

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS, LOCAL 1537,	)	
	)	
Complainant,	)	CASE 14629-U-99-3665
	)	
vs.	)	DECISION 6863-A - PECB
	)	
CITY OF ANACORTES,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	
	)	

---

Cogdill Nichols Rein, by W. Mitchell Cogdill, Attorney at Law, appeared on behalf of the complainant.

Foster, Pepper and Sheffelman, by P. Stephen DiJulio, Attorney at Law appeared on behalf of the respondent.

On June 8, 1999, International Association of Fire Fighters, Local 1537 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Anacortes (employer) violated RCW 41.56.140. A partial dismissal was issued under WAC 391-45-110,<sup>1</sup> finding a cause of action to exist on allegations of:

Employer refusal to bargain and interference with employee rights, by unilaterally transferring work historically performed by members of the fire fighter bargaining unit to employees outside of that bargaining unit.

---

<sup>1</sup> An allegation that the employer had violated RCW 41.56.140(2) was dismissed on the basis of insufficient facts. City of Anacortes, Decision 6863 (PECB, 1999).

A hearing was held on March 13 and May 17, 2000, before Examiner Frederick J. Rosenberry.<sup>2</sup> The parties filed post-hearing briefs.

On the basis of the evidence presented at the hearing, the Examiner holds that the employer failed or refused to bargain in good faith by unilaterally deciding to initiate a student fire fighter program. A remedial order is issued to return the parties to the situations they occupied prior to the unfair labor practice, and to prevent recurrences.

#### BACKGROUND

The City of Anacortes, located in Skagit County, was incorporated in 1891. It has a population of approximately 14,370, and is managed under a mayor-council form of city government.<sup>3</sup> The employer maintains a fire department; since 1996, that department has operated under the direction of Fire Chief Richard B. Curtis.

Approximately 85% of the calls that the Anacortes Fire Department responds to are for medical assistance; the remaining 15% are mostly fire-related. At the time of the hearing, the department

---

<sup>2</sup> The Executive Director did not make inquiry about the propriety of "deferral to arbitration" in this case, and neither party ever requested deferral under the policy enunciated in City of Yakima, Decision 3564-A (PECB, 1991), and now codified in WAC 391-45-110(3). While the employer asserted the management rights clause of the parties' collective bargaining agreement as a defense at an early stage of the controversy, it has not pursued a "waiver by contract" defense before the Examiner. Thus, the conditions for deferral are not present in this case.

<sup>3</sup> Demographic and civic data from the "Directory of Washington City and Town Officials," published in 2000 by the Municipal Research and Services Center of Washington, Seattle, Washington.

employed one secretary and 18 full-time employees who appear to qualify for coverage under the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF). Those include the chief, two assistant chiefs, six lieutenants, and nine fire fighters.

The union represents a bargaining unit composed of the full-time lieutenants and the full-time fire fighters. The members of that bargaining unit meet the definition of "uniformed personnel" under RCW 41.56.030(7)(e).

The employer's job description for a fire fighter/paramedic states, in relevant part:<sup>4</sup>

ESSENTIAL JOB FUNCTIONS:

Respond to fire emergency calls as assigned, and perform tasks that may include search, rescue, ventilation, or suppression. Use department equipment as appropriate to extinguish fires of all types in building, grass, terrain, automobiles, or other sites.

Respond to emergency medical care calls as assigned for assistance to sick or injured people and treat them according to ALS guidelines, including the use of intravenous therapy, endotracheal intubation, and pharmacological therapy when indicated.

The full-time fire fighters conduct training for other categories of fire fighters, and are also expected to participate in rotating call-back for standby and fire calls,<sup>5</sup> for which they receive additional compensation.

---

<sup>4</sup> At the time of the hearing all of the fire fighters were certified paramedics.

<sup>5</sup> The employer maintains a practice of calling bargaining unit fire fighters back to work when the on-duty shift is responding to an incident.

In addition to its cadre of full-time fire fighters, the employer has historically maintained a volunteer fire fighter program. Between 20 and 30 volunteers have participated in that program, of which about 10 to 15 have emergency medical technician (EMT) certification. A description of the volunteer fire fighter role prepared in May of 1998 states, in relevant part:

Generally when paged, volunteers/firefighters report to the fire stations on fire, medical and callback calls. Volunteer/Firefighter/EMT's report to the scene of a medical emergency and to the fire stations on fire and callback. Volunteers are assigned to a specific shift and are assigned a pager that will activate when the on duty shift is toned out.

Under present practice, volunteers are ranked equal to entry level firefighters in the command structure. There are times when volunteers will be the response crew. They will work together with one acting as lead responder until such time as paid personnel arrive on scene to take command.

To maintain proficiency each volunteer is expected to attend 75% of training sessions (drills). Drills are held each Wednesday from 7 PM to 9 PM, and occasionally on a Saturday. Attendance and completion of the Skagit County Fire Training Academy is required.

Most of our calls are medical. Volunteers can request to become an EMT. This is accomplished by contacting the department's EMS Officer, Assistant Chief Harju.

Volunteer firefighters are paid \$6.00 per hour and those with EMT certification earn \$7.50 per hour. EMT's will be the first to be called for standby after it is determined no paid personnel are available.

Volunteers are not assigned to staff a station, and are not required to perform equipment and station maintenance except when it is incidental to an emergency response, but they are free to

report to the fire station and train with the full-time fire fighters at any time.<sup>6</sup> According to the chief, the employer's volunteer fire fighters typically earn between \$30 and \$50 per month, depending on their call responses.

