STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF NORTH FRANKLIN, Complainant, vs. NORTH FRANKLIN SCHOOL DISTRICT J51-162, Respondent.	)	CASE 8671-U-90-1888 DECISION 3844 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Eric T. Nordlof, General Counsel, appeared on behalf of the complainant.

Robert W. Winston Jr., P.S., by Jeffrey J. Thimsen, Attorney at Law, appeared on behalf of the respondent.

On June 27, 1990, Public School Employees of North Franklin, an affiliate of Public School Employees of Washington (PSE), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that North Franklin School District J51-162 had refused to bargain and violated RCW 41.56.140-(4), by unilaterally changing conditions of employment. A hearing was conducted on May 2, 1991, by Examiner William A. Lang. Post-hearing briefs were filed on July 15, 1991.

FACTS

The North Franklin School District provides basic educational services in an area which encompasses the Franklin County towns of Connell, Basin City, Mesa, and Eltopia. The employer's administrative offices are located in Connell, where an elementary school, a junior high school, and a high school are operated. The employer

also operates elementary schools in Mesa and Basin City.[1] There are no schools in Eltopia.

Public School Employees of North Franklin is the exclusive bargaining representative of classified employees of the North Franklin School District, including school bus drivers. Karen Crawford is the president of the local PSE chapter.

The employer operates transportation facilities in both Connell, where nine buses are based, and Basin City, where 18 buses are based. The number of routes emanating from each facility approximates the number of buses housed there.

The union and the employer are parties to a collective bargaining agreement effective from September 1, 1988 through August 31, 1991. Procedures for bidding of regular school bus routes are contained in Article VII, Hours of Work, of the parties' collective bargaining agreement, which provides in relevant part:

> **Section 7.6.1.** Regular daily a.m./p.m. routes shall be bid annually based on driver seniority and choice of routes. The a.m. and p.m. route shall be bid separately, and remain separate throughout the year for bidding purposes. Total bid routes shall not exceed forty (40) hours.
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> ...
> **Section 7.12.** The parties will establish a "standard" mileage figure and "standard" travel time (30) minutes between work sites, and a "primary work site" for each employee. In the event that the District does not provide transportation, reimbursement for supervisory-approved travel will be made at the "standard" mileage, calculated at the District's prevailing milage rate. It is mutually agreed and understood that nothing in this section implies a District obligation to

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[1] A distance of some 15 to 20 miles separates Connell from Basin City.

> compensate an employee for travel to and from the employee's residence and the established primary work site.

Prior to October 26, 1989, school bus drivers were required to bid for morning and afternoon routes based at the same location.[2]

The drivers also bid, by rotating seniority, for extracurricular trips for sports and field trips which represented a source of extra income. Drivers would receive compensation for travel from their home city to the opposite transportation facility to pick up a bus for an extracurricular assignment, or for travel time with an empty bus to pick up passengers for an extracurricular trip in a town other than their home base. This commute time was established at 30 minutes for each such trip. Employees using their personal car for the commute could elect to receive mileage in lieu of the 30 minutes commute time. These practices were not specifically addressed by the collective bargaining agreement.

On October 26, 1989, after negotiations, the parties executed a letter of agreement supplementing their collective bargaining agreement. In relevant part, that letter of agreement modified the first sentence of Article VII, Section 7.12, as follows:

> **Section 7.12.** The parties will establish a "standard" mileage figure and a "standard" travel time (30) minutes between work sites, and a "primary work site" for each ((~~employee~~)) route. In the event that the District does not provide transportation, reimbursement for supervisory-approved travel will be made at the "standard" mileage, calculated at the District's prevailing mileage rate. It is mutually agreed and understood that nothing in this section implies a District obligation to

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[2] In other words, if a morning route originating in Connell was bid, the driver was required to take an afternoon run from Connell as well, and could not bid on an afternoon route originating from Basin City.

> compensate an employee for travel to and from the employee's residence and the established primary work site.
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> [Deletions indicated by ((~~strikeout~~)); additions indicated by underline.]

The parties agree that the change from the word "employee" to the word "route" in the first sentence of Section 7.12 permitted the drivers to bid a regular afternoon route which would originate from a base different from their regular morning route.

