following conditions are met.
>
> 1. That employees working under the Working Agreement between Spokane County and Local #1135 shall not under any event or circumstance suffer a loss in wages, hours, benefits or other conditions under the contract.
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> 2. That work may be subcontracted if, and only if, a) the intended work cannot be done because of manpower or equipment limitations, and b) that a cost analysis indicates that work done by a private firm is less expensive than if it was done by the Road Department.

On May 1 or May 2, 1984, the county entered into a contract with a private firm, S&F Construction, in the amount of $104,409 for pavement overlay and replacing drywells in maintenance district #3 (the Espanola job). This type of work had been performed previously by members of the Local 1135 bargaining unit. There was no further notice to the union beyond what had been said on April 30, 1984.

On May 17, 1984, the employer responded to Cole's proposal in a letter from Hormann and Turner to Hester, as follows:

> I am in receipt of John Cole's letter of April 30, 1984. In our meeting of April 30, 1984, I discussed fully our contract of reballasting roads in the area of Espanola. At this time I do not see any need for a

> supplemental agreement as currently proposed, but I would be glad to discuss further with you should you so wish.

On May 21, 1984, Cole responded to the employer, as follows:

> After reviewing your letter of May 17th, I find it encouraging that you are willing to discuss the matter of subcontracting. While your offer is well taken, your timing is belated at best. Had you made the offer at the appropriate time your invitation would have been properly made and well taken. However, given the fact that the County has already awarded a contract, I fail to see what negotiations at this time would produce.
>
> Therefore, while your offer to negotiate is well taken, it is unfortunately after the fact, and therefore, inappropriate.

Thereafter, over the remainder of the period until the complaint charging unfair labor practices was filed to initiate this case, the county entered into at least 25 contracts with private contractors to perform road maintenance work, totaling more than $6,954,000, for grading, draining, placing of crushed surfacing, paving, installing sidewalks and traffic facilities, bridge replacement, installing drywells, seal coating, pavement recycling, constructing traffic barriers, and crushing and stockpiling gravel. Some of that work was beyond the capabilities of the employer's own equipment and workforce. Other work contracted out was of the type historically performed by bargaining unit employees. The county did not notify the union that bids were being requested or being awarded for any of those road projects.

The record in this matter establishes that road department maintenance personnel worked more overtime in 1984 than they did

during the corresponding period of time in 1983. The union was aware of the employer's ongoing practice of contracting out road maintenance work, but did not pursue its April 30, 1984 written proposal for a supplemental agreement or otherwise request to negotiate with respect to any project awarded to private contractors after the initial request to bargain the contract awarded in May of 1984 to S&F Construction.

POSITIONS OF THE PARTIES

The complainant contends that Spokane County has subcontracted bargaining unit work without negotiating the subject with the union, that the union made a timely request to negotiate the matter, and that the county continued to subcontract out bargaining unit work after the union had requested negotiations on the subject, without offering to negotiate the subject.

The respondent contends that the complaint in this matter is untimely because it was filed more than six months after the event giving rise to the complaint. The employer contends that the type of work which was contracted out had historically been contracted out, that no employees were laid off or otherwise adversely affected, and that the union has, by its inaction, waived its right to object to the contracting out of the work projects in question.

DISCUSSION

The Timeliness Issue

Chapter 41.56 RCW sets forth a six-month statute of limitation on the filing of unfair labor practices complaints, as follows:

> RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS. The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law. (Emphasis supplied)

The six-month limitation period may be tolled where the complaining party does not have actual or constructive knowledge of the unfair labor practice. Metromedia Inc., 232 NLRB 486 (1977).

In the instant case, however, the union was aware by April 12, 1984 and had confirmed by April 30, 1984 that the employer intended to subcontract the road work identified herein as the Espanola job. Its use of the past tense in its May 21, 1984 letter indicates actual knowledge of the fact that particular work had been contracted out to S&F Construction. The union demanded bargaining on April 30, 1984, even making a specific proposal on the subject of sub-contracting. The employer, in effect, refused to negotiate on the subject matter.

The union did not pursue legal recourse by filing an unfair labor practice complaint regarding sub-contracting of the Espanola project until November 19, 1984, more than six months after it had knowledge of the cause of action. By that time, the complaint was untimely as to the Espanola job, pursuant to RCW 41.56.160.

