STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 176-C, Complainant, vs. ISLAND COUNTY, Respondent.	CASE 11311-U-94-2647 DECISION 5388 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Julia C. Mullowney, Attorney at Law, appeared for the union.

Robert R. Braun, Jr., Consultant, appeared for the employer.

On September 2, 1994, Washington State Council of County and City Employees, Local 176-C (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Island County (employer) unilaterally implemented changes in insurance benefits and premiums in violation of RCW 41.56.140(4), and that the employer controlled, dominated or interfered with the bargaining representative of certain of its employees in violation of RCW 41.56.140(2). The preliminary ruling issued by the Executive Director on September 9, 1994, pursuant to WAC 391-45-110, framed the cause of action as limited to "unilateral change in medical and dental benefits". An inquiry was made about the propriety of "deferral to arbitration" under policies previously announced by the Commission, but deferral was found inappropriate.[1] A hearing was held at Coupeville,

[1] The Executive Director sent a deferral inquiry on November 15, 1994. The employer refused to unequivocally waive assertion of procedural defenses to arbitration.

Washington, on August 17, 1995, before Examiner Vincent M. Helm. The parties filed post-hearing briefs.

BACKGROUND

Bargaining History Relative to Insurance

The union represents clerical, technical and professional employees who are supervised by various elected officials of Island County, including the county commissioners, auditor, treasurer, assessor, clerk, coroner, district court judge and prosecuting attorney. The employer and union are parties to a collective bargaining agreement effective from January 1, 1993 through December 31, 1995.

The execution of the parties' current contract, in September of 1993, was preceded by protracted and sometimes acrimonious negotiations in which Robert R. Braun, Jr. was the chief spokesperson for the employer and Lori Province assumed a similar role for the union. According to Province, the parties entered contract negotiations from a background largely devoid of mutual trust, with the major issue for bargaining unit employees being employee involvement in decisions with respect to insurance coverage, premiums and reserves. This concern was engendered, in part, by the fact that employees paid a portion of the premium cost. Moreover, the employees believed that the employer had diverted reserves from insurance accounts to its general fund in the past, and had used such for purposes other than providing insurance benefits or premium payments. As a consequence, employees believed that insurance reserves were artificially depleted to a level whereby benefits were reduced and employees were being laid off to provide money to pay claims incurred.

Article 15 of the parties' contract is titled: "Health and Welfare". Sections 15.6 through 15.6.5 were added to the parties'

collective bargaining agreement as the result of the latest round of negotiations. They provide:

> 15.6 There shall be a "County Health Insurance Committee" (CHIC). This Committee shall be composed of employees from all Employer Bargaining Units. Each Employer Bargaining Unit shall advise the Board of County Commissioners (BOCC) at the beginning of any Labor Contract term the names of its two (2) appointments and two (2) alternates who shall be members for the term of the Agreement and represent the designated unit. In addition to unit employees, two (2) members shall be designated from among Unit Exempt Employees and two (2) delegates may be appointed by the BOCC. The foregoing shall be the members of the CHIC.
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> 15.6.1 The purpose of CHIC is to review the financial operation of the County insured health programs, deliberate to consensus any modification to the programs, deliberate to consensus disposition of surpluses or deficiencies accrued in the program and to recommend to their respective constituency adoption of modifications or dispositions arrived at by the Committee.
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> 15.6.2 The Committee shall be provided all operating financial information, in the regular format, on a quarterly basis as same becomes available. Such information shall be confidential until the Committee shall have met with the County Consultant who shall be retained by the BOCC for the purpose of providing guidance and information to the Committee on a free and open basis. Once the Committee has deliberated to consensus regarding any information or proposed action, Committee members are free to divulge operating information as required to their respective constituency.
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> 15.6.3 For purposes of this section 15.6 a consensus is reached when CHIC reaches a point of agreement such that no party is in major disagreement with a course of action or inaction. A party's agreement

> with reservations will not preclude a determination that a consensus has been reached. Each member is to function in a free and unincumbered manner, however, (s)he is to avoid conduct which precludes the development of a consensus by CHIC.
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> 15.6.4 Generally the Board of County Commissioners will give favorable consideration to the recommendations of CHIC provided prudent financial concerns are addressed. Fundamental considerations are prioritized as follows:
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> 1. Maintain current basic benefits at current premium levels with prudent reserves and current or reduced costs to the public and employees.
> 2. Obtain a waiver of premium whenever possible, provided, prudent reserves are maintained.
> 3. Improve benefits provided prudent reserves are maintained.

