STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PASCO POLICE OFFICERS ASSOCIATION, Complainant, vs. CITY OF PASCO, Respondent.	CASE 10369-U-93-2385 DECISION 4694-A - PECB DECISION OF COMMISSION
CITY OF PASCO, Complainant, vs. PASCO POLICE OFFICERS ASSOCIATION, Respondent.	CASE 10403-U-93-2399 DECISION 4695-A - PECB DECISION OF COMMISSION

Hoag, Vick, Tarantino & Garrettson, by James M. Cline, Attorney at Law, appeared on behalf the union.

Greg A. Rubstello, City Attorney, and Joseph A. Ramirez, Attorney at Law, appeared on behalf of the employer.

These cases come before the Commission on a timely petition for review filed by Pasco Police Officers Association, seeking to overturn a decision issued by Examiner William A. Lang.[1]

BACKGROUND

The City of Pasco and the Pasco Police Officers Association were parties to a collective bargaining agreement in effect from January 1, 1991 through December 31, 1992. When the parties began the negotiation process for a successor contract, the employer's chief

[1] City of Pasco, Decision 4694 and 4695 (PECB, 1994).

negotiator was City Attorney Greg Rubstello, and the union's chief negotiator was Victor Smedstad of the law firm of Aitchison, Hoag, Vick & Tarantino. Michael Aldridge was president of the union and a member of the union's negotiation team.

On June 17, 1992, Rubstello wrote to Smedstad proposing a set of ground rules for the negotiations, including that all tentative agreements would be in writing, signed or initialed by the chief negotiators, and that tentative agreements reached would remove those issues from being subject to certification for interest arbitration in the event unsuccessful negotiations and mediation. By letter of July 9, 1992, Smedstad agreed to the ground rules. The parties exchanged initial proposals on July 21, 1992.

Disciplinary Action Appeals

At a negotiation session on August 25, 1992, the union proposed new contract language that would allow a bargaining unit employee who had been disciplined the option of pursuing either an appeal to the local civil service commission or grievance arbitration. The employer wanted to maintain existing language, which allowed only an appeal to the civil service commission. After the union demanded that employees be given the option of pursuing disciplinary matters through the grievance procedure, the employer proposed that the union could choose one option or the other, but not both.

The parties discussed the subject at a negotiation session held on September 22, 1992. After a caucus, Smedstad informed Rubstello that the union's bargaining team would "opt" to go with the civil service procedure on disciplinary matters, rather than insisting that they be subject to arbitration.[2] Rubstello testified that the union's agreement to maintain the existing civil service language

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[2] Testimony from both Smedstad and the president of the union confirmed this was the union's stated position.

"made it very easy from that point on for us to be conciliatory with those other changes they wanted."[3]

Without knowing Smedstad was leaving the Aitchison firm, Rubstello wrote to Smedstad on October 1, 1992, enclosing a proposed agreement, which he characterized as tentative, for consideration. It contained language allowing disciplinary actions to be appealable to the civil service commission, but not allowing them to be considered grievances subject to arbitration. It was Rubstello's intent to have the agreement signed during the next session, which was planned for October 7th.

Smedstad left his law firm on October 2, 1992, and after that date, no longer represented the union in these negotiations. The session planned for October 7th did not occur. James M. Cline eventually replaced Smedstad as chief negotiator for the association.

The next negotiating session was on November 10, 1992. Claiming he did not have Smedstad's notes and did not know what had been agreed to previously, Cline disavowed the oral agreement between Smedstad and Rubstello and reasserted the union's original position giving employees the non-exclusive option to take disciplinary matters to arbitration. Rubstello protested the union's change of position.

During November of 1992, Rubstello made some attempts to work with Cline's position, and made several proposals in response. He proposed to permit arbitration under the contract if the union would waive the civil service alternative, but Cline believed a waiver of an individual's statutory right would be illegal. Rubstello proposed allowing employees the option to appeal to the city manager and to arbitration, in lieu of the civil service commission. In a series of communications, Cline and Rubstello

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[3] Transcript, at p. 92.

discussed whether the employer's proposals were permissive or mandatory subjects of bargaining.

The Hours of Work and Management Rights Proposals

Article XI of the existing labor agreement gave the employer the right to establish and/or modify work schedules and to confine time spent on lunch and rest breaks to those periods established by the employer. The union proposed deleting language from the provision, the effect of which would restrict the employer's ability both to change hours of work and regulate lunch and rest break periods. The employer proposed to continue the language in Article XI.