Historically, the employer has staffed its headquarters station (Station 1) with full-time fire fighters 7 days a week, 24 hours per day. Normally there are two or three fire fighter/paramedics on-duty at all times, one of which is a lieutenant and usually the on-site person in charge.

In about 1994, the employer had a second fire station (Station 2) constructed on the west side of the city. Initially, the employer did not staff Station 2 on a regular basis, but an ambulance and fire apparatus were kept there. In addition to warehousing fire equipment, Station 2 has living quarters.

There have been random periods of time since 1994 when Station 2 has been staffed for variable periods of time. This has particularly occurred when prompt response out of Station 1 was hampered.<sup>7</sup> Occasionally, both full-time fire fighters responding to a callback and volunteers have reported directly to Station 2, to obtain an ambulance or fire apparatus before responding to an incident.

---

<sup>6</sup> The reference in the quoted job description to attendance at 75% of the drills was deleted by a memorandum dated September 23, 1999, and a reference to compliance with the "SOP" was added. The SOP was not placed into evidence at the hearing.

<sup>7</sup> An example of occasions for short-term staffing of Station 2 was when a large snowfall caused concern about the ability of Station 1 to respond promptly to calls in the vicinity of Station 2.

By memorandum directed to members of the city council under date of March 18, 1998, Chief Curtis detailed a staffing proposal that called for hiring additional full-time fire fighters and introduced the idea of using a new category of "student" fire fighters. Chief Curtis' memorandum stated in relevant part:

. . . the fire department's full time staff has remained the same over the last 40 years. Since that time, the department has adopted the responsibility for Advance Life Support services on Fidalgo and Guemes Island. The expectations of the department have grown to include emergency services beyond the basic fire suppression model too. We are expected to provide a myriad of services; vehicle extrication, rope rescue, flood fighting, confined space rescue, and public education. Combined with these responsibilities, emergency fire and E.M.S. responses have dramatically increased during that time.

I was asked by the mayor to look into an economical method to solve many of the issues facing the department. My proposal to add personnel to station #2 will not only benefit the surrounding Skyline community, but also increase the department's capability for the entire City.

. . . . .  
With maximum staffing level, including student firefighters, I am proposing to provide three firefighters at each of our two stations. The program consists of two components; expanding our volunteer program to include six student firefighters, and employing three additional Firefighter/Paramedics with three subsequent Lieutenant promotions. The student firefighter program provides an opportunity for student firefighters, from an approved college fire science program, to gain on-the-job experience. The students will provide support for the paid firefighter staff, and will gain the most from this relationship in terms of job experience.

At maximum staffing, each station will house one Lieutenant/Paramedic, one Firefighter/

Paramedic, and one volunteer Student/Firefighter. The department's minimum staffing level will be five firefighters split between the two stations.

Under the chief's proposal, Station 1 and Station 2 would each have the same complement of personnel: Three lieutenants; three full-time fire fighters; and three student fire fighters. In addition, 24 volunteers were to be assigned to Station 1 and 6 volunteers were to be assigned to Station 2.<sup>8</sup> The chief's memorandum pointed out that his proposal would improve response time. He estimated the cost of the proposal to be \$245,610, but that the frequency of callbacks of full-time personnel would be reduced with a savings of \$72,750, so the net cost of the proposal was \$172,860.

The chief's interest in a student fire fighter program was motivated, at least in part, by an increasing difficulty in recruiting volunteer fire fighters. The chief's presentation included a summary that stated, in relevant part:

**Staffing Enhancement Plan  
(Paid FF/Student Volunteer FF)**

**Summary**

The following is a description of a program to enhance the fire department's capability to provide fire suppression E.M.S. services to the community. The program will double the available paid and volunteer staff to respond to emergencies, thereby providing faster response, and greater fire suppression capability. The program will provide, at a maximum staffing level, three firefighters at each of our two stations. Response time to the Skyline area will be dramatically reduced.

---

<sup>8</sup> The employer generally used the term "student volunteer" in the presentation of its case. For clarity, the Examiner elects to distinguish the two classes as "student fire fighters" and "volunteer fire fighters."

Fire suppression capability within the first few minutes before flashover will be greatly enhanced. Dependence on calling back Firefighter/Paramedics will drop significantly. The program consists of two components; expanding our volunteer program to include student firefighters and employing additional Firefighter/Paramedics.

#### **Student Firefighter Element**

. . . While on duty, participants will assist in the delivery of emergency medical and fire protection services to the public. Non-emergency activities will include in-service training, pre-fire surveys, public education programs, and equipment and station maintenance, and other Fire/EMS related activities. . . .

#### **Service Period:**

The initial service period will be 18 months with the possible extension in three month periods, depending on the Chief's approval, to 30 months. Failure to meet the expectations during any period shall result in the department excusing the participant from service.

During the service period, the participant will be evaluated by objective standards. The participant will be evaluated by a shift Lieutenant on a quarterly interval throughout the duty period.

#### **Duty Shifts:**

Upon satisfactory completion of initial recruit training academy, HIV, Basic First Aid training, and department orientation, the participant will be assigned to a scheduled shift. The participant will report to the Shift Lieutenant who will serve as his/her immediate supervisor. While on duty the participant is expected to participate in the duty shift's routine activities as a means to gain practical on-the-job experience.

Participants will be provided housing accommodations during their duty shift. Participants may be provided housing during off-duty shifts provided the expectations outlined in the policy are met. Duty shift schedules are as follows:



## Schedule (repeating cycle)

On	Off	On	Off	On	Off	Off	Off	Off
24	24	24	24	24	24	24	24	24

Start Time    08:00 am    08:00 am    08:00 am  
This "modified Detroit" schedule averages 10  
duty shifts per month. . . .