The contract provisions regarding the CHIC appear to have evolved from an employer proposal dated May 4, 1993, where they were labeled as Sections 16.5 through 16.5.3.[2] There was extensive discussion of this matter in contract negotiations held on May 10, 1993, including the union's reaction to the employer's offer which was, in part, a verbal counter-offer. That was followed by a union counter-proposal dated May 21, 1993, which referred to this subject as well as other discussions held at unspecified times during the course of the bargaining. On August 26, 1993, the employer submitted a document to the union which was titled: "Employer's Union Committee Recommended Settlement".[3] That recommended settlement was ratified by the parties, and the material labeled therein as Sections 16.1, 16.2, 16.5, and 16.5.1 through 16.5.5, were

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[2] Exhibit 2. Although both parties maintained in their briefs that the ultimate contact language was the result of union proposals, no documentary evidence was introduced which supports that contention.

[3] Exhibit 4.

incorporated in the parties' collective bargaining agreement with all of Section 16 being renumbered Section 15.

The insurance provisions were negotiated in the context of other contract provisions which are relevant to determination of the dispute now before the Examiner, including:

> 6.1 Grievance Defined - A grievance shall be defined as a dispute or disagreement raised involving the interpretation or application of the specific provisions of this Agreement.
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> ...
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> 6.3 Arbitration Procedure - If the grievance is not settled in accordance with the foregoing procedure, the grievant may refer the grievance to arbitration within thirty (30) days after receipt of the answer provided in Step 2. If the request for arbitration is not filed by the grievant within thirty (30) days, the party waives its right to pursue the grievance through the arbitration procedure. At any time and during any step of the grievance procedure, the parties may settle their differences by written agreement. Such settlement terminates the grievance procedure.
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> 6.3.6 The decision of the arbiter shall be final and binding on the parties; provided, that any party in its discretion may seek relief through lawsuit.
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> ...
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> 6.7 Election of Remedies - It is agreed that taking a grievance appeal to arbitration constitutes an election of remedies and a waiver of all rights by the grievant to litigate or otherwise contest the appealed subject matter in any court or other available forum. Likewise, litigations or other contest of the subject matter in any court or other available forum shall constitute on election of remedies and a waiver of right to pursue the matter through the grievance procedure.

> ...
> 15.1 The Employer agrees to continue the current medical plan and pay the Skagit County Medical Bureau premium. Employee cost for the premiums will not exceed 1990 levels plus as provided at 20.2.1 and 20.3.1. Employees covered by the "Committee Plan" shall remain in that plan. The following provisions shall apply:
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> ...
> 15.1.2 If the Employer increases medical benefits to all other County employees (except Sheriff's Department personnel), it will extend this same coverage to employees covered under this Agreement.
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> ...
> 15.3.1 The relationship between the premium paid by the Employer and that paid by employees shall be maintained should premiums be increased or decreased during the life of this Agreement.

After the contract was signed, Carol Benson and Daniel Jones were appointed by the union as its representatives to the CHIC.

CHIC Meeting on June 2, 1994

The dispute before the Examiner arises out of actions taken at and after a CHIC meeting held on June 2, 1994. The participants at that meeting, including representatives of three unions, the employer and non-represented employees, voted upon three options. None of the options was unanimously agreed upon. Benson and Jones both testified they recalled no mention of a scheduled vote by the board of commissioners, or of any plans by the employer to implement CHIC recommendations on July 1, 1994.

