STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1890, Complainant, vs. CITY OF WENATCHEE, Respondent.	CASE NO. 5394-U-84-981 DECISION NO. 2216 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Durning, Webster and Lonnquist, by James H. Webster, Attorney at Law, appeared on behalf of the complainant.

Carlson and Drewelew, by John Hotchkiss, Attorney at Law, appeared on behalf of the respondent.

On August 8, 1984, International Association of Fire Fighters, Local 1890, (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) alleging that the City of Wenatchee (respondent) violated RCW 41.56.140(1), (2), and (4) by circumventing the exclusive bargaining representative and engaging in direct dealings with three bargaining unit employees with regard to the matter of a civil service commission promotional examination. A hearing was held on November 8, 1984, before Frederick J. Rosenberry, Examiner. The respondent submitted a post-hearing brief.

BACKGROUND

The City of Wenatchee and International Association of Fire Fighters Local 1890 have a collective bargaining relationship which pre-dates the events that are relevant to this proceeding. The bargaining unit is composed of firefighters who are "uniformed personnel" within the meaning of RCW 41.56.030(6). The parties to this proceeding were parties to a collective bargaining agreement effective for the period January 1, 1983 through December 31, 1984.

The employer has a civil service commission which is appointed and functions pursuant to the provisions of Chapter 41.08 RCW (Civil Service For City Firemen). This civil service commission is composed of three persons. The same three persons evidently sit separately as a civil service commission under the separate statutory authority of Chapter 41.12 RCW (Civil Service

For City Police). The civil service commission had adopted rules governing some aspects of the employment relationship for members of the complainant's bargaining unit. The collective agreement between the parties made specific reference to civil service rules and regulations within the management rights clause of the contract, as follows:

> Any and all rights concerned with the management and operation of the Department are exclusively that of the City unless otherwise provided by the terms of this Agreement. The City has the authority to adopt rules for the operation of the Department and conduct of its employees, provided such rules are not in conflict with the provisions of this Agreement or with applicable law. The City has the right to (among other actions) discipline, temporarily lay off, or discharge employees; to assign work and determine duties of employees, to schedule hours of work; to determine the number of personnel to be assigned duty at any time, and to perform all other functions not otherwise expressly limited by this Agreement, in accordance with Wenatchee Fire Department Civil Service Rules and Regulations.

The civil service commission rules call for the maintenance of promotional eligibility lists that are effective for one year. In order to accomplish this, the civil service commission performs annual testing to establish applicant standing on the promotion eligibility list. When a vacant position is to be filled, the civil service commission certifies to the fire chief the names of the three applicants on the eligibility list having the highest examination scores.

At the outset of 1984, there were three firefighters who were on the eligibility list for promotion to the rank of lieutenant. When notice of a promotional examination was posted by the civil service commission in June, 1984, these same three firefighters were the only applicants.

The respondent's fire chief was aware of the civil service commission procedure concerning administration of annual promotional examinations, and was familiar with the proficiency of the three applicants. He had previously determined that each of these three applicants was qualified for promotion to the rank of lieutenant. The fire chief noted that the three applicants would, regardless of their re-examination scores, automatically be referred to him for consideration in the event that a vacancy occurred. Because of this, the fire chief concluded that it should not be necessary to re-examine the three candidates, and that the 1984 civil service examination could be cancelled as a cost savings measure for the city.

Firefighters Gary Bass, Mike Hughes and Glen Widner were summoned to a meeting with the fire chief and assistant fire chief, at which time the fire chief proposed (and sought to obtain their concurrence in) cancellation of the 1984 promotional examination. Although the record does not reflect the precise date, the parties agree that this meeting took place some time in

late June, 1984. One of the firefighters voiced objection to the chief's proposal, because he desired to take the test in order to potentially improve on his previous test score and his standing on the eligibility list. The chief noted the firefighter's objection, but he continued to advance his proposal.

The fire chief appeared before the civil service commission and introduced his proposal to cancel the promotion examination. The union also appeared before the civil service commission and spoke against the chief's proposal. The civil service commission chose to proceed with the promotional examination and it was subsequently conducted. The relative standing of the three candidates did not change.