The existing agreement also contained a management rights provision which gave "any and all rights concerned with the management and operation of the department" exclusively to management "unless otherwise specifically provided by the terms of this agreement." The union proposed changes to the provision as follows:[4]

> ARTICLE III - MANAGEMENT RIGHTS
>
> ((~~Any and all rights concerned with the management and operation of the department are exclusively that of the Employer, unless otherwise specifically provided by the terms of this Agreement.~~))
>
> The Association recognizes:
>
> 1. The prerogatives of the Employer to operate and manage its affairs in all respects in accordance with its responsibilities and powers; and
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> 2. That the Employer reserves those rights subject to the obligations imposed by RCW 41.56.010 et seq. concerning management in the operation of the department which include, but are not limited to the following:

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[4] New material is indicated by underline; deleted material is indicated by ((~~strikeout between double parenthesis~~)).

a. To recruit, assign, transfer or promote members to positions within the department;

b. To suspend, demote, discharge, or take other disciplinary action against employees for just cause;

c. To control the Department budget.

3. To take whatever actions are necessary at all times in order to insure the proper functioning of the department.

The employer submitted a counterproposal which would have completely replaced the existing Article III and which specified that its exclusive right "to make and implement decisions with respect to the operation and management of the police department" included but was not limited to, the following:

1. To establish the qualifications for employment and to employ employees;
2. To establish the makeup of the police department's work force and make changes from time to time, including the number and the kinds of classifications, and direct the city work force toward the organizational goals established by the city;
3. The right to determine the police department's mission, policies, and all standards of service offered to the public;
4. To plan, direct, schedule, control and determine the operation of services to be conducted by employees of the police department in the city;
5. To determine the means, methods and number of personnel needed to carry out the departmental operations and services;
6. To approve and schedule all vacations and other employee leaves;
7. To hire and assign or transfer employees within the department, or police-related functions;
8. To lay off any employees from duty due to insufficient funds;

9. To introduce and use new or improved methods, equipment or facilities;
10. To assign work to, and schedule employees;
11. To take whatever action necessary to carry out the mission of the city in emergencies;
12. To determine the budget.

The union's position was that the employer's hours of work and management rights proposals contained waivers. Citing City of Yakima, Decision 3564-A (PERC, 1991), it argued those permissive subjects of bargaining must be withdrawn at impasse.

After mediation sessions were held on March 18 and 19, 1993, the mediator recommended that the parties were at an impasse. On March 31, 1993, the union filed a complaint charging unfair labor practices, alleging the City of Pasco unlawfully insisted to impasse on a permissive subject of bargaining, namely, waivers regarding management rights to change hours of work and determine the disciplinary appeal procedure. (Case 10369-U-93-2385.)

On April 12, 1993, the employer filed a complaint charging unfair labor practices, alleging that the union engaged in unlawful bad faith bargaining when it refused to honor the oral agreement made between Smedstad and Rubstello regarding appeals from disciplinary actions. (Case 10403-U-93-2399.)

On June 29, 1993, the Executive Director certified the dispute for interest arbitration under RCW 41.56.450. In a preliminary ruling letter of August 25, 1993, the Executive Director withdrew the certification of the "management rights", "hours of work", and "grievance procedure" issues from interest arbitration, since causes of action for unfair labor practices were stated. See City of Bellevue v. IAFF, Local 1604, 119 Wn.2d 373 (1992), where the Supreme Court of the State of Washington ruled that the Commission

has the authority to decide unfair labor practice complaints while interest arbitration is pending.

The two cases were consolidated for hearing before Examiner William A. Lang on October 26, 1993. The Examiner concluded that the union violated RCW 41.56.150(4) when it withdrew from the oral agreement concerning appeals from disciplinary action. He further concluded that the employer's pursuit of its proposals on management rights and hours of work did not constitute an unfair labor practice. The union filed a timely petition for review.

POSITIONS OF THE PARTIES

The union argues that the parties had not reached a tentative agreement on proposed contract language for the disciplinary appeal process, and that therefore there was no agreement the union could later disavow. The union also argues that waivers of a party's right to engage in collective bargaining are permissive subjects of bargaining, and the employer committed an unfair labor practice when it insisted upon its proposal regarding management rights and hours of work to the point of impasse.

The employer argues that the union engaged in bad faith bargaining when it did not honor the oral agreement between Smedstad and Rubstello. It contends that its managements rights and hours of work proposals were mandatory subjects of bargaining that may be pursued to the point of impasse. The employer urges the Commission to affirm the Examiner's decision.

