STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	)	CASE 8640-U-90-1883
Complainant,	)	DECISION 3815 - PECB
vs.	)	
PUBLIC UTILITY DISTRICT 1 OF CLARK COUNTY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Richard D. Eadie, Attorney at Law, appeared on behalf of the union.

Davis Wright Tremaine, by Stephen M. Rummage, appeared on behalf of the employer.

On June 15, 1990, International Federation of Professional and Technical Engineers, Local 17, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Public Utility District 1 of Clark County had violated RCW 41.56.140(4), by refusing to bargain with the union. A hearing was held in Kirkland, Washington, before Examiner Mark S. Downing on October 11, 1990. Both parties filed post-hearing briefs.

BACKGROUND

History of Bargaining

The instant unfair labor practice complaint must be viewed in light of a lengthy history of litigation between these parties. The general information in this background section is derived from the

decisions in Public Utility District 1 of Clark County, Decision 2125 (PECB, 1985), and Public Utility District 1 of Clark County, Decisions 2045-A, 2045-B (PECB, 1989).

Public Utility District 1 of Clark County provides electrical service to residents in and around Vancouver, Washington. W. Bruce Bosch is the general manager and chief executive officer of the employer.

International Federation of Professional and Technical Engineers, Local 17, was recognized prior to 1983 as the exclusive bargaining representative of a bargaining unit of engineering employees of Public Utility District 1 of Clark County. Bill Kalibak is an agent of Local 17 in collective bargaining matters.

The parties had a collective bargaining agreement for the period from April 1, 1983 through March 31, 1984. During that period, the bargaining unit consisted of approximately 23 employees.

On August 1, 1984, the union filed a complaint charging unfair labor practices, accusing the employer of bargaining in bad faith during successor contract negotiations with the union. The Executive Director issued a preliminary ruling finding a cause of action to exist for proceedings before the Commission.[1]

The unfair labor practice case was held in abeyance after the employer petitioned the Commission for a declaratory ruling as to whether the Commission had jurisdiction over public utility districts. In 1985, the Commission ruled that it had jurisdiction over the employer pursuant to Chapter 41.56 RCW.[2] That ruling was

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[1] Public Utility District 1 of Clark County, Decision 2045 (PECB, 1984), citing Public Utility District 1 of Clark County, Decision 1884 (PECB, 1984) and Public Utility District 1 of Clark County, Decision 1991 (PECB, 1984).

[2] Decision 2125, supra.

affirmed by the Supreme Court of the State of Washington on March 3, 1988.[3]

A hearing on the unfair labor practice charges filed by the union in 1984 was conducted by an Examiner on October 3 and 4, 1988. The Examiner concluded in a decision issued on February 24, 1989,[4] that the employer had violated RCW 41.56.140(1) and (4), by:

> 1. Having direct contact with bargaining unit members while collective bargaining negotiations were in progress;
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> 2. Making threats of layoffs of bargaining unit employees to influence the collective bargaining negotiations; and
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> 3. Conditioning settlement on the union's withdrawal of all pending litigation against the employer, including the August 1, 1984 unfair labor practice complaint.

The Examiner ruled that a purported disclaimer of the bargaining unit by the union was coerced by the employer's unlawful conduct, and was void. The Examiner ordered the employer to bargain collectively with the union, upon request, concerning the wages, hours and working conditions of the employees in the bargaining unit, but made that obligation effective only from the date of the Examiner's decision.[5] The Examiner rejected extraordinary remedies of attorney fees and imposition of interest arbitration that had been requested by the union.

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[3] Public Utility District 1 of Clark County vs. Public Employment Relations Commission, 110 Wn.2d 114 (1988).

[4] Decision 2045-A, supra.

[5] The Examiner reasoned that the purported "disclaimer" by the union had provided the employer with some basis to refuse to bargain up to the date of the decision holding that the disclaimer was null and void.

On October 11, 1989, the Commission affirmed the Examiner's decision, rejecting arguments advanced by both the employer, in a petition for review, and the union, in a cross-petition for review.[6]

The employer filed a petition for review of the Commission's decision in superior court on November 9, 1989, but did not serve that petition for review on the Commission until November 15, 1989. On January 12, 1990, the Superior Court of Clark County dismissed the employer's petition for review, finding that the petition was served on the Commission two days after the statutory deadline. The court ruled that it lacked jurisdiction due to the employer's non-compliance with the service requirements of the Administrative Procedures Act.[7]

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[6] Decision 2045-B, supra. Although the Commission refused the union's request for an award of attorney fees, the Commission indicated that it was considered to be "a close question".

[7] The employer appealed this ruling to the Washington Court of Appeals. On August 3, 1990, the Court Commissioner for the Washington Court of Appeals affirmed the superior court's dismissal of the employer's petition for review, stating:

> RCW 34.04.130(2) requires that a petition for review of an agency's decision "be served and filed within thirty days after the service of the final decision of the agency." If the petitioner fails to meet this requirement, the superior court lacks subject matter jurisdiction. ... [cite omitted]

On October 25, 1990, the Court of Appeals denied a motion by the employer to modify the Commissioner's ruling dismissing its petition for review. The employer appealed to the Supreme Court of the State of Washington, which denied the employer's petition for review on March 7, 1991. Clark Public Utility v. Public Employment Relations Commission and International Federation of Professional and Technical Engineers, Local 17, 116 Wn.2d 1015 (1991).

Events Precipitating This Complaint

The specific events that precipitated this particular unfair labor practice complaint occurred in the spring of 1990, after the employer's appeal of the Commission decision had been dismissed. On March 23, 1990, union representative Kalibak sent a letter to employer official Bosch, as follows:

> As a result of the Public Employment Relations Commission upholding of the Unfair Labor Practices committed by the Clark County Public Utility District and Local 17's representational status, please accept this letter as a request by the union to commence collective bargaining negotiations. To expedite this process, please have someone from your staff contact me to schedule mutual bargaining dates.
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> Additionally, the union would request a list of salary adjustments given to all classifications under Local 17's jurisdiction since August 1984.

After receiving no reply from the employer, Kalibak sent a follow-up letter to Bosch on April 20, 1990.

