STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF NORTH FRANKLIN / PSE, Complainant, vs. NORTH FRANKLIN SCHOOL DISTRICT, Respondent.	)	CASE 8854-U-90-1941 DECISION 3980 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

Jeffrey J. Thimsen, Attorney at Law, appeared on behalf of the respondent.

On October 23, 1990, Public School Employees of North Franklin, an affiliate of Public School Employees of Washington (PSE), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the North Franklin School District had violated RCW 41.56.140(4). A hearing was held at Pasco, Washington, on April 18, 1991, before Examiner Jack T. Cowan. The parties submitted post-hearing briefs.

BACKGROUND

North Franklin School District provides educational services for kindergarten through 12th grade students in a portion of Franklin County. The administration office, high school, junior high school, and an elementary school are located at Connell, Washington. Other elementary schools are located at Mesa and Basin City, Washington. The schools are operated under the direction of an elected board of directors and the superintendent of schools.

Public School Employees of North Franklin is the exclusive bargaining representative of a bargaining unit of classified employees who provide transportation, custodial, maintenance, instructional aide, secretarial, and food services for the North Franklin School District.

The collective bargaining relationship between the employer and the union pre-dates the events involved in this case. The employer and PSE were parties to a collective bargaining agreement for the period from September 1, 1988 to August 31, 1991.

As an adjunct to its educational program, the employer offers meals for students.[1] Based on an "ability to pay" formula administered by the school district, qualifying students are provided meals at a reduced price or at no cost.

For an unspecified period of time, the employer had an employee in a "food service clerk" position that was included in the bargaining unit represented by the union. From 1985 to 1989, that position was filled by Cindy Dillon. It was Dillon's job to maintain food service inventory records; check supplies in and out; order goods and services; record the number of meals served; prepare cost analysis regarding costs per meal and related data; pick up, record and deposit cash receipts; prepare and submit reports and reimbursement claims to appropriate government agencies; prepare and submit monthly bills to parents or other responsible parties for student meal costs; screen student applications to determine eligibility for free or reduced price meals, and maintain an ongoing eligibility roster; ensure that each meal service location had a system to accurately record meal distribution; and respond to inquiries regarding the food service program and billings.

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[1] In additional to the traditional "school lunch", the employer embarked, at some undisclosed time prior to September, 1990, on a student breakfast program. It is administered in the same manner as the lunch program.

During 1988 and 1989, the duties of the food service clerk position went through a transition, converting from manual to computerized recordkeeping and billing. During this period, Dillon spent the majority of her work time on the new computer and billing system.

Initial keypunch duties took more time than was projected. At some point during the transition period,[2] the employer created a new position, titled "keypunch/clerk - food services", to assist the food services clerk in the performance of her duties. The job description for that position stated:

> GENERAL DESCRIPTION
>
> Provide direct clerical support to the Food Services Department. Refer to daily student lunch activity reports from each school as source documents for data entry. Assist in compilation of each students' statement of account, to be mailed each month.
>
> DUTIES AND RESPONSIBILITIES:
>
> 1) Keypunch daily student lunch activity for each school in the Accounts Receivable accounting system.
>
> 2) Assist in posting, sorting and distributing statement of student accounts on a monthly basis.
>
> 3) Provide general clerical assistance as directed.

The part-time position was filled for approximately four months, and was included in the bargaining unit.

The employer was unable to locate a commercially published program that would provide it with the performance that it desired, and was dissatisfied with the initial results of the effort to computerize the recordkeeping for its food services program. In either 1988 or

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[2] The record does not reflect the exact period of time that the position was filled. Dillon testified that the part-time clerk was employed in either 1988 or 1989.

1989, the employer took steps to hire a data processing consultant, Chuck Wooding, to introduce equipment and programs that would better serve the employer's needs.[3] Wooding recommended computer hardware, and he designed software for the employer's exclusive use that provided an accounting and billing system for the food service program. Wooding taught Dillon how to operate the equipment and programs, including input of data, extracting data, and distributing computerized billing statements.