Jones stated that his understanding of the role of CHIC differed from that of a commissioner who attended part of the June 2 CHIC meeting. Commissioner McDowell said the role of CHIC was to understand the financial aspects of the insurance program, to make

recommendations to the board of commissioners concerning the reserve and to provide information about the status of the plan to employees. Jones told the commissioner that he believed another purpose of CHIC was to take back its recommendations for a vote by the union membership, then present the results of that vote to the commissioners. Jones maintained he understood the purpose of the contract provisions dealing with CHIC was to prevent unilateral action by the board of commissioners. The commissioner responded that only about 15% of the reserves belonged to the employees, and the employer could decide how to dispose of them as it saw fit.

Roy Allen, an employer representative at the CHIC meeting, volunteered to act as secretary and to prepare notes. Allen prepared a document which, he claimed, summarized the findings and recommendations of CHIC relative to dealing with insurance fund reserves.[4] Allen furnished copies of that document to each member of the committee, as well as to Province and others. He received no comments from any of the original recipients, and he then sent the memorandum to the board of commissioners.

When Jones became aware of the memorandum prepared by Allen, some time around June 10, 1994, he discussed it with the current and former president of the union, as well as with his fellow CHIC members. Jones views Allen's memorandum as being the personal recommendation of Allen to the board of commissioners. Jones' personal notes from the June 2, 1994 CHIC meeting are also in evidence.[5]

The documents essentially reflect that a majority did vote to decrease premiums and increase dental benefits, and that there was some question as to whether one voter (who provided the determinative vote) was a proper voting member of the CHIC. Allen's minutes

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[4] Exhibit 12.

[5] Exhibit 8.

indicate a consensus was reached to recommend to the board of commissioners that consideration be given to reducing the medical premiums and increasing the dental benefit to an extent not to exceed $98,000, the amount in reserves projected by the employer's consultant to be excessive. Suggestions for increasing dental benefits were also mentioned including raising the $1,000 maximum amount and the schedule of payments for dental services.

Actions Subsequent to June 2 CHIC Meeting

At a union meeting held on June 6, 1994, Jones and Benson made a report to the membership on their views of what had transpired at the CHIC meeting held on June 2, 1994.[6] Minutes of that union meeting reflect that Jones reported orally, in a general fashion, and that he was to prepare a written report regarding various proposals regarding lower premiums and increased dental benefits discussed in the CHIC meeting. The minutes of the union meeting also reflect a suggestion that this local union and another local union should meet before the next CHIC meeting, to discuss package proposals.

On June 27, 1994, the employer's board of commissioners voted unanimously to reduce medical premiums by 12%, to reduce dental premiums by 10%, and to increase dental benefits by 25%, all to be made effective July 1, 1994. The union received notification of this action on July 5, 1994. This unfair labor practice charge followed, on September 2, 1994.

Braun subsequently advised Province that, in response to the union's unfair labor practice complaint, the board of commissioners had rescinded the actions taken with respect to changes in

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[6] This occurred prior to Jones' receipt of Allen's minutes of the CHIC meeting.

insurance premiums and benefit levels.[7] The letter stated the purpose was to comply with the union's requested remedy, in order to mitigate damages, and was not an admission of liability.

POSITIONS OF THE PARTIES

The union contends that it proposed the formation of a labor-management committee to review the financial operations of the employer's health insurance programs in the parties' contract negotiations, and that this proposal was eventually adopted in the form of CHIC as specified in the relevant portions of Article 15 of the parties' collective bargaining agreement. The union argues that, pursuant to the mandates of the labor contract, CHIC reached consensus to increase dental benefits. The union then asserts that the employer modified medical and dental premiums on July 1, 1994, without prior notice to the union and without the union having adopted the CHIC recommendations. The union maintains the changes in premiums are tantamount to a change in wages which required bargaining with the union prior to implementation. It argues that the CHIC deliberations did not substitute for bargaining between the employer and union, because the union's CHIC representatives were not clothed with real or apparent authority to bind the union. The union thus argues that the employer violated the statute by implementing the changes, and that the union did not waive its statutory rights either by virtue of the terms of the collective bargaining agreement or by its conduct. The union urges that the employer has failed to meet its burden of affirmatively establishing that the union waived its right to bargain.