On April 24, 1990, Bosch responded to Kalibak in a letter, as follows:

> As indicated in previous correspondence, the matter referred to in your letter of April 20, 1990, is still in litigation. For that reason, all correspondence should be directed to our legal counsel, Wayne W. Nelson of our office and Thomas A. Lemly of Davis, Wright, Tremaine in Seattle. By copy of this letter, I am forwarding copies of your letter to them.

Kalibak wrote to Nelson and Lemly on May 7, 1990, enclosing copies of the union's March 23 and April 20 letters, and requesting a reply to the union's bargaining demands.

Thomas Lemly[8] responded to Kalibak on May 25, 1990, in the following manner:

> We've received copies of your letters of April 20 and May 7, 1990, concerning collective bargaining between Local 17 and Clark Public Utilities. As I think you know, **Clark Public Utilities is not comfortable with the Commission's decision in this case, and is not prepared to commence collective bargaining at this time.** Local 17 has disavowed interest in the bargaining unit of engineers at the Utility, and the employer will not recognize Local 17 as a representative of these employees without proof that the employees actually desire your representation. [emphasis by **bold** supplied]

The union's unfair labor practice complaint was filed shortly thereafter, on June 15, 1990. The complaint alleged that the employer had violated RCW 41.56.140(4) by the statement highlighted in the foregoing quotation from Lemly's May 25, 1990 letter. The remedies requested by the union included a bargaining order and the payment of attorney's fees.

On August 10, 1990, the union filed amendments to its unfair labor practice complaint. The union did not assert any new factual allegations, but argued additional interference violations against both employees and the union under RCW 41.56.140(1) and (2) were demonstrated by the following statement from Lemly's May 25, 1990 letter:

> ... the employer will not recognize Local 17 as a representative of these employees ...

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[8] Lemly had been listed as counsel of record for the employer in the Examiner's decision, but he had also represented the employer in bargaining and in correspondence with the union and employees. Two letters written by Lemly had formed the basis for finding unfair labor practice violations.

The union requested additional remedies, in the form of an order continuing the union's status as exclusive bargaining representative and an order imposing interest arbitration.

An answer filed by the employer on September 18, 1990 denied that its conduct had violated Chapter 41.56 RCW, and asserted several affirmative defenses. A hearing on the union's complaint and amended complaint was held before the undersigned Examiner on October 11, 1990.

POSITIONS OF THE PARTIES

The union argues that a bargaining obligation was imposed upon the employer by the Supreme Court's decision upholding the jurisdiction of the Commission over public utility districts, and by the Commission's 1989 decision holding that the employer had committed unfair labor practices during the contract negotiations between the parties in 1984. The union argues that Commission decisions are valid and effective upon issuance, absent the granting of a stay by a court, and that an employer cannot ignore those decisions because they are not "comfortable" with the ruling. The union emphasizes that the employer never requested a stay of the Commission's order, and that its petition for review had been dismissed by the court prior to the demand for bargaining at issue in this case. The union maintains that the employer's continuing illegal conduct warrants the imposition of extraordinary remedies, namely attorney's fees and interest arbitration.

The employer again argued in its answer here that the union lacked standing to seek an order requiring imposition of a bargaining relationship, because of the union's earlier disclaimer of the bargaining unit. The employer's answer contained a contention that the complaint was frivolous, because of the union's failure to seek enforcement of the Commission's previous unfair labor practice

order in the courts. The employer asserts that it had no obligation to bargain with the union until the Commission's previous bargaining order was enforced by a court. Additionally, the employer contended that the Commission's order remained interlocutory in nature and was unenforceable, so long as the employer's appeal from dismissal of its petition for review remained pending. The employer justifies its refusal to bargain with the union on the basis that it disagrees with the Commission's decision, and intends to somehow obtain judicial review of that order. The employer argues that the union is, in effect, asking the Commission to enforce its 1989 order without following the statutory enforcement procedures provided by Chapter 41.56 RCW. The employer maintains that Commission orders are not self-enforcing and that the provisions of RCW 41.56.190 are the only means available to enforce those orders. The employer maintains that the union's request for extraordinary remedies lacks merit, because the employer has never refused to comply with a judicially-enforced order of the Commission. The employer further opposes the imposition of interest arbitration under the premise that public utility districts are subject to federal substantive labor law, and that the National Labor Relations Act does not authorize mandatory interest arbitration. The employer argues that it should be awarded attorney's fees based on the union's pursuit of a frivolous case.

The union responds that it filed a new unfair labor practice complaint, as opposed to seeking enforcement of the Commission's bargaining order, on the grounds that the employer's actions since the Commission's decision show further evidence of its steadfast refusal to accept Commission jurisdiction over its affairs or to bargain with the union. The union argues that enforcement of the previous Commission order would have been inadequate, because that order did not contain all of the relief that is necessary to remedy the employer's repeated unfair labor practice violations.

DISCUSSION

Bargaining Obligations of the Employer

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, guarantees the right of public employees to organize and bargain collectively with their employers. The rights of public employees are stated in RCW 41.56.040, as follows:

> No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

The Legislature has defined certain types of conduct by public employers to be unfair labor practices, as follows:

> **RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> (2) To control, dominate or interfere with a bargaining representative;
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> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
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> (4) To refuse to engage in collective bargaining.

The authorization of public employers to bargain collectively, as well as the obligation of public employers to engage in collective bargaining negotiations with the representatives of their employees, is established by provisions of RCW 41.56.100:

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative ...

The failure of a public employer to fulfill this obligation can lead to finding an unfair labor practice under RCW 41.56.140(4).