The chief's summary also detailed eligibility requirements which included an expectation that the student fire fighter would be in good physical condition, have an average attendance of 30 full shifts per quarter,<sup>9</sup> be enrolled in an approved college fire science program, and maintain a minimum 2.5 grade point average. The chief's memorandum pointed out that the participants must arrange for their own substitutes to cover absences due to classroom activities, training, testing and other personal activities. The chief proposed that the student fire fighters be paid \$350 per month as reimbursement for expenses.

The union first learned of the student fire fighter proposal when it was forwarded to the city council on March 18, 1998. On that same day, the union submitted a letter to the employer's human resources director, stating in relevant part, "We formally request to bargain both the decision and impact of this action."

The employer responded by letter dated March 20, 1998, stating that the matter was being submitted to a city council study session, and that it was "some way from actually implementing such a program." The employer also advised the union that it would be willing to discuss the effects of future implementation, but that it would not submit a decision to use student fire fighters to

---

<sup>9</sup> Although characterized as an "average," the "30 shifts per quarter" is essentially all of the shifts available on a three-platoon system.

collective bargaining. It asserted such a personnel action was allowed by the terms of the management rights clause contained in the parties' collective bargaining agreement, and that it was under no legal obligation to bargain the "decision."

There was a considerable amount of communication between the employer and union regarding the matter. As an attachment to an October 1, 1998, memorandum to the employer, the union detailed its perception of the impact of implementation of the student fire fighter program, stating:

The following is the Union's response to the City's proposed student Fire Fighter Program. Below, the Union has developed a list that shows some of the many ways in which the City's student proposal directly impacts all of the members of the IAFF Local 1537.

The Union still maintains that the decision to staff the West End Fire Station is a mandatory subject to bargain, and the Union has not waived it's right to bargain this decision.

#### **Impacts**

1. The City's job description for Student Fire Fighter matches almost word for word the current job description for Professional Fire Fighters/Paramedics. These students would be hired to perform (skim) the following duties now done exclusively by Bargaining unit members:
  - a. Deliver Emergency Medical Services and primary response for fire suppression.
  - b. Pre-fire plans.
  - c. Public education programs.
  - d. Equipment, Fire Station, and grounds care and maintenance.
  - e. Drive first out fire and medical vehicles to emergency calls.

- f. Perform search, rescue, ventilation, and suppression.
  - g. Perform daily tests and upkeep tasks to keep all equipment and apparatus in state of readiness for emergencies. Perform routine equipment maintenance, design, recommend and perform modifications and fabrication for equipment.
  - h. Participate in pre-planning fire tactics to improve service and rescue.
  - i. Check hydrants and test available water flows on a regular schedule, maintain records, including location and types of hydrants.
  - j. Wash equipment and perform station maintenance, wash windows, and floors.
  - k. Make public presentations, conduct tours of the station, presenting training classes for other staff, volunteers, community groups, and fire personnel from other districts.
  - l. Use computers to enter data and generate reports, and maintain necessary manual and computer records.
2. The City's proposal requires all Bargaining unit members to supervise, train, educate and evaluate students, this is also a unilateral change in our working conditions. This will require and demand large quantities of time, and impact other duties that Bargaining unit members normally perform. The continual influx of new personnel could also have an adverse effect on firefighter safety for all members of the Department.
3. Negative financial impacts to all bargaining unit members. Currently when minimum staffing levels are reduced because of illness, vacations, or unforeseen absence, a bargaining unit member will first be offered the opportunity to work the overtime shift or partial shift.

Under the City's proposal, minimum-staffing levels will be supplemented with student firefighters. This reduces all Bargaining unit members' ability to earn overtime wages.

4. The city's proposal also allows student Fire Fighters to take the place of a Bargaining Unit Member (under "other," the last paragraph in the student Fire Fighter job description).

The parties did not resolve their differences during a period of nearly nine months following the chief's proposal to the city council. The employer apparently added three full-time fire fighter positions to its workforce by December of 1998.

By memorandum dated December 10, 1998, the employer notified all Fire Department employees that two individuals had been enrolled in the student fire fighter program, and had started their orientation on December 9, 1998. That memorandum indicated the new personnel were students at Skagit Valley College who had graduated from the Skagit County Recruit Academy and were currently volunteer fire fighters with fire departments serving the areas where they resided. The employer assigned the student fire fighters to work at Station 1 between the hours of 8:00 a.m. and 5:00 p.m. weekdays with the exception of Wednesdays, when they were scheduled to work from 1:00 p.m. to 9:00 p.m.<sup>10</sup>

The union restated its request for bargaining on the student fire fighter matter in a letter directed to the employer's labor

---

<sup>10</sup> This work schedule differed from the "modified Detroit schedule" set forth in the chief's proposal. The Examiner infers that the late shift was scheduled on Wednesdays so that the students could train with the volunteers on those evenings.

relations representative under date of December 12, 1998.<sup>11</sup> It also asked the employer to discontinue the student fire fighter program until the collective bargaining process was completed.

Employer representatives, including the fire chief, met with union representatives on December 16, 1998, to further discuss the matter. At that meeting, the chief presented the union with a memorandum that detailed his perception of the organization and implementation of the student fire fighter program. While noting that his memorandum did not reflect the employer's formal position, and that the employer's position would be developed as the process evolved, the chief's memorandum made several points:

- The City believes that the program will benefit the students first and provide timely support for emergency response. . . .
- . . . . This structure provides two full time Firefighters and one student at one station, and one full time Firefighter and one student at the other station.
- . . . . The City wants to leave the opportunity for students to stay at the fire station as an incentive in order to draw a higher caliber of student to the program who otherwise may not be able to afford it.
- . . . . A benefit from the student program is that more staff is available before flashover occurs. . . .
- The City agrees that the student fire-fighters will not be sufficiently trained to be a team member until they have completed thorough orientation.

