STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF EVERETT, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 46, Respondent.	CASE 127504-U-15 DECISION 12671 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Lawrence Hannah, Attorney at Law, Perkins Coie LLP, for the City of Everett.

W. Mitchell Cogdill, Attorney at Law, Cogdill Nichols Rein Wartelle Andrews, for the International Association of Fire Fighters, Local 46.

On July 20, 2015, the City of Everett (employer) filed this unfair labor practice complaint alleging that the International Association of Fire Fighters, Local 46 (union) breached its duty to bargain in good faith by insisting to impasse on a nonmandatory subject of bargaining by submitting a proposal to increase minimum shift staffing levels to interest arbitration.

On August 4, 2015, the unfair labor practice manager issued a preliminary ruling finding a cause of action. On the same day, the executive director suspended the shift staffing issue from the list of issues certified to interest arbitration on July 2, 2015, pending the outcome of this case.

A hearing was held on the unfair labor practice complaint on August 1, 2, 3, and 4, 2016, in Everett, Washington. The parties submitted post-hearing briefs on December 22, 2016.

ISSUE

Did the union refuse to bargain in violation of RCW 41.56.150(4) by insisting to impasse on a

proposal involving Article 27 (Health and Safety) for shift staffing/minimum crew level, which is alleged to be a nonmandatory subject of bargaining, and by pursuing this proposal to interest arbitration?

The union's shift staffing proposal is a nonmandatory subject of bargaining. The employees' interest in wages, hours, and working conditions, as reflected by their safety concerns regarding shift staffing levels, are outweighed in this case by the employer's interest in maintaining entrepreneurial control and exercising management prerogative over shift staffing levels. The union committed an unfair labor practice by insisting to impasse and pursuing the proposal to interest arbitration.

BACKGROUND

Nature of the Everett Fire Department

The employer provides firefighter and emergency medical services to its citizens by operating a fire department. The fire department consists of six stations and employs over 160 firefighters[1] who are organized in a bargaining unit represented by the union. The employer and union were parties to a collective bargaining agreement effective from January 1, 2012, through December 31, 2014.

Firefighters work 24 hour shifts and, during those shifts, firefighters respond to a variety of calls for services from the community including structural fires, medical situations, and vehicle accidents. Calls for service are dispatched through a county-wide 9-1-1 dispatching service known as SnoPac 911, which covers all of Snohomish County.

The City of Everett has grown over the decades. In 1978, the population was 52,000 in an area of 22.68 square miles. There were 4,980 calls for service and the fire department was staffed with a minimum of 26 firefighters per shift. In 2014, the population was 104,900 in an area of 34.16

[1] The parties use the term "firefighters" to cover all bargaining unit classifications which also includes classifications such as paramedic, assistant fire marshal, fire inspector, fire captain, fire battalion chief, medical services officer, and fire division chief.

square miles. There were 21,389 calls for service and the department was staffed with a minimum of 28 firefighters per shift.

Everett and surrounding jurisdictions are parties to mutual aid agreements that provide services to each other as needed. SnoPac911 dispatches calls pursuant to those agreements. As a result of the agreements, Everett firefighters are sometimes dispatched to respond to service calls outside of the boundaries of the City of Everett. Firefighters from surrounding jurisdictions are sometimes dispatched to calls for service inside the City of Everett.

When they are not responding to calls firefighters prepare reports regarding service calls, receive training, perform building inspections, and maintain fire department equipment and facilities. Given the nature of 24 hour shifts, firefighters sleep, eat meals, and engage in exercise to keep physically fit and build camaraderie. The more time firefighters spend responding to service calls during a 24 hour shift, the less time they have to prepare reports, train, sleep, eat, and exercise.

History of Minimum Shift Staffing at the Everett Fire Department

The issue of minimum shift staffing levels has a long history between the parties, going back to at least 1973. The collective bargaining agreements between the parties have contained language setting minimum shift staffing levels since that time.

In 1976, the employer challenged the constitutionality of the newly established interest arbitration provisions of Chapter 41.56 RCW in state court. Ancillary to the constitutional issue, the employer argued that, even if interest arbitration was constitutional, shift staffing was not a mandatory subject of bargaining that could be pursued to interest arbitration.