The bargaining obligations of Public Utility District 1 of Clark County have been clearly stated on several occasions over the past few years. In 1988, the Supreme Court of Washington rejected the employer's challenge to the Commission's jurisdiction over public utility districts pursuant to Chapter 41.56 RCW.[9] In 1989, the employer's conduct during the 1984 contract negotiations with the union was found to have violated Chapter 41.56 RCW. Among the violations found was that the employer had coerced the union, by conditioning agreement and the cancellation of announced layoffs on the union withdrawing pending unfair labor practice charges. This led to a conclusion by the Examiner in that case that the "disclaimer" action taken by the union at that time was null and void. Thus, the Examiner found that the bargaining obligation continued to exist between the employer and Local 17.[10] That order was affirmed by the Commission on October 11, 1989.[11]

The Employer's Conduct During the Spring of 1990

Refusal to Bargain -

On March 23, 1990, after the employer's petition for review had been dismissed by the superior court, the union requested the employer to commence collective bargaining negotiations. The

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[9] 110 Wn.2d 114 (1988).

[10] Decision 2045-A, supra.

[11] Decision 2045-B, supra.

employer did not respond, and the union repeated its demand to bargain on April 20, 1990.

The employer responded on May 25, 1990, indicating that it was not prepared to begin negotiations. The reasons given were its displeasure with the Commission's previous decision, and the same "disclaimer" arguments which had been considered and rejected by both the Examiner and the Commission in the previous proceeding.

Employers and unions subject to the provisions of Chapter 41.56 RCW are required to bargain, upon request, unless a collective bargaining agreement is in effect between the parties. Mason County, Decision 3116-A (PECB, 1989). The parties' previous collective bargaining agreement expired on March 31, 1984, and no agreement was in effect when the union made its bargaining demands on March 23 and April 20, 1990. The employer did not effect a valid filing of a petition for review of the Commission's earlier decision, and its efforts to avoid that reality have been rejected by the courts at every level. Thus, a violation of RCW 41.56-.140(4) could be found in this case on the basis of the employer's clear refusal to commence negotiations communicated in Lemly's May 25, 1990 letter.

Refusal to Provide Information

An employer's duty to provide information to the exclusive bargaining representative of its employees was discussed in City of Seattle, Decision 3066 (PECB, 1988), at page 27, as follows:

> The duty to bargain collectively includes a duty on behalf of the employer to provide relevant information needed by a union for the proper performance of its duties as the employees' exclusive bargaining representative. [citations omitted]

Information on salary adjustments previously given to bargaining unit employees is clearly relevant to a union's collective bargaining responsibilities.

In this case, the union's bargaining demands made in March and April of 1990 also contained a request for information concerning all salary adjustments given to bargaining unit employees since August, 1984. Thus, the employer's conduct in refusing to provide this information could be found to violate the provisions of RCW 41.56.140(4).

Interference -
A "derivative" violation of RCW 41.56.140(1) generally occurs when any of the other subsections of RCW 41.56.140 is violated, because interference with union affairs, discrimination for filing charges or a refusal to bargain inherently interferes with the right of public employees to organize and bargain collectively under RCW 41.56.040. A "derivative" violation of RCW 41.56.140(1) thus could accompany the "refusal to bargain" violations detailed above.

The union has also alleged an independent "interference" violation. The standard for proving an interference infraction was set forth in City of Seattle, supra, at pages 8-9, as follows:

> An interference violation can be found if complainant shows that the employer's conduct could reasonably be perceived by employees as a threat of reprisal or force, or a promise of benefit, deterring them from the pursuit of lawful union activity. ... [citations omitted] The complainant is not required to make a showing of intent or motivation on behalf of the employer, nor is it necessary to show that employees were actually interfered with or coerced. ... [citations omitted] The key question in an interference violation is whether the employees could reasonably perceive the employer conduct to be attempting to interfere with their statutory rights pursuant to Chapter 41.56 RCW. [citation omitted]

The question before the Examiner in this case is, "How was the employer's conduct reasonably perceived by its employees?"

The employer's May 25, 1990 response to the union's demand for bargaining ignores any role for the union as the employees' exclusive bargaining representative. It would certainly be reasonable for employees made aware of this conduct to conclude that the employer was attempting to interfere with their statutory rights pursuant to Chapter 41.56 RCW. The missing link here is evidence that the employees were made aware of the employer's May 25, 1990 letter.[12] Thus, the Examiner concludes that an independent "interference" violation could not be found in this case.

Effectiveness of Commission Orders Upon Issuance

The Public Employment Relations Commission is an administrative agency of the state of Washington, and its decisions are subject to the Administrative Procedures Act. The Commission decision identified as Decision 2045-B was subject to judicial review under RCW 34.04.130,[13] as follows:

> (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form,

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[12] This is an important distinction between the facts of record here and those dealt with by the Examiner in the previous unfair labor practice case. In the earlier case, the employer itself had communicated its threats to the employees. The record fails to disclose that either the employer or union communicated with the employees in regards to the correspondence of March to May, 1990.

[13] The provisions of Chapter 34.04 RCW controlled the employer's appeal of the Commission's 1989 decision, because that case was initiated before the July 1, 1989 effective date of a new Administrative Procedures Act codified as Chapter 34.05 RCW. RCW 34.05.902 provides that agency proceedings begun before July 1, 1989 shall be completed under the applicable provisions of Chapter 34.04 RCW.

> is entitled to judicial review thereof ... and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. ...
>
> (2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court ... **The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency** and all parties of record. ...

In the absence of a petition for judicial review, the final decision of an administrative agency becomes res judicata on the matters involved, and is not subject to collateral attack in a subsequent proceeding.[14]

The employer maintains that, as Commission orders are not self-executing, it can ignore such rulings until they are enforced by a court in response to a petition filed by the Commission or any party to the Commission proceeding. The employer thus defended its refusal to bargain with the union until the Commission's 1989 decision was reviewed by a court pursuant to the employer's petition for review under Chapter 34.04 RCW, or was enforced under RCW 41.56.190.

In support of its position, the employer relies on a statement made by the United States Court of Appeals for the 7th Circuit in Seafarers International Union v. NLRB, as follows:

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[14] Res judicata is the legal rule that final judgments by a court (or administrative agency) of competent jurisdiction is conclusive of the rights of parties in all later suits on matters determined in the former case. Black's Law Dictionary, Revised Fourth Edition (1974).

> ... orders of the National Labor Relations Board are not self-executing. Employers and unions may thumb their noses at the Board's orders until a court enforces them. NLRB v. P*I*E Nationwide, Inc., 894 F.2d 887 (7th Cir. 1990).