---

<sup>11</sup> The letter was directed to James Hobbs, who was then representing the employer in negotiations with the union for a successor collective bargaining agreement.

The student fire fighter program implemented by the employer in December of 1998 remained in effect until May of 1999, when the employer terminated that program.

Notwithstanding the termination of the initial student fire fighter program, the employer did not abandon future implementation of such a program, and the dispute between the employer and union remained unresolved. The union filed the complaint to commence this unfair labor practice proceeding on June 8, 1999.

Although the complaint was not amended, evidence concerning subsequent events was received at the hearing without objection from either party as to the subject matter. In January of 2000, the employer re-implemented the student fire fighter program with two new students who were assigned to work 24-hour shifts at Station 1 on the "modified Detroit schedule." One of those student fire fighters was assigned to the "A" shift; the other was assigned to the "B" shift. Those two student fire fighters worked alongside the full-time fire fighters assigned to those shifts, using the same kitchen, dining and sleeping facilities as the full-time fire fighters. The uniform worn by the student fire fighters resembled the uniform worn by the full-time personnel during summer seasons.<sup>12</sup>

The employer established benchmarks and performance expectations for the student fire fighters. The initial four weeks of service were to be an orientation period; the second and third months of service were limited to low risk responses; the fourth to eighth months were limited to intermediate responses; the student fire

---

<sup>12</sup> No distinction was noted at the hearing. The pants and shirts were of the same color, the badges worn were the same, and the student fire fighters were issued the same bunker gear used by the full-time fire fighters.

fighters were to make regular responses beginning with their ninth month.

#### POSITIONS OF THE PARTIES

The union is opposed to the structure of the student fire fighter program, and maintains that the employer unlawfully declined to submit its decision to collective bargaining, notwithstanding the union's repeated requests. The union acknowledges (and even stipulates) that it cannot show that the employer engaged in bad faith with respect to the discussions between the parties on the impacts or effects of implementing the student fire fighter program, and the union's focus is on the employer's unilateral decision to inaugurate the program. The union recognizes that the employer has had a traditional volunteer fire fighter program in place for a long time, but it argues that the student fire fighter program is different from the traditional volunteer program. The union points out that the student fire fighters work alongside the full-time fire fighters and perform the non-emergency activities which are performed by the full-time fire fighters, but not the traditional volunteers. The union further argues that the volunteer fire fighters supplement, but do not replace, the full-time fire fighters, which distinguishes them from the student fire fighters. Additional distinctions noted by the union are that the student fire fighters work scheduled duty shifts (which is not the practice for the traditional volunteers); the student fire fighters are required to be immediately available as part of the first response team (where the traditional volunteers may decline to respond to a call); and that the student fire fighters are provided with kitchen and sleeping facilities (which are not available to the traditional volunteers). Moreover, the union alleges that the implementation of the student fire fighter program was to the

detriment of the full-time fire fighters, who were required to work alongside inexperienced personnel in emergency situations, who had to train the student fire fighters, and who suffered a decrease of callback time and compensation. The union contends that the work performed by the student fire fighters is identical to that performed by the bargaining unit employees in all important respects, and it characterizes the introduction of the student fire fighters as unlawful "skimming" of bargaining unit work to a different segment of the employer's workforce. The union maintains that the student fire fighter program was implemented for economic reasons, as a means for obtaining additional fire suppression/EMT personnel without having to incur the cost of hiring additional full-time fire fighters, and that the employer was obligated by law to submit the decision concerning the student fire fighter program to collective bargaining.

The employer denies that any of its actions violated its collective bargaining obligation, and points out that the parties stipulated that the union could not show a failure to bargain in good faith with regard to any impacts or effects of the implementation of the student fire fighter program(s). The employer points out that it has historically provided fire and emergency medical responses through a combination of full-time and volunteer fire fighters, and it alleges that the union has not had exclusive jurisdiction over such work. It follows, according to the employer, that its addition of student fire fighters (who it characterizes as volunteers), was not a material change in its operation. According to the employer, the only variation in its volunteer fire fighter program is that the students reside at a station and receive a fixed stipend; that most of the duties performed by the student fire fighters are the same as those performed by the traditional volunteers; and that any differences are insignificant. The employer maintains that student fire fighters have not displaced



any full-time fire fighters, that they have not been called back for work in place of a full-time fire fighter, and that the use of student fire fighters has not reduced the amount of work available or the income of the full-time fire fighters. Moreover, the employer asserts that bargaining unit members make callback decisions, assign duties to student and volunteer fire fighters, and make staffing decisions at incident sites. The employer argues that its cost of operation was not a factor in introducing student fire fighters, as evidenced by increased costs to fund them and the employment of three additional regular full-time fire fighters. According to the employer, its decision to enhance its volunteer service with the addition of the student component was a fundamental managerial decision; there was no duty to bargain with the union regarding the matter. The employer also argues that the union has failed to identify what exclusive work jurisdiction has been eroded by the use of students, and has failed to meet its burden of proof to demonstrate that skinning has taken place because there has been no layoff or reduction of regular fire fighter work opportunities. It is the employer's position that any personnel changes that may have occurred had no material effect on the regular fire fighters' wages, hours, or terms of employment, accordingly, there was no duty to bargain and the complaint should be dismissed.

