STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 378, Complainant,	)	CASE 8081-U-89-1754
vs.	)	DECISION 3706 - PECB
MASON COUNTY, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Davies, Roberts and Reid, by James D. Oswald, appeared on behalf of the complainant.

Michael E. Clift, Assistant Prosecutor, appeared on behalf of the employer.

Teamsters Union, Local 378, filed a complaint charging unfair labor practices with the Public Employment Relations Commission on July 19, 1989, wherein it alleged that Mason County had violated RCW 41.56.140(4). Specifically, the union alleged that the employer had unilaterally altered the working conditions of employees represented by the union when the employer adopted an ordinance containing a "no smoking" policy, without bargaining to impasse with the union. A hearing was held in the matter at Shelton, Washington, on July 20, 1990, before Examiner William A. Lang. The parties waived filing of post-hearing briefs.

FACTS

Teamsters Union, Local 378 is the exclusive bargaining representative of all regular employees of the Mason County General Services Department, excluding supervisors, confidential employees and specified other employees. The union and employer were parties to a collective bargaining agreement for the period January 1, 1987

through December 31, 1988. Up to that time, employees were being allowed to smoke in a non-public designated area at their work spaces.

In the spring of 1989, negotiations on a successor agreement were in mediation and almost completed. At the end of a mediation session held on May 19, 1989,[1] Christine Freed, the budget director and spokesperson for the employer, raised an issue relating to the adoption of a "no smoking" policy for Building III. Most of the employees represented by the union were scheduled to move into that newly-purchased facility as soon as remodeling was completed.

The business agent for the union, Owen Linch, discussed the matter of a "no smoking" policy with Freed and with Michael Byrne, who directed the Department of General Services.[2] Freed proposed that the new building be declared a "no smoking" area. Linch asked to see the new building, and to consider alternative proposals.

The parties met again on May 25, 1989, after another mediation session on the successor agreement.[3] Freed presented a proposal for a "no smoking" policy. Linch requested a tour of the building, and the parties set a May 31, 1989 meeting date for that purpose.

On May 31, the parties toured the new building for about a half hour and discussed possible alternatives and options. Linch suggested venting an outside wall or converting a room which was

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[1] The union remembered the initial session as having taken place on April 25, 1989.

[2] Byrne is also referred to in the transcript as "Michael Bush".

[3] The parties had reached agreement on a successor agreement in mediation. The union ratified the new contract at the end of May, while the Board of County Commissioners approved the agreement at its meeting on June 27.

formerly used as a computer room.[4] Byrne said the county would get cost estimates for such venting and conversions. Expressing concern about the costs and the safety of employees, Freed proposed the designation of an area outside of the building, below the exterior stairs, as a smoking area.

On June 12, 1989, Freed telephoned Linch with the cost estimates and told Linch that the Board of County Commissioners would consider the amendment of the "no smoking" ordinance at a public meeting scheduled for June 27, 1989. Linch asked that the meeting be postponed, because he would not be available on that date.

The parties met on June 15, 1989, to discuss the "no smoking" policy. Robert Holstein, who was the employer's consultant, estimated the cost of converting the computer room at $450.00. Linch offered to pay the cost of the conversion. Linch also asked if there were monies available to help employees to stop smoking. Freed volunteered to check with the Mason County Health and Wellness Committee, because she believed they had some unexpended funds which might be used for that purpose. Byrne did not have a cost estimate on venting an outside room, as the consultant did not believe that to be a viable option.[5] Linch asked to meet with the consultant, and again requested that the employer postpone the consideration of the "no smoking" ordinance then scheduled for June 27, 1989.

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[4] Building III is a two story structure, with the upper floor slightly above the road grade. It was formerly occupied by a credit union. The lower level is compartmentalized into offices with floor-to-ceiling partitions and doorways. The upper level was a common area with privacy partitions and a conference room, except for a former computer vault located upstairs behind several doors and equipped with its own heating/cooling system.

[5] It was feared that smoke would remain in the building.

On June 21, 1989, with the permission of the union, union officer Janet Jenney circulated a memo to General Services Department employees in Building III who were represented by the union. Jenney informed union members that the Board of County Commissioners was conducting a hearing on the "no smoking" policy on June 27, and that anyone could attend on work time without loss of pay or vacation time. Ten employees signed up to attend the meeting.