POSITIONS OF THE PARTIES

The complainant charges that the respondent violated the Public Employees Collective Bargaining Act (Chapter 41.56 RCW) by engaging in direct dealing with the three members of the bargaining unit, citing the chief's meeting with them as individuals. The union contends that the matter of promotional examination is a mandatory subject of bargaining because it is a condition of employment by which promotions to the (bargaining unit) position of lieutenant would be made, and because the civil service commission is not similar in scope, structure and authority to the board created by Chapter 41.06 RCW. The complainant further alleges that the the employer should have submitted any proposed change to the bargaining process, and that the fire chief sought to circumvent the examination requirement without notifying the union about his proposal and bargaining with the union about it.

The respondent takes the position that the entire matter is regulated by the civil service commission rules and regulations, whose relevant provisions are similar in scope to Chapter 41.06 RCW. Therefore, according to the employer, collective bargaining is not required pursuant to RCW 41.56.100 and the disputed activity is not a mandatory subject of bargaining. Alternatively, the respondent asserts that the subject of promotional examination is a personnel matter which is not peculiar to the firefighter bargaining unit, because promotional examinations are applicable to other employees of the respondent including police officers. It follows, according to this argument, that the employer is not required to engage in collective bargaining as it is defined in RCW 41.56.030(4). The city also contends that, even if the issue is a mandatory subject of bargaining, the complainant knowingly waived its bargaining rights in the management rights clause in the parties' collective bargaining agreement. The city further contends that it has not made threats of reprisal to members of the bargaining unit, that the union has failed in its duty to meet the burden of proof required to establish a violation and has failed to demonstrate how the

city has interfered with, restrained or coerced its employees or interfered with the internal affairs of the employee organization.

DISCUSSION

Where public employees have exercised their right under Chapter 41.56 RCW to organize and select a labor organization as their exclusive bargaining representative under RCW 41.56.080, the employer is obligated to bargain with that organization to the exclusion of all others and also to the exclusion of direct dealings with employees on matters that are mandatory subjects of collective bargaining. An employer which circumvents its obligations towards the exclusive bargaining representative commits a violation of RCW 41.56.140(4) (refusal to bargain) and derivatively, of RCW 41.56.140(1) (interference with employee rights).

The instant complaint charges that the employer disregarded its obligations to the union as the exclusive bargaining agent, and engaged in illegal direct dealing in contravention of the Public Employees Collective Bargaining Act, when the chief and his associate meet with the firefighters. There is no evidence that the union was provided the opportunity to attend or even advised of the meeting. The matter of direct dealing was raised in Friederich Truck Service, Inc., 259 NLRB 1294 (1982) where the NLRB stated:

> It is clear that by the above unilateral conduct, respondent FTS dealt with employees in contravention of its duty to bargain and negotiate with the union as the exclusive representative of its employees. Such conduct is a well recognized violation of Sections 8(a)(1) and (5) of the Act.

In Goldendale School District, Decision 1634 (PECB, 1983), a circumvention violation was found. In the course of evaluating the bargaining obligation the examiner stated.

> RCW 41.56.140(4) makes it an unfair labor practice for a public employer to refuse to engage in collective bargaining with the exclusive bargaining representative concerning the wages, hours and conditions of employment of the employees in the bargaining unit. It is clear in this case that the district did not negotiate with the union, but rather negotiated directly with the individual employee, concerning the wages, hours and working conditions of the "classified instructor".

See also: Royal School District, Decision 1419 (PECB, 1982); Seattle-King County Health Department, Decision 1458 (PECB, 1982).

There is no question that the fire chief, an agent of the employer in the case at hand, conducted direct dealings with the employees to the exclusion

of their recognized exclusive bargaining representative. The determination of the unfair labor practice allegations in this case turns on whether the subject of the meeting was a mandatory subject of bargaining between the union and the employer at the time of the admitted direct dealing between the employer and the employees. The respondent raises several lines of argument in its defense to the allegation of unfair labor practices.

Mandatory Subject of Bargaining

The subject matter of this dispute is the procedure for bargaining unit employees to obtain promotion to higher rank within the bargaining unit represented by the union. The collective bargaining obligation is defined in RCW 41.56.030(4) as including wages, hours and working conditions. The statute does not identify every potential mandatory bargaining subject, and cases must be determined on their own merit. In addition to the perquisites of rank in a para-military organization, promotion in this case affects working conditions by changes of assignment and duties. The examination procedure at issue has a significant and material, if indirect, impact on wages. See: City of Hoquiam, Decision 745 (PECB, 1979).