The case reached the Washington State Supreme Court which upheld the constitutionality of the interest arbitration provisions. However, the court declined to rule on whether the subject of minimum shift staffing levels was a mandatory subject of bargaining that could be pursued to

interest arbitration and instead deferred that question to the interest arbitration process.[2] *City of Everett v. IAFF, Local 350*, 87 Wn.2d 572 (1976). In dicta, the court stated that "the size of the crew might well affect the safety of the employees and would therefore constitute a working condition" and therefore could be a mandatory subject of bargaining. *Id.*

Also in 1976, an interest arbitration panel issued an award deciding that minimum shift staffing was sufficiently related to the safety interests of firefighters and was a mandatory subject of bargaining.[3] The panel went on to award contractual language setting forth a 25 firefighter minimum shift staffing level. That minimum level has survived many successor bargains and is located in Article 27 of the parties' most recent 2012-2014 collective bargaining agreement. With minor language updates that are not relevant to this case, the shift staffing language has remained unchanged since 1976 and currently provides:

ARTICLE 27 – HEALTH AND SAFETY

> The parties recognize that manning (crew size, on duty shift force) vitally affects the efficient and economic operation of the Department in providing the best possible service to the community and, further, that changes from the present minimum level agreed to in prior contracts do affect the safety and job security of the members of the Union, and therefore agree as follows:
>
> The City agrees to maintain a firefighting force of at least twenty-five (25) firefighters on duty at all times. The City further agrees to maintain at least three (3) firefighters on each fire suppression company, one of whom shall be a captain; to maintain two (2) firefighters on each aid car and to maintain a battalion chief who shall be on duty with each fire suppression platoon.
>
> The City further agrees to use the attrition method in reaching the twenty-five (25) firefighter minimum crew level. Attrition is defined as voluntary quit, dismissal for just and sufficient cause, permanent disability, retirement or death.
>
> Provided, however, that notwithstanding the foregoing, the City may, during the course of the contract year, seek to effect a change in the minimum manning provided by paragraph one above. If the City desires to effect such change, it shall

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2 It appears this litigation and the related interest arbitration proceeding occurred before the Public Employment Relations Commission was fully formed. As illustrated by the instant case, the issue the court deferred to interest arbitration in 1976 falls squarely within the jurisdiction of PERC and the state courts.

3 This discussion is provided for background purposes only.

> propose to the Union a written proposal as to the reduction sought including reason for the change, prior to the date of the change. At least 90 days prior to the proposed effective date of the change, the City shall meet with representatives of the Union at reasonable times and places for the purpose of exploring the advisability of the change and agreement to the change. If the parties fail to agree to the change within 60 days of the first formal conference, the parties shall submit the proposal to arbitration as provided for by Article 6, Step 4. The Arbitrator shall resolve the issue based upon a finding that the proposal of the City will improve efficiency of service and that it does not reasonably impair the safety of the firefighting force.

While bargaining a successor to the 2012-2014 collective bargaining agreement, the union proposed to increase the minimum shift staffing levels set in Article 27 from 25 to 35. The employer did not agree to the proposal and, during bargaining and mediation, notified the union that it viewed shift staffing levels as a permissive subject of bargaining. The employer confirmed its position regarding this view in a memorandum to the union dated March 16, 2015. The union continued to pursue the proposal. On July 2, 2015, the executive director found that the parties were at impasse in their bargaining and certified a list of issues for interest arbitration that included "Article 27, Health and Safety." He later suspended that issue from interest arbitration pending the outcome of this case.

DISCUSSION

Applicable Legal Standards

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4). Whether a particular item is a mandatory or permissive subject of bargaining is a question of law and fact for the Commission to decide. WAC 391-45-550. The Commission, on a case-by-case basis, balances "the relationship the subject bears to [the] 'wages, hours and working conditions'" of employees and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative" when determining whether a subject of bargaining is mandatory or permissive. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *City of Seattle*, Decision 12060-A (PECB, 2014), *citing International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197 at

203. While the balancing test calls upon the Commission and its examiners to balance these two principal considerations, the test is more nuanced and is not a strict black-and-white application. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. *City of Seattle*, Decision 12060-A.