A proposal to amend Ordinance 30-87,[6] was considered at the June 27, 1989 meeting of the Mason County Board of Commissioners. The minutes of that meeting indicate that a number of General Services Department employees testified. Jenney expressed concern that the union was still negotiating with the employer regarding the policy as it affected Building III. Jenney pointed out that the union had offered several proposals, and she expressed her belief that the employer's negotiators had not taken union concerns into consideration. Jenney concluded that she believed that, with proper ventilation, a room could be provided for smokers as in the courthouse.[7]

The transcript of the Board of County Commissioners meeting on June 27, 1989, was read into the record of this proceeding. The relevant parts are excerpt as follows:

> Commissioner Gibson: I am prepared, if the board has any comments, I will make the motion that we adopt the smoking ordinance, draft

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[6] Adopted on April 28, 1987, pursuant to the Washington Clean Indoor Air Act, Chapter 70.160 RCW, Ordinance 30-87 had prohibited smoking in all public areas in buildings owned or leased by Mason County. The entire building known as Annex II was designated a "no smoking" area. Elected officials and department heads located in buildings other than Annex II could establish their own policies for non-public areas.

[7] A simple fan is used in a room provided for smokers in the Mason County Courthouse.

smoking ordinance in regard to making building I -- or amending the ordinance in regard to making buildings I, II and -- well, I, II, III and IV not smoking with the clause in III that it is going to be temporary until negotiations are final, if that makes sense.

Commissioner McGee: Is temporary the word we want? You know, we can come with a different word for however you want to do it.

Commissioner Gibson: In essence, it's going to be temporarily non-smoking so that the move can happen once -- you know, until negotiations are final. And then we will have to deal with that through negotiations because it has been established present on negotiations is in the progress.

. . .

Commissioner McGee: It isn't temporarily being implemented, and it would be the same with all these buildings.

Commissioner Gibson: Well, I suppose if negotiations were to finalize and provide for a change in building III from a non-smoking status, if it were to, you know, finalize that way, that would supersede our ordinance anyway. Wouldn't it Mike?

Mr. Clift: That in itself wouldn't supersede the ordinance but would probably amend the ordinance after that.

. . .

Commissioner Gibson: Maybe the board would wish to take an executive session.

Commissioner McGee: I was going to suggest that, if someone else wants to speak first.

. . .

Ms. Jenney: I wanted to find out does this mean that I am under the misunderstanding that we are still in the process of negotiating this, we are not at impasse? I mean what is going on with that?

Commissioner Gibson: All I have said is that until negotiations are final, that could go through whatever process it goes through.

Commissioner McGee: Executive session of the prosecuting attorney.

Commissioner Gibson: The chair will declare a recess with the executive session with the prosecuting attorney.

(BOARD RECESS IN EXECUTIVE SESSION)

Commissioner Gibson: I am going to make a motion that we adopt the resolution in draft form that designates buildings I, II, III and IV non-smoking buildings, recognizing that this is not in part.

Commissioner McGee: Let's get the motion first. The motion is to amend ordinance 30.87 to include no smoking in I, II, III and IV; right? Is that right? That's the motion.

Commissioner Gibson: Under discussion that negotiations are going on, that the amendment or this amendment that we have in front of us right now is what we are voting on is subject to change on outcome of the negotiations.

Commissioner McGee: Does everyone understand what he just said that the motion was adopted for the ordinance or to amend the ordinance to your one that says "draft" across it. And then Mike said it -- and it was seconded -- and Mike has said that we are recognizing the fact that negotiations are still going on and it could have an effect on this ordinance in the future. Okay. Now questions.

Ms. Jenney: So it is true that you are still in negotiations with the Teamsters union on this particular subject?

. . .

Commissioner McGee: We are mandated by law to continue negotiations.

Ms. Jenney: Even though a date was refused?

Commissioner McGee: A date?

Ms. Jenney: A date to have our next meeting was refused.

> Commissioner McGee: Yes. We will continue negotiations. Yes we will. You have our -- it's in the record as such.
>
> Ms. Jenney: Okay.
>
> (Transcript pages 61-66)

The Board of Commissioners unanimously voted to amend Ordinance 30-87, as follows:

> Ordinance 30-87 shall be amended to include the following:
>
> 1. County owned buildings #1, #2, #3, & #4, shall be designated[8] in their entirety as "no smoking" areas.
>
> 2. County elected officials and department heads, whose offices/departments are located in any County Building except Buildings 1, 2, 3, & 4, may establish their own smoking policies within areas of their offices which are not public areas as defined in Ordinance 30-87 Section 2.