The employer contends that criteria to establish an employer violation of the statute has not been met. The employer asserts

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[7] This was in the form of an undated letter from Braun to Province. A copy of the document was received by the Commission on October 6, 1994.

that, for the complaint to be sustained, it would be necessary to find that the employer's actions effected a change in terms and conditions of employment and gave rise to a bargaining obligation. In its view, the change in premiums did not change terms and conditions of employment, because the relationship between the amount of premium paid by the employer and that paid by the employees did not change in conformance with Section 15.3.1 of the parties' collective bargaining agreement. The employer concedes that the change in dental benefits was a subject of collective bargaining, but maintains that the union sanctioned the action taken by virtue of express contract provisions. The employer contends that the union has agreed, under Section 15.6 of the labor agreement, to designate CHIC representatives to act on the union's behalf in bargaining changes to insurance benefits, and has thereby waived by contract any right to negotiate on benefit levels other than through the CHIC procedure set forth in the collective bargaining agreement. The employer maintains that, during the negotiations, the union wanted CHIC to have final authority and that the contract reflects a negotiated compromise whereby the board of commissioners was obligated to follow CHIC recommendations when a contractual hierarchy test was met. The employer's last defense is that the union has waived its right to negotiate by its conduct. It maintains that the union had adequate notice of the pending consideration of changes in insurance premiums and benefits and took no timely action to request bargaining, thereby waiving any employer bargaining obligation.

DISCUSSION

Relevant Legal Considerations

As a general rule, an employer must provide notice to the exclusive bargaining representative of its organized employees, must provide opportunity for bargaining, and must bargain upon request, prior to

making any change of employee wages, hours or working conditions. A unilateral change made without conforming to the collective bargaining obligations imposed by Chapter 41.56 RCW will constitute a "refusal to bargain" in violation of RCW 41.56.140(4), and will be overturned as unlawful regardless of the merits of the change.

Employer-provided employee health insurance benefits are an alternate form of compensation, and are a mandatory subject of collective bargaining within the "wages" category of RCW 41.56.030-(4). Therefore, an employer may not unilaterally change either the amount it contributes for benefits or the nature of the benefits. City of Seattle, Decision 651 (PECB, 1979); Spokane County, Decision 3418 (PECB, 1990).

An employer does not violate the statute with respect to implementation of changes in terms and conditions of employment, if the union waives its right to bargain upon the subject. A waiver may be established through either: (1) the union's failure to make a timely request for negotiations; or (2) by terms of the parties' collective bargaining agreement. Clover Park School District, Decision 3266 (PECB, 1989); City of Pasco, Decision 2603 (PECB, 1987); Lake Chelan School District, Decision 4940-A (PECB, 1995). The burden of proof is, however, on the party claiming that there has been a waiver of the statutory right to negotiate. City of Wenatchee, Decision 2194 (PECB, 1985).

With respect to a claim of waiver by inaction, if the evidence shows that the union was presented with a fait accompli, it is not required to make a futile request to bargain. Clover Park School District, Decision 2560-A (PECB, 1988).

With respect to a claim of waiver by contract, it must be clearly demonstrated that the union understood or can reasonably be presumed to have understood that the effect of agreed upon contract

language was to abrogate the normal duty of the employer to bargain upon the subject. City of Yakima, Decision 3564-A (PECB, 1985).

The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976). If the employer action at issue in an unfair labor practice case is either protected or prohibited by the parties' collective bargaining agreement, the parties will have bargained upon the subject and will have thereby precluded a finding of unilateral action in violation of statute. King County, Decision 3204-A (PECB, 1990); Spokane Transit Authority, Decision 2597 (PECB, 1987). The Commission commonly defers such questions to arbitration, under City of Yakima, Decision 3564-A, supra, and will dismiss an unfair labor practice complaint where it is found that a claimed unilateral change is controlled by the parties' contract.