Wooding maintained an on-going consultant relationship with the employer, frequently updating the computer programs to better serve the employer's needs. There was a period of time when Wooding was updating the system monthly, and was visiting the employer's offices weekly, to ensure that the data sought by the employer was being processed, and that the computer system was operating as intended.

In June of 1989, Dillon applied for a transfer to a secretary position at the employer's high school. Concurrently, the employer requested a meeting with the union.

Later in the month of June, 1989, Superintendent Dale Clark and Business Manager Dave Curry met with local union President Karen Crawford and Vice-President Barbara Krause.[4] The employer notified the union that it was willing to grant Dillon's transfer request, but also stated that it desired to simultaneously eliminate the food services clerk position. The employer proposed to distribute the work of that position to the other employees in the administration office. The employees in the school district's administrative

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[3] Wooding is associated with an enterprise called "Delta/Soft", which is located in Basin City, Washington. That firm describes itself as a "custom software and consulting" business.

[4] PSE local union chapter officers are elected from the ranks of members employed in the bargaining unit.

office are included in the bargaining unit, and the union had no objection to the re-assignment of the work proposed by the employer. Thereafter, Dillon was transferred to the position that she had requested, and the food service clerk position was eliminated.

While attending a school district board of director's meeting in September of 1990,[5] local union President Crawford observed the board adopting a formal contract with Delta/Soft, calling for Wooding to perform administrative and financial services for the employer's Food Services Department. That contract stated:

> **NORTH FRANKLIN SCHOOL DISTRICT**
> **FOOD SERVICE ADMINISTRATIVE SERVICES AGREEMENT**
>
> This agreement entered into this ___ day of _____, 19__ between the North Franklin School District (herein referred to as the District) and Delta/Soft (herein referred to as Consultant) for the purpose of contracting with Delta/Soft to perform administrative and financial services for the Food Services Department of the North Franklin School District.
>
> The Consultant agrees to perform the services described herein for the period of September 1, 19__ through August 31, 19__ in consideration of a monthly payment calculated as follows:
>
> SPI Form 398 - Line 19 times 8.5 cents plus $25.00 if filed by the 10th of the month.
>
> Minimum monthly payment $1200.00
>
> The following conditions and stipulations govern the performance of the Consultant in its conduct of the agreed functions, duties and responsibilities to adequately render the services necessary to meet the administrative needs of the Food Services Department.
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> FUNCTION: The primary function of the Consultant is to; 1) establish, provide and operate the software necessary to maintain an accounts

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[5] The record does not reflect the exact date of the school board meeting.

receivable system to record breakfast and lunch sales throughout the District resulting in and the delivery of a monthly billing to all customers, and 2) comply with any and all of the reporting requirements set forth by Federal, State, or local entities.

DUTIES:

- Receive, approve and maintain a file of all applications for free and reduced price breakfasts and lunches.

- Establish individuals accounts to identify each customer by name, location and whether priced free, reduced or full and monitor the status of each customer based on their eligibility status as free, reduced or full price.

- Establish a system at each school or location to accurately record each breakfast or lunch sale for the purposes of entering said sales on the accounts of the customers and reporting the same to the Superintendent of Public Instruction in accordance with the "AccuClaim" requirements.

- Provide a monthly sales report for all deferred sales indicating the total breakfast and lunches sold in the categories of free, reduced or full price at each location respectively.

- Interact with each school location and customers to insure the integrity and accuracy of account information informing all concerned with and where they may contact Consultant with account inquiries.

- Provide the Business Manager with an updated alphabetical list of free and reduced students, by location, due no later than the 5th of each month. (This information should be available in detail for each account if requested.)

RESPONSIBILITIES:

- Complete the monthly billing process insuring that statements to customers are in the mail no later than 10 working days after the monthly cut-off date.

- Develop and post office hours for the public and other staff needing to relate that information to customers.