On July 10, 1989, Linch wrote to Freed, saying:

> ... As stated in the June 15 meeting I do not believe that we are at impasse. I still have proposals that you have not considered. That is why, as you should remember, I asked for another meeting the first week in July, and you refused to meet. ...

Also on July 10, the union filed the unfair labor practice charge to initiate this proceeding.

On July 20, 1989, Freed wrote Linch:

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[8] The designations of the buildings were later changed from Arabic numbers to Roman numbers.

> Mason County still maintains we are at an impasse over the issue of the "no smoking" Policy.
>
> We understand our obligation to negotiate on this issue and therefore I am requesting a mediator from PERC. (Copy attached.)

The parties next meeting regarding the no smoking issue occurred in mediation, on September 11, 1989. At that meeting, Linch asked for an understanding that the union's unfair labor practice complaint against the employer not be jeopardized by the union's participation in mediation. The parties discussed a greenhouse approach to the outside stairs option, and the employer's representatives stated they would consider the proposal.

The parties met again on September 21, 1989, also in mediation. The matter of a greenhouse was discussed and not accepted. The employer also took the position that ventilation could not guarantee that the building would be smoke-free. The employer rejected arbitration as a method of resolving the dispute. Neither party requested further mediation, and none was scheduled.

POSITION OF THE PARTIES

The union contends that the employer has unilaterally adopted a policy that there would be no smoking in Building III, without bargaining. The union also argues that the negotiations were not at impasse, as there were additional proposals to be made before the employer adopted its "no smoking" ordinance.

The employer argues that it bargained in good faith and was unable to reach agreement with the union. It also raised affirmative defenses that it had the right to establish the policy without bargaining, because a "no smoking" policy is a permissive subject of bargaining; that the management rights clause of the contract

gave it the right to do so; and that the Clean Air Act gave it the right to do so.

DISCUSSION

Mason County was the respondent in a previous unfair labor practice case involving the adoption of a "no-smoking" policy. Mason County, Decision 3108 (PECB, 1989).[9] In that case, the employer was found to have committed an unfair labor practice by unilaterally establishing the "no-smoking" policy in Ordinance 30-87 by making Annex II a no-smoking area. As in the case now before the Examiner, the employer's pleading in the earlier case had raised various affirmative defenses to its unilateral action.

The employer argued in the earlier Mason County case that the management rights clause permitted the unilateral action, that the Washington Clean Indoor Air Act authorized the employer to impose restrictions, and that the subject of a no-smoking policy is not a mandatory subject of bargaining. The Examiner found in that case, however, that an employer's decision to declare a work place a smoke-free environment is a mandatory subject for bargaining.[10] The Examiner in that case also rejected the employer's affirmative defenses based on the Clean Indoor Air Act. The management rights clause in the collective bargaining agreement between Mason County and the Washington State Council of County and City Employees, Local 1504, was also determined to be insufficient to constitute a waiver of the union's bargaining rights in that case.

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[9] The decision was appealed to the Commission, which dismissed it on procedural grounds. Mason County, Decision 3108-A (PECB, 1989).

[10] See, also, Kitsap County Fire District 7, Decision 2872-A (PECB, 1988), which contains an extensive analysis leading to the Commission's conclusion that a "no smoking" policy is a mandatory subject for bargaining.

In this controversy, the parties' 1987-88 agreement did not contain a management rights clause of even the general nature of the clause relied upon by the employer in the earlier case. Further, that agreement had expired on December 31, 1988, long before the "no smoking" issue was first raised by the employer.[11] The successor agreement under which part of the negotiations took place contained a management rights clause, as follows:

> ARTICLE III - MANAGEMENT RIGHTS
>
> The union recognizes the County's right to manage subject only to the terms and conditions of this agreement.

Like the management rights clause found insufficient in the earlier Mason County case to constitute a waiver, the above-quoted clause is of a general nature and insufficient waiver to avoid the duty to bargain. See, also, the discussion of waiver by contract in City of Kennewick, Decision 482-B (PECB, 1980).

Had the Legislature imposed a complete ban on smoking in public buildings, there would be nothing to bargain about. The most that can be said for the claim of a "conflict of laws" is that the Washington Clean Indoor Air Act leaves the employer some discretion in implementing the law. That range of discretion leaves room for collective bargaining on the subject.

