STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1191-WC, Complainant, vs. WALLA WALLA COUNTY, Respondent.	CASE NO. 6869-U-87-1391 DECISION 2932 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pamela G. Bradburn, General Counsel, appeared on behalf of the complainant.

Mary A. Koch, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On May 6, 1987, Washington State Council of County and City Employees, Local 1191-WC (complainant) filed a complaint with the Public Employment Relations Commission, alleging that Walla Walla County (respondent) had committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4). A hearing was conducted on February 9, 1988, in Walla Walla, Washington. The parties submitted post-hearing briefs.

BACKGROUND

Walla Walla County has collective bargaining relationships with several employee organizations, including Washington State Council of County and City Employees, Local 1191-WC. The union

represents a bargaining unit of approximately 60 employees working in the departments of: Auditor, Assessor, Court Services, Clerk, Treasurer, Planning, District Court, Central Services, and Custodian.

Events leading to the instant unfair labor practice complaint arose in the context of a collective bargaining agreement in effect between the parties from January 1, 1985 through December 31, 1987. The contract contained a "reopener" clause for calendar year 1987, as follows:

> For 1987, the County and the Union agree to reopen the contract for negotiation of wages and one article to be selected by each of the parties.

The parties met on November 19, 1986, to begin negotiations under terms of the reopener clause. The union informed the employer that it had chosen union security as its issue to be negotiated in addition to wages. The record indicates that the employer proposed a wage freeze and raised "hours of work" as its second issue for negotiations. Certain other aspects of the meeting are in dispute between the parties.

The record indicates that, upon hearing the union's choice of issue at the November 19, 1986 meeting, the respondent's negotiator, Gerard Gasperini, suggested that the complainant choose another issue. Several union officials who attended the meeting testified that Gasperini then stated that the parties "were at impasse". Gasperini testified that he did not have specific recollection of the "impasse" statement, but did recall that the union security issue was raised. It is clear that Gasperini reminded the union of the respondent's long-standing opposition to union security beyond the existing "maintenance of membership" language contained in the collec-

tive bargaining agreement. At the conclusion of the meeting, the parties agreed to consider what their issues for negotiation should be, and the issues would be brought forward at the next meeting.

At the outset of the parties' second bargaining session, on January 20, 1987, the complainant informed the respondent that it still wished to negotiate the union security matter. During the course of the meeting, the parties discussed the relative merits of union security, but the record does not disclose any specific proposals made on the subject. Gasperini testified that the complainant raised a concern that he was not fully explaining the union's position on union security to the County Commissioners. Gasperini testified that he offered the union bargaining team the opportunity to speak with the Commissioners directly on the matter. The record does not indicate how the complainant reacted to the offer.

While the dates are unclear, the complainant presented uncontroverted testimony that it made several modifications in its union security proposal. The complainant proposed a "modified agency shop", and also proposed making union security subject to a referendum among bargaining unit employees.

On March 17, 1987, the parties held their third bargaining session. The union security issue was raised again during the course of the meeting, with the union proposing that a "service fee" be imposed on bargaining unit employees who were not members of the union. The union also proposed a wage freeze and a "rollover" of all other contractual terms for calendar year 1987, requested that the county withdraw its hours reduction proposal, and sought language guaranteeing that the employees represented by the complainant would receive the same wage increase that other bargaining units or non-represented

employees may be granted during 1987. Gasperini told the union that he would review the proposal with the Commissioners, and that he would respond to the union by letter.

On March 25, 1987, Gasperini sent a letter to the union's business representative, Jerry Gilming, detailing the county's position in negotiations. After outlining the elements of the complainant's proposal for settlement, Gasperini wrote:

> The County has closely reviewed and deliberated on this potential framework for settlement and have decided to reject it primarily because of the service fee. As we discussed at length during these and earlier negotiations, the County believes that the decision to join your labor organization and/or actively support it is one that resides solely with the employee and that the County is not warranted in requiring such membership, participation or financial support as a condition of employment.
>
> Although the County believes that the parties have reached impasse on the issues subject to the reopener clause of the labor agreement it continues to be available to meet and confer regarding these subjects...