> - Insure that the schools have the lists or other systems necessary for the daily recording of students accepting a meal.
>
> TERMINATIONS
>
> - This contract shall remain in effect year to year unless either party gives notice by June 30th of any given year to terminate by August 31st of the same year.
>
> The District reserves the right to cancel this contract with 90 days notice in the event that the Consultant fails to perform to the conditions and stipulations of the contract or if there is an inordinate amount of customer dissatisfaction with the billing services.

Crawford did not question the school board or the superintendent regarding the contract at the meeting, and the union did not request collective bargaining with the employer regarding the matter.

On October 23, 1990, the union filed the instant unfair labor practice charge against the employer.

POSITIONS OF THE PARTIES

The union claims that the employer hired an outside consultant, without advance notice, to perform work historically performed by members of the bargaining unit. It is the union's position that the employer's alleged unilateral conduct is tantamount to an unlawful refusal to bargain. According to the union, it was faced with a fait accompli which relieved it of its obligation to request bargaining regarding the matter. As a remedy, the union proposes that the employer be directed to submit both the decision to contract out bargaining unit work and the effects of such decision to collective bargaining, and that the employer be directed to make the bargaining unit whole for the loss of income resulting from the contracting out of bargaining unit work.

The employer acknowledged that the consultant performs about 25% of the duties formerly performed by the food services clerk, and that the execution of the contract with the consultant in September of 1990 merely formalized a business relationship that had been in place for about one year. According to the employer, however, it notified the union both of its intention to pass the duties of the food service clerk position to other employees in the administration office, and of its intention to utilize, to some degree, the services of a computer consultant. It contends that the union expressed no objection to its plan. The employer denies that the union was faced with a fait accompli, and it argues that the union waived its rights by failing to request bargaining. The employer also contends that the complaint was untimely.

DISCUSSION

The Legal Standards to Be Applied

The Duty to Bargain -

These parties have a bargaining relationship under the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. The duty to bargain is defined in RCW 41.56.030(4), as follows:

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, 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.

It is well settled that an employer is obligated to maintain the status quo on all wages, hours, and conditions of employment of its organized employees, except where changes are made in conformity with the collective bargaining process.

An employer cannot implement "unilateral" changes of mandatory bargaining subjects, unless it has given notice of the proposed change to the exclusive bargaining representative of its employees, and has provided that union with an opportunity to bargain regarding the proposed change. Where the exclusive bargaining representative makes a timely request for bargaining, the employer must also bargain in good faith to either an agreement or an impasse. Lewis County, Decision 3418 (PECB, 1990); Pierce County, Decision 1710 (PECB, 1983).

Fait Accompli -
In labor relations usage, a fait accompli describes an unannounced, unilateral change involving a mandatory subject of bargaining. A union confronted with such a change is not obligated to go through the useless act of requesting bargaining, or to bargain from the disadvantaged position of having the unilateral change already in effect. City of Seattle, Decision 2746 (PECB, 1989); City of Tukwila, Decision 2434-A (PECB, 1987). An employer who presents a union with a change of a mandatory subject as a fait accompli commits an unfair labor practice. City of Seattle, Decision 3654 (PECB, 1990).

Waiver of Statutory Bargaining Rights -
A union may waive its statutory bargaining rights by inaction. Such waivers are found where, after having been given adequate notice of a proposed change on a mandatory subject of collective bargaining, the union fails to make a timely request for bargaining on the subject. Newport School District, Decision 2153 (PECB, 1985); City of Pasco, supra.

Mandatory Subject of Bargaining -

Consistent with precedents under the National Labor Relations Act (NLRA),[6] the Public Employment Relations Commission has repeatedly held that an employer's decision to transfer work historically performed by bargaining unit employees to persons outside of the bargaining unit is a mandatory subject of collective bargaining. It matters not whether the work is being "skimmed" (i.e., to be performed by other personnel of the same employer, as in South Kitsap School District, Decision 472 (PECB, 1978) and Spokane County Fire District 9, Decision 3482-A (PECB, 1991)), or is being "contracted out" (i.e., to be performed by the personnel of another entity as in City of Pasco, Decision 2603 (PECB, 1987) and City of Kelso, Decision 2120-A (PECB, 1985)). The duty to bargain arises from the infringement on the union's work jurisdiction.