There were a number of other occasions where the employer entered into contracts for road work within the six months preceding the filing of the complaint in this case. As to

those incidents, the complaint charging unfair labor practices was timely filed, and the discussion turns to whether one or more unfair labor practice violations have been proved.

Duty to Bargain on Subcontracting

The National Labor Relations Act, as amended, establishes the collective bargaining obligations of employers and the exclusive bargaining representatives of employees. Those obligations are set forth in Sections 8(a)(5), 8(b)3 and 8(d) of the NLRA as follows:

> Section 8
>
> (a) It shall be an unfair labor practice for an employer-
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> * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).
>
> (b) It shall be an unfair labor practice for a labor organization or its agents--
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> * * *
>
> (3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a).
>
> * * *
>
> (d) 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 ... .

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, sets forth somewhat similar obligations and unfair labor practices for employers, as follows:

> RCW 41.56.030(4) DEFINITIONS.
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> * * *
>
> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.
>
> * * *
>
> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> * * *
>
> (4) To refuse to engage in collective bargaining.

The National Labor Relations Board and the Public Employment Relations Commission have interpreted their respective statutes in a generally similar manner. The precedents controlling the

decision in this case are well established under the NLRA, if not under both the federal and state statutes.

The NLRB has interpreted the NLRA to impose upon the employer an obligation not to make unilateral changes in any conditions of employment without first consulting with the exclusive bargaining representative of its employers and providing that organization with the opportunity to bargain the subject. The NLRB holds that such unilateral actions by employers violate the NLRA because they derogate the status of the employees' chosen exclusive bargaining representative and interfere with the employees' right of self-organization, by emphazing that there is no necessity for the union. May Department Stores Co. v. NLRB, 326 US 376, 385 (1945). PERC precedent on the subject is: South Kitsap School District, Decision 472 (PECB, 1978). Thus, the collective bargaining statutes not only protect the employees from the direct economic effect of the employer's unilateral action, but it also forbid by-passing of the employees' exclusive bargaining representative. Leeds and Northrup Co. v. NLRB, 391 F.2d 874, 877 (1968). South Kitsap School District, supra. Because such unilateral actions undermine the stability of industrial relations, the NLRA prohibits them regardless of the subjective intent of the employer. NLRB v. Katz, 369 US 736, 743-744, 379 US 203, 205,215 (1964); Florida Steel Corp. v. NLRB, 601 F.2d 125 (CA 4, 1979). The Supreme Court stated in Katz, supra, that:

> The duty "to bargain collectively" enjoined by Section 8(a)(5) is defined by Section 8(d) as the duty to "meet ... and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Clearly, the duty thus defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith if a party has refused even to negotiate in fact -- "to meet ... and confer" -- about any of the mandatory subjects. A refusal to

> negotiate in fact as to any subject which is within Section 8(d), and about which the union seeks to negotiate, violates Section 8(a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargaining to that end. We hold that an employer's unilateral change in conditions of employment under negotiation is similarly a violation of Section 8(a)(5), for it is a circumvention of the duty to negotiate which frustrates the objectives of Section 8(a)(5) much as does a flat refusal.

Thus, the essence of the violation is the change in the status quo without notice to or bargaining with the union. Rochester Institute of Technology, 264 NLRB 1020. Notice must be given sufficiently in advance as to afford the union an opportunity for counter arguments or proposals. NLRB v. Katz, supra at 743; Greshon Transfer, 272 NLRB 72; NLRB v. Citizen Hotel Company, 326 F.2d 501 (CA 5, 1964); NLRB v. W. R. Grace and Co. Construction Products Div., 571 F.2d 279, 282 (CA 5, 1978); Sun-Maid Growers of California v. NLRB, 104 LRRM 2543 (CA 9, April 30, 1980). City of Vancouver, Decision 808 (PECB, 1980).

Presenting the union with a fait accompli is not sufficient, for notice is of value only if given before the action is taken by the employer. Rose Arbor Manor, 242 NLRB 795; Winn Dixie Stores, Inc., 243 NLRB 972. City of Centralia, Decision 1534 (PECB, 1983). Thus, in assessing whether an employer's unilateral action is violative of Section 8(a)(5), a predominant factor is "whether in the light of all the circumstances there existed reasonable opportunity for the union to have bargained on the question before unilateral action was taken by the employer". NLRB v. Cone Mills., 373 F.2d 595, 599 (CA 1967).