895 F.2d 385 (7th Cir. 1990), at page 386.

The undersigned Examiner has traced the history of that statement, however, and is not persuaded by it.[15] The employer's argument

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[15] The National Labor Relations Board (NLRB) had issued an order in Seafarers. Both the employer and union had appealed to court, and the NLRB had filed a cross-petition to enforce its order. The employer sought dismissal of the union's appeal, arguing that it was not timely filed, but the court denied the employer's motion and ordered that the case proceed to briefing. The statement relied upon by the employer here appeared in the introductory paragraph of the decision, and was never analyzed or discussed in any detail by the court.

The Seafarers court attributed the cited statement to its previous decision in NLRB v. P*I*E Nationwide, Inc., 894 F.2d 887 (7th Cir. 1990), where an introductory paragraph at page 890 began:

> A remedial order issued by the Labor Board is not self-executing. The respondent can violate it with impunity until a court of appeals issues an order enforcing it. Olin Industries, Inc. v. NLRB, 72 F.Supp. 225, 229 (D.Mass. 1947).

That employer had fired an employee after learning that another company had reinstated him pursuant to a settlement of an NLRB unfair labor practice charge. In 1987, the NLRB found an unfair labor practice and ordered that the employee be reinstated. The employer reinstated the employee, but fired him again in 1988. Another unfair labor practice was found, but the NLRB sought enforcement of its 1987 order instead of proceeding with the latter case. The employer argued that it was inequitable for the Board to seek enforcement of that order while the Board had an independent unfair labor practice case in progress arising out of similar or related facts. The court agreed that it could take equitable considerations into account in deciding whether to enforce an NLRB order, but concluded that the employer had failed to prove any equitable defenses preventing enforcement of the NLRB's 1987 order. The court's statement concerning a respondent's conduct after the issuance of an order of

that it can "thumb its nose" at Commission orders until they are enforced by a court has been traced back to American Federation of Labor v. NLRB, 308 U.S. 401 (1940), where the court addressed the issue of whether a certification issued by the Board was an "order" made reviewable upon petition to the court of appeals. The court ruled that a certification can only be reviewed by a court in conjunction with the court's review of an unfair labor practice finding by the NLRB.[16] The court made no mention whatsoever of a principle that parties can ignore orders of the NLRB until they are enforced by a court.

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the Board was never analyzed by the court and was not determinative of any issue in the case.

The P*I*E court cited Olin Industries v. NLRB, 72 F. Supp. 225 (D.Mass. 1947) in support of the statement relied upon here by the employer. The employer in Olin had filed an action under the federal Administrative Procedure Act of 1946, to enjoin the NLRB from conducting hearings on representation proceedings until such time as proper rules of procedure were published in the Federal Register. The court denied the injunction, holding that the employer's rights were amply protected by the procedural provisions of the NLRA. The court also stated, at page 229:

> Upon application by the Board, the appropriate circuit court of appeals may, upon notice, with the entire record of the proceedings before it, enforce the order of the Board, and until the court has acted, the complainant can stand upon its asserted rights and with impunity refuse to comply with the Board's orders. American Federation of Labor v. NLRB, 308 U.S. 401 ...

As in the more recent cases, the statement was not central to the court's resolution of the issue at hand.

[16] The holding was based on sections 9(d) and 10(f) of the NLRA, which require an employer who believes that the NLRB has erred in a representation case to refuse to bargain and await enforcement action by the NLRB as its only avenue for judicial review of the representation case decision.

Further, even if the Supreme Court's 1940 decision concerning the terms of the NLRB has some ongoing validity under federal law, the Examiner notes that the procedure for review of representation case decisions under the NLRA is much different from the procedures available for review of the Commission's decisions under state law. Rulings by the Commission in representation cases can be appealed under the Administrative Procedures Act (APA) within thirty days after service of the Commission's decision. See, RCW 34.04.130(2) and RCW 34.05.510, et seq. The finality of Commission orders was emphasized in Lewis County v. PERC and WSCCCE, Local 1341C, 31 Wn.App. 853 (1982), where the employer was attempting to attack an earlier certification by the Commission as a defense to a pending unfair labor practice charge. The court held that a certification was a final agency order for purposes of judicial review under the provisions of RCW 34.04.130(1).[17] As the employer in Lewis County had failed to seek judicial review when the certification was issued, the court held that it was later estopped from attacking the certification in a different proceeding. The principle of the finality of Commission orders that have not been appealed was also adopted in Shelton School District, Decision 2084 (PECB, 1984) and Quillayute Valley School District, Decision 2809-A (PECB, 1988).

The employer's position that it can ignore Commission decisions is not supported by either federal or state precedent. RCW 41.56.160 authorizes the Commission to issue remedial orders in unfair labor practice proceedings, as follows:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders ...

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[17] See, also, Renton Education Ass'n v. PERC, 24 Wn.App. 476 (1979), review denied 93 Wn.2d 1025 (1980), and Clover Park Education Ass'n v. PERC and WFT, WPERR CD-68-1 (Division II, No. 3817-II, 1980).

The Commission is authorized by RCW 41.56.090 to adopt rules to carry out its mission, as follows:

> The commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations.

The Commission's rules concerning unfair labor practice violations are codified at Chapter 391-45 WAC, and the duties of an Examiner concerning unfair labor practice cases are specified as follows in WAC 391-45-310:

> After the close of the hearing and the filing of all briefs, the examiner shall make a decision containing findings of fact, conclusions of law and order. [emphasis added]

An Examiner's decision becomes the final order of the agency unless the case is brought before the Commission in a timely manner under the following provisions of WAC 391-45-350:

> The examiner's findings of fact, conclusions of law and order shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the examiner. [emphasis added]
>
> ...
> In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission. [emphasis supplied]

When a case is considered by the Commission, the order issued by the Commission under WAC 391-45-390 is certainly the "final order" of the administrative agency within the meaning of both the applicable and current statutes governing administrative procedure and judicial review.