There can be little doubt that promotional procedures are normally considered a mandatory subject of bargaining. Support for this conclusion is found in City of Green Bay, Decisions 12352-B, 12402-B (Wisconsin ERC, 1975) and Police Officers Assn. v. Detroit Police Dept., 233 NW 2d 49 (Mich. Ct. App., 1975). In the latter case, the Michigan Employment Relations Commission (MERC) (which administers that state's Public Employment Relations Act (PERA)) determined that the matter of promotion is a mandatory subject of bargaining, and the Michigan court stated:

> We conclude that MERC did not err in holding that the standards and criteria for promotion are "terms and conditions of employment" under Section 15 of PERA and a mandatory subject of collective bargaining.

Both public sector and private sector case law generally establishes that the matter of promotions falls within the scope of mandatory bargaining. Precedent under federal law and under the similar laws of other states is taken into consideration in interpreting and enforcing Chapter 41.56 RCW. See: Pierce County, Decision 1710 (PECB, 1983); City of Snohomish, Decision 1661-A (PECB, 1984).

The "Civil Service Exception"

The employer asserts that it has no obligation to bargain collectively with the union on the matter of promotion because of the civil service commission exception language in RCW 41.56.100, which states:

> ... nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by Chapter 41.06 RCW.

The respondent contends that the Wenatchee Civil Service Commission is similar in scope, structure and authority to the state personnel board, whose objectives are specified in the declaration of purpose set forth in RCW 41.06.010. It states:

> The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline, training and career development, and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions, and retention therein, in the state service, shall be made on the basis of policies hereinafter specified.

The respondent acknowledges that there are differences between the Wenatchee Civil Service Commission and the board created by RCW 41.06, but argues that there is no substantive difference between the two systems with respect to promotion rules because they are both based on merit.

A similar claim of bargaining exclusion was raised in City of Walla Walla, Decision 1999 and 1999-A (PECB, 1984) where the employer claimed that a union proposal on seniority contravened its civil service commission regulations adopted pursuant to RCW 41.08. The allegation was rejected:

> Seniority provisions of the type covered by the union's proposal are a common (mandatory) subject in collective bargaining. In order to be excluded from collective bargaining by the "civil service" proviso to RCW 41.56.100, the subject matter must have been delegated to a board "similar in scope, structure and authority" to the State Personnel Board, which draws a broad range of authority from RCW 41.06.150. It was pointed out in City of Bellevue, Decision 839 (PECB, 1980) that Chapters 41.56 and 41.08 RCW are separate enactments of the legislature which are markedly different from one another. An allegation that the civil service body operates under Chapter 41.08 RCW is not sufficient to invoke RCW 41.56.100.

In City of Bellevue, Decision 839 (PECB, 1980) the employer claimed an issue to be exempt from mandatory bargaining on the basis that it was delegated to a civil service board pursuant to RCW 41.56.100. Bellevue's contentions were also rejected. The examiner stated in relevant part:

> The "civil service proviso" to RCW 41.56.100 is widely mis-read. RCW 41.56.100 does not require any deferral to any and all civil service bodies .... The city's assertion of "delegation to civil service" in this case constitutes an affirmative defense on which the city had the burden of proof .... RCW 41.08 and RCW 41.06 are separate enactments of the legislature and are markedly different from one another. While similarities exist, limitation of the scope of the Bellevue civil service to a narrow class of the city's employees and the absence of delegated authority concerning wages and wage-related matters compels the conclusion that the Bellevue Civil Service Board is not similar in scope, structure and authority" to the State Personnel Board. If the legislature had intended that bodies created pursuant to RCW 41.08 qualify under the proviso to RCW 41.56.100, it could easily have so provided. The exemption from mandatory bargaining does not apply in this case.

Aside from the introduction of the civil service commission rules and regulations, the record in the instant case contains no evidence of comparability or distinction between the Wenatchee Civil Service rules and regulations and the scope, structure and authority of the (State Personnel) board created by Chapter 41.06 RCW. In comparing the respondent's civil service commission organization, structure and authority under the provisions of RCW 41.08 with the state personnel system created by RCW 41.06, there are some similar provisions. However, the overall structure, scope and authority of the state system significiantly exceeds that of the Wenatchee civil service system. The respondent's civil service commission rules and regulations do not meet the standard necessary to exempt the respondent from its collective bargaining obligations under RCW 41.56.100.