Conflicting Evidence About Parties' Intent

There was conflict in the testimony of the principal negotiators as to the tenor of proposals and discussions relative to the CHIC issue during the negotiating session held on May 10, 1993. Both Province and Brown introduced their notes from that meeting, to support their respective contentions. The discrepancies can be attributed to diametrically opposed recollections as to attribution of comments. Province stated that the union presented a written proposal at the meeting,[8] and that Braun commented on the union's proposal. Braun stated Province made an oral, rather than written, response to the employer's earlier written proposal. Many of the comments that Province attributes to Braun were, according to Braun, comments made by Province in presenting the oral offer. Province's notes did not identify Braun as the speaker in many instances, although Province testified that the notes were her

[8] The union did not produce such a proposal at the hearing.

recording of Braun's statements. Braun's notes indicate that many of the statements that Province attributed to Braun were, in fact, made by Province. Braun's notes were reviewed with Province at the next negotiating session, held approximately two months later.

Province testified, on direct examination, that Braun said money would not be disposed of unless the CHIC committee recommended it. According to her notes, this occurred on May 10, 1993, and in reference to the employer proposal for Section 16.5.1. Her notes reflect that the commissioners would be the contracting entity with Skagit Medical Bureau, which was the administrator of the medical and dental insurance plans.[9] According to Province's notes, union representative John Cole stated that a consensus of CHIC would be required to bind the county commissioners. Province testified that her notes further reflect Cole stating that a consensus of the CHIC committee should be taken to the union membership, at which time disclosure of pertinent information obtained by the CHIC committee was to be made to the bargaining unit. Province recalled no discussion in contract negotiations of the union waiving its right to bargain on health and welfare benefits. Province stated there was specific discussion that the parties would need to negotiate with respect to changes, if there were a change in state law with regard to health insurance.

Province conceded that she would ordinarily place initials before comments recorded in her notes, to indicate who was the speaker, and that she failed to attribute some of her notes on comments concerning 16.5.1, 16.5.2, and 16.5.3. Her recollection is that her notes concerning 16.5.2 were references to comments made by Braun, and that a reference in her notes to "cuts both ways" was to a comment made by Cole in response to Braun. According to

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[9] Province testified that Article 16.5.4 in the contract resulted from recognition that only the employer's board of commissioners had authority to contract with Skagit Medical Bureau.

Province, confidentiality concerning data provided at CHIC meetings was an employer concern. Therefore, she believes her notes relative to confidentiality referred to Braun's comments on the subject. Province stated that a reference in her May 10 notes indicated that Braun said he will sign 3.2 as proposed by the union and a reference to 16.5.1. which immediately followed indicated that Braun was continuing to speak on this subject as well as with respect to 16.5.3. That also conforms to her memory of the meeting.

Province testified that, in her judgment, the prior labor agreement between the parties permitted the employer to change the premium, up to a specified maximum amount, without negotiating with the union. The same language appears in Section 15.3.1 of the current collective bargaining agreement.

Province directed a communication to union members on June 28, 1993, advising them of the status of contract negotiations.[10] Page two of that document refers to the CHIC committee as ultimately provided for in Section 16.5 of the negotiated agreement, and indicated that the union had proposed that the CHIC committee make all changes in insurance plan design and recommendations with respect to disposing of insurance reserves. Province testified that her June 28 memo accurately reflects, in summary form, the union negotiating committee's position.

According to Braun, Province reviewed each item in the employer's April 21, 1993 proposal at the May 10, 1993 meeting, and indicated the union's position. Braun interpreted his notes as showing that Province's response to the employer proposal on Section 16.5 was that CHIC should have final say on how the medical plan was operated, and that Cole then stated this made employees accountable for expenditures and therefore they could have no complaints.

