STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. FORT VANCOUVER REGIONAL LIBRARY, Respondent.	CASE NO. 5938-U-85-1103 DECISION NO. 2396 - PECB PRELIMINARY RULING ON AMENDED COMPLAINT

The complaint charging unfair labor practices was filed in the above-entitled matter on August 14, 1985. A preliminary ruling was issued pursuant to WAC 391-45-110 on October 4, 1985, referring the entire complaint to an Examiner for hearing. Hearing dates have been set and reset, most recently for March 5 and 6, 1986.

On February 19, 1986, the union filed a motion to amend and a proposed amended complaint. As noted in the preliminary ruling on an amended complaint in a companion case, amendments to unfair labor practice complaints are freely granted, particularly at the pre-hearing stage of the proceedings. Fort Vancouver Regional Library, Decision 2350-A (PECB, 1986). The motion to amend made in this case is similarly granted.

The first (unnumbered) paragraph of the amended complaint makes reference to "RCW 41.06.140", a provision of the state civil service law dealing with employee participation in policy and rule-making. Giving the complainant the benefit of the doubt, (and in view of the complainant's earlier citation of RCW 41.56. 140), the complaint is read as invoking the authority of the Public Employment Relations Commission under RCW 41.56.140.

Paragraph 1.a. of the amended complaint alleges communications dating as far back as November, 1984 and a failure to timely provide bargaining proposals occurring prior to March of 1985. The complainant was certified by the Commission as exclusive bargaining representative of the employees involved on December 27, 1984. Fort Vancouver Regional Library, Decision 2124 (PECB, 1984). To the extent that the complaint alleges any duty to bargain prior to that time, it fails to state a cause of action. Additionally, the allegations are no longer timely under the statute of limitations contained in RCW 41.56.160. There was no reference in the original complaint to a delay in the presentation of bargaining proposals.

Paragraph 1.b. of the amended complaint is essentially the same as paragraph 2 of the original complaint. It concerns lengthy delay in forwarding of a promised "last and final offer", and is referred to the Examiner for hearing.

Paragraph 2 of the amended complaint details "take-away" proposals advanced by the employer in bargaining, allegedly in reprisal for the employees seeking a change of representation. This material is similar to allegations found in paragraph 1 of the original complaint, and is referred to the Examiner for hearing.

Paragraph 3 of the amended complaint contains new material, alleging that the employer has advanced proposals predictably unacceptable to the union and has insisted to impasse on those proposals without concession or reasonable explanation. The dates on which those proposals were initially made are not specified, but other references in the complaint suggest that those matters continue to be on the bargaining table down to the present time, so that the conduct was ongoing during the six

months prior to their filing with the Commission. The allegation is referred to the Examiner for hearing.

Paragraph 4 of the amended complaint begins with a general allegation of a "take it or leave it" approach which can be aligned with allegations found in paragraph 3 of the original complaint. This is taken to be conclusionary, or as introductory to more detailed allegations which follow.

Paragraph 4.a. of the amended complaint, which contains new material, concerns a list of union proposals as to which the employer has made no response. The timing of the individual proposals and, thus, of any failure to respond, is not made clear. An allegation of refusal to respond to proposals states a cause of action, but only for conduct occurring within the period since August 19, 1985 (i.e. six months prior to filing of the allegation with PERC), and is referred to the Examiner for hearing on that basis.

Paragraph 4.b. of the amended complaint involves specific instances after August 9, 1985, when the employer is accused of refusing to engage in an exchange of proposals or meaningful communication of concerns. This is referred to the Examiner for hearing.

Paragraph 4.c. contains three subsections alleged for the first time in the amended complaint. All of the events detailed in the three subsections occurred on or before May 23, 1985. They are untimely under RCW 41.56.160.

Paragraph 5.a. of the amended complaint (when taken together with introductory material in paragraph 5) alleges a refusal to meet at reasonable times by limiting bargaining to daytime meetings while refusing to permit bargaining unit employees released time

with pay to attend the bargaining sessions. This is referred to the Examiner for hearing.

Paragraph 5.b. of the amended complaint alleges cancellation of a scheduled June 5, 1985 bargaining session. No similar allegation is found in the original complaint, and that portion of the paragraph is thus found to be untimely filed. The balance of the paragraph concerns conduct on and after August 29, 1985 whereby the employer refused to meet and/or refused to communicate with the union except through the mediator assigned by the Commission, and is referred to the Examiner for hearing.

Paragraphs 6 and 6.a. of the amended complaint allege that the employer has consistently refused to explain its valuation of its wage proposals made in bargaining. This is referred to the Examiner for hearing.

Paragraph 6.b. of the amended complaint alleges a refusal on the part of the employer to make a proposal or a concession. The duty to bargain requires parties to deal with one another in good faith, and an effort to reach an agreement, but does not compel a party to make a proposal or to make a concession. RCW 41.56.030(4). Accordingly, this allegation fails to state a cause of action.

Paragraphs 6.c. and 6.d. of the amended complaint concern the union's request and reiteration of its request for information concerning the employer's evaluation of the union's proposals, and the employer's failure to respond. This is referred to the Examiner for hearing.

Paragraph 7., 7.a., and 7.b. of the amended complaint all concern the employer's making of confusing proposals with an intent to frustrate agreement. All of this is new material. While

parties have been found guilty of refusal to bargain violations in the past for injecting confusion into the bargaining process, South Columbia Irrigation District, Decision 1404-A (PECB, 1982), these allegations will state a cause of action only as to events occurring on and after August 19, 1985, and are referred to the Examiner for hearing on that basis.

Paragraph 7.c. of the amended complaint, which concerns a May 9, 1985 proposal, might at first appear to be untimely. However, a reference to the same conduct is found in paragraph 1 of the original complaint and the employer's insistence on the reduction of sick leave appears to be ongoing. The allegation is referred to the Examiner for hearing.

Paragraphs 7.d. and 7.e. of the amended complaint repeat allegations found in paragraphs 4 and 5 of the original complaint. They concern specific conduct occurring at a July 19, 1985 mediation session, and are referred to the Examiner for hearing.

Paragraph 7.f. of the amended complaint concerns misrepresentation of an employer proposal made to the union. While there is nothing in the statute which would require an employer make proposals of equal benefit to all members of the bargaining unit, a misrepresentation of the effect of a proposal would state a cause of action and is referred to the Examiner for hearing.

Paragraph 7.g. of the amended complaint alleges unilateral implementation of changes of wages, hours and working conditions, and is referred to the Examiner for hearing.

Paragraph 8 of the amended complaint is an allegation of a course of conduct of refusal to bargain. Standing alone, without supporting factual allegations, this is merely conclusionary. To the extent that the complaint contains factual allegations of

misconduct falling within the jurisdiction of the Commission, the complainant will be entitled to show a course of conduct involving those facts.

NOW, THEREFORE, it is

ORDERED

Except for the matters identified above as having been referred to the Examiner for hearing, the amended complaint charging unfair labor practices filed in the above-entitled matter is dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 27th day of February, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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