STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, AFL-CIO, Complainant,	CASE NO. 5661-U-85-1037
vs.	DECISION 2845-A - PECB
MUNICIPALITY OF METROPOLITAN SEATTLE (METRO), Respondent.	DECISION OF COMMISSION

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

Preston, Thorgrimson, Ellis and Holman, by J. Markham Marshall, Attorney at Law, appeared on behalf of the respondent.

This matter comes before the Public Employment Relations Commission on cross-petitions for review of findings of fact, conclusions of law, and order entered by Examiner Rex L. Lacy, subsequent to a hearing in this unfair labor practice case.

International Federation of Professional and Technical Engineers, Local 17 (hereinafter, the "union"), filed a complaint with the Commission on February 4, 1985, wherein the union alleged that the Municipality of Metropolitan Seattle (hereinafter, "METRO") had committed unfair labor practices within the meaning of RCW 41.56.140. The gravamen of the union's complaint was that the employer refused to recognize and/or bargain with Local 17 after "acquiring" some employees pursuant to an intergovernmental agreement under which METRO

assumed the responsibility for operating commuter pool functions formerly operated by the City of Seattle.

A hearing on the complaint was held on November 4 and 5, 1986, but the case was held in abeyance until a decision was issued by the Superior Court for King County on judicial review of related unit clarification proceedings filed by METRO.[1] The Examiner's findings of fact, conclusions of law, and order in this case were entered on January 19, 1988.

BACKGROUND

METRO, a municipal corporation, is a public employer within the meaning of RCW 41.56.020 which offers services to residents of Seattle and most of King County, Washington. METRO is governed by a board of directors. It engages in essentially two operations: Waste water treatment and public transit services.

Local 17 is a bargaining representative within the meaning of RCW 41.56.030(3). The union is the exclusive bargaining representative of a multi-department bargaining unit of office-clerical employees of the City of Seattle. Five city employees working in the "commuter pool" operation were within that bargaining unit.

In April, 1984, the City of Seattle entered into an inter-governmental agreement with METRO, whereby the "commuter pool" and the city employees involved with that function were to be transferred to METRO. Approximately 21 City of Seattle employees, including the five clerical employees represented by

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1 The unit clarification proceedings had been decided by this Commission on September 23, 1986 in METRO, Decision 2358-A (PECB, 1986).

Local 17, were transferred to METRO pursuant to the inter-governmental agreement. The agreement between the employers contained the following provisions:

> METRO shall succeed to the City's obligations under it's collective bargaining agreement with the International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, (exhibit "B") as to represented employees transferred.
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> METRO will take the place of the City in any pending employee grievance (represented and nonrepresented) and any labor arbitration proceeding involving transferred employees.

Ever since the transfer was implemented, METRO has consistently refused to recognize Local 17 as exclusive bargaining representative of the commuter pool clerical employees, and has, therefore, refused to bargain with Local 17 concerning the wages, hours, and working conditions of such employees.

On September 28, 1984, METRO filed a unit clarification petition with the Commission, seeking a ruling on its claim that the commuter pool clerical employees should be included in an existing bargaining unit of METRO transit employees represented by Amalgamated Transit Union, Local 587.[2] That matter was set to be heard on February 4, 1985.

Meanwhile, on October 2, 1984, Local 17 filed suit against METRO in the Superior Court for King County, claiming rights under the intergovernmental agreement between the City of Seattle and METRO. The union asked for an order requiring METRO to recognize Local 17 as the exclusive bargaining representative of the commuter pool clerical employees.

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2 Case No. 5472-C-84-274.

At least through the date of the hearing in the unit clarification case,[3] METRO continued to operate the commuter pool in essentially the same manner as it was operated by the City of Seattle. At the hearing in the unit clarification case, METRO officials testified that organizational changes might be made in the future which could affect the commuter pool employees.