Applying the foregoing principles to the case at hand, the employer and the undersigned Examiner are bound by the Commission's 1989 ruling that the employer committed unfair labor practices during the 1984 negotiations, that the purported "disclaimer" was null and void by reason of it having been coerced by the employer, and that the union remains the exclusive bargaining representative of the engineering personnel of Public Utility District 1 of Clark County.

Effect of Appeal on Commission Orders

The Administrative Procedures Act provided the employer a right to appeal from the Commission's 1989 decision. RCW 34.04.130. Apart from emphasizing the exclusivity of that procedure, the same statute clearly states the effect of an appeal on the agency order, as follows:

> (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof ... and **such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere** by a special statute or a statute of general application.
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> ...
>
> (3) **The filing of the petition shall not stay enforcement of the agency decision.** ... [emphasis by **bold** supplied]

The employer nevertheless attempts to defend its refusal to bargain in this case on the basis that it had an appeal of the Commission's 1989 decision pending at the time of Lemly's May 25, 1990 letter.

At the outset of the analysis of this argument, the Examiner notes that the facts undermine the employer's position. Even if the employer had some colorable claim of a valid judicial review pending (and therefore the possibility of moving for a stay of the Commission's decision), a defense built on that premise ceased to exist on January 12, 1990, when the Superior Court dismissed the employer's petition for judicial review based on the rather obvious defect in its service. Thereafter, the employer was no more than attempting to rehabilitate its defective attempt to use the only avenue of appeal allowed to it by the applicable Administrative Procedures Act, and it lacked a forum in which to even move for a stay of the Commission's decision.

A party's obligations under a Commission decision are not altered by collateral litigation between the parties. This principle was initially established by the Commission in Lewis County, Decision 556 (PECB, 1978).[18] Shortly after the union was certified as exclusive bargaining representative of the employees involved in that case, the employer filed an unfair labor practice complaint alleging that the union had refused to allow non-members to attend a union meeting. The complaint was dismissed by the Executive Director and that ruling was affirmed by the Commission.[19] The employer refused to bargain with the union while appealing the Commission's decision to court. The employer argued that it was excused from a bargaining obligation pending disposition of the

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[18] This ruling was affirmed in Lewis County, Decision 556-A (PECB, 1979).

[19] See, Lewis County, Decision 464 (PECB, 1978), and Lewis County, Decision 464-A (PECB, 1978).

court appeal from its unfair labor practice charge, but the Examiner rejected that position, stating:

> ... it is well settled that collateral litigation does not suspend the duty to bargain under Section 8(a)(5) of the National Labor Relations Act, which is the federal law parallel to RCW 41.56.140(4) ...

Lewis County, supra, at pages 2-3.

This principle was reaffirmed by the Commission in Mason County, Decision 3116 (PECB, 1989), where the Examiner had held:

> ... it is an unlawful repudiation of the bargaining obligation for an employer to refuse to bargain with a union during the pendency of administrative or judicial proceedings to review a determination that the employer has engaged in an unfair labor practice.

Mason County, supra, at page 11.

The Examiner's ruling was affirmed by the Commission.[20] The Commission rulings on this issue are consistent with those of the NLRB. In Hamilton Electronics Company, 203 NLRB 206 (1973), the Board held that the duty to bargain is not obliterated or stayed pending an appeal of the Board's order in the court of appeals.[21]

It is clear that Commission decisions are not automatically stayed upon the filing of a petition for judicial review. RCW 34.04.130-(3). This parallels the status of orders issued by the NLRB, as Section 10(g) of the NLRA also provides that the filing of a petition for review with a court does not operate as a stay of the Board's order, unless specifically ordered by the court.

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[20] See, Mason County, Decision 3116-A (PECB, 1989).

[21] See, also, Old King Cole v. NLRB, 260 F.2d 530 (6th Cir. 1958).

The Commission's 1989 decision was not, in fact, stayed by an order of any court. The employer's petition for review was not perfected in a timely fashion, and its efforts to avoid that reality have been rejected by the courts at every level.[22] The issues resolved by the Commission in 1989 cannot be relitigated in the instant matter. The employer had an obligation to bargain with the union as of the Commission's order of October 11, 1989, and it has not been overturned or stayed by a higher authority. It remains a final and presently effective order of the Commission.

Is this an Enforcement Proceeding?

A petition to enforce a remedial order issued by the Commission can be filed pursuant to provisions of RCW 41.56.190, as follows:

> The commission, or any party to the commission proceedings, thirty days after the commission has entered its findings of fact, shall have power to petition the superior court of the state ... for the enforcement of such order and for appropriate temporary relief or restraining order ... Upon such filing, the court ... shall have jurisdiction of the proceeding and of the question determined therein, and shall have power ... to make ... a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission.

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[22] The dismissal of the employer's appeal at each level of the court system was consistent with both Commission and court precedents concerning the timeliness of petitions for review. The Commission has ruled that both the filing and service of a petition for review are jurisdictional requirements. See, Federal Way Water and Sewer District, Decision 3228-A (PECB, 1990). The Supreme Court recently ruled that a superior court does not obtain jurisdiction over an appeal from an agency decision unless the appealing party serves all of the parties to the action in a timely fashion. See, City of Seattle v. PERC, 116 Wn.2d __ (May 16, 1991).

Enforcement actions are filed with the superior court, and not through a new unfair labor practice complaint with the Commission.

Citing PERC v. Kennewick, 99 Wn.2d 832 (1983), the employer argues that enforcement cannot lawfully be granted without a court reviewing the propriety of the underlying unfair labor practice findings. As the union has not invoked the provisions of RCW 41.56.190, it is unnecessary for the undersigned Examiner to decide whether enforcement of the Commission's order should be granted.