## DISCUSSION

### The Duty to Bargain and Unilateral Changes

These parties bargain collectively under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Their duty to bargain is defined in RCW 41.56.030(4), as follows:

"Collective bargaining" means . . . 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, . . .

That duty is enforced through unfair labor practice proceedings under RCW 41.56.140 through .160 and Chapter 391-45 WAC. Where an unfair labor practice is alleged, the complainant has the burden of proof. WAC 391-45-270. The burden to establish affirmative defenses lies with the party asserting the defense.

This case presents several issues arising from the employer's initiation and implementation of a resident student fire fighter internship program. The issues are not matters of first impression, however. Similar issues have previously been raised before and decided by the Commission.

#### The Standards to be Applied

The potential subjects for bargaining between an employer and union are commonly divided into three categories: "mandatory," "permissive," and "illegal". Federal Way School District, Decision 232-A (EDUC, 1977), citing NLRB v. Wooster Division of Borg Warner, 356 U.S. 342 (1958). Matters affecting wages, hours, and working conditions are mandatory subjects of bargaining about which an employer is obligated to bargain in good faith, upon request, with the exclusive bargaining representative. Matters of management or union prerogatives which do not affect wages or hours, or which are considered remote from "terms and conditions of employment" are categorized as non-mandatory or "permissive" subjects. The parties may bargain regarding permissive subjects, but are not required by law to do so. The parties to a collective bargaining relationship

have a legal obligation to refrain from bargaining matters which would result in an unlawful outcome (i.e., "illegal" subjects).

Some issues that arise at the workplace do not fall neatly into the "mandatory," "permissive," and "illegal" categories. The Commission has utilized a balancing approach to determine close questions about mandatory subjects of bargaining, and that approach was endorsed by the Supreme Court of the State of Washington in IAFF Local 1052 v. PERC, 113 Wn.2d 197 (1989). The bargaining obligation may be applicable as to both a managerial decision and the effects of that decision.

It is well settled that wages (including compensation for overtime work), premium pay (such as the call-back pay involved in this case), and hours of work (including work opportunities) are all mandatory subjects of bargaining. See City of Seattle, Decision 651 (PECB, 1979); City of Poulsbo, Decision 2968 (PECB, 1985).

It is also well settled that transfers of bargaining unit work to persons outside the bargaining unit are also a mandatory subject of bargaining. South Kitsap School District, Decision 472 (PECB, 1978); City of Kennewick, Decision 482-B (PECB, 1980); King County Fire District 36, Decision 5352 (PECB, 1995). Spokane Fire District 9, Decision 3482-A (PECB, 1991) points out that the standards for evaluation of a bargaining obligation are the same regardless of who gets the bargaining unit work:

Long-standing Commission precedent indicates that an employer has a duty to give notice to and bargain, upon request, with the exclusive bargaining representative or its employees prior to transferring bargaining unit work to persons outside of the bargaining unit. South Kitsap School District, . . . A transfer or removal of work can arise from "contracting out", whereby an employer enters into a busi-

ness arrangement to have the work performed by employees of a third party, or from "skimming", whereby an employer has the work performed by its own employees who are either unrepresented or members of a different bargaining unit.

Those Commission precedents are consistent with Fiberboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964).

Both a decision to skim or contract out bargaining unit work and the effects of such a decision on bargaining unit employees are normally mandatory subjects of bargaining. Skagit County, Decision 6348 (PECB, 1998); City of Kelso, Decision 2120-A (PECB, 1985) [Kelso I]; Clover Park School District, Decision 2560-B (PECB, 1989); City of Mercer Island, Decision 1026-A (PECB, 1981).

The status quo must be maintained regarding all mandatory subjects of bargaining, except where changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. City of Yakima, Decision 3501-A (PECB, 1998), affirmed 117 Wn.2d 655 (1991); Spokane County Fire District 9, Decision 3661-A (PECB, 1991); Pierce County Fire District 2, Decision 4146 (PECB, 1992).<sup>13</sup> An employer thus commits an unfair labor practice under RCW 41.56.140(4), if it imposes a new term or condition of employment, or changes an existing term or condition of employment, upon its represented employees without having exhausted its bargaining obligation under Chapter 41.56 RCW. City of Tacoma, Decision 4539-A (PECB, 1994). An employer also violates RCW 41.56.140(4) if it presents a union with a fait accompli, or if it fails to bargain in good faith, upon request. Federal Way

---

<sup>13</sup> A complaint alleging a "unilateral change" must establish the relevant status quo. Municipality of Metropolitan Seattle, Decision 2746-B (PECB, 1989).

School District, supra; Green River Community College, Decision 4008-A (CCOL, 1993); North Franklin School District, Decision 5945-A (PECB, 1998).

The Commission has found that refusal to bargain violations inherently interferes with the rights of bargaining unit employees, and so routinely finds a "derivative" interference violation under RCW 41.56.140(1), when a violation is found under RCW 41.56.140(4). See Washington State Patrol, Decision 4757-A (PECB, 1995); Battle Ground School District, Decision 2449-A (PECB, 1986).

#### Application of Standards

The employer cites the decisions in several cases, but its particular focus is on the analytical elements detailed in Spokane County Fire District 9, Decision 3482-A (PECB, 1991). It contends that decision supports its assertion that it had no obligation to bargain with the union regarding its decision to use student fire fighters. The cited Spokane 9 case involved a "skimming" allegation, where the employer began calling in and compensating members of its traditional volunteer fire fighter force, instead of calling back bargaining unit employees on an overtime basis. In evaluating its merits, the Commission looked at five factors that were previously detailed in Clover Park School District, Decision 2560-B (PECB, 1988). The Examiner has applied those factors, but arrives at a different conclusion than the employer.