On March 21, 1986, the Commission's Executive Director issued a decision in the unit clarification case, pursuant to RCW 41.56.060 and WAC 391-35-190. Determining that Local 17 was the exclusive bargaining representative of the clerical employees in the commuter pool operation transferred to METRO under the intergovernmental agreement, the Executive Director dismissed METRO's claim that the commuter pool employees were within the bargaining unit represented by the Amalgamated Transit Union. METRO, Decision 2358 (PECB, 1986).

METRO petitioned for review of the Executive Director's decision by the full Commission, arguing that it had changed the operation, thus warranting the abolition of any bargaining unit represented by Local 17. In METRO, Decision 2358-A (PECB, 1986), the Commission rejected METRO's arguments and affirmed the decision of the Executive Director.

METRO petitioned the Superior Court of King County for judicial review of the Commission's decision. On November 17, 1987, the court affirmed the unit clarification decision.

On November 17, 1987, the Superior Court of King County also ruled in favor of Local 17 in its civil action against METRO, holding that METRO had acted in bad faith. The Court ordered METRO to recognize Local 17 as the exclusive bargaining

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3 February 4, 1985, which was also the date of filing of this unfair labor practice complaint.

representative of the commuter pool employees, and ordered METRO to pay Local 17's attorney fees in that litigation.

On January 19, 1988, Examiner Rex L. Lacy issued his findings of fact, conclusions of law and order in the instant case. In essence, the union had accused METRO of a "refusal to bargain" unfair labor practice under RCW 41.56.140(4). In its answer to the complaint, METRO admitted that it had refused to recognize and bargain with Local 17 as the exclusive bargaining representative of the transferred employees. METRO's primary defense to the complaint was that it had reorganized its operations to such an extent that the commuter pool function had been integrated into METRO's overall operations, so as to justify the elimination of any bargaining unit represented by Local 17. Examiner Lacy found that the changes made by METRO after February 4, 1985, were made without notice to or bargaining with the exclusive bargaining representative of the affected employees, and so were unlawful unilateral acts by the employer. Accordingly, he found METRO's arguments to be frivolous, and therefore awarded attorney fees as an extraordinary remedy. The Examiner ordered METRO to restore the commuter pool operation to the status quo ante which existed as of August 4, 1984, ordered METRO to "make whole" the commuter pool employees so that they would suffer no loss of wages or benefits due to METRO's failure to recognize the union, and ordered METRO to bargain in good faith with Local 17 concerning all appropriate subjects of bargaining for the commuter pool employees. As further extraordinary relief, the Examiner ordered that, if no agreement on the first collective bargaining agreement between these parties was reached through negotiations, METRO is submit to final and binding interest arbitration of the unresolved issues under procedures patterned after those set forth in RCW 41.56.450 for uniformed personnel.

Also in January, 1988, METRO appealed the decisions of the Superior Court in both cases, now consolidated, to the Court of Appeals, where they remain pending.

POSITIONS OF THE PARTIES

In its petition for review and supporting memorandum, METRO relies heavily upon RCW 35.58.240, which requires it to prepare, adopt, and carry out a general comprehensive plan for public transportation services. In essence, METRO contends that the Examiner's decision interpreting Chapter 41.56 RCW and requiring the employer to engage in certain remedial conduct under RCW 41.56.160, conflicts with METRO's mandate under Chapter 35.58 RCW to perform its essential transportation functions. Relying on First National Maintenance Corp. vs. NLRB, 452 U.S. 666, 676 (1981), METRO argues that reorganization is a pure management decision regarding the scope and direction of the business enterprise and, as such, is not subject to mandatory employee participation in the decision-making. METRO also argues that, even before the reorganization took place, it had no duty to bargain with Local 17, because the issue of Local 17's status as exclusive bargaining representative was pending before the Commission in the unit clarification proceedings. METRO also seems to rely on the portion of the Commission's decision in the unit clarification case where the Commission commented on the significance of a lack of evidence that METRO had, in fact, reorganized as of the time of the hearing in the unit clarification case. METRO argues that the Examiner's decision is "contrary to the clear signal" sent by the Commission in that decision, i.e., that evidence of an actual reorganization is relevant to determining METRO's bargaining obligations. With respect to the remedial order, METRO argues that restoration of the commuter pool