THE "PECULIAR" LANGUAGE

The respondent has argued that the matter of promotions is a personnel matter that is not peculiar to the firefighters' bargaining unit. Because RCW 41.56.030(4) imposes the bargaining obligation on matters relating to wages, hours and working conditions which may be peculiar to an appropriate bargaining unit, it follows, according to the respondent, that there is no bargaining obligation in the instant case. In support of its argument, the respondent cites Seattle v. Auto Sheet Metal Workers, 27 Wn.App 669 (1980).

RCW 41.56.030(4) states:

> "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.

In evaluating this argument it is incumbent on the examiner to take into consideration the background that proceeded the court ruling relied upon by the respondent here. Initially, the Auto Sheet Metal dispute involved several labor organizations who had obtained an injunction prohibiting the City of Seattle from implementing certain personnel practices. The matter came before the superior court when the employer sought dissolution of the injunction and a declaratory ruling sustaining the validity of recently enacted city personnel ordinances. The court determined that the ordinances did not create a civil service commission or personnel board that was similar in scope, structure and authority to the board created by Chapter 41.06 RCW and dissolved the injunction. Subsequent to the superior court's action, only two of the labor organizations involved appealed seeking relief on tangential issues. On appeal, the court addressed numerous issues. With respect to collective bargaining, the court stated:

> The apparent purpose of the legislature's 1967 changes was to answer the concerns expressed in the Governor's veto message. Insofar as collective bargaining at the local level is concerned, the legislature's definition of collective bargaining honors the legislative integrity of local governmental units by leaving them considerable latitude to develop and implement merit systems to the extent that they are not inconsistent with the right of collective bargaining on personnel matters "which may be peculiar to an appropriate bargaining unit." The legislature's definition expresses a policy that certain incidents of public employment should be subject to the give and take of the bargaining table where peculiar needs of particular employees may be better articulated and responded to, while other personnel matters involving employees as a class may fairly be left to the traditional system of personnel administration.

That procedural background is such as to place the weight of the precedent into question. The cited comment was made without the benefit of case presentations by all parties in support of their respective positions. The case arose outside of the context of the unfair labor practice procedure put in place by the legislature for determination of disputes arising under Chapter 41.56 RCW. The superior court had noted that there was no complaint of unfair labor practice pending on the matter and that, if there was, the matter would probably be referred to the Public Employment Relations Commission for adjudication. Auto Sheet Metal thus stands as an isolated case, and is not taken as a statement of well-developed case law that identifies or segregates those terms or conditions of employment that are

subject to the "give and take of the bargaining table", and can be described as mandatory subjects of bargaining.

The "peculiar" language of RCW 41.56.030(4) is subject to at least two widely differing interpretations, both of which might be argued as plausible in the setting of a collective bargaining law and process. The existence of such an ambiguity, in and of itself, weakens the employer's argument here. Further, the facts undermine the employer's position under either alternative.

One view, consistent with collective bargaining law and tradition, is that the bargaining rights of an exclusive bargaining representative are peculiar to its bargaining unit, i.e., that it has no right to bargain for the wages, hours or working conditions of persons outside of its certified or recognized bargaining unit. See: Orient School District, Decision 2174, 2174-A (PECB, 1985); Pend Orielle County, Decision 2266, 2266-A (PECB, 1985). The statute is capable of such an interpretation, so long as one does not inject punctuation where none exists, and that would seem to be the better (or at least less controversial) interpretation. Applying this interpretation to the facts of the case at hand, the union would be well within its rights in demanding bargaining on the matter at issue. The complainant has not sought collective bargaining on the matter of promotional examinations on behalf of the respondent's police officers, on behalf of fire department employees excluded from the bargaining unit or on behalf of any other group of employees. Rather, it is asserting bargaining rights on behalf of the firefighters it represents on a matter of promotions within the existing bargaining unit.

An alternative view, and that which is advanced by the respondent here, is that the employer would have no bargaining obligations on standardized terms made applicable accross bargaining unit lines. Acceptance of this view on broad terms would, when carried to its logical extremes, constitute a severe restriction on the collective bargaining process. It would follow that most terms or conditions of employment could be generically characterized as a common or general condition as to which peculiarity was lacking. Wages would not be bargainable, because all employees earn them. Work schedules would not be bargainable because all employees have them, ignoring that some functions are operated around the clock, every day of the year, while others are operated only during "normal office hours". Promotions, too, could be observed generically as a normal condition of employment as to which peculiarity would then be lacking. Such a generic exclusion of promotions, wages, holidays and other conditions of employment from bargaining would make a mockery of the legislative purpose stated in RCW 41.56.010 and has been repeatedly rejected by PERC in defining mandatory subjects of bargaining. A more reasonable application of this theory for establishing peculiarity would be to determine whether the bargaining proposal is, when examined in detail, intended to effect the bargaining unit exclusively or to address differences between bargaining unit employees and other employees of