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[10] Exhibit 11.

Braun said he indicated he wanted to make it clear the board of commissioners, rather than CHIC, had the final say under the employer's proposal. Braun said Province objected to merging CHIC and the Wellness Committee and was therefore rejecting the employer's proposal on 16.5.3.

The union made a written counter-proposal on May 21, 1995.[11] Braun interpreted item "3B" in this document as indicating the union agreed to the employer's proposal of CHIC language with a consensus concept, and indicated that criteria proposed by the employer for CHIC recommendations was probably agreeable. Braun stated that item "3C" related to a proposal by the union to reopen the contract in the event state law reformed insurance. Braun testified he responded that if there was to be a change in the plan outside of one based on CHIC action, then the employer would have to bargain with the union. With respect to ordinary operation of the plan, however, Braun said he informed the union that the employer would rely on the committee. Braun testified that the union agreed with his position. Braun said his understanding was that any action recommended by CHIC within the purview of its authority would be ratified by the board of commissioners, unless the union advised it that such action violated the parties' labor contract.

Braun further testified that, in explaining the language ultimately placed in 15.6.4 of the collective bargaining agreement to the union, he stated that the commissioners' role in giving favorable consideration to CHIC recommendations conforms with procedures applicable to planning and zoning authorities, whose recommendations the commissioners are bound to ratify if they comply with applicable criteria. Therefore, under Braun's stated perception, the board of commissioners must: (1) adopt CHIC recommendations when based upon the hierarchy of utilization provided for in 15.6.4

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[11] Exhibit 15.

of the contract; or (2) be in violation of the labor agreement. The union offered no testimony with respect to its May 21 proposal.

Application of Commission Precedent to the Facts

The union strenuously asserts the employer's actions in reducing employee insurance premium costs and raising dental insurance benefits were outside the provisions of the labor agreement, but that contention does not square with reality. Without regard to what may have been the union's intent in negotiating the provisions of Article 15 of the contract, any reasonable construction of the contract language requires a finding adverse to the union here.

The union concedes the employer had the right, under the parties' previous contract, to change the insurance premiums (within designated parameters) during the term of the contract. The union premised that understanding on language of Section 16.1 of the predecessor contract which has been carried forward as Section 15.3.1. of the current contract. The union does not contend that the change in premiums adopted by the board of commissioners in July of 1994 was outside of the bargained-for parameters, or that it was somehow a change not encompassed by the contract. Indeed, to have raised such a claim would have been incomprehensible. Thus, the gravamen of the union's complaint with respect to the change in premium levels must be found to be without merit.

The remaining framework of the union's complaint is equally without foundation. The parties devoted a great deal of effort at the hearing to presenting evidence regarding Article 15 of their labor agreement, both with respect to the background that provided the catalyst for adoption of the contract language, and with respect the positions advanced by the parties in the negotiations leading up to the language formalized in the contract. The net result, in the Examiner's view, produces the following scenario: Because of perceived unilateral action on the part of the employer concerning

disposition of insurance funding reserves, the bargaining unit desired to have a mechanism whereby it had some degree of control over actions impacting upon insurance premiums, reserves, and benefits. The employer, while recognizing these considerations, nevertheless did not want to totally abdicate its decisionmaking authority. The new provisions of Article 15, as negotiated, represent a reconciliation of these interests.

The testimony and documentary evidence are in irreconcilable conflict as to who said what with respect to negotiating the contract provisions at issue. The evidence indicates the end product of extensive discussion in negotiations was a mechanism to jointly receive and disseminate relevant information, consider and recommend changes, and implement recommendations through a consensus process. The language agreed upon, however, left nearly as much unsaid as was expressed, and many gaps left to be filled in by means of contract interpretation. As is too often the case in fashioning a new and comprehensive solution to a complex problem, the devil is in the details:

* The contract language is imprecise with respect to limitations upon the discretion of the board of commissioners and conditions which must exist before the employer may take action effecting changes in benefits and premiums.