The complainant did not respond to Gasperini's letter for several weeks, and Gasperini sent a second letter on May 12, 1987, reiterating the respondent's willingness to "meet and confer" on the issues raised in the reopener negotiations.

The parties met again on July 7, 1987. At that time, the union proposed retention of the existing "maintenance of membership" union security provision and a 75 cent an hour wage increase.

By letter dated July 9, 1987, Gasperini informed the union that the union's offer was unacceptable. On this occasion,

rejection of the proposal was attributed to the county's poor financial condition.

The parties did not reach agreement on the "reopener" issues, and proceeded with bargaining for a successor agreement. The record indicates that the parties had not reached agreement on either the 1987 reopener or the successor agreement as of the date of the hearing in the instant unfair labor practice case.

POSITIONS OF THE PARTIES

The union argues that the employer's steadfast refusal to consider any union security proposal was a violation of RCW 41.56.140(1) and (4). While recognizing that the collective bargaining law does not compel concessions, the complainant contends that the respondent's actions show a lack of good faith in the collective bargaining process.

The employer argues that it did not commit an unfair labor practice. The respondent maintains that the issue of union security has been raised a number of times, and that the complainant knew of the employer's historic resistance to enhanced union security language. The respondent also maintains that it did engage in good faith bargaining, noting that the issue was discussed a number of times in the negotiations process.

DISCUSSION

In its opening statement, the complainant expressed its desire to clarify the duty to bargain in the context of limited subjects for negotiation. While noting that the parties to the

instant unfair labor practice complaint dealt with limited issues in the "reopener" negotiations, the number of bargaining items has no bearing on analysis of the employer's duty to bargain. Rather, the focus of attention must be centered on the employer's expressed attitude toward whatever subject(s) are open for negotiations.

RCW 41.56.030(4) defines "collective bargaining" in the following manner:

> ..."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, <u>except that by such obligation neither party shall be compelled to agree to a provision or be required to make a concession unless otherwise provided in this chapter</u>. (emphasis supplied).

Within this statutory provision, the Legislature has expressed a public policy favoring the settlement of collective bargaining agreements through negotiations, while rejecting coercion in the bargaining process.

The employer would characterize the instant unfair labor practice proceedings as an attempt by the union to exert some form of coercion upon it. The Examiner must disagree. As presented, this complaint deals with a predetermined position on the part of the employer to not consider certain matters if proposed by the union. The complainant presented credible testimony demonstrating that the respondent's negotiator

declared impasse almost immediately when the complainant announced "union security" its choice of bargaining subject. It is difficult to imagine how meaningful collective bargaining could take place within such a framework, where futility was announced even before specific proposals were put forth to be considered. In many respects, the instant dispute is similar to the situation presented in City of Mercer Island, Decision 1457 (PECB, 1982), where the employer declared impasse before the parties had even explored their relative bargaining positions. Here, too, the respondent stated its absolute opposition to the union security subject area before any proposals could be exchanged.

The Examiner recognizes that a fine line is involved here. On one hand, a public employer has the right to refuse a demand made by a union. In other words, "no" can be a legitimate bargaining response, if made in good faith. A line can be drawn, however, and distinctions in conduct can be made. The collective bargaining process must take place in an atmosphere where the parties are at least receptive to consider the proposals made by the opposing side. If one of the parties states its unequivocal opposition to a bargaining topic before meaningful discussions can take place, the bargaining process shall undoubtedly fail.

During the hearing and in its post-hearing brief, the respondent suggests, in its defense, that the complainant should have known what the employer's response to union security would be, given the employer's longstanding opposition to modifying the existing "maintenance of membership" clause. Such an argument is not persuasive. Following the respondent's logic to its extreme, a party to negotiations could rely on a compromise, or even upon an unlawful refusal to consider a proposal, made in a prior round of bargaining as its reason to refuse to deal with

the issue in the present round of negotiations. In effect, the respondent's argument would allow the creation of a "perpetual no". The law requires good faith bargaining at all times. It is concluded that the employer refused to bargain in good faith in this case.

