STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| PUBLIC SCHOOL EMPLOYEES OF WENATCHEE, an affiliate of PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. WENATCHEE SCHOOL DISTRICT, Respondent. | CASE 7425-U-88-1542<br>DECISION 3240 - PECB<br>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

Eric T. Nordlof, Attorney at Law, appeared on behalf of the complainant.

Johnson and Johnson, P.S., by Phillip R. Johnson, Attorney at Law, appeared on behalf of the respondent.

On June 2, 1988, Public School Employees of Wenatchee, an affiliate of Public School Employees of Washington (PSE), filed a complaint with the Public Employment Relations Commission, alleging that the Wenatchee School District had committed unfair labor practices in violation of RCW 41.56.140(3) and (4), by failure to give notice and bargain concerning reductions or the impacts of such reductions on "transportation" employees represented by the union, and by failure to provide the exclusive bargaining representative with requested information necessary to perform its statutory representation function. A hearing was held at Wenatchee, Washington, on October 26, 1988, before J. T. Cowan, Examiner. The parties submitted post-hearing briefs.

BACKGROUND

The union is the exclusive bargaining representative of all classified employees whose job descriptions are defined as "full-time and regular part-time school bus drivers employed by the district". A collective bargaining agreement exists between the parties for the period from September 1, 1987 through August 31, 1990.

A special levy needed to provide supplemental funding for education in the Wenatchee School District was twice submitted for voter approval in early 1988.[1] The levy failed to pass on both occasions, resulting in a forced budget reduction of $1,650,000 for the 1988-89 school year. The transportation department's share of the shortfall was calculated by the employer as $30,011.

The employer sought input from the unions representing its employees and from other concerned parties as to how a reduction in cost and service could best be accomplished while minimizing any adverse impact on the students. Among the recommendations that were forthcoming was a curriculum department proposal to convert from half-day to full-day kindergarten. Such a conversion would effectively eliminate mid-day bus runs, thereby causing a reduction in work hours, wages and related benefits for those school bus drivers who had previously driven the mid-day kindergarten runs.[2]

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[1] The levy elections were held on February 22 and again on March 29, 1988.

[2] Any possible change or reduction of state funding because of the conversion from half-day to full-day kindergarten does not appear as a consideration in the evidence in this case.

After meeting with representatives of the various bargaining units on April 13, 1988, the superintendent submitted a compilation of recommended budgetary reductions, called a "Report on Program Reduction", to the school board on April 18, 1988.

PSE was not made aware of any possible elimination of mid-day bus runs prior to its receipt of the recommended reduction plan on April 18, 1988. On April 21, 1988, the union sent a letter to the superintendent, stating in part:

> PSE of Wenatchee/Trans. hereby demand to bargain the decision to layoff (cut routes) and effects of that decision. PSE has proposals for cost savings both within and without the Trans. department which we feel remove the necessity on cutting routes and going to a full day kindergarten to achieve that. Please make available to the association all documentation which has been used to arrive at the projected cut amounts, with an adequate amount of time to study before our first bargaining session.

The employer agreed to set a date for negotiations.

Following a public meeting held on April 25, 1988, the superintendent submitted revised recommendations to the board on April 27, 1988.

The parties met on April 28, 1988, in response to the union's request. At that meeting, the union repeated its demand to bargain, and asked for specific information concerning the budget cuts which had been referred to in the superintendent's original reduction plan. The record does not indicate that the substance of the issues was negotiated.

The school board adopted the superintendent's April 27, 1988 revised program reduction plan on April 29, 1988. The adopted

plan included the conversion from half-day to full-day kindergarten.

Following the employer's April 29, 1988, adoption of the program reduction plan, a second meeting was held by these parties on May 2, 1988. That meeting was brief, and it ended abruptly with the departure of the district negotiator. The union was able, however, to offer its first written proposal on the subject, stating:

> Public School Employees of Wenatchee / Trans. has demanded to bargain the decision and effects of the proposed layoffs of the bus drivers. PSE makes the following proposals in furtherance of that right;
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> 1. That instead of eliminating half-day kindergarten, the wages of regular drivers continue at the 87-88 amount during the 88-89 school year.
> 2. That the parties re-open Schedule A effective 3/1/89.
> 3. That the District cease from chartering all but a few extra-trips where chartering may be unavoidable. That the parties discuss a method of extra-trip savings.

Following the June 2, 1988 filing of the complaint in this case, the parties met on June 21 and July 7, 1988, to negotiate wages and benefits for the 1988-89 school year. Agreement was reached between the parties, and was ratified by the school board on August 8, 1988.