An interest arbitration eligible party can bargain to impasse and seek interest arbitration on mandatory subjects of bargaining. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A (MRNE, 2015). Interest arbitration eligible parties are also free to discuss and negotiate permissive subjects of bargaining, but each party is free to bargain or not to bargain and to agree or not to agree about those permissive subjects. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450, 460 (1997); *Whatcom County,* Decision 7244-B (PECB, 2004). An interest arbitration eligible party commits an unfair labor practice violation when it seeks interest arbitration on a permissive subject of bargaining. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338 (1986).

If the parties agree to include a permissive subject of bargaining in a collective bargaining agreement, the parties' agreement does not render that subject mandatory. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A; *see also Allied Chemical and Alkali Workers of America, Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Agreements on permissive subjects of bargaining "must be a product of renewed mutual consent" and expire with the parties' collective bargaining agreement. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338 at 344.

Suspension of Interest Arbitration

If a party believes that a permissive subject of bargaining is being advanced to interest arbitration, it may file an unfair labor practice complaint against the party that insisted to impasse on the permissive subject. The party claiming that a permissive subject of bargaining is being advanced

to interest arbitration must have communicated its concerns to the other party "during bilateral negotiations and/or mediation." WAC 391-55-265(1)(a); *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A.

The objecting party must file and process an unfair labor practice complaint prior to the conclusion of the interest arbitration proceeding if the party advancing the proposal has not withdrawn or cured the proposal. WAC 391-55-265(1)(a). If a preliminary ruling is issued under WAC 391-45-110, the executive director must suspend the certification of the disputed issue for interest arbitration. WAC 391-55-265(1)(c).

The suspension of the issue remains in effect until a final ruling is made on the unfair labor practice complaint. *Id.* If the issue was unlawfully advanced or affected by unlawful conduct, the issue shall be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal shall only be permitted to submit a modified proposal that complies with the remedial order in the unfair labor practice proceeding. WAC 391-55-265(2)(a). If the suspended issue was lawfully advanced, the suspension shall be terminated and the issue shall be remanded to the interest arbitration panel for a ruling on the merits. WAC 391-55-265(2)(b).

Application of Legal Standards

The Parties' Agreement and the 1976 Interest Arbitration Award are not Binding

Given the unique and lengthy history of the minimum shift staffing issue between the parties, it is important to note limitations on the significance of that history on these proceedings because both parties make arguments that touch on those facts.

First, it is of no impact on this decision that the shift staffing language is contained in the parties' collective bargaining agreement, and has been for over forty years. Parties can reach agreement on permissive subjects and incorporate those agreements into their contract, but they cannot agree to convert an otherwise permissive subject into a mandatory subject of collective bargaining. WAC 391-45-550; *Spokane Airport Board*, Decision 7889-A (PECB, 2003).

Second, the 1976 interest arbitration award that found shift staffing to be a mandatory subject of bargaining is not a controlling authority on the Commission. The Commission is charged by the legislature to decide whether a specific issue is mandatory under the collective bargaining laws, not interest arbitrators. RCW 41.56.160.

Those historical facts, while relevant as background and to give context to the current dispute, are not binding on the Commission in deciding whether shift staffing is a mandatory or permissive subject of bargaining today.

The Union's Proposal Relates to Shift Staffing and Not to Equipment Staffing

Commission decisions that discuss firefighter staffing generally examine the specific issue to determine whether it relates to shift staffing, equipment staffing, or both. *City of Centralia*, Decision 5282-A (PECB, 1996). Shift staffing deals with how many total employees are on duty during any particular shift. Equipment staffing is how many employees are assigned to a particular piece of equipment, such as a fire truck or ladder. *Id.* Generally, equipment staffing has more often been found to be mandatory while shift staffing has been found to be permissive. In mixed cases where shift staffing and equipment staffing are both implicated, employee safety interests have predominated with the more direct safety impacts of equipment staffing predominating.

For example, the employer's action at issue in the Commission's decision in *City of Centralia* appeared on its face to deal only with shift staffing. The employer decided to reduce the number of firefighters on duty per shift from three to two. However, because the employer operated only one piece of equipment, it was found that the employer's decision to reduce the number of staff on shift necessarily impacted equipment staffing. The Commission concluded that shift staffing in that case was a mandatory subject of bargaining because of the safety impact on firefighters when fewer firefighters were assigned to a piece of equipment. *Id.*

Similarly, in *Spokane Airport Board*, while bargaining a successor contract the union proposed a new minimum shift staffing level. Although there were two pieces of equipment at issue and the proposal at stake was described in terms of overall shift staffing, the Commission found that the

proposal impacted both shift and equipment staffing and concluded it was a mandatory subject of bargaining.