#### The Past Practice -

The employer's analysis starts from the role of the traditional volunteer fire fighters in its organization. The employer views the student fire fighters as an extension of an existing practice, and it contends they perform work that closely aligns with that of the traditional volunteers, so that there was no obligation to

bargain with the union. However, the Examiner notes that the students perform work that was historically performed by the full-time fire fighters. The analysis of a "contracting out" or "skimming" claim must start from the work jurisdiction of the bargaining unit claiming an unfair labor practice.

- Introduction of the students provided the employer with additional staff resources with which to fulfill its mission. Although the chief's initial proposal to the city council cited a stagnation of staffing levels for many years during which there had been a seemingly-gradual increase of calls for service, there were no recent or impending changes of the work to be performed. Where additional work becomes available that could be allocated to a bargaining unit, the union representing that bargaining unit has a legitimate and valid interest in the available work, and a right to demand bargaining over both the decision and effects of how that work would be distributed. Community Transit, Decision 3069 (PECB, 1988).<sup>14</sup>
- The employer maintains that the students generally perform the same tasks as the traditional volunteers. The Examiner is not persuaded by the employer's characterization of two acknowledged differences as "minor", and attaches substantial significance to those differences: The students reside at the fire station, which even the employer viewed as a substantial incentive for recruitment purposes; the students receive a

---

<sup>14</sup> In the instant case the record reflects that the volunteer fire fighters have an organization that they pay dues to, but there was no claim that the employer recognizes that volunteer fire fighter organization for purposes of collective bargaining. Likewise, no claim has been made by that organization that it has standing under Chapter 41.56 RCW to claim the work performed by the student fire fighters.

\$500 monthly stipend for their services, which amounts to about \$2.00 per hour for their on-duty time regardless of whether they respond to any emergency calls.<sup>15</sup> Even if not characterized or reported by the employer as "wages", such economic incentives align this case with the payments to volunteers that were found unlawful in Spokane 9, supra.

- The employer argues that the union failed to meet its burden of proof that it has exclusive jurisdiction and claim to the work performed by the students, because that same work is performed by volunteer fire fighters. While the record certainly establishes some overlap of duties between the volunteers and the full-time fire fighters, there are also distinct and significant differences: The volunteers have weekly two-hour training sessions and do not have scheduled on-duty shifts, where the bargaining unit employees work fixed shifts which include on-the-job training activities; the volunteers have personal discretion about whether to respond to a particular fire or medical emergency call, where the bargaining unit employees are required to respond whenever dispatched; and volunteer activities are not viewed as a primary occupation providing sufficient income to support oneself or a household, where the bargaining unit employees are full-time employees.<sup>16</sup> In distinct contrast to the

---

<sup>15</sup> With a nine-day cycle and 72 hours worked per cycle, the students on the "modified Detroit" schedule were on duty about 243 hours per month. Although a \$350 per month amount was also mentioned, the chief testified that he was paying the students \$500 per month. The traditional volunteers are only paid for their actual responses.

<sup>16</sup> See RCW 41.26.030(4), defining "fire fighter" for purposes of the LEOFF statute as including "Any person who is serving on a full time, fully compensated basis as a member of a fire department . . ."

employer's traditional volunteers, and directly comparable to the bargaining unit employees, the students are assigned to scheduled duty shifts which include on-the-job training activities, they must respond when dispatched, and they work full-time hours for which they receive cash compensation. The relevant comparison here is that the students work side-by-side with -- and respond to all incidents accompanying -- the bargaining unit employees, and use apparatus and clothing indistinguishable from bargaining unit employees.

- Even during their orientation period, when the students are normally excluded from situations that are potentially dangerous or require advanced training, the students are nevertheless present at incidents and available to the incident commanders as a resource for implementing the mission of the fire department. The record is clear that the students are learning to perform all of the work performed by the full-time fire fighters, and that the differences between those groups disappear as the students gain experience. Contrary to the employer's claim of meaningful distinctions, the "Student Volunteer Training and Expectations Benchmark" issued by the chief calls for the student fire fighter to be able to perform all of the functions of a full-time fire fighter on emergency calls by their fourth month of service.
- Even if the students employed during the initial student fire fighter program were involved to a lesser degree, the duties of the second complement of students closely align with the chief's initial staffing plan, and with the routine duties of the full-time fire fighters.

The employer's characterizations of the student program fail to recognize fundamental differences between the student and the



volunteers program, and the employer's argument describing the personnel action as the commingling of two categories of volunteers falls short. The union's evidence has persuasively identified significant differences between the students and the volunteers, and substantial overlap between the duties of the students and the regular fire fighters support its allegations.

Infringement on Bargaining Unit Interests -

The employer argues that the introduction of the student fire fighter program was of no substantive detriment to the full-time fire fighters, and that some components of the overall staffing program could be looked upon with favor by the full-time fire fighters. Again, the arguments are not persuasive.

Although unilateral personnel action viewed as being adverse is the usual basis for unfair labor practice complaints, the bargaining obligation applies equally to changes that might be viewed as favorable to some or all members of the bargaining unit. The threshold criteria for finding a violation concerns the existence of a change, not its nature. City of Seattle, Decision 651 (PECB, 1979). Potential increases in work opportunities are subject to the collective bargaining process. In Battle Ground School District, Decision 2449-A (PECB, 1986), the Commission rejected an employer argument that its employment of students did not adversely affect bargaining unit employees (because they lost no work hours or wages), and found a "skimming" allegation. See also Community Transit, supra, where the work at issue was an expansion of the employer's routes and services.