DISCUSSION

The parties' duty to bargain is defined in RCW 41.56.030(4) as follows:

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

The duty to bargain is enforced by RCW 41.45.140(4). The complainant has the burden of proof in an unfair labor practice case. See WAC 391-45-270. With respect to these cases, the employer has the burden to prove the union engaged in bad faith bargaining when it did not honor the oral agreement, and the union has the burden to prove the employer's insistence to impasse on the subject proposal was an unfair labor practice.

Appeal Process for Disciplinary Actions

Our Supreme Court reviewed the bargainability of discipline procedures in City of Pasco v. Public Employment Relations Commission, 119 Wn.2d 504 (1992). As in this case, the union had proposed a grievance procedure that would give employees the option of appealing disciplinary action through the contractual grievance procedure, rather than through an appeal to the civil service commission. The court held that a proposal for a contractual remedy to parallel and/or replace the civil service forum was a mandatory subject of bargaining.

Whether a party breached the statutory requirement to bargain in good faith depends on the totality of conduct. See Mason County, Decision 3706-A (PECB, 1991) where the Commission said:

> The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and to explore possible alternatives, if any, that may achieve a mutually satisfactory accommodation of the interest of both the employer and the employees.11/ The statutory obligation to bargain in good faith does not require a party to always grant a concession or agree to a specific proposal, but neither is a party entitled to reduce collective bargaining to an exercise in futility.12/ Entering negotiations with a take-it-or-leave-it attitude on items of importance is risky for a party, but a party may maintain its firm position on a particular issue throughout bargaining, if the insistence is genuinely and sincerely held, and if the totality of its conduct does not reflect a rejection of the principle of collective bargaining.13/

11 South Kitsap School District, Decision 472 (PECB, 1978).

12 RCW 41.56.030(4); City of Snohomish, Decision 1661-A (PECB, 1984).

13 City of Snohomish, Decision 1661-A (PECB, 1984); Pierce County, Decision 1710 (PECB, 1983).

Citing Federal Way School District, Decision 232-A (EDUC, 1978), *affirmed* King County Superior Court (Cause 830404, 1978), the Commission referred in Mason County to the good faith obligation as a duty to participate actively in the deliberations, so as to indicate a present intention of finding a basis for agreement. The Commission acknowledged that differentiating between good faith and bad faith is not a simple task, but specified that where bargaining sessions have taken place, one cannot look to any one action or inaction by the parties to make a determination. The Commission has acknowledged that decisions involving a failure to bargain in good faith reflect qualitative, rather than quantitative, evaluation.

> A position taken by a party in a context of good faith bargaining may be perfectly lawful, while the same position if adopted as part of

> an overall plan to frustrate agreement ... cannot be given agency imprimatur.

Shelton School District 309, Decision 579-B (EDUC, 1984).

Thus, the totality of conduct must be considered.

The Examiner characterized the oral agreement on disciplinary action appeals as a tentative agreement, having been reached at an arms length negotiation but withdrawn later by the union. The union argues that a tentative agreement was never reached, since the agreement was not in writing and signed by the parties as required by the parties' ground rules. It contends that the application of such a rule provides a very bright line as to when a tentative agreement has been reached and removes any confusion regarding the terms. The union contends that Rubstello's proposal actually constituted a non-binding counteroffer.

Two decisions involving the National Labor Relations Act deal with a party's refusal to accept provisions previously agreed upon during negotiations. In NLRB v. Industrial Wire Products Corp., 445 F.2d 673, 79 LRRM 2593 (CA 9, 1972), *enforcing* 177 NLRB 328, 74 LRRM 1128 (1969), the appeals court held the employer bargained in bad faith when, after the parties had agreed to certain clauses and agreed that the union would draft a document embodying the agreement, the employer advised the union the clauses previously agreed to were not acceptable. In Wichita Eagle & Beacon Publishing Co., 222 NLRB 742, 91 LRRM 1227 (1976), the Board held that the employer did not violate the law when it rejected the union's request for reopening of negotiations on contractual provisions the parties previously had agreed to.

Tentative agreements have been given differing interpretations in Commission case law. Some cases have found that a party is guilty of bad faith in failing to honor tentative agreements; other cases

have found tentative agreements to be just that, agreements which are not final and which can be renegotiated.