The question before the Examiner here comes down to whether the employer bargained in good faith over the issue of smoking in Building III. Collective bargaining is defined in RCW 41.56.030 (4) as:

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[11] See, City of Bremerton, Decision 2733-A (PECB, 1987), where assertion of an expired collective bargaining agreement as a "waiver" was rejected as a frivolous defense.

> ... the performance of 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, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. ...

A number of decisions by the Commission have examined the question of whether the conduct of a party in bargaining breached the statutory requirement of "good faith". In Federal Way School District, Decision 232-A (EDUC, 1978), affirmed King County Superior Court (Cause 830404, 1978), the Commission stated that the obligation to bargain in good faith is a duty to participate actively in the deliberations, so as to indicate a present intention of finding a basis for agreement. Differentiating between good faith and bad faith is not a simple task. Where there have been bargaining sessions, one cannot look to any one action or inaction by the parties to make a determination. The totality of conduct must be considered.

In City of Mercer Island, Decision 1457 (PECB, 1982), the employer was found guilty of an unfair labor practice where, after three negotiating sessions, the employer had presented an oral "final offer" without ever making a written proposal. The record in Mercer Island quotes the city's negotiator as stating its only offer was "where the council wants to wind up". The Examiner in that case concluded there was no attempt to negotiate in good faith when the employer presented its first position as its last offer. See, also, Whitman County, Decision 250 (PECB, 1977).

In this case, Mason County appears to have decided, from the outset, that Building III would be smoke free. On cross-examination, Freed testified:

> Q Am I correct that you presented the issue Mr. Linch as that you were going to bargain with him the effects of the Commissioners' intention to implement no smoking in Building III?
>
> A Yes.
>
> Q Now, you testified that as of June 15, you felt like you didn't have any room to move within the parameters that the Commissioners gave you?
>
> . . .
>
> A Um-hum.
>
> Q You have to answer audibly
>
> A That's correct. Yes. I'm sorry.
>
> Q So the whole question of whether there would be a smoking room inside the building was outside of the parameters that you could work in?
>
> A That's correct.
>
> Q And the options that Mr. Linch proposed regarding ventilating one of the offices on the perimeter with an outside window, those options were never presented to the Commissioners prior to the June 27th implementation of the ordinance; were they?
>
> A. They were. And they were discussed by the Board. They were researched by the administrative staff in the General Services Department in terms of cost and effects to the building and I did discuss them in my briefing sessions with the commissioners and they understood -- they understood what the impacts to those kinds of changes to the building would be.

(Transcript pages 94-95)

The facts in this controversy indicate that the county was not acting in good faith, because the union's proposals never seemed to receive serious attention. Mason County would not offer any suggestions on how the proposals could be modified. While the record indicates that the county entertained a number of proposals and even obtained cost estimates at the union's request, the record also shows that the employer was unresponsive even when the union proposed to pay the cost of modifying the building. In what must be considered a textbook tour of the indices of good faith and bad faith bargaining, the Examiner in Fort Vancouver Regional Library, Decision 2350-C and 2396-B (PECB, 1988), held that an employer's rigid adherence to its own position in bargaining, evidencing a determination to reach agreement only on its own terms, violated the statute. The employer's rejection of a proposal coupled with the failure to provide guidance as to how to modify it to make it more acceptable also violated the law. Similar conclusions must be reached here.

Beyond the failure or refusal of the employer to give serious consideration to the union's proposals to provide a location for smokers to use, it is also clear that Mason County did not even give serious consideration to union concerns about alternatives for smokers. There is no evidence that Freed ever followed up on the union's request for funds to help employees quit smoking, even after hinting that some funds might be available for that purpose.

The series of meetings in 1989 between the parties in which the matter was discussed can be summarized as follows:

Date	County Position	Union Position
May 19	No smoking in Building III	Will consider
May 25	Repeats initial proposal	Requests tour of building
May 31	(Tour) Freed proposes smoking area outside building. Byrne to get cost estimates.	Proposes venting of outside room or conversion of separately vented room.