## POSITIONS OF THE PARTIES

The union alleges a refusal by the employer to bargain both the decision to eliminate half-day kindergarten and the impact of that decision on the transportation department. The union further alleges that the employer failed to provide requested

information necessary for the policing and enforcement of its collective bargaining agreement. As remedy for these alleged violations, the union seeks to restore half-day kindergarten and the lost bus driving hours; also, to make the bargaining unit whole for work lost.

The employer contends it has no obligation to bargain budget, budget reductions or program decisions. The employer further contends that an emergency situation was created by the double levy failure, a situation which was compounded by time constraints imposed upon it by its collective bargaining agreement with another organization. It urges that such factors effectively mandated an immediate revision, thereby precluding any opportunity to bargain in a timely manner prior to adoption of the amended budget and program. The employer contends the union had all the information needed to determine the effects of the conversion of the kindergarten program on its members, and that information requested was neither relevant nor necessary. Contending that it did, in fact, bargain the effects of the budget reduction on bargaining unit members, the employer requests the complaint be dismissed with prejudice.

## DISCUSSION

### Bargaining the Decision and its Effects

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The definition of "collective bargaining" set forth in RCW 41.56.030(4) identifies "wages, hours and working conditions" as mandatory issues for collective bargaining. The statute makes no provision for the suspension of the duty to bargain due to "emergency" conditions, including those created by levy failures. To the extent that the employer

defends its actions in this case based on the existence of an "emergency", the arguments are entirely without merit.

The timing of the employer's actions in this case may well have more to do with bargaining in another bargaining unit than with an intentional insult to PSE and this unit. Language appearing in the collective bargaining agreement between the employer and the organization representing its certificated employees (teachers) requires that the employees in that unit be notified of any impending change or staff reduction not later than May 1 of any school year.[3] The Educational Employment Relations Act, Chapter 41.59 RCW, imposes a duty to bargain on school districts which is no greater and no less than the duty imposed by Chapter 41.56 RCW. In other words, this employer could not be excused from its duty to bargain with PSE under Chapter 41.56 RCW because of the contracts it had bargained with another unit and organization under Chapter 41.59 RCW.

The impetus for this entire transaction was a double levy failure and a resulting budget reduction. As urged by the employer, the employer had no duty to bargain with this or any other union concerning the decision to reduce its budget. Spokane Education Association v. Barnes, 83 Wn.2d 366 (1974); Federal Way School District, Decision 232-A (EDUC, 1977).

The conversion of the kindergarten program must be fit within "wages, hours and working conditions" if that decision is to be a mandatory subject of collective bargaining. The fit is not easy. Decisions concerning curriculum and basic educational policy are reserved to the employer, without need for notice to or bargaining with unions representing school district employees. Federal Way School District, supra. In this case, the proposal

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[3] This is in contrast to the statutory requirement of May 15 for notice of non-renewal of teacher contracts.

to convert the kindergarten from half-day to full-day evidently came from the employer's curriculum department, and may have been based in some part upon educational policy considerations not subject to the duty to bargain. The record makes clear, however, that labor costs were also a factor, if not the principal motivating factor, in the decision to convert the kindergarten program.

The employer's emphasis in implementing budget reductions was to minimize effects on classroom teachers and students. That goal is evident in the case of the kindergarten conversion. Instead of going to school for one-half of the day for each of the days in the normal school year, and to share the classroom with another class attending for the other half of each school day, kindergarten classes would be in the classroom for the full day on half of the days in the school year. The same number of teachers and classrooms would be required. The kindergarten students would receive the same number of hours of instruction during the year, only on a different schedule. The savings resulting from the conversion were primarily, if not exclusively, due to the elimination of the mid-day bus runs. It would no longer be necessary for the school district to transport students from morning half-day kindergarten to their homes at mid-day, or to pick up students attending afternoon half-day kindergarten at mid-day for school.

The conversion of the kindergarten program clearly had the result of reducing the work opportunities for members of the transportation bargaining unit. PSE characterizes this as a "layoff". Decisions to lay off bargaining unit employees are a mandatory subject of collective bargaining. Federal Way School District, supra. Robert's Dictionary of Industrial Relations, BNA Books, 1971, defines "layoff", however, as "a term generally applied to a temporary or indefinite separation from employment". While there was a reduction in hours of work for the bus drivers as a

class, the evidence does not disclose the separation of any of them from employment. Reduction of hours and layoff are not regarded as synonymous, and "layoff" is not an accurate description of the matter under consideration in the instant case.

The statute does not address constraints on the duty to bargain imposed upon the parties by their own collective bargaining agreement. The employer cites several provisions of the parties' contract which, it contends, waive the union's right to bargain on issues during the contract term. Section 15.7 is certainly a broad "waiver" clause. Section 2.1 is similarly a "management rights" clause that broadly reserves to management the authority to "determine the method, number and kinds of personnel by which operations are undertaken by employees in the unit are to be conducted".