operation as it existed on August 4, 1984 is punitive, that the Examiner's order attempts to override the authority conferred on METRO by RCW 35.58.240 to reorganize, and that the order thus exceeds the Commission's authority. Finally, METRO argues that the order compelling interest arbitration violates constitutional and statutory limitations on delegation of decisions affecting expenditures by a public body. METRO argues that, absent legislative authorization, a public employer is prohibited from engaging in interest arbitration as an illegal delegation of the legislative power. METRO notes that RCW 41.56.430 authorizes interest arbitration only for certain municipal employees, but does not expressly authorize the imposition of interest arbitration as a remedy for unfair labor practices.

In its reply to the petition for review and in its own cross-petition for review, Local 17 generally defends the challenged portions of the Examiner's decision. The union goes farther, however, asking the Commission to rule that METRO must pay all of the dues that should have been collected by Local 17 from members within its bargaining unit from the date of the transfer to the date of compliance. The union argues that METRO's authority under Chapter 35.58 RCW does not relieve it of contractual obligations assumed under the intergovernmental agreement to transfer the commuter pool, nor of its obligations to bargain in good faith under Chapter 41.56 RCW. The union notes that RCW 35.58.265 appears to require METRO to assume and honor contracts with any labor organization representing employees of any transit operation acquired by METRO. Local 17 contends that precedent dealing with an employer's right to determine the scope and direction of the business enterprise are distinguishable from the present situation. Local 17 argues that there is no law supporting METRO's assertion that it was excused from engaging in collective bargaining with

Local 17 during the pendency of the unit clarification proceedings, noting that the two cases cited by METRO in support of that argument were representation cases rather than unit clarification cases, and that both of those cases involved the duty of the employer to maintain the status quo. Local 17 contends that METRO initially agreed to recognize Local 17 as the bargaining representative, which became the status quo, but then consistently refused to do so after the transfer. The union counters METRO's reliance on First National Maintenance, supra, contending that decision does not sanction refusal to bargain over wages, hours, and other terms and conditions of employment, but merely recognizes the prerogative of management to determine the scope and direction of the enterprise. Local 17 argues that the award of attorneys fees and other remedies ordered by the Examiner are appropriate on these facts, apparently relying at least in part on the Superior Court judge's ruling that METRO acted in bad faith.

DISCUSSION

METRO's Statutory Authority

We deal first with METRO's contention that the Examiner's findings of fact, conclusions of law and order contravene METRO's statutory authority.

RCW 35.58.240 does confer broad powers on METRO relative to transportation. That statute particularly authorizes METRO to prepare, adopt and carry out a general comprehensive plan for public transportation. The question before the Commission is whether the Examiner's decision somehow prevents METRO from carrying out its statutory mandate. If so, and if such an order is required to enforce the unfair labor practice

provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, then there would be a conflict between two statutory provisions.

In our decisions, whenever it is contended that there is a clash between a statute administered by the Commission and other legislative enactments, we try to harmonize the statutes wherever possible, so that the legislative purposes of both statutes may be effectuated to the greatest extent possible. See, e.g., Mason County, Decision 2307-A (PECB, 1986). The Washington appellate courts have also recognized in many cases that statutes should be harmonized, whenever possible:

> Apparent conflicts in statutes should be reconciled and effect given to each if this can be achieved without distortion of the language used.

Rose vs. Erickson, 106 Wn.2d 420 (1986); Tommy P. vs. Board of County Commissioners, 97 Wn.2d 385, 391 (1982).

The statute which is applicable to metropolitan municipal corporations, such as METRO, provides:

> 35.58.265 **Acquisition of existing transportation system--Assumption of labor contracts--Transfer of employees--Preservation of employee benefits--Collective bargaining.** If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired pensioned employee of

> such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [emphasis supplied]

Chapter 91, Laws of 1965, Section 1.

