STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| LAKE CHELAN EDUCATION ASSOCIATION, Complainant, | ) | CASE 10725-U-93-2494 |
| vs. | ) | DECISION 4940 - EDUC |
| LAKE CHELAN SCHOOL DISTRICT 129, Respondent. | ) | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

Eric R. Hansen, Attorney at Law, appeared for the union.

Tom Reese, Superintendent, appeared for the employer.

On October 18, 1993, the Lake Chelan Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Lake Chelan School District 129 (employer) had refused to bargain in violation of RCW 41.59.140(1)(a) and (e), by unilaterally assigning new duties to employees represented by the complainant. A hearing was held at Chelan, Washington, on August 17, 1994, before Examiner Vincent M. Helm. The parties presented closing arguments on the record at the hearing, and waived filing of post-hearing briefs.

## BACKGROUND

The union represents the non-supervisory certificated employees of the employer under the Educational Employment Relations Act, Chapter 41.59 RCW. The employer and union were parties to a collective bargaining agreement effective from September 1, 1992 until midnight, August 31, 1994. The contract provided a limited reopener to bargain the salary schedule and insurance contribution for the 1993-94 academic year.

Prior to the onset of this dispute, the principals at the employer's high school and middle school attempted to supervise the parking lot and bus unloading/loading area before and after school.

On August 27, 1993, the first day of school in the 1993-1994 academic year, High School Principal Larry Bowers advised the high school teachers that they would be required to supervise the school's parking lot area during periods before and after school, when school buses were being unloaded or loaded. This was to continue for four to five weeks. A similar requirement was imposed upon teachers at the middle school by their principal, Karen Walters, at a meeting held on the first day of school. In each case, the teachers were advised that the assignment was being made in order to ensure the safety and well being of the students. Teachers were requested to sign up for either morning or afternoon duties in the parking area. Those who did not indicate a preference were nonetheless assigned a morning or afternoon tour of duty in the parking area of the schools.

The parking lot assignments in fact continued for approximately five weeks, and required 15 to 30 minutes of time immediately before or after normal class hours. During the times they were assigned to supervise the parking areas, the teachers did not follow their prior before- or after-school routines:

A teacher who normally supervised before-school activities in the high school gymnasium was unable to do so when required to be in the parking lot.

A teacher was unable to open the computer lab for students prior to the start of the school day, and occasionally missed staff meetings or was unable to talk to parents because of time spent supervising the parking area.[1]

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[1] At times, that teacher stayed at the school to permit students to work in the computer lab after he completed his time supervising the parking area. There is no

Another teacher who normally used the time before classes to prepare for classes or to meet with students or parents either did not get this type of work done, or did it at other times such as during lunch or after school, due to supervising the parking area.

Teachers who in the past would spend the time before or after school talking to each other were unable to do so.

After being informed of the requirement concerning parking lot supervision, President Skip Boyd of the local union contacted other union representatives as well as the employer's superintendent, Tom Reese. On August 30, 1993, Boyd addressed a letter to Reese advising of the union's intent to bargain the impact of the changed condition of employment with respect to "school bus duty", and indicating the types of activities theretofore engaged in by teachers during the period before and after class hours.

On September 3, 1993, Superintendent Reese responded in writing. He indicated the concerns which prompted the assignment of teachers to supervision of school parking lots before and after school, and also asserted that such assignments constituted a management prerogative and were not bargainable. Reese indicated a willingness to bargain upon the matter if the union desired, provided the employer could also bargain about one issue of its choice as a reopener of the parties collective bargaining agreement.

The union's written response, on September 8, 1993, reiterated its position that the disputed assignments constituted extra duty, and were a change of working conditions tantamount to a reopening of the contract. Boyd stated that the union therefore expected to be able to reopen one issue of its choice.

The flow of correspondence between the parties ceased with an unsigned letter from Reese to Boyd dated September 16, 1993. In

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evidence that this was required by the employer, however.

that document, the superintendent reiterated his claim that the assignment of bus duty to the teachers was a prerogative of the employer consistent with other non-professional duties assigned to teachers, and did not constitute a violation of the collective bargaining agreement. The union then filed the complaint herein, requesting as a remedy a bargaining order, posting of appropriate notices and attorney's fees.