The Burden of Proof -

The complainant has the burden of proof in an unfair labor practice case. WAC 391-45-270. Where a "unilateral change" is alleged, the complainant initially has the burden of establishing that there was a decision or effect giving rise to the duty to bargain. Spokane County Fire District 9, Decision 3661-A (PECB, 1991). The burden to establish affirmative defenses to an unfair labor practice complaint lies with the party asserting the defense. Conditions where an employer, having given adequate notice, may lawfully make changes of mandatory subjects were described in Lewis County, Decision 3418 (PECB, 1990), as follows:

> (1) There has been a waiver by inaction by the union after being given due notice of the proposed change; (2) there has been good faith bargaining to an "impasse"; or (3) the employer has established that there is some "business necessity" to make an immediate change. These are all "affirmative defenses", where the burden of proof is upon the employer to show the circumstances that excused it from

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[6] See, Fibreboard Paper Products, 379 U.S. 203 (1964).

> the duty to maintain the status quo. City of Sumner, Decision 1839, 1839-A (PECB, 1984). [footnotes omitted]

The burden of proof may thus shift from one party to the other during the processing of a case.

Statute of Limitations -

RCW 41.56.160 contains a six-month "statute of limitations" on the filing of unfair labor practice complaints. Again consistent with federal precedent interpreting the similar provision of the NLRA,[7] the Commission has interpreted that as a period of time which commences when the affected employees knew or reasonably should have known of the decision or conduct that is allegedly offensive. Port of Seattle, Decision 2796-A (PECB, 1984); Emergency Dispatch Center, Decision 3255-B, 3522 (PECB, 1990).

Application of the Legal Standards

The June, 1989 Meeting -

There is no dispute that the employer proposed to re-distribute the work of the "food services clerk" position to other bargaining unit employees in the administration office. That action may have given rise to a duty to bargain under City of Hoquiam, Decision 745

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[7] See, U.S. Postal Service, 271 NLRB 397 (1984). In Plymouth Locomotive Works, Inc., 261 NLRB 595 (1982), the NLRB stated:

> It is well settled that the 6 months period does not begin to run until the party adversely affected has received actual or constructive notice of the conduct constituting the alleged unfair labor practice. [emphasis supplied].

Such policy is also consistent with the decisions of the Supreme Court of the United States on statute of limitations defenses in civil rights cases arising under the Civil Rights Act of 1871 and under Title VII of the Civil Rights Act of 1964.

(PECB, 1979), for re-arrangements of job duties and/or the rates of pay for performing the work, but it did not involve any removal of unit work from the bargaining unit. The union acknowledges that it expressed no objection to the transfer of the work of the food services clerk position to the other employees in the administration office. It points out that the affected employees understood that the work would be remaining in the bargaining unit.

At issue is whether the employer adequately notified the union that some of the work historically performed by the "food services clerk" would be assigned to the outside consultant. The employer maintains that it met its notice obligation at the meeting held in June, 1989, by advising the union that it intended to utilize the services of the computer consultant to perform "to some degree" the work previously performed by the abolished position. The union denies, however, that it had any knowledge of the employer's intention to assign unit work to the data processing consultant.

The employer points to the testimony of Superintendent Clark, who recalled that both the distribution of Dillon's work to other employees and the use of a data processing consultant were of concern when he met with Crawford and Krause to discuss Dillon's request for a transfer to a different assignment. According to Clark, it was his intention that the meeting be for the purpose of imparting general information to the union. Clark could not specifically recall notifying the union that the consultant would be taking over some of the duties formerly performed by Dillon, but he was sure that it was mentioned.

The union relies on the testimony of Crawford, who stated that she was generally aware in June of 1989 that Wooding had been employed to develop a computerized billing program. Crawford maintained that the employer never provided the union with information regarding the scope of work that would be performed by the outside consultant, and that it was her impression that Wooding's activi-

ties would be limited to setting up the necessary computer hardware and software to produce the data desired by the district. Crawford maintained that Superintendent Clark only told the union that the work theretofore performed by Dillon would be performed by other classified employees, and she denied that the employer notified her that it would be assigning any of the work formerly performed by Dillon to Wooding.