* No clear definition of consensus was provided.

* It was unstated whether the board of commissioners was free to act upon CHIC recommendations prior to or absent their ratification by the bargaining unit.

* It was not unequivocal whether the commissioners could adopt changes in addition to or apart from CHIC recommendations.

* No timeframe is set forth for consideration and action upon CHIC recommendations by the bargaining unit.

In addition to the gray areas of the contract itself, the evidence concerning the actions taken at the June 2, 1994 CHIC meeting is extremely unclear. The colloquy at that meeting between Jones and

McDowell highlights the existence of real confusion among the parties as to the precise role of the CHIC. Questions raised by the evidence, but left unanswered to any probative degree, include whether an appropriate consensus was reached (based upon possible ineligibility of a participant which could have affected the outcome) and what were the exact terms of any consensus that was reached. Further troubling questions arise, as noted above, from the subsequent actions taken by the parties and their representatives at the CHIC meeting.

The one fact which is abundantly clear is that the subject matter of this unfair labor practice was thoroughly negotiated by the parties. All of the issues framed by the parties revolve around the interpretation of the parties' collective bargaining agreement. Clearly, therefore, the employer did not take unilateral action in violation of its statutory obligations when it adopted the complained-of modifications of insurance premiums and benefits. While the union might well have argued that the employer had violated the collective bargaining agreement by its actions, a ruling on such a claim would have to have come from an arbitrator appointed pursuant to the collective bargaining agreement.[12]

The employer's unilateral rescission of the complained-of changes put the parties back in the same position they were in before the disputed CHIC meeting. They are free to take a fresh approach to that issue, without prejudice, or to re-negotiate the terms of their agreement. The evidence does not, however, support a finding of a unilateral change.

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[12] Apart from the "timeliness" position already asserted by the employer in response to the deferral inquiry made in this proceeding, the Examiner notes that the parties' contract requires the union to make an election of remedies. The union's pursuit of a contractual remedy may well be subject to an additional constraint, due to its having chosen to file this unfair labor practice case, but that would also be for an arbitrator to decide.

FINDINGS OF FACT

1. Island County is a "public employer" within the meaning of RCW 41356.030(1).

2. Washington State Council of County and City Employees, Local 176-C, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of Island County.

3. At all times material hereto, there was a collective bargaining agreement in effect between the employer and union which contains, in Article 15, various procedures for considering, initiating and acting upon proposed changes in insurance premiums and benefits. The collective bargaining agreement also contains, in Article 6, an agreed-upon procedure for resolving disputes concerning the interpretation or application of the collective bargaining agreement. The contractual grievance procedure culminates in binding arbitration.

4. On June 2, 1994, acting under color of authority provided in Article 15 of the parties' labor contract, the "County Health Insurance Committee" (CHIC) discussed and voted upon changes in insurance premiums and dental benefits.

5. On July 2, 1994, acting under color of authority provided in Article 15 of the parties' collective bargaining agreement, the employer's board of commissioners adopted changes in insurance premiums and dental benefits for employees in the bargaining unit represented by the union.

6. Local 176-C, did not take steps to file a timely grievance or to otherwise invoke the contractual procedures for interpretation or application of the parties' existing collective bargaining agreement.

CONCLUSIONS OF LAW

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

2. The procedures for considering and implementing changes of employee insurance benefits has been a subject for bargaining between Island County and Local 176-C, and is a matter covered by the collective bargaining agreement between those parties, so that Island County has not implemented a unilateral change of wages, hours or working conditions, and has not violated any provision of RCW 41.56.140, when it acted in response to those contractual provisions.

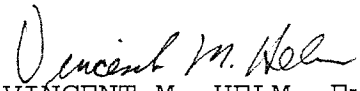
3. The Public Employment Relations Commission lacks jurisdiction to remedy any violation of the parties' collective bargaining agreement as an unfair labor practice under RCW 41.56.140.

ORDER

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

Issued at Olympia, Washington, this 18th day of December, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.