When bargaining is requested, it must be conducted in good faith, which presupposes negotiations, with attendant give and take,

between the parties with the intention of reaching agreement through compromise. This requires more than merely going through the motions of bargaining, or taking a pro forma approach to bargaining. Winn Dixie Stores, Inc., 243 NLRB 972 (1979). The prohibition against unilateral changes applies only to mandatory subjects of bargaining. Unilateral changes in the parties' relationships are not violative of the Act if the changes involve permissive, non-mandatory subjects of bargaining. Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburg Plate Glass, 404 US 157 185-188(1971). In general, the NLRB, PERC and the courts have found matters to be mandatory subjects of bargaining if they set a term or condition of employment or regulate the relationship between employers and employees. International Union of Operating Engineers, Local Union No. 12, 187 NLRB 430, 432 (1970). Federal Way School District, Decision 232 (EDUC, 1977). If the actions concern a managerial decision of the sort that is at the core of entrepreneurial control, or decisions involving fundamental changes in the scope, nature or direction of the business rather than labor cost, then there is no duty to bargain. First National Maintenance Corp., 452 US 666 (1981); Otis Elevator Company, 269 NLRB 162 (1984). City of Yakima, Decision 2380 (PECB, 1986).

The expiration of a collective bargaining agreement does not terminate an employer's duty to recognize and bargain with the exclusive bargaining representative of its employees. Henson v. NLRB, 428 F.2d 133, 136-138 (CA 8, 1970). Thus, at the expiration of the collective bargaining agreement the employer may not unilaterally alter terms and conditions of employment without meeting its obligation under the statute. Spokane County, Decision 2167-A (PECB, 1985). Although an employer's contractual obligations may cease with the expiration of the collective bargaining agreement, those terms and conditions established by the contract and governing the employer-employee,

as opposed to the employer-union, relationship survive the contract and present the employer with a continuing obligation to apply those terms and conditions. Sir James, Inc., 183 NLRB 256 (1970). As the Ninth Circuit Court has stated:

> [T]he collective bargaining agreement survives its expiration date for purposes of marking the status quo as to wages and working conditions. The employer is required to maintain that status quo following the expiration of the collective bargaining agreement until the parties negotiate a new agreement or bargain in good faith to impasse.

NLRB v. Carilli, 648 F.2d 1206 (CA 9, 1981).

See also: NLRB v. Sky Wolf Sales, 470 F.2d 827-830 (CA 9, 1972).

Preservation (or the prevention of diversion by sub-contracting) of bargaining unit work has been determined to be a mandatory subject of bargaining. Fibreboard Paper Products Corp. v. NLRB, 379 US 203, 205-215 (1964); NLRB v. Katz, 369 US 736, 743-744 (1962); National Woodwork Manufacturers Association v. NLRB, 386 US 612, 640-647 (1967); South Kitsap School District, Decision 483 (PECB, 1978); City of Kennewick, Decision 487-A (PECB, 1979); City of Vancouver, Decision 808 (PECB, 1980).

Was There Subcontracting?

To constitute a breach of the bargaining obligation, there must be a change which is material, substantial, and significant. Rust Craft Broadcasting of New York, Inc., 225 NLRB 327 (1976). If the changes are non-discretionary and merely preserve the "dynamic status quo", i.e., action consistent with past policies and practices, then no violation will be found. Such changes, if expected by the employees, do not disrupt the bargaining rela-

tionship or undermine support for the union. NLRB v. Katz, supra.

At this point, the inquiry is whether all or any of the work contracted out by Spokane County during the relevant six month period in 1984 was work of a type historically performed by bargaining unit employees, so as to give rise to an obligation on the employer to give notice to the union and an opportunity to bargain on the decision to subcontract.

Witnesses from both parties agree that some types of work contracted out between April and November, 1984 have historically been performed by private entrepreneurs. Some work, such as crushing and stockpiling gravel, requires machinery that the county does not possess. Some of the work is a part of a larger undertaking. Some work is done in cooperation with county personnel. As to those contracts, there is no disagreement that the county is following past practice.