June 12	Cost estimates provided by telephone. Says county board to adopt "no smoking" ordinance at June meeting.	Union asks employer to delay adoption.
June 15	Cost estimate given. Says ventilating not viable. Declares impasse.	Asks to meet with county consultant. Offers to pay costs. Asks County to delay adoption.
June 27	County adopts ordinance with "proviso" on negotiations.	
July 10		Letter disputes impasse. Files ULP complaint.
July 20	Requests mediation.	
Sept. 21	No new offer. Will consider greenhouse.	Proposes greenhouse.
Sept. 21	Rejects greenhouse and any form of ventilation.	

It does not appear that the employer ever considered any alternative or approach suggested by the union to resolve the matter. The employer "declared an impasse" while the union was willing to explore alternatives that might be available after discussions with the employer's consultant. The timing of the declaration of impasse immediately prior to the employer's adoption of the ordinance lends credence to the union's argument that the employer did not negotiate in good faith. While submission of a dispute to mediation is a common practice among parties truly seeking to find a solution to a problem, the Examiner notes that Mason County asked for mediation in this situation only after the union had filed this unfair labor practice case.

The employer's contention that it was willing to negotiate the changes, and that it invited the union to do so, is not persuasive. It is well settled that an employer cannot satisfy its duty to bargain by first making a change in working conditions and then offering to bargain. City of Tukwila, Decision 2434-A (PECB,

1987). The union is entitled to influence the decision before it is finalized and implemented, and is not obligated to engage in futile negotiations to restore the original conditions. A problem thus emerges from the discussion and actions concerning the adoption of the "no smoking" ordinance by the Board of County Commissioners. In contrast to the statutory duty to refrain from making unilateral changes until the duty to bargain has been fulfilled, the officials of this employer apparently felt they were at liberty to adopt (and, impliedly, to implement) the "no smoking" edict with an "understanding" that the ordinance could be amended in the future after negotiations with the union. By itself, that discussion and action demonstrate that Mason County lacked any real understanding of its statutory obligations or intent to bargain any position but its own. Even if the record is read in the light most favorable to the employer, the minute the employer changed the status quo and adopted the no smoking ordinance it violated the Public Employees' Collective Bargaining Act.

REMEDY

The employer's violation of the RCW 41.56.140(4) in this case closely follows a similar violation involving another union. The difference between the two cases seems to be a transparent attempt to circumvent the law, by surface bargaining and by prematurely declaring an impasse. In view of this history, an order to bargain, by itself, would not be an effective resolution of the unfair labor practice. An extraordinary remedy is necessary.

When the employer adopted the "no smoking" ordinance, it changed the working conditions of the employees involved. Therefore, it is necessary and proper to restore the status quo ante as a base for any future notice and collective bargaining. This can best be accomplished by prohibiting Mason County from enforcing its "no smoking" ordinance by any discipline of bargaining unit employees

or any levy of fines against bargaining unit employees for violations, until such time as an agreement is reached with the union on a "no smoking" policy for Building III. Any fines previously imposed on employees in the bargaining unit represented by Local 378 shall be refunded to them.

The Examiner orders the parties to bargain in good faith until an agreement is reached. If the matter remains unresolved after a reasonable period of collective bargaining, the employer is hereby given the option of compelling the union to submit the issue to binding arbitration.

FINDINGS OF FACT

1. Mason County is a "public employer" within the meaning of RCW 41.56.030(1). At all times pertinent hereto, Budget Director Christine Freed was the spokesperson for the employer in collective bargaining with organizations representing its employees.

2. Teamsters Union, Local 378, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain nonsupervisory employees of Mason County. At all times pertinent hereto, Owen Linch was the business representative of the union.

3. During the time pertinent hereto, the employer and union were parties to a collective bargaining agreement. That contract did not contain a clear and unmistakable waiver of the union's right to bargain concerning changes of wages, hours and working conditions not specified in the contract.

4. In the spring of 1989, the employer and union engaged in collective bargaining negotiations on a "no smoking" policy

affecting bargaining unit employees who work in a county-owned facility known as Building III. On May 19, 1989, Freed proposed that there be no smoking in Building III. Freed admitted this was her parameter in bargaining the policy with the union and a position maintained throughout negotiations and mediation.

5. During the subsequent meetings between the parties, Linch made a variety of proposals concerning modifying Building III, including offering to pay the cost of venting an outside room or converting another room. While Freed discussed the union's proposals with the Board of County Commissioners, all such proposals were rejected by the employer without suggestion as to what might be acceptable.

6. During the subsequent meetings between the parties, Linch asked Freed if money was available to help employees quit smoking. Freed said she would check with the Health and Wellness Committee, but never responded back on the matter.