Columbia County, Decision 2322 (PECB, 1985), and City of Mukilteo, Decision 1571-A (PECB, 1983), are examples of the first type. The Examiner in Columbia found that the parties reached tentative agreement on a proposal and ordered the employer to reinstate it. The parties had agreed to a contractual provision, but later the employer evidenced different intentions. The Examiner in that case found that by raising a certain issue well after bargaining was underway, the employer intended to frustrate and disrupt the collective bargaining process. In City of Mukilteo, Decision 1571-A (PECB, 1983), the Commission agreed with the Examiner's finding that the employer's repeated delays in bringing up a "tentative agreement" for ratification by the city council indicated it was not prepared to negotiate in good faith. In those cases, there was no issue as to whether a tentative agreement had been reached, and clear patterns of delays and disruption to the bargaining process were evidenced.

Oak Harbor School District, Decision 2956 (PECB, 1988), and Fort Vancouver Regional Library, Decision 2396-B and 2350-C (PECB, 1988), are examples of the second type. The parties in Oak Harbor appeared to reach an understanding on a successor contract, but one of the parties later rejected the tentative agreement. No violation was found, however, where they proceeded with further negotiations, ratified the next tentative agreement, and signed a written contract. In Fort Vancouver Regional Library, Decision 2396-B and 2350-C (PECB, 1988), the Examiner found that the employer was not acting in bad faith when it withdrew from a tentative agreement and altered its proposal on sick leave. In that case, there was no evidence that the parties agreed they would sign tentative agreements. The Examiner in Fort Vancouver Regional Library, supra, found that where an employer sets forth reasons for withdrawing from tentative agreements, and those reasons are not so

illogical as to warrant an inference that the withdrawal indicates intent not to reach agreement, it is quite possible to arrive at a conclusion that there is no unfair labor practice violation.[5]

In the case before us, the union's sudden change of position could support an inference that the withdrawal of agreement was intended to frustrate the collective bargaining process. The totality of the union's conduct, however, leads us to a different result.

The Parties' Ground Rules -
One critical consideration is whether the parties had the type of agreement which the union was required to honor. We agree with the Examiner that the employer did what was necessary to comply with the ground rules, and that the union then changed its position regarding disciplinary appeals. The Examiner considered an oral agreement by the union to be a binding commitment. Because of the particular circumstances before us, the Commission does not agree.

The parties had adopted specific ground rules for reaching a "tentative agreement". They agreed that tentative agreements would be in writing and signed or initialed by the parties. The obvious purpose of such a requirement is to ensure that each side understands what it is that they have agreed to. Putting conceptual agreements into textual form often reveals unresolved issues or misunderstandings. The parties had an agreement in principle but the article in question was not formalized as a tentative agreement through the parties' initials or signatures.

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[5] In finding no violation, the Examiner cited Arrow Sash and Door Company, 281 NLRB 1108 (1986), for the proposition that withdrawal from tentative agreements reached in bargaining may be an indicator of bad faith. Also, under Reliable Tool and Machine, 268 NLRB 101 (1983), withdrawal does not constitute a per se refusal to bargain. See, also, Hickinbotham Bros. Ltd., 254 NLRB 96 (1981), and Merrell M. Williams, 279 NLRB 82 (1986).

Because of the parties' own ground rules, the union could reasonably have believed that it had the right to change its position when a concern arose as to the legality of the employer's proposal. If we were to require the union to abide by the oral agreement, we would be superseding the terms of an agreement that was mutually confirmed in writing, i.e., the negotiating ground rules, in order to give effect to one that had not been, i.e., the terms of the article regarding disciplinary appeals.

The Timing of the Change of Position -
The timing of the events also supports finding there was no unfair labor practice. The union's change of position occurred at the first negotiating session after receipt of the employer's written description of the oral agreement. There was not a prolonged period during which the employer could be said to have detrimentally relied upon continued manifestations that the agreement remained in effect. The union's subsequent actions reflect a willingness to come to agreement on some other basis. Considering federal and PERC precedent, we find the union's withdrawal from the oral agreement did not frustrate negotiations to an extent sufficient for an unfair labor practice to have occurred.

Employer's Insistence to Impasse

The issue here is whether management rights and hours of work proposals which limit the rights of bargaining unit employees are mandatory subjects of bargaining that may be pursued to impasse.