There is a substantial disagreement over some of the work contracted to private enterprise in 1984. Turner and Hormann, 30 year and 16 year county employees respectively, testified that contracts have historically been let during their employment for asphalt paving, light bituminous surface treatment, drywells, culvert replacement, ditching, grading, crushed surfacing and bridge replacement, and for various kinds of signals and directional indicators. They assert that the amount of work contracted out during 1984 was similar to the ratio of work historically performed by private businesses. On the other hand, union witnesses could only recall a few instances, excluding the clean-up of ash from the Mount St. Helens' eruption, where private enterprise had done bargaining unit work.

During 1982, county employees placed 33,000 yards of crushed gravel on unpaved roads. In 1983 and 1984, the amount was 46,000 to 47,000 yards of gravel. During 1982, the county let 20 contracts to private firms for placing crushed gravel on county roads, and 25 contracts were let in 1983 and 1984. In 1982, county employees installed 3 maintenance structures, 20 in 1983, and 57 in 1984. Road department employees installed 13 drainage structures in 1982 and 1983. Private contractors installed 88 drainage structures in 1982, 196 in 1983, and 138 in 1984.

Overtime hours for bargaining unit employees have increased each year. In 1982, employees worked 2277 hours of overtime. In 1983, the amount of overtime climbed to 2616 hours, and reached 4221 hours in 1984. During the same time period, the number of bargaining unit employees decreased from 111 in 1982 to 107 in 1984. No employees were laid off during 1984.

It is concluded that some of the work contracted out by Spokane County during 1984 was of a type historically performed by bargaining unit employees. The amounts and types of work contracted out was consistent, however, with past practice and policies of the department, and could have reasonably have been expected by bargaining unit employees. There has not been a material, substantial, or significant change in the operation of the road department which would give rise to a duty to bargain.

The Waiver Issue

Waiver is the intentional relinquishment of a known right. City of Kennewick, Decision 482-B (PECB, 1979). Thus a finding of waiver depends upon analysis of the contractual language and the facts and circumstances surrounding the conduct of the parties

or the making and administration of the collective bargaining agreement, to determine whether there has been a clear relinquishment of the bargaining right. American Oil Co. v. NLRB, 602 F.2d 184, 188 (CA 8, 1979).

The waiver must be "express", Communications Workers of America, Local 1051 v. NLRB, 644 F.2d 923, 928 (CA 1, 1981), City of Kennewick, supra, and must be clear and unmistakable; General Electric Co. v. NLRB, 414 F.2d 918, 923-924 (CA 4, 1969), cert. denied 396 US 1005, and it must be shown that the right to bargain was consciously waived. Tocco Division of Park-Ohco Industries, Inc. v. NLRB, 702 F.2d 624-628 (CA 6, 1983).

Waivers may occur by union inaction. Upon receiving notice outside of the context of ongoing negotiations, it is incumbent upon the union to timely request bargaining. The union cannot be content with merely protesting the action or filing an unfair labor practice complaint. Citizens National Bank of Willmar, 245 NLRB 389 (1979). City of Yakima, Decision 1124-A (PECB, 1981). To establish a waiver by inaction it must be shown that the union had clear notice of the employer's intent to institute the change sufficiently in advance of implementation as to afford a reasonable opportunity to bargain regarding the proposed change, and that the union failed to timely request bargaining. American Distributing Co v. NLRB, 715 F.2d 446 (CA 9, 1983), 115 LRRM 2048 (1983).

In this case, the record amply demonstrates that the union had sufficient notice by April 30, 1984 that the employer was contemplating contracting out road work in addition to the Espanola job. The union responded on the same day with a specific proposal which was not limited to the Espanola job, requesting the employer to negotiate the contracting out of work.

The employer's reply to Cole's "supplemental agreement" proposal might have constituted a refusal to bargain on the Espanola job but, for reasons already indicated, that inquiry is not before the Examiner. The employer's reply did not indicate a general rejection of bargaining regarding contracting out of work, but rather invited further discussion between the employer and the union.