7. On June 12, 1989, Freed informed Linch that the Board of County Commissioners was to adopt a "no smoking" ordinance on June 27, 1989 for several buildings, including Building III. Freed refused Linch's request that the meeting or action be postponed due to his unavailability to attend.

8. On June 15, 1989, Linch asked to meet the employer's consultant, to discuss what other possible approaches might be taken. Linch also renewed his request that the June 27, 1989, adoption action be postponed. Freed refused to delay the meeting, and declared an impasse in negotiations.

9. On June 27, 1989, the Mason County Board of Commissioners adopted a "no smoking" ordinance making Building III a "no smoking" area. At the suggestion of its counsel, the Board

declared an intent to amend the ordinance, depending on the outcome of collective bargaining negotiations with Local 378.

10. On July 20, 1989, Freed requested mediation. The parties met several times and discussed creating a smoking area in a "greenhouse" beneath the outside stairs. Freed rejected the proposal, however.

CONCLUSIONS OF LAW

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

2. By its failure to bargain in good faith, as evidenced by its failure to offer any suggestions as to how union proposals could gain acceptance or an agreement could be reached on terms other than its own, as described in paragraphs 4 through 10 of the foregoing findings of fact, Mason County has refused to bargain concerning working conditions that are mandatory subjects of collective bargaining under RCW 41.56.030(4).

3. By unilaterally implementing a "no smoking" ordinance affecting bargaining unit employees, as described in paragraph 8 of the foregoing findings of fact, and by refusing to bargain in response to a timely request to bargain concerning said changes, Mason County has committed, and is committing, unfair labor practices in violation of RCW 41.56.140(4).

ORDER

Mason County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   A. Failing and refusing to bargain in good faith with Teamsters Union, Local 378, as the exclusive bargaining representative of its employees, with respect to all wages, hours and working conditions, and specifically with respect to whether the work areas occupied by bargaining unit employees shall be a "no smoking" environment.

   B. Enforcing or otherwise giving effect to the "no smoking" ordinance adopted on June 27, 1989, insofar as it affects employees in the bargaining unit represented by Teamsters Union, Local 378.

   C. In any other manner interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   A. Reinstate the policies on smoking in effect prior to June 27, 1989, with respect to the portions of Building III occupied by employees in the bargaining unit represented by Teamsters Union, Local 378, and make no change of such policies except as provided in this Order.

   B. Vacate any discipline imposed on employees in the bargaining unit represented by Teamsters Union, Local 378, for violations of the "no smoking" ordinance adopted on June 27, 1989.

C. Refund any fines levied against employees in the bargaining unit represented by Teamsters Union, Local 378, for violations of the "no smoking" ordinance adopted on June 27, 1989.

D. Give notice to Teamsters Union, Local 378, concerning any proposal to change the policies on smoking with respect to the portions of Building III occupied by employees in the bargaining unit represented by Teamsters Union, Local 378, and, upon request, bargain collectively in good faith with Teamsters Union, Local 378, regarding a "no smoking" policy for Building III.

E. If an agreement is not reached after a reasonable period of collective bargaining negotiations conducted pursuant to this Order, Mason County may compel the union to submit the dispute for determination through mediation and, if necessary, for binding arbitration.

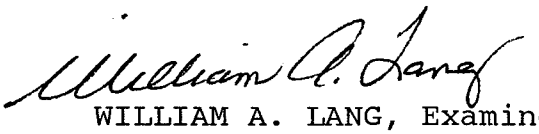
F. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

G. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

H. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Dated at Olympia, Washington on the 31st day of January, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, 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

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL cease enforcement of the "no smoking" ordinance adopted on June 27, 1989 with respect to employees in the bargaining unit represented by Teamsters Union, Local 378.

WE WILL vacate any discipline imposed upon employees in the bargaining unit represented by Teamsters Union, Local 378, with respect to the "no smoking" ordinance adopted on June 27, 1989.

WE WILL refund any fines imposed upon employees in the bargaining unit represented by Teamsters Union, Local 378, with respect to the "no smoking" ordinance adopted on June 27, 1989.

WE WILL give notice to and, upon request, bargain to agreement with, Teamsters Union, Local 378, prior to adopting or implementing "no smoking" regulations affecting employees in the bargaining unit represented by Teamsters Union, Local 378.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

MASON COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.