Chapter 41.56 RCW, which is applicable to all municipal corporations of the State of Washington, including METRO, provides:

> **41.56.010 Declaration of purpose.** The intent and purpose of this chapter to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers. [emphasis supplied]

Chapter 108, Laws of 1967, ex. sess., Section 1.

> **41.56.030 Definitions.** As used in this chapter:
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> . . .
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> (4) "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.

Chapter 108, Laws of 1967, ex. sess., Section 3.

> **41.56.140 Unfair labor practices for public employer enumerated.** It shall be an unfair labor practice for a public employer:
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> . . .
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> (4) To refuse to engage in collective bargaining.

Chapter 215, Laws of 1969, ex. sess., Section 1.

> **41.56.160 Commission to prevent unfair labor practices and issue remedial orders.** The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders . . . This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that may have been or may hereafter be established by law.

Chapter 215, Laws of 1969, ex. sess., Section 3, as amended.

RCW 35.58.265 thus expressed a clear legislative mandate, even before the enactment of Chapter 41.56 RCW, that METRO is to assume and observe any existing labor contracts when it acquires any existing transportation system. That statute also expresses a legislative intent that employees transferred to METRO shall be placed in no worse position with regard to wages and other enumerated benefits. Finally, RCW 35.58.265 clearly provided an obligation for METRO to engage in collective bargaining with any labor organization having existing contracts with the acquired transportation system. The

subsequent actions of the legislature in adopting Chapter 41.56 RCW are clearly consistent with METRO's obligations under RCW 35.58.265. Further, when RCW 35.58.265 and the contractual agreement that METRO executed with the City of Seattle are considered together, they present a compelling obstacle for METRO to overcome in this case.

Nonetheless, METRO argues that it cannot perform its statutory mandate if it is not allowed to reorganize. We doubt that claim. All that METRO was required by both statutes and the intergovernmental agreement to do when it took over the commuter pool operation was to recognize and bargain with Local 17. METRO never did so.

METRO has taken the position in both the unit clarification case and in this unfair labor practice case that it did not complete its reorganization until well after August 4, 1984. The first conclusion from that fact is that METRO was able to get along without reorganizing for more than six months from the time of the transfer to the time of the unit clarification hearing. The second conclusion from that fact is that the Examiner's decision did not make it impossible for METRO to reorganize, but merely held that METRO was obligated to first recognize and bargain with the exclusive bargaining representative of the employees over whom it assumed jurisdiction, as it agreed to do and as the statutes required it to do.

The courts and this Commission have recognized that an employer has certain prerogatives to manage its affairs unrelated to employment. We find, however, that the facts of this case are sharply distinguishable from those in First National Maintenance Corp. vs. NLRB, 452 U.S. 666 (1981), which involved a partial closure of an employers business. The Supreme Court held there that the employer was not required to bargain the

closure decision with the union representing its employees, as the decision was similar to the decision of whether to be in business at all.

A key distinction from First National Maintenance to be observed here is that METRO solicited the take-over of the commuter pool operation from the City of Seattle, and it continues to provide services of that type. If permitted to stand, the reorganization at issue here would, at most, have had the effect of moving the commuter pool work from METRO employees in the bargaining unit represented by Local 17 to METRO employees outside of that bargaining unit. This Commission has long held that there is a mandatory duty to bargain such transfer decisions. City of Mercer Island, Decision 1026-A (PECB, 1981).

Even if there were no duty to bargain the decision to transfer unit work, the Supreme Court held in First National Maintenance that the employer is required to bargain the "effects" of decisions which may themselves be nonbargainable, yet METRO has never offered to bargain even "effects" with Local 17. The authority to "prepare, adopt, and carry out a general comprehensive plan" conferred on METRO by RCW 35.58.240(1) does not mean that the employer is freed of its duties under both RCW 35.58.265 and Chapter 41.56 RCW to bargain over wages, hours, and other conditions of employment with regard to employees that it assumes when it takes over another transit system. The Superior Court for King County has already affirmed the existence of a bargaining obligation under the intergovernmental agreement between METRO and the City of Seattle. The Examiner's decision did not deprive METRO of its prerogative to develop reorganization plans pursuant to the statutory mandate of Chapter 35.58 RCW, but implemented METRO's statutory duty to bargain. METRO was obligated to recognize

and bargain with Local 17 from the time the transfer from the City of Seattle was implemented. Indeed, METRO could have given notice and offered to bargain the decision to transfer bargaining unit work outside of Local 17's bargaining unit, as well as the effects of such a reorganization, as part of its collective bargaining negotiations with Local 17 for their first contract or any successor contracts.