Cole's May 21, 1984 letter, written after bids had been awarded for the Espanola project, appears to begin with a broad view of the contracting out subject, but then narrows its view to the Espanola job and ends with a rejection of the employer's offer to bargain. Thereafter, the union took no affirmative action regarding the contracting out of work, some of which could have been accomplished by the members of Local 1135, until this unfair labor practice case was filed. The union's failure to vigorously pursue its earlier broad demand to negotiate the issue thus takes on the appearance of a waiver by inaction.

Waivers may also occur by contractual provisions or by bargaining history. Chesapeake and Potomac Telephone Co. v. NLRB, 687 F.2d 633, 636 (CA 2, 1982). A waiver by bargaining history can be established if it is shown that the subject was fully discussed or consciously explored and the union has consciously yielded its interest in the matter. American Distributing Co. v. NLRB, 715 F.2d 446 (CA 9, 1983), 115 LRRM 2049 (1983).

In this case, the union made a specific, written proposal to the employer on April 30, 1984. That proposal did not altogether prohibit the employer from contracting out work, but rather acknowledged the established practice of the employer by its listing of certain conditions on sub-contracting. There was no signed contract emanating from Cole's April 30, 1984 proposal for a supplemental agreement, but the substance of that proposal

could reasonably be interpreted as marking the maximum limitation which the union would have imposed on the employer in this area. When closely examined, the record in the instant case does not establish that the employer entered into sub-contracts during the relevant six month period which violated the limitations which were set forth in Cole's written proposal on the subject. No bargaining unit employee was laid off or otherwise terminated due to the contracting out of work. To the contrary, the evidence establishes that bargaining unit employees worked more overtime than in previous years.

FINDINGS OF FACT

1. Spokane County is a political subdivision of the state of Washington pursuant to RCW 41.56.020, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Local 1135, is a "bargaining representative" within the meaning of RCW 41.56.030(3). Local 1135 represents an appropriate bargaining unit of county employees in the county road department.

3. The collective bargaining agreement covering Local 1135's bargaining unit expired on December 31, 1982. A successor agreement had not been negotiated at the time the hearing in this matter was held.

4. During March, 1984, Spokane County called for bids for replacing drywells and pavement overlay in the Espanola area of the county.

5. About April 12, 1984, Local 1135 became aware of the employer's actions regarding the contract referred to in Finding of Fact 4 above. Representatives of the union, John Cole and Jerry Hester, confirmed that the employer had requested bids on replacing drywells and pavement overlay in the Espanola area of maintenance district three.

6. About April 30, 1984, Cole met with Hormann at the county road department to discuss a grievance and the contracting of road work in the Espanola area. Hormann confirmed that they had requested bids on the Espanola project. Thereafter, Cole demanded to bargain the subject, and, additionally made a written proposal setting forth the union's position for contracting out county road projects.

7. On May 1, 1984, Spokane County entered into a contract with S&F Construction to replace drywells and overlay pavement in the Espanola area of maintenance district three. The amount of the contract was $104,409.

8. On May 17, 1984, Hormann responded to Cole's demand for bargaining the contracting of county road work. Hormann offered to "discuss" the subject, but he did not commit the employer to negotiate the subject of contracting road projects. The employer's late response afforded the union no opportunity to effectively bargain the subject.

9. The union filed this unfair labor practice complaint more than six months after the contracting of Espanola projects.

10. Between May, 1984 and November, 1984, Spokane County entered into at least 25 contracts, totaling in excess of $5,000,000 with private contractors to repair county roads. Such contracts represented no change of the opertion of the

department. The county did not notify the union of the employer's intention to let the road project contracts, and did not offer to bargain the contracting of road work with Local 1135.

11. After its demand to bargain the contracting of road work for the Espanola project, the union did not request to bargain any road project contracts.

CONCLUSIONS OF LAW

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

2. The complaint charging unfair labor practices was not timely filed as to the contract for the Espanola job.

3. By the events described in paragraph 10 through 11 of the above Findings of Fact, Spokane County has not violated RCW 41.56.140(4).

ORDER

Based on the foregoing and the record as a whole, the complaiant

charging unfair labor practices should be, and are hereby, DISMISSED.

DATED at Olympia, Washington, this 13th day of March, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Rex L. Lacy

REX L. LACY, Examiner

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