In the present case, Article 27 sets minimum equipment staffing levels and minimum shift staffing levels. The union does not propose to change the equipment staffing levels. The union's proposal to modify Article 27 relates only to shift staffing levels. Therefore, employee safety interests in equipment staffing levels that were key to the conclusions in *City of Centralia* and *Spokane Airport Board* are not at issue here.

The Commission has previously noted, *citing City of Richland*, that, "[t]he number of staff on duty (shift staffing) has been found to be a management prerogative." *City of Everett*, Decision 11241-A (PECB, 2013). The fact that the union's proposal in this case relates solely to shift staffing leans heavily towards it being a management prerogative and therefore a nonmandatory subject of bargaining.

The Union's Proposal Impacts Both Management Prerogatives and Wages, Hours, and Working Conditions

The employer argues that shift staffing is solely within the province of managerial prerogative and therefore there is no need to apply the balancing test. In support, it cites the basic principle that determining the level of services provided is a core managerial prerogative. The employer equates its ability to determine level of services with setting shift staffing levels. This contention is unpersuasive based both on the facts of this case and the application of Commission and Washington State Supreme Court precedent.

This case is not about the employer's right to determine its mission or set the scope of services it provides its citizens. Instead, it relates to how shift staffing levels that are set by the employer to provide those services impact firefighter safety. The union's proposal does not require the employer to reduce, increase, or eliminate the level of firefighting services it provides to its citizens.

In *City of Wenatchee*, Decision 780 (PECB, 1980) the Commission was invited to rule that shift staffing proposals in public safety bargaining were *per se* nonmandatory. The Commission declined to do so in favor of deciding "questions of mandatory or non-mandatory subjects of bargaining on a case by case basis after being fully apprised of the facts in each case."

This case presents employee interests regarding workload and safety issues related to shift staffing levels. The validity of those interests have been acknowledged by the courts and Commission for forty years, including twice by the Washington State Supreme Court, where the court stated that the issue of shift staffing of firefighters "might well affect the safety of employees and would therefore constitute a working condition." *City of Everett*, 87 Wn.2d 572 (1976); *City of Richland.* 113 Wn.2d 197 (1989). When a subject touches on both employee interests in wages, hours, and working conditions and management prerogatives, those interests must be balanced.

Employees' Safety Interest in Shift Staffing Levels

Safety concerns weigh more heavily on employee interests in wages, hours, and working conditions when applying the balancing test. In *City of Richland,* the Washington State Supreme Court indicated that shift staffing could be mandatory if it has a "demonstratedly direct relationship to employee workload and safety."

Firefighting is a dangerous profession with many aspects of the job impacting safety and health.[4] Much of the union's evidence focuses on establishing this fact. The crux of the union's position tying shift staffing to safety is that the more calls to which a firefighter responds, the more they are exposed to hazards and experience fatigue. The number of calls responded to during a 24 hour shift has increased over time, resulting in more time spent responding to calls. The union's proposal ultimately seeks to reduce the number of calls for service that each firefighter must respond to during a shift.

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[4] The state of Washington presumes, for workers compensation claims, that when firefighters contract certain diseases, that those diseases are work-related. RCW 51.32.185. Firefighting is the only profession with such presumptions.

The union called two medical doctors to serve as expert witnesses on the health and safety concerns of firefighters. They did not testify as to Everett firefighters specifically, but their conclusions regarding health and safety hazards facing firefighters are generally relevant to the firefighting profession. When firefighters respond to service calls, they are exposed to hazardous elements that can cause physical and psychological injuries. Some of these elements include smoke, fumes, dangerous chemicals, blood-borne pathogens, and being struck by falling objects or vehicles. The exposure to these elements can lead to immediate injury or illness, or to more long term impacts as a result of cumulative exposure. Generally, the more calls firefighters respond to, the higher their fatigue levels. In addition to the physical exertion expended when responding to calls, those calls can occur at all hours and interrupt sleep. It is rare for Everett firefighters to be able to sleep all night, resulting in fatigue.