In its answer to the complaint, the employer admitted the factual allegations of the complaint with respect to assigning teachers responsibility for supervising the unloading and loading of school buses on school district property immediately before and after normal class hours for a total time of approximately 45 minutes each day and lasting for a period of four to five weeks. It maintained such a requirement was in accord with employer policies and the teachers' standard contracts with respect to employer assignment of duties during the regular contracted work day.

Subsequent to the filing of the complaint and prior to the hearing herein, the parties were involved in contract negotiations for a collective bargaining agreement to replace the one under which this dispute arose. The employer contends that the issue of supervision of the school parking lots has been resolved as a result of those negotiations. The union does not dispute that assertion, although it notes that all agreements were tentative and that one outstanding contract issue remained which was unrelated to this dispute.

At the conclusion of the hearing the union moved to amend its remedy request to include back pay for the time involved in providing supervision of the school parking lots. The employer objected, and the Examiner reserved ruling on that motion.

## POSITION OF THE PARTIES

The union maintains that the requirement to monitor school parking lots during the periods before and after classes constituted a change in the terms and conditions of employment of the teachers and caused them to work longer hours. It is argued that the change imposed a mandatory bargaining obligation upon the employer, and that the employer violated the statute by refusing to bargain upon request. The union contends that it has not waived its right to bargain upon the subject by virtue of the collective bargaining agreement in effect between the parties. The union cites the following cases in support of its position: City of Clarkston, Decision 3286 (PECB, 1989); City of Bellevue, Decision 2788 (PECB, 1987); Seattle School District, Decision 2079-B (PECB, 1989); City of Auburn, Decision 901 (PECB, 1980); and City of Hoquiam, Decision 745 (PECB, 1979).

The employer maintains that it has the prerogative to direct the employees to do the work involved herein, without an obligation to bargain upon either the decision or its effect upon the bargaining unit. At the hearing, the employer further contended that various contract provisions were both relevant to, and dispositive of, the issue as to the right of the employer to assign the duties in question to teachers without bargaining upon the subject with the employees' collective bargaining representative. In the event there was a duty to bargain, the employer maintains that subsequent discussions and negotiations have satisfied this obligation.

## DISCUSSION

It was agreed by the parties that the disputed assignments were reasonably necessary to secure the objective of student safety in the parking lot areas. The determination of the issue in this case involves consideration of several factors including whether the action complained of involves a mandatory bargaining subject, whether the union waived its bargaining rights by the parties'

contract, and whether this dispute involves only the interpretation or application of the collective bargaining agreement.

## Applicable Legal Principles

Mandatory Subjects of Bargaining -

In resolving the question of whether a matter is a mandatory subject of bargaining, the Commission will balance the employees' interests in wages, hours, and working conditions against the prerogative of the employer to direct its operations. In that context, the Commission weighs the employer's need for control against the impact upon employee concerns relative to wages, hours, and terms and conditions of employment. International Association of Fire Fighters, Local 1052 v. PERC, 113 Wn.2d 197 (1989); City of Spokane, Decision 4746 (PECB, 1994).

Even if the decision itself is not a mandatory subject of bargaining, the employer must bargain, upon request, regarding significant impacts or effects of its exercise of a management prerogative. Only if there is no significant impact upon employees is the employer not obligated to bargain upon either the decision or its effects. Spokane Fire District 9, Decision 3661-A (PECB, 1991).

Violations of Collective Bargaining Agreements -

The object of the collective bargaining process is for the employer and union to negotiate and sign a contract which will regulate their relationship for some period of up to three years' duration. RCW 41.56.030(4); 41.56.070. Nevertheless, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976); City of Sumner, Decision 4785 (PECB, 1994); Whitman County, Decision 4417 (PECB, 1993). RCW 41.58.020(4) expresses the legislature's intent to encourage the resolution of disputes regarding the interpretation or application of a collective bargaining agreement through

the grievance arbitration process, and RCW 41.56.122 specifically authorizes grievance arbitration under Chapter 41.56 RCW.

Waiver by Contract -

When parties sign a collective bargaining agreement, they usually waive their right to further bargaining on the matters covered for the life of the contract. Disputes may arise as to what is covered by the contract, however. Where the conduct complained of in an unfair labor practice case is arguably privileged under terms of a labor agreement, the Commission may defer to the contract's arbitration process. City of Yakima, Decision 3564-A (PECB, 1991); King County, Decision 2193 (PECB, 1986); Seattle School District, 2079-B (PECB, 1986). The Commission's deference to the arbitration process in appropriate circumstances is a matter of policy, rather than an express statutory mandate, but is reflective of the Commission's implementation of legislative intent set forth in RCW 41.58.020(4). Deferral to arbitration may be directed even where opposed by one or both of the parties. Tumwater School District 33, Decision 936 (PECB, 1980); City of Richland, Decision 246 (PECB, 1977).