The Commission has followed federal labor law to distinguish between "mandatory", "permissive" and "illegal" subjects of bargaining.[6] The scope of mandatory bargaining includes matters

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[6] Federal Way School District, Decision 232-A (EDUC, 1977), citing NLRB v. Wooster Division of Borg Warner, 356 U.S. 342 (1958).

that directly impact the wages, hours or working conditions of bargaining unit employees.[7]

As the Examiner stated, it is well settled that a party may bargain to impasse on any "mandatory" subject of bargaining. As also noted by the Examiner, our Supreme Court applied federal precedent in Klauder, et al. v. San Juan County Sheriff's Guild, 107 Wn.2d 338 (1986), resulting in the declaration that, in general:

> [T]hose issues that deal with wages, hours and other terms and conditions of employment are subjects about which the parties must bargain and are categorized as "mandatory" subjects. On the other hand, the parties need not bargain on other matters which are referred to as "permissive" issues including those which deal with procedures by which wages, hours and other terms are established.

As to "permissive" subjects, however:

> A party commits a "refusal to bargain" [unfair labor practice] insisting to impasse on a proposal that is not a mandatory subject of bargaining. In a bargaining unit of "uniformed personnel" for which interest arbitration is provided under RCW 41.56.450 to resolve impasses, a party is not permitted to insist to interest arbitration on a non-mandatory subject of collective bargaining.
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> City of Pasco, Decision 3582-A (PECB, 1991).

The Court in Klauder, supra, also held that it was unlawful to bargain to impasse over a nonmandatory subject.

WAC 391-45-550 outlines the Commission's policy relating to mandatory and nonmandatory subjects as follows:

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[7] See, Wenatchee School District, supra.

> It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.

In City of Yakima, Decision 3564-A (PECB, 1991), the Commission recognized that employers are sometimes willing to make concessions in order to obtain waivers of bargaining rights from the union, so that the employer is less hindered in administering the contract.

The union relies on a statement in City of Yakima that waivers of statutory bargaining rights are not, themselves, mandatory subjects of bargaining. The referenced statement was an overgeneralization made in a different context. We agree with the Examiner that the City of Yakima, supra, is not controlling because the issues in the two cases are not the same. The issue in City of Yakima was whether waivers contained in the parties' **existing management rights clause** were sufficient to allow the employer to make unilateral changes. The Commission found the existence of a contract to be an essential element to finding a waiver. In the present case, the issue is whether the employer may bargain to impasse on a management rights clause in negotiations for a **new collective bargaining agreement**.

The crux of the issue in this case would seem to be one of perspective: The employer sees its "management rights" and "hours" proposals as fulfilling its statutory duty to bargain on the

subjects covered for the life of the contract; the union views the same proposals as waivers of its right to bargain specific "management rights" or "hours" issues as they may arise during the life of the contract.

This is a case of first impression for the Commission, but federal case law is well-settled. A management rights clause with terms directly related to terms and conditions of employment is a mandatory subject of bargaining, and an employer may bargain to impasse on such a clause. NLRB v. American National Insurance Company, 343 U.S. 395 (1952). In American National Insurance Company, the union had submitted a proposed contract covering wages, hours, promotions, vacations and other provisions, including a grievance procedure with ultimate resort to an arbitrator. As in this case, the employer wanted to exclude discipline and other matters from arbitration and proposed that those matters be the exclusive responsibility of management under a broad management rights clause. The union refused to agree to such a clause so long as it covered mandatory subjects of bargaining. After the parties deadlocked on the provision, the NLRB found that the employer's insistence on the clause constituted a per se violation. The Supreme Court reversed and held that the act of proposing a management rights clause was not per se, an unfair labor practice, and that the employer bargained in good faith.[8]

The union argues that the NLRB has not always applied American National Insurance Company to management rights clauses. Relying on NLRB v. Bartlett-Collins Company, 639 F.2d 652, 106 LRRM 2272 (CA 10, 1981); Salvation Army of Mass., 271 NLRB 195, 116 LRRM 1410 (1984); Quality Engineered Products Co., 267 NLRB 593, 114 LRRM 1100 (1983); and A-1 King Size Sandwiches, Inc., 265 NLRB 850, 112

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[8] As noted by the Examiner, American National was relied upon in NLRB v. Tomco Communication Inc., 567 F.2d 871 (9th Cir. 1978), which held an employer may impasse on a management rights clause.

LRRM 1360 (1982), the union points out that the NLRB has, on occasion, declined to find such clauses containing waivers of bargaining rights to be mandatory subjects of bargaining.