The union also pointed to various other more general factors that it argues tying shift staffing to safety. The Everett community contains hospitals, shelters, and other facilities that attract vulnerable populations with a need for firefighting services. The neighboring Boeing plant and U.S. Naval facilities, as well as an underground train tunnel that requires special handling when there are calls for services in those locations. Emergency situations could be responded to more safely with higher staffing levels. Furthermore, the union asserts the Everett firefighting force is aging.

The union also argues that the more time spent responding to calls results in less time spent on other tasks. It argues that training opportunities are interrupted by calls for service. Equipment is not always properly cleaned between calls. Reports are sometimes delayed. Building inspections are delayed or not performed.

The Employer's Managerial Prerogative Outweighs the Employees' Safety Interests

The employer has a strong managerial prerogative in being able to determine shift staffing levels. This prerogative has long been acknowledged by the Commission and courts. This is consistent with the fact that employers are tasked with determining their mission, setting service levels, and budgeting to provide those services.

The union established that firefighters have safety interests related to shift staffing levels. However, the evidence regarding those interests are largely general in nature and do not sufficiently demonstrate a direct relationship between those safety interests and shift staffing levels.

The most direct evidence tying shift staffing to firefighter safety is the expert testimony that responding to increased numbers of service calls also increases exposure to risk elements. But those risk elements are inherent in the firefighting profession and could only be eliminated by not responding to service calls at all.

The evidence was largely speculative in nature regarding the direct safety impacts of shift staffing on interrupted trainings, delayed building inspections, equipment cleaning, and response times for emergencies. For example, trainings are interrupted, but there was insufficient evidence to establish how many of those interruptions were directly related to shift staffing levels. Building inspections are delayed, but there was not enough evidence to tie those delayed inspections to shift staffing levels.

The factors cited by the union do not show a "demonstratedly direct" relationship to safety sufficient to shift the balance in the union's favor and make the shift staffing proposal a mandatory subject of bargaining.

CONCLUSION

Applying the *City of Richland* balancing test, the employer's managerial prerogative in setting shift staffing levels outweighs the employees' interests in workload and safety related to shift staffing levels. Therefore, the union's shift staffing proposal is a nonmandatory subject of bargaining and the union committed an unfair labor practice when it insisted on submitting that proposal to interest arbitration.

FINDINGS OF FACT

1. The City of Everett (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The International Association of Fire Fighters, Local 46 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer provides firefighter and emergency medical services to its citizens by operating a fire department. The fire department consists of six stations and employs over 160 firefighters who are organized in a bargaining unit represented by the union.

4. The employer and union were parties to a collective bargaining agreement effective from January 1, 2012, through December 31, 2014.

5. Firefighters work 24 hour shifts and, during those shifts, respond to a variety of calls for services from the community including structural fires, medical situations, and vehicle accidents.

6. Calls for service are dispatched through a county-wide 9-1-1 dispatching service known as SnoPac 911, which covers all of Snohomish County.

7. Everett and surrounding jurisdictions are parties to mutual aid agreements that provide services to each other as needed. SnoPac 911 dispatches calls pursuant to those agreements. As a result of the agreements, Everett firefighters are sometimes dispatched to respond to service calls outside of the boundaries of the City of Everett. Firefighters from surrounding jurisdictions are sometimes dispatched to calls for service inside the City of Everett.

8. When they are not responding to calls firefighters prepare reports regarding service calls, receive training, perform building inspections, and maintain fire department equipment and facilities. Given the nature of 24 hour shifts, firefighters sleep, eat meals, and engage in exercise to keep physically fit and build camaraderie.

9. The City of Everett has grown over the decades. In 1978, the population was 52,000 in an area of 22.68 square miles. There were 4,980 calls for service and the fire department was staffed with a minimum of 26 firefighters per shift. In 2014, the population was 104,900 in an area of 34.16 square miles. There were 21,389 calls for service and the department was staffed with a minimum of 28 firefighters per shift.

10. In 1976, an interest arbitration panel issued an award deciding that minimum shift staffing was sufficiently related to the safety interests of firefighters and was a mandatory subject of bargaining. The panel went on to award contractual language setting forth a 25 firefighter minimum shift staffing level. That minimum level has survived many successor bargains and is located in Article 27 of the parties' most recent 2012-2014 collective bargaining agreement.

11. While bargaining a successor to the 2012-2014 collective bargaining agreement, the union proposed to increase the minimum shift staffing levels set in Article 27 from 25 to 35.