Where an employer's claim of "waiver by contract" is determined in an unfair labor practice proceeding, the employer has the burden of establishing that defense. Lakewood School District, Decision 755-A (PECB, 1980). A general management's rights clause will not operate as a waiver, absent specific language in the contract clearly indicating a waiver of the right to bargain upon the subject. City of Seattle, Decision 4163 and 4164 (PECB, 1992).

## Sufficiency of the Union's Case

In the instant case the complainant has the burden of proof to establish that an unfair labor practice was committed. Pierce County Fire District 9, Decision 4547 (PECB, 1993). In order to prevail the union must establish a failure to bargain by the

employer either with respect to unilateral action concerning a mandatory subject of bargaining or a failure to bargain upon the demonstrable effects of its actions with respect to a permissive subject of bargaining upon the wages, hours, or terms and conditions of employment of its employees. The union has failed to satisfy its burden of proof with respect to either aspect of its evidentiary obligation.

In the instant case, the employer directed its employees to perform school-related functions during periods which were before and after normal class hours but still within the employees' normal work day. The parties' contract required the bargaining unit employees to be at school at least one-half hour before the first class begins and until one-half after the last class ends:

> ARTICLE III - PERSONNEL
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> SECTION 6: CONTRACT DAY
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> Certificated teachers are required to be at the respective schools for the benefit of students and patrons for a contract day in accordance with state law at least one-half hour before the first class begins and until one-half hour after the final class ends ... said employees shall not be required to work beyond the normal employee work hours ....

The duties imposed consisted of supervising students on school property, which is within the normal duties of the employees. The safety of students was the undisputed driving force causing the employer to impose monitoring activities on the teachers; there was no illegal motivation on the part of the employer. Clearly, the direction of the work force is at the very core of entrepreneurial control. Under any rational balancing test, the interests of the employer far outweighed any considerations of employees interests in this case. In this context, union's claim that the employer had an obligation to bargain its decision cannot be credited.

An issue remains as to whether the employer was required to bargain the impact or effects of its decision upon the employees. Again, the answer is "No". The evidence in this record indicates that the impact upon bargaining unit employees was de minimus. The parties' contract clearly required the attendance of the teachers at the school during the time they were assigned duties in the school parking lot. There was no direct evidence that any employee was required by the employer to work before or after the normal eight hour workday as a result of being required to supervise parking lots. The examples given of inconvenience to students or parents do not support a conclusion that teachers themselves were adversely affected. There being no discernible impact upon bargaining unit employees as the result of the action of the employer, no obligation to bargain any aspect of the decision of the employer ever arose.

## The Waiver by Contract Defense

Even if the actions at issue were to be deemed to be mandatory subjects of collective bargaining (e.g., as "assignments"), or that their effects were mandatory subjects of collective bargaining (e.g., as an increase of work hours and/or an intrusion on the employees' personal use of the required attendance time before and after classes), the Examiner would find that the union waived its right to demand bargaining on these matters.[2] The parties'

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[2] While the Commission would ordinarily defer resolution of the underlying contractual issue to the grievance arbitration process in a case of this nature, there is no absolute requirement that it do so. Since the grievance procedure of the contract was not invoked in this case, and the time limits imposed therein would preclude processing a grievance at this time absent the employer's waiver of the contractual time limits, no useful purpose would be served by implementation of the Commission's deferral policy in this instance. The waiver by contract issue is, at most, a secondary basis for determination of this case.

contract reserved to the employer the right to assign, direct, and manage the work force to meet the employer's educational commitment:

> ARTICLE III - PERSONNEL
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> SECTION 1:
> EMPLOYMENT, ASSIGNMENT, AND TRANSFER
> In order to meet the educational needs of the district, **the** employment, **assignment, direction** and management **of all employees** of the District are the exclusive right and responsibility of the Board of Directors of the District of [sic] their designee....
>
> ARTICLE VII - MANAGEMENT RIGHTS
>
> It is the intention of the parties hereto that all rights, powers and prerogatives, duties and authorities which the Board now has or has had prior to the signing of this Agreement are retained by the board except for these which are specifically set forth in this Agreement.
>
> The Board has the responsibility and authority to manage and direct the operations and activities of the district provided that all such actions shall conform to State and Federal law and provisions of this agreement.
>
> The Board has charged the superintendent with the responsibility and authority for the administration of the district, as directed by federal regulation, state statute and the State Board of Education rules and regulation and through him/her to administration personnel.
>
> The Association's recognition of these management rights does not preclude any employees from filing a grievance or seeking a review of the exercise of administrative decisions and applications of these management rights.