Although this employer did not implement all of the components of the staffing plan as initially proposed by the chief, both of the student fire fighter programs have added significant work hours to the staffing resources available to the department. The initial

student program added approximately 80 hours per week of available staff time; the later student program added approximately 112 hours per week of staff time to perform work historically performed by the regular full-time fire fighters. A credible inference is available that work or promotional opportunities that would have been commensurate with such an increase in the size of the bargaining unit were not offered.

The employer's "no adverse impact" argument is also belied by the chief's memorandum of March 18, 1998, which pointed out that call-backs for full-time fire fighters would be significantly reduced by the organizational changes he was proposing. The reduction of call-back pay was estimated at \$72,750 per year, which meant an average loss of more than \$6,000 per year for the 12 employees in the department when the proposal was made.

The employer pointed out that the lieutenants, who are members of the bargaining unit, have the authority to determine whether a particular incident warrants the call-back of full-time fire fighters, and the employer would seemingly shift responsibility for the frequency of callbacks of bargaining unit members from the management to the union. The Examiner does not accept such a shifting of burden, however. The lieutenants act in such matters as agents of the employer, not as agents of the union. In doing so, they are obligated to make prudent decisions regarding callbacks in conformity with department guidelines promulgated by the employer, and they would be subject to criticism if they failed to take the student fire fighters into consideration when assessing the staff available to deal with a particular incident response. The lieutenants are obligated to conduct the department's mission in an appropriate manner, and do not have the liberty of administering personnel or directing the workforce in a manner that may be

most favorable to their personal interest or the institutional interests of the union.

Motivation for Use of Student Fire Fighters -

The chief's March 18, 1998, memorandum to the city council articulates that there had been considerable growth in the services provided by the fire department, as well as an expansion of the area served. The memorandum points out that the mayor had asked the chief to look into an "economical" way to meet the increased demands placed on the department. While it is clear that the student fire fighter program was only one component of proposed staffing changes in the department,<sup>17</sup> assessment of this situation under Clover Park, supra, yields a conclusion that the motivation for introduction of the student fire fighters was to avoid paying the wages associated with hiring even more bargaining unit employees. The employer's interest in limiting its costs for an expanded operation does not suffice to overcome its obligation to bargain its decision to move work out of the bargaining unit. King County Fire Protection District 36, Decision 5352 (PECB, 1995).

Employer Declined to Submit the Matter to Bargaining -

The union submitted a letter to the employer, dated March 18, 1998, requesting bargaining regarding both the decision to introduce a student fire fighter program, and the impacts of their introduction. The employer made it abundantly clear to the union, by letter dated March 20, 1998, that it would not bargain the decision to inaugurate the use of student fire fighters. The employer never changed its position.

---

<sup>17</sup> The employer's plan also called for hiring three additional full-time fire fighters and assigning full-time fire fighters to work out of Station 2.

Fundamental Nature of Work Mirrors Bargaining Unit Work -

Review of the record does not disclose any duties performed by students that are not performed by the full-time fire fighters. The full-time fire fighters may have some additional duties, and can require more training and experience, but the chief's own benchmarks call for the student fire fighters to improve their skill during a three-month period by a margin sufficient to perform all fire fighter functions on an emergency scene. Those include fighting interior fires and assisting in medical emergencies.

Conclusions

The record fairly reflects that the employer's motivation for introducing student fire fighters was its desire to increase the size of its fire department workforce to improve the fire and emergency medical response that it offered to its service area, and that the work performed by the student fire fighters is of a type historically performed by bargaining unit employees. The fact that the employer expanded the bargaining unit workforce did not relieve it of its obligation to bargain with the union concerning its decision to transfer closely-related work to persons outside of the bargaining unit, or eliminate the union's legitimate interest in bargaining on the decision to create a second tier of full-time persons performing fire fighting functions for the employer.

Under numerous precedents, the employer should have given notice to the union that it was considering implementation of a student fire fighter program, and it certainly should have bargained in good faith in response to the union's demand for bargaining on the subject. Because the bargaining unit consists of "uniformed personnel", the parties would have been obligated to submit any unresolved differences to interest arbitration under RCW 41.56.430, et seq. See, City of Seattle, Decision 1667-A (PECB, 1984).

FINDINGS OF FACT

1. The City of Anacortes, a public employer within the meaning of RCW 41.56.030(1), operates a fire department that provides fire suppression and emergency medical services under the direction of Fire Chief Richard B. Curtis.
2. International Association of Fire Fighters, Local 1537, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of fire fighters employed by the City of Anacortes. The employees in that bargaining unit are uniformed personnel within the meaning of RCW 41.56.030(7)(e).
3. In addition to its complement of full-time fire fighters, the employer has maintained a cadre of between 20 and 30 volunteer fire fighters. The volunteer fire fighters are used to supplement and provide support for the full-time fire fighters in emergency situations, and the duties of volunteer fire fighters during emergency responses overlap with those of the full-time fire fighters.
4. There are notable differences between the volunteer fire fighters and the full-time fire fighters. The volunteers do not work the fixed shifts scheduled for bargaining unit employees; the volunteers do not perform the facilities and equipment maintenance routinely performed by bargaining unit employees, except when it is incidental to a response; the volunteers are expected to attend a weekly two-hour training session, while the bargaining unit employees have on-the-job training; the volunteers have personal discretion about whether they will respond to a particular fire or emergency medical aid call, while the bargaining unit employees are

required to respond when dispatched; the volunteer status is not normally viewed as a primary occupation, while the bargaining unit employees are full-time and fully-compensated employees.