Sometime in October of 1989, Transportation Supervisor Lynne Shiflett[3] advised the president of the local PSE chapter, Crawford, that the employer intended to discontinue the practice of paying commute time for extracurricular assignments, in order to save mileage on buses by basing them wherever it would provide the shortest trip. Crawford told Shiflett that the drivers would want either the bus at their home location or mileage for the use of personal transportation to the bus. Crawford understood that Shiflett would consider the idea and get back to her.

At a driver safety meeting held on November 1, 1989, Shiflett informed the drivers that, "Commute time for extra-curricular trips will no longer be paid." Shiflett then began posting extra-curricular trips with beginning and ending locations, depending on what would be the shortest route for the trip. Drivers were expected to pick up and return the buses at the specified locations, and compensation was to be computed from that facility.

On January 2, 1990, Phyllis Quinton, a bus driver employed in the bargaining unit, filed a grievance with the approval of Crawford. Quinton alleged that the employer had violated a number of provisions of the collective bargaining agreement, including

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[3] The record indicates that Shiflett was "new" to her position at this period of time.

Sections 5.2 and 5.3, entitled "Matters For Consultation", which required the employer to negotiate changes in "existing benefits, policies, practices and procedures directly relating to work assignments", as well as Section 7.12. The grievance stated:

> We have been paid in the past for commute on our extra-curricula trips. On December 14 and 28, 1989 I was not paid to commute to Connell to get a bus.

In denying the grievance on February 5, 1990, Superintendent Dale Clark wrote that the employer had the right to designate Connell as the primary work site for extracurricular trips pursuant to the provisions of Article II, Section 2.1. Clark also stated:

> Section 7.12 makes it very clear that it is not the obligation of the District to compensate an employee for travel from their residence to a primary work site.

The union appealed the grievance to the employer's school board, which conducted a hearing on the grievance on March 13, 1990. Quinton was represented by PSE Field Representative Bud Myers.

The Board of Directors denied the grievance on March 30, 1990, finding no violation of Sections 5.2 and 5.3. The employer claimed it had negotiated a change in Section 7.12, giving it the right to designate a "primary work site" for each route, and declared that it had established Connell as the primary work site for the route in question.

The union, by vote of its membership on the advice of counsel, decided not to appeal the grievance to arbitration in accordance with Article XV, Section 15.2.5 of the contract. Approximately 3 months later, the union filed this unfair labor practice case with the Commission.

POSITIONS OF THE PARTIES

The union denies that the changes negotiated in Section 7.12 of the parties' contract were intended to cover extracurricular trips. The union argues that the change of practice concerning extra-curricular trips was implemented unilaterally, in violation of the duty to bargain. The union urges that notice given to an employee-officer of the local PSE chapter did not constitute sufficient notice of a proposed change to the union, and that the grievance filed by Quinton was the first time the union had notice of the changed practice.

The employer raises a number of defenses in response to the complaint. The first is that the complaint is time-barred by RCW 41.56.160, because it was filed more than six months after members of the bargaining unit were given notice that payment for "commute time" was discontinued. The second is that the change in practice was negotiated under modifications of Section 7.12, as reflected in the letter of agreement of October 26, 1989. The third is that the filing of the grievance evidenced that the union did not regard the discontinuance of paying commute time for extracurricular runs as a unilateral change.

DISCUSSION

As a general rule, an employer must provide notice to the exclusive bargaining representative of its employees, and must provide an opportunity for collective bargaining, prior to implementing changes in wages, hours or working conditions. This notice must be given to the organization, as opposed to merely being given to employees represented by the union. Royal School District, Decision 1419 (PERC, 1982), held that notice given to an employee-member of the union's bargaining team was not sufficient notice to

the union.[4] In fact, announcement of a change to the employees as a fait accompli relieves the union of the need to request bargaining, and constitutes the basis for finding an unfair labor practice and ordering restoration of the status quo ante.

Application of the Statute of Limitations

The employer moved at the hearing for dismissal of this case, arguing that the complaint was filed more than the statutory six months after the November 1, 1989 announcement of the change in practice to the employees. The Examiner denied the motion at that time, observing that there were precedents which suggested that the statute of limitations might be tolled by absence of notice to the union. In denying the motion, the Examiner invited the parties to address the issue in their post-hearing briefs.