[Emphasis by **bold** supplied.]

In addition to the provisions set forth above, the Examiner finds the following provisions of the parties' collective bargaining agreement are relevant to a determination of this dispute:

ARTICLE I - ADMINISTRATION

SECTION 3: CONTRACT COMPLIANCE

B. Changes in policies, not specifically mentioned in this contract that directly affect the working conditions of certificated employees require input from the Association prior to adoption by the District.

ARTICLE III - PERSONNEL

SECTION 2: GRIEVANCE PROCEDURE

Definitions

A. A "Grievant" shall mean an employee or group of employees.

B. A grievance shall mean a claim that:
1. There has been a misinterpretation or misapplication of this agreement.

Procedures

...

E. Fifth Step If the grievance has not been adjusted to the satisfaction of the grievant at step four, the grievant may ... request ... that the grievance be submitted to arbitration in matters dealing with application and interpretation of the contract ...

...

The arbitrator shall make a decision ... and said decision shall be final and binding upon both parties.

...

SECTION 7: PREPARATION TIME

The employees at the high school and middle school shall have one period for preparation time during each student day.... These preparation times will occur during the time students are normally in classes. Preparation time, thus provided, shall be spent on the premises of the school for planning, correcting papers, parent conferences, and other school related business ....

The relatively specific contract provisions in Article III and Article VII provide a basis to conclude that the union has waived

its right to negotiate on the decision to make the work assignment at issue herein, and supports a finding that the employer has met its burden of proof in establishing a waiver of the right to bargain on the matter at issue.

Subsequent Satisfaction of Bargaining Obligation

Assuming, arguendo, a technical violation of the statute, the limited duration of the complained of employer conduct, the negligible impact of the action upon employee interests, and subsequent contract negotiations which appear to have resolved any lingering problems all warrant some consideration. The Examiner concludes that issuance of a bargaining order in the circumstances herein would not effectuate the purposes of the statute.

## FINDINGS OF FACT

1. Lake Chelan School District 129 is a school district of the state of Washington within the meaning of RCW 41.59.020(5).

2. Lake Chelan Education Association, an "employee organization" within the meaning of RCW 41.59.020(1), is the exclusive bargaining representative of a unit of non-supervisory certificated employees of the Lake Chelan School District.

3. At all times material herein, there was in effect a collective bargaining agreement which provided for various terms and conditions of employment.

4. On the first day of the 1993-1994 school year, Lake Chelan School District initiated a requirement that certain employees represented by the Lake Chelan Education Association monitor activities on school parking lots. The assignments were for time periods while students were getting on or off school

buses, immediately before and after normal class hours but within the employees' contracted work day.

5. The assignments described in the preceding paragraph were made without prior notice to the association. The association demanded bargaining on the employer's decision and/or its effects, but the employer asserted that the assignments were within its management prerogatives and it declined to bargain the matters.

6. The imposition of the bus monitoring duties did not adversely impact, in a significant degree, the wages, hours, terms or conditions of employment of bargaining unit employees.

7. The employer action complained of was within the authority reserved to the management in the parties' collective bargaining agreement.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW.

2. The employer had no duty to bargain, under RCW 41.59.020(4), concerning the assignment of employees covered by the collective bargaining agreement between the parties to the duties of monitoring school parking areas during the period of time students are entering or leaving school buses before and after normal classroom hours.

3. The employer had no duty to bargain, under RCW 41.59.020(4), with respect to the effects of the employer's action because the complainant has failed to show any adverse impact upon

bargaining unit employees by virtue of their temporary assignment to the duties at issue, herein.

4. By refusing to bargain concerning its actions described in paragraphs 2 and 3 of these conclusions of law, the employer did not violate RCW 41.59.140(a) or (e).

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 15th day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Examiner

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