We conclude that there is, in fact, no clash or conflict between RCW 35.58.240 and the provisions of Chapter 41.56 RCW. Therefore, we reject the employer's statutory argument.

Moreover, the importance of RCW 41.56.905 should not be overlooked. As amended by Chapter 287, Laws of 1983, that provision of the Public Employees' Collective Bargaining Act provides for a liberal construction of the chapter, and states that conflicts with "any other statute" shall be resolved in favor of the dominance of Chapter 41.56 RCW. We do not need to apply that provision in this case, since we find no irreconcilable conflicts between the acts.

Bargaining During Pendency of Unit Clarification Case

METRO contends, in the alternative, that it had no duty to bargain with, or even recognize, Local 17, because it had petitioned the Commission for a unit clarification shortly after the transfer of the commuter pool operation. METRO cites NLRB vs. Wright Motors, Inc., 603 F.2d 604, 608 (7th Circuit 1979) and Amalgamated Service and Allied Industries Joint Board vs. NLRB, 815 F.2d 225, 232 (2nd Circuit 1987) as standing for the proposition that an employer may not be penalized for failing to bargain with a union during the time that the employer seeks a unit clarification.

Our reading of the cited cases differs, both as to their facts and their legal effect. Wright Motors involved a representation election, not a unit clarification petition. Another distinguishing fact is that there had been no finding of bad faith in that case. Amalgamated Services was also a representation election case. The refusal to bargain in that case was characterized by the court as a "technical" refusal,[4] and not inherently in bad faith, since a refusal to bargain is an approved procedural means to secure judicial review of the unit determinations of the National Labor Relations Board.[5]

METRO appears to contend that it had a good faith doubt regarding the majority status of Local 17, and so could refuse to bargain. The topic of withdrawal of recognition is discussed in Morris, The Developing Labor Law, 2nd Edition (1983), at page 540 ff. The NLRB and the courts have held that an employer may withdraw recognition from an incumbent union after the certification year has elapsed, if it can affirmatively establish either: (1) that the union no longer enjoyed majority status when recognition was withdrawn, or (2) that the employer's refusal to bargain was predicated on a reasonably grounded good faith doubt as to the union's continued majority status, based upon objective considerations and raised in a context free of employer unfair labor practices. See, e.g., NLRB vs. Windham Memorial Hospital, 577 F.2d 805 (2d Cir., 1978); Retired Persons Pharmacy vs. NLRB, 519 F.2d 486 (2d

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4 815 F.2d at 232

5 By contrast to the circuitous procedure by which it is necessary under Section 9(d) of the NLRA to refuse to bargain in order to obtain judicial review, this Commission has noted since Evergreen General Hospital, Decision 58-A (PECB, 1977) that nothing in Chapter 41.56 RCW or in the Washington administrative procedures act precludes direct appeal of decisions in representation cases.

Cir., 1975). The facts of the situation at hand are, however, distinguishable from the NLRB precedents.

Local 17 has never been certified by PERC as the exclusive bargaining representative of employees at METRO, let alone there having been a recent passage of a certification bar year. Rather than there having been a year or more of good faith bargaining prior to the withdrawal of recognition, as discussed in Morton General Hospital, Decision 2276-A (PECB, 1985), METRO sought to question its bargaining obligations only weeks after signing the transfer agreement which embodied those obligations. Additionally, the declarations of both the Examiner (which we affirm) and of the Superior Court that METRO has acted in bad faith deprive METRO of reliance on precedent which requires a "good faith doubt" on the part of the employer to justify its refusal to bargain. We thus find that the employer has not satisfied either of the foregoing tests for withdrawal of recognition.