Remedy

As a remedy, the respondent shall be ordered to bargain in good faith concerning the union security proposal put forth by the complainant. Extraordinary remedies do not appear warranted. Given the time and cost involved in the processing of the instant unfair labor practice case, it is presumed that the respondent will not again put itself in the jeopardy of having to relitigate the same issue.

FINDINGS OF FACT

1. Walla Walla County is a political subdivision of the state of Washington and a "public employer" within the meaning of RCW 41.56.030(1). The employer has collective bargaining relationships with several employee organizations.

2. Washington State Council of County and City Employees, Local 1191-WC, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of employees of Walla Walla County, described generally as the "courthouse" bargaining unit.

3. Walla Walla County and Local 1191-WC were parties to a collective bargaining agreement for the period of January

1, 1985 through December 31, 1987. The contract called for a "reopener" for calendar year 1987. According to the terms of the reopener clause, the parties were entitled to each raise a language issue to be negotiated. In addition, the parties were to negotiate wage rates.

4. The parties met for an initial negotiation session on November 19, 1986. At that meeting, the union informed the employer that it chose to open "union security" as its language item for bargaining. Upon hearing the union's issue, the employer's negotiator, Gerard Gasperini, stated that the parties "were at impasse", and suggested that the union select another bargaining subject.

5. The parties met again on January 20, 1987. The union informed the employer that it still wanted to raise the union security issue.

6. During the course of the negotiations, the union modified its bargaining position on union security, proposing alternative concepts such as a referendum among bargaining unit employees and a "service fee" for non-members.

7. The employer's negotiator brought the idea of a "service fee" to the County Commissioners for consideration, but sent a letter to the union on March 25, 1987, rejecting the "service fee" idea.

8. On July 7, 1987, the parties met to discuss the outstanding issues, but no progress was made.

9. On July 9, 1987, Gasperini sent the union a letter rejecting the union's last proposal.

10. The parties were unable to resolve their differences in the "reopener" and bargaining for a successor collective bargaining agreement began.

11. During the entire process of negotiations concerning the "reopener" contained in the collective bargaining agreement between the parties, the employer did not modify its position concerning union security, and demonstrated an unwillingness to give good faith consideration to any proposal actually made, or which might have been made, by the union concerning the issue of union security.

CONCLUSIONS OF LAW

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

2. By failing and refusing to give good faith consideration to any and all proposals made by the union on the issue of union security, and by evidencing a closed mind on the topic at the outset of negotiations and at all times during the course of bargaining, Walla Walla County refused to bargain in good faith and committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that Walla Walla County, its officers and agents shall immediately:

1. Cease and desist from refusing to bargain in good faith concerning the issue of union security.

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

   A. Upon request, bargain collectively in good faith with Washington State Council of County and City Employees, Local 1191-WC, concerning the issue of union security.

   B. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notice shall, after being duly signed by an authorized representative of Walla Walla County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Walla Walla County to insure that said notices are not removed, altered, defaced, or covered by other material.

   C. Notify the complainant, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the complainant with a signed copy of the notice required by the preceding paragraph.

   D. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a

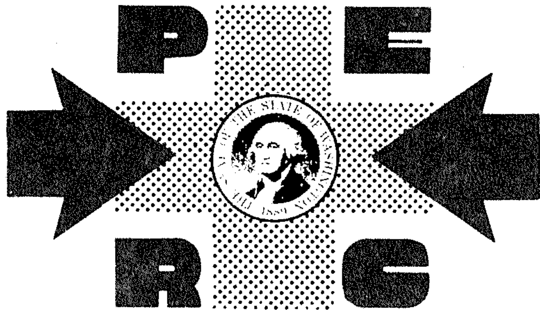
signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 18th day of May, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, Examiner

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain in good faith with Washington State Council of County and City Employees, Local 1191-WC with regard to union security.

WE WILL, upon request, bargain in good faith with Washington State Council of County and City Employees, Local 1191-WC with regard to union security.

DATED:____________________

WALLA WALLA COUNTY

BY:______________________________
Authorized representative

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

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