The union also points to the testimony of Krause. She recalled mention, at the June, 1989 meeting, that Wooding would be setting up a computer program for the food service program. She testified, however, that she did not interpret the impact of that disclosure to be that Wooding would be taking over any of the functions of the job that had been performed by the food services clerk.

The Examiner finds the testimony, recollection and perception of Crawford and Krause regarding the discussion held at the June, 1989 meeting to be credible. Their testimony is also corroborated by that of Dillon, who testified that it was her understanding that she was to have been trained to be self-sufficient using the electronic data processing equipment in the food service clerk position, and that Wooding's help was not to be on-going. Dillon also testified that she was told by former Business Manager Dave Curry that the work of her food services clerk position would be performed by other employees in the administration office after her position was eliminated.[8]

The Examiner finds, in contrast, that the employer's witness had a poor recollection of the substance of what was stated at the meeting held in June of 1989. The superintendent did not directly contradict the testimony of the union witnesses, and he spoke of intentions that may not have been fully communicated.

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[8] Curry is no longer employed by the school district, and did not appear as a witness in this proceeding.

Distribution of the Food Service Clerk's Work -
The union voiced no institutional objection to the distribution of Dillon's duties to other bargaining unit members. The assignment of Dillon's work to an outside consultant is, however, another matter. The record fairly reflects that there was a change of circumstances.

The consultant was initially retained to provide guidance regarding equipment purchases, programming, and instruction to school district employees who were to produce the actual work product. At some undisclosed point in time between June of 1989 and the school board meeting held in September of 1990, the scope of the consultant's work was shifted to encompass production work formerly assigned to the food service clerk.

The employer has acknowledged that it began using the outside consultant to perform at least a portion of the work formerly performed by members of the bargaining unit. The superintendent estimated that approximately 25% of the work formerly performed by the food services clerk is now performed by the consultant.

The Sufficiency of the Union's Case -
The union has met the threshold burden of demonstrating that it was not adequately notified, in or about June of 1989, that the employer intended to assign work theretofore performed by the food services clerk to the outside consultant. Further, the union has adequately established that the employer actually transferred bargaining unit work (i.e., production work formerly done by the food service clerk) to the outside consultant.

Defenses Asserted By the Employer

Timeliness of the Complaint -
Crawford testified that she first learned of the scope of the consultant's duties at the school board meeting held in September,

1990. Her testimony was not contradicted by the employer, nor did the employer put forth any evidence to establish that the union had actual or constructive notice of the changed scope of the consultant's duties at any earlier time. The union is not to be faulted for missing what was going on. The employer's own characterization of the contract signed in September of 1990 was that it was formalizing a business relationship that had been in existence on only an informal or oral contract basis for some time.

The record supports a conclusion that the union was not chargeable with notice of the consultant's production duties prior to the school board meeting held in September of 1990. Thus, that school board meeting marks the beginning of the period for determining the timeliness of the union's unfair labor practice complaint. Although the record does not reflect the exact date of that school board meeting, there is no doubt that the union's complaint filed on October 23, 1990, came within six months thereafter. The complaint in this case was timely filed pursuant to RCW 41.56.160. The employer's argument to the contrary is rejected.

Waiver by Inaction -
The employer has provided no substantive evidence establishing that the union was given advance notice that the consultant would be performing the production work formerly performed by the food services clerk. Lacking such notice, there can be no waiver by inaction.

The service contract between the employer and the consultant was on the agenda for adoption at the school board's September, 1990 meeting. The employer acknowledges that the purpose of the contract was to formalize a business relationship that had been in effect for some time. These facts support the union's claim that it was confronted with a fait accompli in September of 1990. The employer's unilateral action thus relieved the union of the

obligation to request bargaining, and entitles the union to seek redress by way of its complaint of unfair labor practices.