WAC 391-25-090 provides for the filing of a representation petition (not a unit clarification petition) by an employer with affidavits and other documentation to raise a question concerning the representation of its employees. That procedure simply was not followed by METRO in this situation. Even if METRO had asserted a good faith doubt and had presented some "objective considerations" justifying withdrawal of recognition, that would have merely shifted the burden to the union to attempt to establish its majority status. Instead, the focus in the hearing and decision in the unit clarification proceedings initiated by METRO was on whether Local 17 had rights under the successorship agreement and whether the employees belonged in a different unit, not whether Local 17 retained majority support among the transferred employees. Therefore METRO did not establish grounds for the defense asserted here.

The Appropriate Remedies

The remedies ordered by the Examiner include:

1. Restoration of the commuter pool operation to the status quo ante as of August 4, 1984, the date six months prior to the filing of the complaint;[6]

2. Make affected employees whole for any wages or benefits lost as a result of the unilateral changes in the operation of the commuter pool since the transfer;

3. An award of costs and reasonable attorney fees to Local 17; and

4. Submission to procedures designed to secure a first contract between METRO and Local 17, including: ordering METRO to bargain in good faith with Local 17, ordering METRO to engage in mediation, and ordering METRO to submit unresolved issues to interest arbitration if no agreement is reached.

METRO challenges, as "punitive", the portions of the order relating to restoration of the status quo ante and imposing interest arbitration.

Restoration of the Status Quo Ante -
Once again, METRO argues on the basis of RCW 35.58.240 and its concept of management prerogatives in contesting the portion of the Examiner's order calling for restoration of the status quo ante. METRO states that the imposition of a bargaining obligation at this juncture would require the dismantling of an organizational structure that it has revamped in recent years. Unfortunately for METRO, we find that it has been METRO's own recalcitrant and adamant refusal to recognize and bargain with Local 17, from the very inception of METRO's takeover of the

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6 We are correcting an obvious error in paragraph 2(a) of the Examiner's order, to conform the date to the footnote at that point and to the facts of record.

"commuter pool" to the present time, that has placed METRO in its present predicament. The precedents of this Commission and of the NLRB strongly support a remedy restoring the status quo ante when there has been a history of "refusal to bargain" unfair labor practice violations and/or unilateral changes made without the required notice and bargaining.

There is absolutely no requirement in the Examiner's order that METRO's organizational structure be permanently affected by such a bargaining order or by an ongoing bargaining obligation. METRO retains its management prerogatives, including the right to plan for its own re-organization, but must simply bargain first on matters such as transfer of bargaining unit work and the effects of re-organization. Even the federal court ruling relied on so heavily by METRO, First National Maintenance Corp. vs. NLRB, 452 US 666 (1981), recognized that changes in wages, hours, or conditions of employment cannot be made unilaterally without bargaining.

Interest Arbitration -

Although the Legislature has enacted RCW 41.56.430 et seq., imposing interest arbitration for all bargaining disputes involving "uniformed personnel"[7], our statutes do not expressly provide for the imposition of interest arbitration as a remedy for an unfair labor practice. Interest arbitration has not previously been imposed by this Commission as an unfair labor practice remedy. Thus, this case is one of first impression on the remedial issue before us.

METRO argues that, unless the Legislature specifically allows interest arbitration, as it has for the uniformed personnel, a

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7 The definition of "uniformed personnel" in RCW 41.56.030 includes firefighters and certain law enforcement officers.

public employer is prohibited from engaging in interest arbitration because the procedure otherwise constitutes an improper delegation of legislative power. For this contention, METRO relies upon State ex rel. Everett Firefighters Local 350 vs. Johnson, 46 Wn.2d 114 (1955). In that case, the voters of the City of Everett established interest arbitration as part of an amendment of the city charter. While a city has certain home rule powers, the Supreme Court noted that charter provisions are subject to, and must be consistent with, the constitution and general laws of the state. The Supreme Court struck down the interest arbitration provision, holding that state law prevented the city council from abdicating its responsibilities, by turning them over to a board of arbitrators whose decision would be binding upon the city council.