the employer. When the facts of this case are applied to such a theory, however, the employer's argument still breaks down. When the procedure for promotion to the rank of fire lieutenant is examined more precisley, and when all of its intricacies are observed, it becomes clear that it is exclusively peculiar to firefighters. The city does not claim to have any standardized promotional procedure applicable to all of its employees. To the extent that it has parallel procedures for promotions of police officers, they are adopted under the authority of a different civil service statute than the one relied upon by the employer here.

Therefore, the Examiner concludes that disputed subject matter meets the standard for peculiarity which is a threshold issue in determining whether promotions are a subject of collective bargaining pursuant to RCW 41.56.030(4).

Waiver by Contract

The respondent asserts that, in the event promotions are found to be a mandatory subject of bargaining, the complainant nevertheless waived its right to bargain on the matter by virtue of the parties' adoption of a management rights clause as a part of the collective bargaining agreement. Numerous precedents establish, however, that there must be a clear, unmistakable and knowing waiver if a party is to be deprived of its right to bargain about changes in rules or policies that are mandatory subjects of bargaining. See: Latex Industries, 252 NLRB 855 (1980); Rockwell International Corporation, 260 NLRB 1346 (1982); City of Kennewick, Decision 482-B (PECB, 1980) and Goldendale School District, supra. In Park-Ohio Industries, 702 F.2d 624 (6th Circuit, 1983)(enforcing 257 NLRB 413 (1981)), the court held that it must be found that the union waived its right to bargain regarding the matter either in express contract language or by unequivocal extrinsic evidence bearing upon ambiguous contract language. It is well established that the Public Employment Relations Commission is hesitant to find that statutory bargaining rights have been waived by either party and carefully scrutinizes such claims. See: City of Centralia, Decision 1534-A (PECB, 1983).

Beyond its agreement in the management rights clause to allow the respondent to amend laws or ordinances and to adopt rules in accordance with its civil service rules and regulations, the examiner can find no evidence that describes the substance or circumstances of when, and in what manner, the complainant knowingly and consciously agreed to waive its right to act as the exclusive bargaining agent of members of the bargaining unit or that it waived its right to bargain on the matter of promotions. The reference to civil service in the management rights clause is, at best, vague. The collective bargaining agreement also contains an prevailing rights clause. It states:

> All rights and privileges held by the employee at the present time, which are not included in this Agreement, shall remain in force, unchanged and unaffected in any manner by this Agreement. Such rights and privileges shall mean: The number of hours of work shall not exceed an average of 56 hours per week in 1983 and 55.076 hours per week in 1984 calculated on an annual basis, dormitory and kitchen privileges, group life insurance, the furnishings of uniforms and equipment, and such rights and privileges as specified in State and City laws or ordinances as they now exist or as they may hereafter be amended.

The prevailing rights article thus arguably calls, inter alia, for the retention of rights and privileges that are bestowed by Chapter 41.56 RCW as well as rights secured by Chapter 41.08 RCW (Fire Fighter Civil Service).

The chief's conversation with the three firefighters cannot be viewed as a normal business communication involving the administration of the civil service rules and regulations adopted as part of the collective bargaining agreement. Inspection of the civil service rules and regulations discloses that the chief's desires were not in accordance with the existing fire department civil service commission rules and regulations, which state:

> Rule VIII, Section 3
>
> Eligible list promotions: A promotional eligible list for officers for the police and fire departments shall be maintained and in effect for one year for probationary and/or temporary appointments. After one year it shall be automatically extended for temporary appointments only, until such time as a promotional examination can be given.
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> * * *
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> Rule X, Section 3
>
> Promotional eligibility lists: Promotional appointments shall be made from promotional eligible lists which shall be valid for one calendar year from the date that they are certified by the civil service commission. Promotional eligible lists rank the eligible candidate on the basis of ratings resulting from the application of Rule IX, Section 2 of the rules.1/

These civil service commission rules clearly impose a one-year limit on promotional rosters and allow the civil service commission to extend the promotional list for temporary appointments only, which are not a part of this dispute. The civil service general rules do not contain a provision for waiver of the promotional eligibility list regulations. Therefore, when the

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1/ Rule IX, Section 2, provides that "all appointments to and promotions in the civil service shall be made solely on merit, efficiency and fitness ..."

chief met with the three firefighters for the purpose of announcing his desire to change the existing system (and requested their concurrance), his activities went beyond the administration of existing civil service commission rules and regulations.