12. The employer did not agree to the proposal and, during bargaining and mediation, notified the union that it viewed shift staffing levels as a permissive subject of bargaining. The employer confirmed its position regarding this view in a memorandum to the union dated March 16, 2015. The union continued to pursue the proposal.

13. On July 2, 2015, the executive director found that the parties were at impasse in their bargaining and certified a list of issues for interest arbitration that included "Article 27, Health and Safety." He later suspended that issue from interest arbitration pending the outcome of this case.

14. The union's proposal to modify Article 27 relates only to shift staffing levels.

15. The employer has a strong managerial prerogative in being able to determine shift staffing levels. This prerogative has long been acknowledged by the Commission and courts. This is consistent with the fact that employers are tasked with determining their mission, setting service levels, and budgeting to provide those services.

16. Firefighters have safety interests that are related to shift staffing. When firefighters respond to service calls, they are exposed to hazardous elements that can cause physical and psychological injuries. Some of these elements include smoke, fumes, dangerous chemicals, blood-borne pathogens, and being struck by falling objects or vehicles. The exposure to these elements can lead to immediate injury or illness, or to more long term impacts as a result of cumulative exposure. Responding to increased numbers of service calls increases exposure to risk elements.

17. The more time firefighters spend responding to service calls during a 24 hour shift, the less time they have to prepare reports, train, sleep, eat, and exercise. In addition to the physical exertion expended when responding to calls, those calls can occur at all hours and interrupt sleep. It is rare for Everett firefighters to be able to sleep all night, resulting in fatigue.

18. Those risk elements and fatigue are inherent in the firefighting profession and could only be eliminated by not responding to service calls at all.

19. The union did not show a "demonstratedly direct" relationship between cited safety interests and shift staffing levels to shift the balance in the union's favor to make the shift staffing proposal at issue here a mandatory subject of bargaining.

CONCLUSIONS OF LAW

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

2. Based upon Findings of Fact 14 through 19, the union's proposal to modify the contractual minimum shift staffing levels is a nonmandatory subject of bargaining.

3. Based upon Findings of Fact 11 through 13 and Conclusion of Law 2, the union unlawfully submitted to interest arbitration a nonmandatory subject of bargaining in violation of Chapter 41.56 RCW.

ORDER

The International Association of Fire Fighters, Local 46, 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 the City of Everett by insisting on submitting to interest arbitration its minimum shift staffing issue.

   b. In any other manner interfering with, restraining or coercing public employees in the exercise of their collective bargaining rights under 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. Cease and desist from bargaining to impasse and seeking interest arbitration over minimum shift staffing. Within 20 days of the date this order becomes final, notify the interest arbitration panel in writing that this issue, which was identified as "Article 27 – Health and Safety" and was certified for arbitration in a letter dated July 2, 2015, is being removed from the list of issues certified for consideration. Provide a copy of the letter to the employer and to the compliance officer.

   b. Contact the Compliance Officer at the Public Employment Relations Commission within 20 days of the date this order becomes final to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer in conspicuous places on the employer's premises where union notices to bargaining unit employees are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take

reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Notify the complainant, in writing, within 20 days following the date this order becomes final as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the Compliance Officer.

d. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final as to what steps have been taken to comply with this order and, at the same time, provide her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 23rd day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

E. MATTHEW GREER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

CASE 127504-U-15
DECISION 12671 – PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union).**
- **Bargain collectively with your employer through a union chosen by a majority of employees.**
- **Refrain from any or all of these activities, except you may be required to make payments to a union or charity under a lawful union security provision.**

THE WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT THE *INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 46* COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY insisted on submitting a proposal regarding minimum shift staffing levels to interest arbitration. This proposal was not eligible for interest arbitration because it concerned a permissive subject of bargaining.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL notify the interest arbitrator that the minimum shift staffing proposal is being withdrawn from consideration.

WE WILL NOT bargain to impasse and seek interest arbitration on the minimum shift staffing proposal or any other permissive subject of bargaining.

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

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARILYN GLENN SAYAN, CHAIRPERSON
MARK E. BRENNAN, COMMISSIONER
MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 03/23/2017

DECISION 12671 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 127504-U-15

EMPLOYER:	CITY OF EVERETT
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