In this case, the employer contends that the union is seeking to achieve an "enforcement" of the Commission's 1989 decision by means of a new unfair labor practice case. The arguments of the parties on this issue are quite similar to those that were articulated by the parties in Mason County, Decision 3116, supra. The union in that case had filed an unfair labor practice complaint in 1985, alleging that the employer had violated RCW 41.56.140(4) and (1), by repudiating its previous ratification of a collective bargaining agreement. An Examiner's decision upheld the union's allegations and the Commission affirmed.[23] The employer appealed to court. The union requested bargaining for the 1985-86 time period in 1987, while that appeal remained pending, and the employer refused to bargain. Shortly thereafter, the Superior Court of Mason County overruled the Commission's decision and the union appealed the case to the Court of Appeals. While that appeal was pending, the union filed a new unfair labor practice complaint alleging that the employer had refused to engage in collective bargaining. The employer took the position that, based on the superior court's ruling, it had no obligation to bargain for the 1985-86 period, and that the union was barred by the doctrine of res judicata from attempting to re-raise issues that had been disposed of in its earlier unfair labor practice case. The Examiner and Commission

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[23] See, Mason County, Decision 2307 (PECB, 1985), and Mason County, Decision 2307-A (PECB, 1986).

both rejected the employer's position in the second case, holding that the union's complaint was based on events that took place in 1987, and thus was based on conduct different than that at issue in the union's 1985 unfair labor practice complaint.[24]

An unfair labor practice complaint is required to contain a statement of facts, in accordance with the following provisions of WAC 391-45-050:

> Each complaint shall contain, in separate numbered paragraphs:
>
> ...
>
> (3) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

While the union's complaint in this case makes reference to the employer's obligations under the Commission's 1989 decision, the operative factual allegations of the complaint concern only the actions of the employer during March, April and May of 1990. The employer's attempt to characterize this case as an attempt by the union to enforce the Commission's 1989 bargaining order does not fit the facts. The union's complaint does not concern enforcement of the Commission's 1989 bargaining order. The events at issue in this instant complaint are those that occurred during the spring of 1990. The Examiner will not deal here with bargaining for the period from the February 24, 1989 date set in the earlier decisions up to the March 23, 1990 bargaining demand at issue in this case, nor will the Examiner deal with the question of whether the notice to employees called for by the previous order was ever posted. This case is confined to the refusal to bargain and refusal to provide information which occurred on and after March 23, 1990.

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[24] See, Mason County, Decisions 3116, 3116-A (PECB, 1989).

Extraordinary Remedies

As the employer's defenses to the complaint have not been substantiated, the Examiner turns to the question of how to remedy the employer's unfair labor practices.

Attorney fees -

The standard utilized by the Commission for determining whether attorney's fees should be awarded to a successful complainant originated in Lewis County, Decision 644-A (PECB, 1979), affirmed 31 Wn.App. 853 (1982).[25] The Lewis County decision cited, with approval, the holding of State ex. rel. Washington Federation of State Employees v. Board of Trustees, 93 Wn.2d 60 (1980), where the Supreme Court held that RCW 41.56.160 was broad enough to permit a remedial order containing an award of attorney's fees in an action filed with the Higher Education Personnel Board. The court noted that allowance of attorney's fees should be reserved for cases in which a defense to the unfair labor practice charge can be characterized as frivolous or meritless. The court defined the term "meritless" as meaning groundless or without foundation. As explained by the Commission in City of Kelso, Decision 2633-A (PECB, 1988),[26] an award of attorney's fees is appropriate under the following circumstances:

> 1) such an award is necessary to make the Commission's order effective; and
> 2) the defense to the unfair labor practice charge is frivolous; or

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[25] Review denied, 97 Wn.2d 1034 (1982).

[26] Affirmed in part and reversed in part, 57 Wn.App. 721 (1990). The court remanded the award of attorney's fees issue to the superior court. Review of the Court of Appeals decision was denied by the Supreme Court. See, 115 Wn.2d 1010 (1990).

> 3) there is pattern of conduct evidencing a patent disregard for the duty to bargain in good faith.

City of Kelso, supra, at page 29 [emphasis in original].

Commission orders awarding attorney's fees have generally been based on a repetitive pattern of illegal conduct or on willful acts by the respondent. In King County, Decision 3178-B (PECB, 1990), a respondent who had purposefully misread certain Commission practices and precedent was ordered to pay attorney's fees. In City of Seattle, Decision 3593 (PECB, 1990), the Examiner noted that the employer had intentionally and repetitively ignored previous Commission decisions finding it guilty of violations involving the right of employees to union representation, and ordered the employer to pay the complainant's attorney's fees.[27]

The Examiner does not find the Rules of Appellate Procedure (RAP) or the holding of Streater v. White, 26 Wn.App. 430 (Division I, 1980), to be applicable here. RAP 18.9(a) governs proceedings in the Court of Appeals or Supreme Court for review of a trial court decision. The rule permits the appellate court, on its own initiative, to impose attorney's fees on a party who uses the rules for the purpose of delay. Applying a five-part test, the Streater court concluded that the matter before it was essentially a factual appeal and that, as it was constitutionally prohibited from substituting its judgment for that of the trial court in factual matters, the appeal before it was brought for the purpose of delay. The Streater holding was cited by the Court Commissioner in the Court of Appeals in rejecting the union's request for attorney's fees on the employer's defective petition for judicial review. The Court Commissioner held that, although the appeal was clearly without merit, it was not frivolous or brought clearly for the

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[27] The case is currently pending before the Commission on review.

purpose of delay. The case before the Examiner is limited to the employer's conduct in March, April and May of 1990.

This employer has previously ignored its bargaining obligations pursuant to Chapter 41.56 RCW. After the Supreme Court affirmed the Commission's jurisdiction over public utility districts, an Examiner and the Commission ordered the employer to commence collective bargaining negotiations with the union. Although the employer's attempts to review the Commission's ruling have been rejected by three levels of courts, including the Washington Supreme Court, the employer continues to refuse to bargain with the union. The Commission's bargaining order has been effective since it was entered on October 11, 1989. The employer has not even attempted to seek a stay of that order. The employer has now ignored the Commission ruling for a period of over 20 months. The employer's conduct evidences a pattern of repetitive conduct indicating its unwillingness to follow state collective bargaining laws. The Examiner finds that an award of attorney's fees is necessary to make the order in this matter effective.[28]

Interest Arbitration -

The Commission has ordered "interest arbitration" as a remedy for unfair labor practices. METRO, Decision 2845 (PECB, 1988), involved a long history of conflict and repeated attempts by the employer to avoid bargaining obligations.[29] The Examiner in that

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[28] The employer's request for attorney's fees is ludicrous. But for the employer's continuing violations of state law, the union would not have been required to expend its monies to enjoy its collective bargaining rights that are guaranteed by Chapter 41.56 RCW.