While, for the various reasons indicated above, it is not altogether clear that the employer was under a duty to bargain on the decision to covert its kindergarten program, careful analysis of the union's proposals first made on May 2, 1988 indicates that the union proposed little or no alternative to the plan put forth by the employer as early as April 18. The union's first "proposal" stated: "That instead of eliminating half-day kindergarten, the wages of regular drivers continue at the 87-88 amount during the 88-89 school year." Acceptance of that proposal by the employer would have done nothing to reduce its transportation costs or to contribute to the elimination of its budget deficit. The second "proposal", i.e., "That the parties re-open Schedule A effective 3/1/89" could only tend to open the employer to greater liabilities than it already faced, by opening the wage appendix of the contract to mid-term negotiations. The union's third proposal, concerning a limitation on the use of charter busses for "extra trips" may appear at first glance to be some sort of a concession, but close analysis does not support that view. Chartering of extra trips had previously

been a matter of dispute between the parties.[4] There is no indication that the proposed discussions of "savings" would have any definite savings (or any savings at all) to the employer to offset its financial crisis.

The decisions in Pierce County, Decision 1845 (PECB, 1984) and Newport School District, Decision 2153 (PECB, 1985) are instructive. In Pierce County, a union responded to an opportunity for bargaining by making demands on subjects that were not open for bargaining at that time. In Newport, the union (an affiliate of PSE) delayed making any substantive proposals after learning of an opportunity for bargaining, until the decision had been made and the opportunity for bargaining had passed. "Refusal to bargain" unfair labor practice allegations were dismissed in both cases. Here, too, the union appears to have insisted in the face of an actual budget crisis on a different decision, or upon there being no adverse effect upon bargaining unit employees, until after the decision was made. The Examiner thus concludes that the employer did not commit an unfair labor practice by its April 29, 1988 decision to convert its kindergarten program.

Even where there is no duty to bargain a "decision", the effects of that decision on the wages, hours and working conditions of bargaining unit employees are fully bargainable. Entiat School District, Decision 1361, 1361-A (PECB, 1982). It is clear that certain of the bus drivers were adversely affected at that point in time, suffering a reduction in hours and losses of wages and benefits[5] due to the kindergarten conversion. The employer's own

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[4] See, Wenatchee School District, Decision 2650 (PECB, 1987). The docket records of the Commission for that case indicate that the dispute had to do with the use of charter busses for extra trips.

[5] Section 10.1 of the collective bargaining agreement between the parties provides, in part, "Employees must work three (3) hours per day or more (or total 540 hours annually) to be eligible for pro-rated insurance coverage". Elimination

arguments here establish that the double levy failure / budget cut circumstance were not contemplated by the parties in bargaining their contract, and that the "layoff" provisions of the contract did not fit the situation. The union's April 21, 1989 request to bargain and its demands at the April 28, 1989 meeting may have gone a bit too far in the direction of seeking to influence the "decision", but it also appears that "effects" bargaining was effectively negated by the April 29, 1989 school board decision and the employer's responses at the May 2 meeting. The willingness of the employer to consider alternatives must be viewed with some suspicion, when the board unilaterally adopts the superintendent's recommendations on an accelerated schedule due to commitments to another bargaining unit and while negotiations are in progress. The employer's openness to its bargaining obligations towards PSE on "effects" is not helped by its negotiator terminating the May 2 meeting without getting into the "effects". It seems clear that the employer presented the union with a "fait accompli" on the effects as well as on the decision, so that the union was told what to do and given no recourse. Negotiation of mandatory items ceased without the union's consent or awareness. The drivers were not a party to, and had no participation in creation of, the language of the teachers' bargaining agreement. The subsequent negotiations on mandatory items for the 1988-1989 school year started from the premise that both the decision and effects at issue here were a "closed" matter, and must be regarded as being separate and apart from the subject case. The failure of the employer to provide the union with an opportunity to negotiate the effects of the changes prior to their occurrence constitutes a violation of RCW 41.56.140(1) and (4).

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of the half-day runs caused certain of the drivers to drop below the mandatory, three hour threshold. Pension benefits were similarly affected.

The Duty to Provide Information

Unions are entitled to receive, upon request, information that is relevant and necessary to the union's performance of its function as exclusive bargaining representative in the collective bargaining process. Highland School District, Decision 2684 (PECB, 1987); Toutle Lake School District, Decision 2474 (PECB, 1986); Pullman School District, Decision 2632 (PECB, 1987). Such requests are, however, subject to constraints of reason and logic. A request must be sufficiently specific for the other party to understand exactly what is needed. A party is not obligated to do research and create new documents, so that a blanket request made in hopes of receiving desireable information along with other unnecessary information is not within the duty imposed by collective bargaining. The union's information request in the instant case appears to be vague and all-inclusive. The request for any and all of the data used in determining whatever reductions were to take place on a district-wide level was, in effect, a fishing expedition. Relevance was not established. Shaw v. Valdez, 819 F.2d 965 (1987). Further, compliance with the request would have imposed an overwhelming burden on the employer. Specifics regarding the reduction of transportation and related cost factors would have constituted a more reasonable request; one to which the union would be entitled, and to which the employer could reasonably respond.