RCW 41.56.160 provides, in relevant part:

> ... a complaint shall not be processed for any unfair labor practice complaint occurring more than six months before the filing of the complaint with the commission ...

That "statute of limitations" is jurisdictional. The clock begins to run when effective notice is given. Port of Seattle, Decision 2796-A (PECB, 1988).

In this case, the disputed change of policy was announced as a fait accompli, at a meeting attended by all of the drivers on November 1, 1989. If that is the date on which a cause of action arose, then the complainant had until May 1, 1990 to file a timely complaint under RCW 41.56.160. It is clear that the complaint in

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[4] See, also, Clover Park School District, Decision 3266 (PECB, 1989).

this case was not filed until June 27, 1990, and it is subject to dismissal as untimely.

The employer implemented the policy of not paying commute time for extracurricular runs by at least December 14, 1989, when it refused to pay bargaining unit employee Quinton for commute time. Even if that later date were to be taken as the date on which a cause of action arose, then the complainant would have had to file by June 14, 1990 in order to be timely. Again, the complaint filed on June 27, 1990 would have to be dismissed as untimely.

The union argues that the statute of limitations should be tolled for the period up to the time when the union received actual notice of the changed practice. It then contends that notice to a local chapter president is insufficient, that only notice to the union's field representative constitutes notice to the union, and that Myers did not know about the change in policy until he assisted in the filing of the Quinton grievance on January 2, 1991. According to this line of reasoning, a complaint would have been timely if filed as late as July 2, 1990.

The employer responds that the change of practice was discussed with PSE's local chapter president in October of 1989, even before its announcement to the employees. Citing Crawford's experience and leadership role in the union, the employer asserts that it reasonably believed that Crawford received formal notice of the change in policy on November 1, 1989, more than the six months prior to the filing of the complaint.

In Lyle School District, Decision 2736 (PECB, 1987), the undersigned Examiner held, citing Royal School District, supra, that an employer must deal with the union's field representative (and must stop dealing with the local officers) once the local officers notify the employer that the field representative is to be involved in the negotiations. That decision gave tacit approval, however,

of direct dealings between the employer and local chapter officers in the absence of notice shifting the communications to the field representative.

There is no indication here that PSE has instructed the employer to deal only with the PSE field representative. Myers testified that he assists employees by the processing of grievances, either by telephone or in person, "helping them form the statement of agreement and check the articles concerning the contract violation and its proposed remedy." His testimony indicates that local union officers represent the union on day-to-day matters, and rely on the paid field representative for technical advice.

The employer aptly distinguishes Royal School District in this case, based on the office held by Crawford and her experience with employer-union affairs. Crawford had been employed as a bus driver for six years, and had served as the elected president of the local union chapter for two years. She served on the union's negotiating team, along with Myers, and had signed the collective bargaining agreement on behalf of the union. Crawford has been, and remains, the recognized spokesperson for the union on questions relating to bus drivers, and she signed the Quinton grievance. The record shows that the change in policy regarding the payment of commute time for extracurricular runs was discussed by the employer's transportation supervisor with Crawford in October of 1989, and that Crawford made counter-proposals on that subject at that time. Further, Crawford arranged for Shiflett to get back to her directly, making it clear that Crawford neither believed it necessary to consult with Myers before making a counter-proposal, nor to condition its acceptance on Myers' approval. When asked on direct examination if he had sought bargaining over the pay for commuting time, Myers replied that the superintendent had been approached two times by Crawford. The union's direct examination of Crawford further emphasized her role, bringing out that she had direct negotiations on the matter with the employer.

On the record made, the Examiner must conclude that the employer had sufficient continuous dealings with local chapter officers to have satisfied its statutory notice obligations when it advised Crawford that it was considering a change of the commute time practice. That notice was given to Crawford in advance of the November 1, 1989 announcement of the change to the employees. The local union official was also present at the meeting where the change of practice was announced to the employees. The notice to the union, the announcement to the employees and the actual implementation of the change of practice all occurred more than six months prior to the filing of the complaint in this case. Based also on the above analysis, the Examiner reverses his earlier ruling on the employer's motion for dismissal of the complaint. The complaint was not timely filed, and must be dismissed.