5. At an undisclosed time prior to March 18, 1998, the mayor of the City of Anacortes directed the fire chief to look into an economical method to increase the level of service provided by the fire department. In a memorandum directed to the city council on March 18, 1998, the fire chief cited an expanded service area and additional emergency services offered by the department over the preceding 40 years as the basis for a proposal to increase the staffing of the fire department. The chief's plan called for hiring three additional full-time fire fighters, for acquiring six student fire fighters, and for staffing a second fire station on a full-time basis. The chief's proposal called for placing student fire fighters on the same "modified Detroit schedule" consisting of 24-hour duty shifts identical to those worked by the full-time fire fighters. Additionally, the student fire fighters were to share the use of the living facilities at the fire stations, their attendance for scheduled shifts was to be mandatory, and they were to respond to all fire and emergency medical calls when dispatched.
6. The chief's plan called for the student fire fighters to accompany the full-time fire fighters by responding on department apparatus, called for them to wear appropriate uniforms and protective clothing similar to that worn by the full-time fire fighters, and called for a graduated level of responsibility to be placed on the students. By their fourth month of service, the students were expected to perform all functions of full-time fire fighters on emergency calls.

7. The union learned of the chief's proposal when it was released to the city council, and immediately requested bargaining regarding the employer's decision to use student fire fighters and the effects of such use.
8. By letter dated March 20, 1998, the employer notified the union that it would not submit its decision to use student fire fighters to collective bargaining.
9. On December 9, 1998, the employer assigned two student fire fighters at its Station 1 on five scheduled shifts per week, and compensated them by a monthly stipend for their work. The employer discontinued that student fire fighter program in May of 1999.
10. On January 16, 2000, the employer assigned two student fire fighters at its Station 1 on the "modified Detroit" schedule.
11. The student fire fighters described in paragraphs 9 and 10 of these Findings of Fact work side-by-side with members of the bargaining unit represented by the union.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By unilaterally making and implementing a decision to assign student fire fighters to perform the work of the type historically performed by employees in the bargaining unit represented by the union, and by refusing to bargain, upon request, concerning that decision, the City of Anacortes failed and

refused to bargain with the union and has committed unfair labor practices under RCW 41.56.140(4) and (1).

ORDER

The City of Anacortes, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

- a. Giving effect to the "skimming" of bargaining unit work from fire fighter positions represented by IAFF Local 1537.
- b. Refusing to bargain collectively with IAFF Local 1537, as the exclusive bargaining representative of the employees of the appropriate bargaining unit described in paragraph 2 of the foregoing Findings of Fact.
- c. Imposing changes in terms and conditions of employment without having bargained in good faith to legal impasse and refusing to submit the disputed subjects of bargaining to the uniformed personnel impasse procedure detailed in RCW 41.56.430, et seq.
- d. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:



- a. Restore the status quo ante which existed with regard to the changes described in paragraphs 9 and 10 of the foregoing Findings of Fact, by terminating any and all student fire fighter programs and maintaining the wages, hours and working conditions until changes, if any, are reached through good faith collective bargaining with IAFF Local 1537, or the completion of the interest arbitration procedures detailed in Chapter 41.56 RCW and Chapter 391-55 WAC.
- b. Make all employees adversely affected by the unilateral changes whole for all losses they suffered as a result of the unilateral changes.
- c. Upon request, bargain collectively in good faith with IAFF Local 1537, prior to making a determination or implementing any changes regarding mandatory subjects of bargaining.
- d. 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 be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered with other material.
- d. Read the notice attached hereto and marked "Appendix" aloud at the next public meeting of the City of Anacortes City Council and append a copy thereof to the official minutes of said meeting.

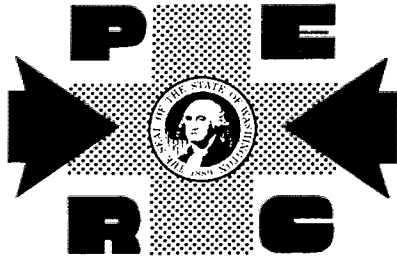
- e. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.
- f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

ISSUED at Olympia, Washington, on the 21<sup>st</sup> day of November, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
FREDERICK J. ROSENBERRY, Examiner

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



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

**THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

WE WILL restore the status quo that existed prior to the introduction of student fire fighters on December 9, 1998, and will maintain those wages, hours and working conditions until changes, if any, are agreed upon through good faith collective bargaining with the International Association of Fire Fighters, Local 1537, or the completion of interest arbitration proceedings as detailed in RCW 41.56.430, et seq.

WE WILL make all employees adversely affected whole for their losses of wages and benefits as the result of the student fire fighter programs unlawfully implemented on and after December 9, 1998.

WE WILL give notice to and, upon request, bargain collectively in good faith with International Association of Fire Fighters, Local 1537, and, if invoked, will complete interest arbitration proceedings as detailed in RCW 41.56.430, et seq. where appropriate, regarding any contemplated decision to change the wages, hours and working conditions of employees in the bargaining unit represented by that organization, prior to implementing any future changes.

WE WILL read this notice into the record of the next public meeting of the Anacortes City Council, and append a copy thereof to the official minutes of such meeting.

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

DATED: \_\_\_\_\_

CITY OF ANACORTES

BY: \_\_\_\_\_  
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone (360) 753-3444.