REMEDY

Having found the employer has committed an unfair labor practice as to the "effects" of its decision to reduce the work opportunities for members of the bus driver bargaining unit, the employer must be ordered to cease and desist from violation of the Act and to take affirmative action to restore the bargaining relationship. The remedy ordered was first adopted by the

Commission in Entiat School District, supra, and is based on the remedy order of the National Labor Relations Board in Transmarine Navigation Corp., 170 NLRB 389 (1968).

## FINDINGS OF FACT

1. Wenatchee School District is a school district operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030(1).

2. The Public School Employees of Wenatchee, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit which includes "all full-time and regular part-time school bus drivers" of the Wenatchee School District.

3. In the spring of 1988, the employer experienced a double levy failure. It was determined that a budget reduction of $1,650,000 was necessary, of which approximately $30,000 was to come from the transportation department.

4. On April 18, 1988, the superintendent of schools put forth a budget reduction plan which included a conversion of the employer's kindergarten program from half-day to full-day attendance, thereby eliminating the need for mid-day school bus runs. PSE became aware of the proposal by that time.

5. On April 21, 1988 and April 28, 1988, PSE made demands for bargaining on the decision and/or the effects of the proposed conversion of the kindergarten program. PSE did not advance any specific proposals for concessions designed to deter the employer from acceptance of the proposal concerning the kindergarten program.

6. On April 29, 1988, the board of school directors of the Wenatchee School District adopted the kindergarten program change recommended by the superintendent. The change had the effect of reducing the hours of work, insurance benefits and retirement benefits for certain bargaining unit members who had been driving the mid-day kindergarten runs.

7. The parties met for negotiations on the matter on May 2, 1988, at which time the union advanced specific proposals. The union proposals were more directed at the decision to modify the kindergarten program than to the effects of that decision. The employer's representative terminated the meeting without getting into the negotiation of the effects of the decision, with the result that the union was presented with a fait accompli as to the effects of the April 29 change, with no concurrent opportunity to negotiate the matter.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By the events described in the foregoing findings of fact, the Wenatchee School District has failed to bargain collectively with Public School Employees of Wenatchee concerning the effects of its decision to reduce the work opportunities, wages and benefits of bargaining unit employees, and so has violated RCW 41.56.140(1) and (4).

Upon the foregoing findings of fact and conclusions of law and the entire record of this proceeding, and pursuant to RCW 41.56.160, the Examiner makes the following:

## ORDER

Wenatchee School District, its officers and agents, shall immediately:

1. Cease and desist from:

   a. Reducing the hours of work and benefits of employees in the bargaining unit represented by Public School Employees of Wenatchee, without first bargaining collectively in good faith with Public School Employees of Washington.

   b. Refusing to bargain collectively in good faith with Public School Employees of Washington, as the exclusive bargaining representative of the employees in the appropriate bargaining unit with respect to all matters of wages, hours and working conditions except to the extent that such bargaining rights are waived by a collective bargaining agreement between the parties.

2. Take the following affirmative action to effectuate the policies of the Public Employment Collective Bargaining Act, Chapter 42.56 RCW:

   a. Ascertain the number of drivers affected by the hours and benefits reduction referred to in paragraph 6 of the foregoing findings of fact.

   b. Provide backpay and benefits to those employees affected by the hours and benefits reduction at the rate of their normal wages.

   c. Give notice to and, upon request, bargain in good faith with Public School Employees of Wenatchee concerning

the effects of any future decisions to reduce the hours of bargaining unit employees.

d. Notify employees by posting, in conspicuous places on the employer's premises where notices to bargaining unit employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the Wenatchee School District, and shall be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Wenatchee School District to assure that said notices are not removed, altered, defaced or covered by other material.

e. 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 this order.

f. 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 this order.

DATED at Olympia, Washington , this 6th day of July, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. T. COWAN, Examiner

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

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

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

WE WILL NOT reduce hours of work or benefits of bus drivers, without first giving notice to Public School Employees of Wenatchee and, upon request, bargain collectively with the union in good faith concerning such reductions.

WE WILL negotiate the effects of the reduction of hours of work and benefits implemented on April 29, 1988, with Public School Employees of Wenatchee, and will pay backpay pursuant to the terms of the order.

DATED: _____

WENATCHEE SCHOOL DISTRICT

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 material. Any question 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.