Waiver

The union points out that it initially attempted to resolve this dispute through the grievance procedure. The union claims that, even if the complaint was filed late, the employer has not shown that it has been prejudiced by the late filing.

The union's argument must fail. While WAC 391-08-003 permits the Commission and its authorized agents to waive application of a Commission rule in the absence of prejudice, we are not dealing here with a rule. As already indicated, above, the Commission has treated the RCW 41.56.160 time limitation as jurisdictional. The Supreme Court of the State of Washington has similarly treated statutory time periods as jurisdictional. Clark County Public Utility District v. PERC, ___ Wn.2d ___ (1991). Even if the Commission or its Examiner were at liberty to waive the late filing in this case, it is evident that the employer would be prejudiced by continued exposure to litigation and liability for the change of practice which PSE would put at issue in the case.

FINDINGS OF FACT

1. North Franklin School District is a "public employer" within the meaning of RCW 41.56.030(1). At all times pertinent hereto, Superintendent Dale Clark was the spokesperson for the North Franklin School District in collective bargaining with organizations representing its employees.

2. Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain nonsupervisory employees of North Franklin School District. At all times pertinent hereto, Karen Crawford was president of Public School Employees of North Franklin and Bud Myers was the field representative for the Public School Employees of Washington.

3. During the time pertinent hereto, North Franklin School District and Public School Employees of North Franklin were parties to a collective bargaining agreement effective through August 31, 1991.

4. In the autumn of 1989, the parties negotiated a letter of agreement modifying Section 7.12 of their collective bargaining agreement, regarding the selection of bus runs by bargaining unit employees. The parties at least agreed to permit drivers to select regular morning and afternoon runs originating from different locations.

5. During the month of October, 1989, the employer notified local PSE official Crawford that it was considering a change of practice concerning payment of commute time for bus drivers on extracurricular trips, such that employees would no longer be compensated for travel between the two bus facilities.

Crawford made counter-proposals on the subject and arranged for the employer to respond directly to her, without reserving a right of approval by the PSE field representative or otherwise directing the employer to negotiate with the PSE field representative.

6. At a meeting held on November 1, 1989 with Crawford and all of its other bus drivers present, the employer announced that it would no longer pay for commute time for extracurricular bus runs.

7. The employer implemented the change of practice announced on November 1, 1989 at least by December 14, 1989, when it denied pay for commute time to bargaining unit employee Phyllis Quinton.

8. On January 2, 1990, Quinton filed a grievance concerning the denial of pay for commute time, specifically citing the event occurring on December 14, 1989. That grievance was processed under the contractual procedure until denied by the employer in March of 1990. The PSE field representative participated in the processing of that grievance. The local PSE chapter elected to abandon the grievance rather than processing it to arbitration under the collective bargaining agreement.

9. The complaint charging unfair labor practices in this matter was filed on June 27, 1990, more than six months after the employer gave notice to Crawford of the change in practice concerning pay for commute time on extracurricular runs.

10. The complaint charging unfair labor practices in this matter was filed more than six months after the employer announced the change in practice concerning pay for commute time on extracurricular runs.

11. The complaint charging unfair labor practices in this matter was filed more than six months after the employer actually implemented the change in practice concerning pay for commute time on extracurricular runs.

CONCLUSIONS OF LAW

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

2. Because of the role and activity of Karen Crawford as the president and spokesperson for Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, as described in paragraphs 3 through 5 of the foregoing findings of fact, the notice given by the North Franklin School District to Karen Crawford in October of 1989 constituted sufficient notice to the union, pursuant to RCW 41.56.030(4), that the employer was contemplating a change of practice concerning pay for commute time on extracurricular bus runs.

3. A cause of action arose in this matter as early as November 1, 1989, with the employer's announcement of the change of practice as described in paragraph 6 of the foregoing findings of fact, and arose no later than December 14, 1989, with the actual implementation of the change of practice by the employer, as described in paragraph 7 of the foregoing findings of fact.

4. The complaint charging unfair labor practices was not filed in this matter within six months of its occurrence, as required by RCW 41.56.160.

ORDER

It is ordered that the complaint charging unfair labor practices filed in this matter be, and it hereby is, DISMISSED.

Dated at Olympia, Washington on the 15th day of August, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

William A. Lang

WILLIAM A. LANG, Examiner

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