Remedy

The purpose of a remedial order in an unfair labor practice case is to restore the injured party (in this case, the union and the employees) to the same situation they would have enjoyed had the unfair labor practice not been committed, and to place the parties on a lawful footing to carry on their future bargaining relationship. While it would be inappropriate for a respondent to profit from its unlawful acts,[9] the remedies ordered by the Commission are not designed to be punitive in nature.

The customary order in a "skimming" or "contracting out" case directs the employer to restore the disputed work to the members of the bargaining unit, and to provide back pay to employees who lost work opportunities or wages. Bargaining is also required regarding any future decision to transfer work outside of the bargaining unit. If the employer proposes such a transfer in the future, the effects of such a move will also be bargainable.

Apart from the customary order, the union suggests that the appropriate remedy in this case should include a payment to the members of the bargaining unit in the amount of $29,133. The union calculates that as the amount which would have been saved by the employer as a result of the services contract with the consultant, based on a projection calculated by the employer's former business manager. The union's suggested remedy is not warranted, however:

First, the amount proposed by the union does not reflect a carefully constructed technical analysis of wages not paid to members of the bargaining unit. The superintendent credibly

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[9] See, Battle Ground School District, Decision 2449-A (PECB, 1986).

testified that the employer has not, in fact, realized the savings that were projected earlier. He pointed out, for example, that the school district had to re-assign employees to manually operate optical scanning devices to acquire food service data, contrary to original estimates.

Second, while the implementation of the "business relationship" and eventual contract between the employer and the consultant at issue in this case could have resulted in a reduction of the work hours of bargaining unit employees, the record does not reflect that any specific individual actually suffered a work reduction as a result of the district's actions.

This is not the first case in which it has been necessary to remedy the effects of an unlawful contracting out of bargaining unit work. The Examiner is not persuaded that a new remedial approach is indicated here, and has looked to the decision of the Commission in a prior case, City of Kennewick, Decision 482-B (PECB, 1980), as the general pattern for the remedial order issued here.

FINDINGS OF FACT

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

2. Public School Employees of North Franklin, an affiliate of Public School Employees of Washington (PSE), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a unit of classified employees who provide instructional aide, transportation, custodial, maintenance, secretarial, and food services for the North Franklin School District.

3. The employer offers lunches for its students. Based on an "ability to pay" formula administered by the school district, qualifying students are provided lunches at a reduced price or at no cost.

4. From an undisclosed point in time until approximately June of 1989, the employer maintained a position entitled "food services clerk" that was included in the bargaining unit represented by the union. The duties of that position involved recordkeeping and related functions for the food services program, including: maintaining food service inventory records; checking supplies in and out; ordering goods and services; recording the number of meals served; preparing cost analysis regarding costs per meal and related data; picking up, recording and depositing cash receipts; preparing and submitting claims for reimbursement for certain costs associated with the meals; preparing and submitting monthly bills to parents or other responsible parties for student meal costs; screening student applications to determine eligibility for free or reduced price lunches, and maintaining an on-going eligibility roster; ensuring that each meal location had a system to accurately record the distribution of meals; submitting periodic reports to district administrators and to the office of the Superintendent of Public Instruction; and responding to inquiries regarding the food service program and billings.

5. From 1985 to approximately June of 1989, Cindy Dillon held the food service clerk position as a bargaining unit employee.

6. During 1988 and 1989 the employer sought to effect a transition from manual to computerized recordkeeping for its food services program. The employer hired an electronic data processing consultant, Chuck Wooding, who recommended computer hardware and designed customized software that provided an

accounting and billing system for the employer's meal program. Wooding trained Dillon to operate the computer equipment and programs that he introduced, and Dillon was informed that she was to be trained to be self-sufficient in the operation of the computer system.

7. For a four-month period in either 1988 or 1989, the employer maintained a part-time "keypunch / clerk - food services" position to assist Dillon in the performance of her duties. The employee in that position provided direct clerical support for the food services program, including preparation of student statements of account, and electronic data entry. That temporary position was included in the bargaining unit represented by the union.