[29] In 1984, METRO and the City of Seattle entered into an intergovernmental agreement to transfer certain "commuter pool" employees to METRO, with METRO succeeding to the city's obligations under a collective bargaining agreement with Local 17. After transfer of the employees, however, METRO refused to recognize Local 17 as their exclusive bargaining representative and filed a unit

case described the employer's arguments as frivolous, noting that METRO had evaded its bargaining obligations for a period of six years, and that not even the extraordinary remedy of attorney's fees ordered by the Superior Court had been sufficient to cause the employer to comply with the law. The Examiner concluded that the broad remedial authority granted to the Commission by RCW 41.56.160 included the power to impose interest arbitration, and he ordered that either party could invoke interest arbitration if no agreement was reached through bilateral negotiations within 60 days after Local 17 requested to bargain under the remedial order. The Examiner concluded that given the history of the parties and the indicated willingness of the employer to continue its pursuit of tactics designed to frustrate the bargaining process, the imposition of interest arbitration would be truly remedial to assure that the parties would achieve an initial collective bargaining agreement. The Commission affirmed the Examiner's ruling, holding that interest arbitration was proper in that matter because of the

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clarification petition with the Commission, seeking to add the employees to an existing bargaining unit of its transit employees represented by another organization. Local 17 filed suit against METRO in the superior court, seeking to enforce the employer's recognition of the union under the intergovernmental agreement, and it filed unfair labor practice charges with the Commission against METRO. In 1986, the Executive Director and Commission ruled that Local 17 continued to be the exclusive bargaining representative for the commuter pool employees. METRO, Decisions 2358, 2358-A (PECB, 1986). An Examiner held a hearing on the union's unfair labor practice charges while METRO appealed the Commission's decision to court. In 1987, the Superior Court of King County affirmed the Commission's unit clarification holding and also ruled in favor of Local 17 in its lawsuit against METRO, holding that the employer had acted in bad faith. The court ordered METRO to recognize Local 17 as the employees' exclusive bargaining representative and to pay the union's attorney's fees. METRO nevertheless filed new representation and unit clarification petitions seeking to challenge the union's status. In 1988, an Examiner ruled on Local 17's unfair labor practice charges against METRO.

employer's repeated efforts to subvert the bargaining process.[30] The Commission noted that imposition of interest arbitration was appropriate only in those cases where there is a showing of frivolity and/or recalcitrance on the part of the unfair labor practice violator. The Commission's order was affirmed by the superior court. On January 14, 1991, the Washington Court of Appeals affirmed the Commission's ruling concerning return of the commuter pool program to its status as of August 4, 1987, but reversed the portion of the Commission's order imposing interest arbitration.[31] The court held that the Commission had no implied power under RCW 41.56.160 to order such a remedy. A petition for review of this ruling was recently granted by the Supreme Court of Washington on April 2, 1991.[32]

The employer in the instant case has evaded its duty to bargain for seven years and has evidenced an arrogant attitude towards the statutes governing administrative procedure, the courts, the Commission, and the whole system of collective bargaining. The foremost example of this attitude is the employer's failure to even recognize the union as the employee's exclusive bargaining representative. The employer's position, grounded on its belief that the union disclaimed interest in the bargaining unit, has been rejected by the Commission, yet is argued again here in what seems to be a never-ending effort to keep open a chapter of this litigation that has been closed because of its failure to properly serve a petition for judicial review of the Commission's earlier decision. There is some basis to infer that the employer would continue with the course of resistance it has historically set unless something is done to change that direction.

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[30] See, METRO, Decision 2845-A (PECB, 1988).

[31] See, Metropolitan Seattle v. PERC, 60 Wn.App. 232 (1991).

[32] See, 116 Wn.2d 1017 (1991).

Apart from the cloud placed over the interest arbitration remedy by the decision of the Court of Appeals in METRO, supra, the employer argues here that public utility districts are subject to federal substantive labor law, and that the National Labor Relations Act does not authorize the imposition of interest arbitration. The employer's arguments are founded upon the following provisions of Chapter 54.04 RCW:

> **54.04.170 Collective bargaining authorized for employees.** Employees of public utility districts are hereby authorized and entitled to enter into collective bargaining relations with their employers with all the rights and privileges incident thereto as are accorded to similar employees in private industry.
>
> **54.04.180 Collective bargaining authorized for districts.** Any public utility district may enter into collective bargaining relations with its employees in the same manner that a private employer might do and may agree to be bound by the result of such collective bargaining.

The Supreme Court's 1988 decision concerning the jurisdiction of the Commission over public utility districts involved the interface of those provisions adopted in 1963 with the provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, adopted in 1967 and amended from time to time thereafter. Interpreting RCW 41.56.020, the Court held that Chapter 41.56 RCW applies to public utility districts, except where that statute conflicts with the statutes expressly referred to in RCW 41.56.020, such as RCW 54.04.170 and .180.

The Examiner's decision issued in 1989 concerning this employer discussed the effect of the Supreme Court's ruling on the Commission's handling of cases involving public utility districts. While the Commission normally considers decisions of the NLRB as

influential on its interpretations of state law,[33] the Examiner concluded that the afore-referenced statutes require a closer adherence to NLRB decisions in cases involving public utility districts. The Examiner stated as follows:

> Adjudication of public utility district labor relations matters must take into account the clear legislative directive to compare public utility districts and their employees with their private sector counterparts.
>
> ...
>
> As a practical matter, this means that disputes arising in public utility district collective bargaining must be adjudicated within the framework of decisions rendered by the NLRB.

Public Utility District 1 of Clark County, Decision 2045-A, supra, at page 14.

The Examiner's conclusions reflect similar opinions voiced by the courts in Electrical Workers v. Grays Harbor PUD, 40 Wn.App. 61, 63 (1985), and Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1984).