By comparison, we note the decision of the Supreme Court in Spokane vs. Spokane Police Guild, 87 Wn.2d 457 (1976), where the employer had also contended that RCW 41.56.450 was an unconstitutional delegation of legislative power, in violation of Article 2, Section 1 of the Constitution. Relying on Barry and Barry vs. Department of Motor Vehicles, 81 Wn.2d 155, 159 (1972), the Supreme Court rejected that contention, finding that the Legislature had provided standards or guidelines, and that procedural safeguards existed to control arbitrary administrative action. The distinction, of course, from the Everett case was that the state Legislature had enacted the interest arbitration provisions as a general law of the state, whereas in the provisions for interest arbitration in Everett had found their source only in a home rule charter subservient to general laws.

The source of this Commission's power, if any, to remedy unfair labor practices by imposing interest arbitration must spring from a legislative source, i.e., RCW 41.56.160. That statute

confers broad remedial powers to rectify and prevent unfair labor practices, providing, in pertinent part:

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

In effect, this case presents the question whether this Commission is limited to those remedies previously imposed in our decisions.

After careful consideration, we have arrived at the conclusion that our jurisdiction to impose remedies is not constrained by statute or otherwise to only those time-honored and traditional remedies we have used in the past. If an extraordinary situation presents itself, as in this case, calling for extraordinary remedies, we believe that they may be imposed, subject to any express constitutional or statutory limitations on our power. If the statutory dictates of Chapter 35.58 RCW really did conflict with such remedies, we might need to rely upon the "overriding" language contained in RCW 41.56.905. As noted above, however, we do not find that METRO's enabling statute conflicts with RCW 41.56.160 or needs to be overridden in this situation. METRO can carry out its statutory duty to develop a comprehensive plan, it can implement reorganizations that do not invoke collective bargaining rights of employees, and it can propose changes and bargain in good faith, upon request, where its plans and reorganizations do touch on mandatory subjects of bargaining, as contemplated in RCW 35.58.265 and required by Chapter 41.56 RCW.

Our Supreme Court has often held that, being remedial in nature, Chapter 41.56 RCW is entitled to a liberal construction to effect its purpose. International Association of Firefighters, Local 469 vs. City of Yakima, 91 Wn.2d 101 (1978); Rosa

Irrigation District vs. State, 80 Wn.2d 633 (1972). We also find the decision of the Supreme Court in Green River College vs. HEPBoard, 95 Wn.2d 108 (1980) to be instructive on this question. In that case, the Supreme Court upheld an administrative rule of the Higher Education Personnel Board which established interest arbitration and designated the HEPBoard as the arbitrator. The unfair labor practice provisions of Chapter 28B.16 were added to that statute by the same legislative enactment which added RCW 41.56.140 and RCW 41.56.160 to Chapter 41.56 RCW, and are stated in terms similar to those of the statute we administer. There was no express statutory mandate authorizing that the HEPBoard's administrative rule, yet the Supreme Court found it to be a valid exercise of administrative expertise. If this Commission adopts the Examiner's order imposing interest arbitration as a remedy for unfair labor practices which the Examiner and we have found, we will, in effect, be establishing a new administrative rule of law, much like that of the HEPBoard in the Green River case.

We recognize that, whether adopted as a Washington Administrative Code regulation pursuant to our rule-making authority, or as precedent in a contested case, we are governed by well-settled principles set forth in the Green River decision, 95 Wn.2d at 112. The Commission has only those powers either expressly granted or necessarily implied from statutory grants of authority. Anderson, Leech and Morse, vs. State Liquor Control Board, 89 Wn.2d 688, 694 (1978). We believe, however, that this remedy is necessarily implied by RCW 41.56.030(4), RCW 41.56.160 and 41.56.905.