It is true that the Board does not always find a management rights provision to be addressing mandatory subjects. In Mental Health Services Northwest, 300 NLRB 926, 136 LRRM 1025 (1990), a management rights clause was held to be a permissive, rather than a mandatory subject of bargaining because it related to governing employee activities outside the workplace and outside the employment relationship. Also, it dealt with the union's position on a political issue and the Board found these objectives to be unrelated to terms and conditions of employment. Mental Health Services Northwest and the cases relied upon by the union are likewise inapposite and fail to support the union's argument that the management rights clause proposed by the employer in this case is not a mandatory subject of bargaining. In Salvation Army, the NLRB held that the employer refused to bargain by insisting as a condition of continuing negotiations that the union agree to a clause stating that it would recognize the religious mission of the employer, which was found to be a non-mandatory subject of bargaining. NLRB v. Bartlett-Collins and Quality Engineered Products involved management rights proposals which allowed management to make stenographic transcripts of bargaining sessions and, when the employer insisted upon such a provision to the point of impasse, the Board held the such a transcription was not a mandatory subject of bargaining. In Bartlett-Collins, which was enforced by the Tenth Circuit, the NLRB stated that meaningful collective bargaining would not be encouraged if a party could stifle negotiations at the onset by insisting upon a court reporter.

In A-1 King Size Sandwiches, supra, the employer made a wage proposal under which the employer would not consider any modification in the basic wage rate and in which, in the Board's words, the union's role was limited "to observation, suggestion or

prayerful entreaty". According to the Board, such a proposal together with the employer's extremely broad management rights proposal and no strike clause, gave the employer the exclusive right to evaluate employees, and its decisions on wages would be final. Further, in the words of the NLRB, the employer "would have the unilateral right to terminate or modify bonus or work incentive plans and the Union would be precluded from striking to enforce its wage demands". In concluding that the employer refused to bargain in good faith, the Board stated:

> [E]xamination of the Respondent's other proposals, particularly as they interrelate, reveals that Respondent was insisting in retaining to itself total control over virtually every significant aspect of the employment relationship. Thus, under its proposals, Respondent sought to retain exclusive and unbridled control over discipline and discharge ...; moreover, discipline/discharge matters were implicitly excluded from the grievance and arbitration procedure and layoff/recall matters were expressly excluded.

A-1 King Size Sandwiches, 265 NLRB 850, 859.

The foregoing cases all turned on the particular subject matter that the management rights clauses addressed. Unlike the provisions in the cases cited by the union, we find the management rights and hours of work clauses in this case to be mandatory subjects of bargaining involving wages, hours and working conditions on which a party may insist to the point of impasse.

NOW THEREFORE, it is

ORDERED

1. The findings of fact and conclusions of law and order issued in the above-captioned matter by Examiner William A. Lang are affirmed and adopted as the findings of fact and conclusions of law of the Commission, with the exception of the following:

a. Paragraph 5 of the Examiner's Findings of Fact is amended to read:

> At an early stage in the negotiations, the union proposed to alter the procedures for appeal of employee disciplinary action. At a negotiation session on September 22, 1992, the union agreed to withdraw its proposed change in the appeal procedure of disciplinary actions, and retain the provisions of Article V Grievance Procedure of the previous contract, under which the civil service commission was designated as the forum to decide such matters. Rubstello prepared a written proposed agreement, and forwarded it to Smedstad for signature. There were minor changes remaining to be made within the context of the oral agreement, but the document correctly dealt with the issue of the forum for resolution of disputes concerning disciplinary actions.

b. Paragraph 6 of the Examiner's Findings of Fact is amended to read:

> On or about October 1, 1992, Attorney James M. Cline replaced Smedstad as the representative of the union. At a negotiation session held on November 10, 1992, Cline disavowed any knowledge of the oral agreement, claiming he did not have Smedstad's notes. Cline stated the union would never agree to retaining the civil service commission as the forum for disciplinary actions. Rubstello protested,

but made other proposals in an effort to finalize the negotiations.

c. Paragraph 2 of the Examiner's Conclusions of Law is amended to read:

> By its actions to withdraw from an oral agreement concerning the forum for appeal of disciplinary actions, as described in paragraphs 5 and 6 of the foregoing findings of fact, the Pasco Police Officers Association has not committed an unfair labor practice in violation of RCW 41.56.150(4).

2. [Case 10369-U-93-2385] The complaint charging unfair labor practices filed by the Pasco Police Officers Association against the City of Pasco is DISMISSED.

3. [Case 10403-U-93-2399] The complaint charging unfair labor practices filed by the City of Pasco against the Pasco Police Officers Association is DISMISSED.

Issued at Olympia, Washington, the 1st day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, Chairperson

DUSTIN C. McCREARY, Commissioner

SAM KINVILLE, Commissioner