Whether interest arbitration should be imposed on the employer is a "close question". The Examiner and Commission in their 1989 orders denied this same union's request for interest arbitration, but the employer's continuing violations of state collective bargaining laws over the interim period of time must be considered. On the other hand, a question as to the Commission's authority to impose interest arbitration as a remedy is currently pending before the Supreme Court. The employer's arguments concerning lack of authority by the NLRB in this area should be considered, but the

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[33] RCW 41.59.110(2) states:

> The rules, precedents, and practices of the national labor relations board, provided they are consistent with this chapter, shall be considered by the commission in its interpretation of this chapter ...

employer failed to provide any case citations to support its argument in this regard and the union also failed to adequately address this important issue.

The Examiner is not imposing interest arbitration at this time. If the employer fails to adhere to the remedies imposed by this decision, its continued recalcitrance will bring this case exceedingly close to the facts found significant by the Examiner and Commission in METRO, supra. Thus, the Commission may have an opportunity to consider these questions again at a later time, depending on the employer's response to this decision.

FINDINGS OF FACT

1. Public Utility District 1 of Clark County is a public employer within the meaning of RCW 41.56.030(1).

2. International Federation of Professional and Technical Engineers, Local 17, is the exclusive bargaining representative of an appropriate bargaining unit of engineering employees of the employer within the meaning of RCW 41.56.030(3).

3. The employer and union were signatories to a collective bargaining agreement covering the period of April 1, 1983 through March 31, 1984.

4. On February 24, 1989, an Examiner ruled that the employer had violated RCW 41.56.140(1) and (4) by its conduct during 1984 contract negotiations with the union. The Examiner held that a purported "disclaimer" by the union was null and void by reason of it having been coerced by the employer, and that the union remained the exclusive bargaining representative of the engineering employees.

5. On October 11, 1989, the Examiner's ruling was affirmed by the Commission.

6. The employer failed to file a timely petition for review of the Commission's decision in superior court. The court dismissed the petition on January 12, 1990, holding that the employer failed to serve its petition on the Commission within 30 days after the Commission's decision, as required by RCW 34.04.130(2). Further appeals by the employer were dismissed by the Court Commissioner for the Washington Court of Appeals on August 3, 1990, the Court of Appeals on October 25, 1990, and the Supreme Court of the State of Washington on March 7, 1991.

7. On March 23, 1990, Bill Kalibak, union representative, requested that the employer commence collective bargaining negotiations. The union also requested a list of all salary adjustments given to bargaining unit members since August, 1984. The union sent a follow-up letter to the employer on April 20, 1990.

8. On April 24, 1990, W. Bruce Bosch, general manager and chief executive officer for the employer, referred the union's bargaining demand to legal counsel.

9. On May 7, 1990, the union wrote to the employer's in-house counsel and to Thomas A. Lemly, of Davis Wright Tremaine, requesting a reply to its bargaining demands.

10. On May 25, 1990, Lemly responded to the union's bargaining demands with the following statements:

> ... Clark Public Utilities is not comfortable with the Commission's decision in this case, and is not prepared to commence collective bargaining at this time. Local 17 has disavowed interest in the bargaining unit of engineers at the Utility, and the employer will not recognize Local 17 as a representative of these employees without proof that the employees actually desire your representation.

11. On June 15, 1990, the union filed the instant unfair labor practice complaint, alleging that the employer had violated RCW 41.56.140(4). The union requested remedies of a bargaining order and an award of attorney's fees.

12. On August 10, 1990, the union filed amendments to its complaint. While no new factual allegations were asserted, the union argued that the employer's May 25, 1990 reply also violated RCW 41.56.140(1) and (2). The union sought the additional remedies of an order continuing the union's status as bargaining representative and an order imposing interest arbitration.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW, Chapter 54.04 RCW, and Chapter 391-45 WAC.

2. Public Utility District 1 of Clark County has refused to bargain collectively in good faith with International Federation of Professional and Technical Engineers, Local 17, by rejecting Local 17's demand to bargain when there was no collective bargaining agreement in effect between the parties and by refusing to provide Local 17 with information on salary adjustments given to bargaining unit employees since August,

1984, and so has committed unfair labor practices within the meaning of RCW 41.56.140(4) and (1).

ORDER

Public Utility District 1 of Clark County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to bargain collectively in good faith with International Federation of Professional and Technical Engineers, Local 17, concerning the wages, hours and working conditions for its engineering employees represented by the union.

   b. Refusing to provide relevant information needed by International Federation of Professional and Technical Engineers, Local 17 to perform its duties as exclusive bargaining representative, including information on salary adjustments given to bargaining unit employees since August, 1984.

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

2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes and policies of RCW 54.04.170 and Chapter 41.56 RCW:

a. Upon request, bargain collectively in good faith with International Federation of Professional and Technical Engineers, Local 17, concerning the wages, hours and working conditions for its engineering employees represented by the union.

b. Reimburse International Federation of Professional and Technical Engineers, Local 17, for its reasonable attorney's fees and other costs associated with the prosecution of this unfair labor practice case, upon presentation of a sworn and itemized statement of such costs and fees.

c. 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.

d. 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.

e. 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 22nd day of July, 1991.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

MARK S. DOWNING
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 ON A COMPLAINT CHARGING UNFAIR LABOR PRACTICES. 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 EMPLOYEES:

WE WILL, upon request, bargain collectively in good faith with International Federation of Professional and Technical Engineers, Local 17, concerning the wages, hours and working conditions for our engineering employees represented by the union.

WE WILL reimburse International Federation of Professional and Technical Engineers, Local 17, for its reasonable attorney's fees and other costs associated with the prosecution of this unfair labor practice case, upon presentation of a sworn and itemized statement of such costs and fees.

WE WILL NOT refuse to bargain collectively in good faith with the International Federation of Professional and Technical Engineers, Local 17, concerning the wages, hours and working conditions for our engineering employees represented by the union.

WE WILL NOT refuse to provide relevant information needed by International Federation of Professional and Technical Engineers, Local 17 to perform its duties as exclusive bargaining representative, including information on salary adjustments given to bargaining unit employees since August, 1984.

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: _____

PUBLIC UTILITY DISTRICT 1 OF CLARK 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.