8. In June, 1989, Dillon applied for a transfer to a different position within the bargaining unit.

9. At a meeting held between employer and union officials in June, 1989, the employer notified the union that it was willing to grant Dillon's transfer request, but desired to simultaneously eliminate the food services clerk position theretofore held by Dillon. The union concurred with the employer's proposal to distribute work formerly performed by Dillon to other bargaining unit employees in the employer's administration office. The employer did not effectively communicate, and the union did not agree to, any proposal to transfer recordkeeping and report production work formerly performed by Dillon to the computer consultant. The food services clerk position was eliminated thereafter.

10. Wooding continued to work as a computer consultant for the school district, frequently updating the computer programs to better meet the employer's needs. At an undisclosed time, the employer transferred approximately 25% of the work formerly

done by Dillon in the food services clerk position to Wooding, who thereafter performed recordkeeping and production duties in addition to the updating of computer programs.

11. While attending a meeting of the employer's board of directors in September, 1990, union President Crawford observed the adoption of a contract calling for Wooding to perform administrative and financial services for the district's food services department, including recordkeeping and production duties formerly done by Dillon in the food services clerk position.

12. The contract entered into between Wooding and the North Franklin School District in September of 1990 was intended to formalize a "business relationship" which had been in effect for some time without benefit of documentation.

13. The union was not chargeable with knowledge of the "business relationship" which had been in effect between Wooding and the North Franklin School District with respect to recordkeeping and production duties formerly done by Dillon in the food services clerk position.

CONCLUSIONS OF LAW

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

2. The union had no knowledge or reason to know, prior to the school board meeting held in September of 1990, of the informal "business relationship" between Wooding and the North Franklin School District regarding recordkeeping and production duties formerly done by Dillon in the food services clerk position, so that the complaint charging unfair labor practices filed in this matter was timely pursuant to RCW 41.56.160.

3. By unilaterally contracting out bargaining unit work to the outside consultant, without giving notice to Public School Employees of North Franklin or providing an opportunity for collective bargaining concerning the decision and its effects, the North Franklin School District refused to bargain and violated RCW 41.56.140(4) and (1).

ORDER

North Franklin School District, 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 with Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, as the exclusive bargaining representative of the employees in the appropriate bargaining unit described in paragraph 2 of the foregoing findings of fact.

   b. Making unilateral changes of working conditions without giving notice to the exclusive bargaining representative of its employees.

   c. Contracting out the work of bargaining unit positions without first giving notice, and bargaining with, the exclusive bargaining representative of its employees.

   d. 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. Terminate any contract for the performance of record-keeping and production work formerly performed by the food services clerk position, and restore to the bargaining unit all work that has been improperly contracted out.

b. Give Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, notice of any proposed changes of wages, hours or working conditions of employees represented by that organization, and specifically with respect to any proposals to transfer work from bargaining unit employees to other employees or contractors, before the decision is made.

c. Upon request, bargain collectively in good faith with Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, prior to implementing any transfer of work from bargaining unit employees to other employees or contractors, so that the exclusive bargaining representative has a reasonable opportunity to suggest alternatives or voice objections.

d. 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.

e. 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.

f. 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 6th day of February, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JACK T. COWAN, 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 restore the status quo ante by returning work formerly performed by the bargaining unit that is now performed by the electronic data processing consultant to the bargaining unit.

WE WILL grant back pay with interest reimbursing the members of the bargaining unit for loss of work hours resulting from the assignment of bargaining unit work to the electronic data processing consultant.

WE WILL give notice to Public School Employees of North Franklin prior to transferring any bargaining unit work to persons outside of the bargaining unit.

WE WILL upon request, bargain collectively with Public School Employees of North Franklin, an affiliate of Public School Employees of Washington, as an exclusive representative of an appropriate bargaining unit, with respect to the transfer of bargaining unit work, wages, hours, and working conditions.

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: _____

NORTH FRANKLIN SCHOOL DISTRICT

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 Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.