The fire chief is not a member of the civil service commission. On the contrary, his personnel decisions are subject to the regulations of that commission and he lacks authority to speak for the commission or to unilaterally change the civil service commission rules and regulations. Only the commission has the authority to modify or adopt rules for the regulation of personnel matters. The fire chief was entitled to petition the civil service commission for a change of its rules. The fire chief violated RCW 41.56.140(4) and (1), however, when he went to the three firefighters and dealt directly with those members of the bargaining unit, circumventing its obligations to their exclusive bargaining representative.

The civil service commission processed the proposed examination cancellation by way of its prescribed rules and regulations, eventually concluding that the proposal should be rejected. There was thus no actual change which could be alleged to have been a violation of RCW 41.56.

FINDINGS OF FACT

1. The City of Wenatchee is a municipality of the state of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 1890, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining unit of certain uniformed personnel employed by the City of Wenatchee.

3. In June, 1984, without notice to or consent of the exclusive bargaining representative, the fire chief engaged in direct discussion with three firefighters and sought their individual concurrance with his proposal to cancel the annual civil service promotional examination for the rank of lieutenant.

4. The respondent maintains and operates a civil service commission operating pursuant to Chapter 41.08 RCW. That body has adopted rules and regulations affecting certain aspects of the employment relationship, including promotions to the rank of fire lieutenant. The fire chief's proposal to cancel the annual promotional examination was not in accordance with the existing fire department civil service rules and regulations and would have required a change in the civil service commission rules and regulations.

5. The employer and the union were parties to a collective bargaining agreement that was in effect from January 1, 1983 to December 31, 1984. This agreement made general reference to the respondent's civil service rules and regulations within the management rights of that contract. There is no evidence of a clear, unmistakable and knowing waiver on the part of the complainant of its right to bargain on the subject of promotions within the bargaining unit.

6. Promotion of bargaining unit firefighters to the bargaining unit rank of lieutenant directly affects the wages and working conditions of employees so promoted.

CONCLUSIONS OF LAW

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

2. The matter of promotional examination to the rank of lieutenant in the fire department of the City of Wenatchee is a condition of employment that is peculiar to the firefighter uniformed personnel bargaining unit and is a mandatory subject of collective bargaining under RCW 41.56.030(4).

3. The respondent's civil service commission does not constitute a body similar in scope, structure and authority to the board created by Chapter 41.06 RCW, so as to meet the standard necessary for exemption under RCW 41.56.100 of a matter subject to its rules and regulations from the respondent's collective bargaining obligation under Chapter 41.56 RCW.

4. The collective bargaining agreement in effect between the parties does not, by virtue of its management rights clause or otherwise, confer on the city exclusively a right to make a unilateral change in the method by which promotions to the rank of lieutenant are made, and does not constitute a waiver by the union of its right to act as exclusive bargaining representative under RCW 41.56.080.

5. By circumventing the exclusive bargaining representative to deal directly with bargaining unit employees on a matter subject to bargaining under RCW 41.56.030(4), the City of Wenatchee refused to bargain and violated RCW 41.56.140(4) and (1).

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the City of Wenatchee, its officers and agents shall immediately:

1. Cease and desist from:

   A. Negotiating directly with individual uniformed personnel represented by International Association of Fire Fighters, with respect to wages, hours and terms or conditions of employment.

   B. Interfering with, restraining or coercing public employees in the exercise of their rights secured by RCW 41.56,

2. Take the following affirmative action to remedy the unfair labor practice and effectuate the policies of the Act:

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

   B. Notify the Executive Director of 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 the Executive Director with a signed copy of the notice required by the proceeding paragraph.

DATED at Olympia, Washington, this 15th day of August, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Frederick J. Rosenberry

FREDERICK J. ROSENBERRY, Examiner

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

"Appendix"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT negotiate directly with individual employees represented by the International Association of Fire Fighters, Local 1890, with respect to wages, hours and terms or conditions of employment.

CITY OF WENATCHEE

BY: _____
AUTHORIZED REPRESENTATIVE

DATED: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.