STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF RICHLAND, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1052, Respondent.	)	CASE NO. 6289-U-86-1214 DECISION 2448-B - PECB DECISION OF COMMISSION

Perkins Coie, by Nancy Williams, Attorney at Law, appeared on behalf of the employer.

Critchlow and Williams, by David E. Williams, Attorney at Law, appeared on behalf of the union.

On May 23, 1986, the City of Richland (employer) filed an unfair labor practice complaint with the Public Employment Relations Commission, alleging that International Association of Fire Fighters, Local 1052 (union) had violated RCW 41.56-.150(4) by bargaining to impasse and seeking interest arbitration on a claimed non-mandatory subject of bargaining. Specifically, the employer claims that a proposal advanced by the union under a title of "Standards of Safety" is a "minimum manning" proposal as to which there is no duty to bargain. A hearing was held on September 15, 1986, before William A. Lang, Examiner. The Examiner issued his Findings of Fact, Conclusions of Law and Order on February 27, 1987. The employer filed a timely petition for review, bringing the matter before the Commission.

THE EXAMINER'S DECISION

The Examiner found that the union had insisted to impasse on a proposal that the wage provisions of the parties' collective bargaining agreement be reopened if the employer changed its equipment manning policy. The Examiner found that the union proposal did not limit the prerogative of management to change minimum staffing levels, and that it was a mandatory subject of "wage" bargaining which the union was entitled to pursue to impasse. Accordingly, he dismissed the employer's complaint.

POSITIONS OF PARTIES

The employer maintains that the Examiner erred in dismissing the complaint, resting its arguments on three major points. First, while acknowledging that the union may have a right to bargain the effects of employer decision making in non-mandatory areas, the employer contends that such bargaining is available only if the effect impacts wages, hours or working conditions. Second, the employer contends that the union proposal at issue is actually a minimum manning proposal and, as such, is not a mandatory subject of bargaining. Third, the employer contends that making a permissive subject of bargaining (e.g., minimum manning) mandatory through linkage with mandatory subjects (e.g., safety, wages) goes against past PERC policy and could lead in practice to having a change in any issue be reason for opening bargaining in any mandatory area.

The record does not contain any communication from the union in response to the employer's petition for review, but it is assumed that the union agrees with the Examiner's decision.

DISCUSSION

The Commission views the union proposal as a demand that the labor agreement be opened for negotiations on wages if certain manning standards are changed. The proposal is not a demand for "minimum manning" per se; rather it calls for negotiations to commence, at the union's choice, presumably when the manning standards are lowered. The basis for an increase in compensation apparently would be reduced safety and increased work loads.

The demand for a wage opener, by itself, is not a problem; such proposals are commonly made by both management and labor. What troubles the Commission is that the opener is linked to a subject that has previously been held to be a permissive subject of bargaining. The Commission is being requested to agree that a change in a permissive subject (manning) requires negotiations on a mandatory subject (wages), without making a direct link between the two areas. The union is not requesting bargaining on the effects, rather it is requesting bargaining on compensation for the effects.

The duty to bargain on "personnel matters, including wages, hours and working conditions" is clearly defined in RCW 41.56.030(4). This duty has been further defined to include bargaining over changes in permissive subjects if they impact a mandatory area. See, City of Hoquiam, Decision 745 (PECB, 1980). Additionally, City of Wenatchee, Decision 780 (PECB, 1980) specifies that the issue of minimum manning will be decided as a mandatory or permissive subject for bargaining on a case-by-case basis.

The guidelines established by law and past decisions applied to the case before us state that the city has an obligation, with

or without specific language in the labor agreement, to bargain on the effects on wages, safety or other mandatory areas of bargaining if it changes the manning or manning allocation. Its obligations are quite different from what the union is seeking. Under the union's proposal, changes in the specified manning level would allow for bargaining on wages. However, the effects of changes may actually involve safety, work assignments, individual work load, etc., or there may be no effect at all. This inconsistency of matching past guidelines that obligate an employer to bargain over specific effects of a change and the union's proposal to bargain only wages (whether there is any effect on wages or workload) because of a change of manning level or allocation is fatal to the union's position.

The Commission further notes that the union is requesting that a change in a permissive area of bargaining be linked to the mandatory bargaining issue of wages which, in turn, would presumably by subject to interest arbitration. This situation expands too broadly the language and intent of the law. The intent relating to mid-term changes is to obligate the parties to bargain over the actual effects of changes in mandatory areas and to refer to the parties to the grievance procedure or filing of unfair labor practice charges if the intent is not met.

The delineation between mandatory and permissive subjects has been established to allow represented workers an opportunity to help determine their compensation, hours and working conditions and to allow management flexibility in directing the operation. In this case, the union is attempting to limit a recognized area of management flexibility.

The Commission continues to hold that employers must offer the opportunity to bargain over the effects of changes. During this bargaining, the union has the opportunity to identify areas that are affected by any change and bargain over the effects in each area.

AMENDED FINDINGS OF FACT

1. The City of Richland is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).

2. International Association of Fire Fighters, Local 1052, AFL-CIO is a bargaining representative within the meaning of RCW 41.56.030(3) and is the exclusive bargaining representative of non-supervisory firefighter personnel of the City of Richland.

3. During bargaining for a collective bargaining agreement in 1986, the union insisted to impasse on a proposal to reopen negotiations on wages if the city changed its then current equipment manning policy. The proposal does not relate bargaining of effects to the specific effects that are occasioned by a change.

AMENDED CONCLUSIONS OF LAW

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

2. By insisting to impasse on its proposal for a conditional reopener of wages, a mandatory subject of collective bargaining, based on unspecified changes in minimum

manning standards, a potentially permissive subject of bargaining, International Association of Fire Fighters Local 1052 has failed and refused to bargain in good faith and has committed an unfair labor practice in violation of RCW 41.56.150(4).

AMENDED ORDER

International Association of Fire Fighters, Local 1052, its officers and agents, shall immediately:

1. Cease and desist from advancing beyond the point of impasse or seeking interest arbitration on the union proposal concerning standards of safety as submitted in collective bargaining during 1986.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Public Employees Collective Bargaining Act:

   a. Withdraw the proposal concerning standards of safety from collective bargaining for 1986.

   b. Post, in conspicuous places on the employer's premises where union notices to employees are usually posted, a copy of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized representative of Local 1052, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the union to ensure that said notices are not removed, altered, defaced or covered by other materials.

c. Notify the Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply herewith and, at the same time, provide a signed copy of the notice required by the preceding paragraph.

ISSUED at Olympia, Washington this 31st day of July, 1987

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARK C. ENDRESEN, Commissioner

JOSEPH F. QUINN, Commissioner