We also recognize that this Commission does not have the power to make decisions or promulgate rules that amend or change legislative enactments. Fahn vs. Cowlitz County, 93 Wn.2d 368, 383 (1980). We do not believe that an order imposing interest

arbitration as an extraordinary remedy for the unfair labor practices found in this case would amend or change any statute.

We also find support for imposition of such a remedy in the holdings affirming that administrative rules may "fill in the gaps" in legislation, if such rules are necessary to the effectuation of a general statutory scheme. Hamma Hamma Co. vs. Shorelines Hearings Board, 85 Wn.2d 441, 448 (1975). We conclude that the use of interest arbitration as an extra-ordinary remedy in this case would flesh out the statutory scheme relating to unfair labor practices, much like our imposition of the extraordinary remedy of awarding reasonable attorney fees has done so in the event of frivolous defenses. See, e.g., Lewis County, Decision 644 (PECB, 1979), aff. 31 Wn.App. 853 (1982), pet. rev. den., 97 Wn.2d 1034 (1982). Like the remedial order which we have before us on review, the awarding of attorney fees which was affirmed by the court as an appropriate extraordinary remedy for unfair labor practices was not based upon explicit terms of the statute, but upon the broad remedial authority conferred by RCW 41.56.160 in the context of the remedial nature of the statute. As noted earlier by the Supreme Court in State vs. Board of Trustees, 93 Wn.2d 60, 67 (1980), "RCW 41.56.160 does not explicitly grant the power to award attorneys fees and other litigation expenses." The Court nevertheless upheld the order of the HEPBoard, which had imposed an award of attorney fees pursuant to the statute which provides that agency its power to prevent unfair labor practices and to issue appropriate remedial orders. The Court relied upon decisions interpreting the National Labor Relations Act, which stress that remedies designed to best effectuate the policies behind collective bargaining are appropriate, and noted that the HEPBoard's determination as to remedies should be accorded considerable judicial deference, because the HEPBoard is the legislatively

designated agency to enforce the unfair labor practice provisions of the Act.

Mindful of the need to stay within the mandate of the applicable statute, the Supreme Court cautioned in State vs. Board of Trustees, supra, that the power to award attorney fees as an unfair labor practice remedy should be limited to those cases where the defense to the unfair labor practices was characterized as frivolous or meritless. PERC has followed that limitation with regard to attorney fees in Lewis County, supra, and subsequent cases. We find that, with a similar limitation making its imposition appropriate only in those cases where there is a showing of frivolity and/or recalcitrance on the part of the unfair labor practice violator, our imposition of interest arbitration as an extraordinary remedy will effectuate the legislative purpose of maintaining labor peace. Such a limitation, we feel, supports and validates the heretofore unrecognized remedy of imposition of interest arbitration. By this decision, we have no intention of adopting interest arbitration as a common remedy, or as one that will be frequently imposed for typical unfair labor practices. The remedy is being imposed here because of METRO's repeated efforts to subvert the bargaining process, the entire pattern of which is set forth in detail in the Examiner's decision.

Local 17's Claim For Back Dues

We see no merit in Local 17's claim, in its cross-petition for review, to a direct payment by METRO of all dues monies that Local 17 might have been collected from employees within the commuter pool clerical bargaining unit, from the date of the transfer to the date of compliance by METRO. The record does not contain sufficient evidence to support that claim.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact and conclusions of law issued by Examiner Rex L. Lacy are affirmed and adopted as the findings of fact, conclusions of law of the Commission.

2. The order issued by Examiner Rex L. Lacy is affirmed and adopted as the order of the Commission except as to paragraph 2.(a) thereof, which is amended to read:

   (a) Restore the commuter pool operation to the status quo ante as of August 4, 1984.

3. The Municipality of Metropolitan Seattle, its officers and agents, shall immediately notify IFPTE, Local 17, of the steps it has taken to comply herewith.

4. The Municipality of Metropolitan Seattle, its officers and agents, shall immediately notify the Executive Director of the Public Employment Relations Commission of the steps it has taken to comply herewith.

ISSUED at Olympia, Washington, this 6th day of July, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner