

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE MANAGEMENT ASSOCIATION,	)	
	)	
Complainant,	)	CASE 13306-U-97-03245
	)	
vs.	)	DECISION 6662 - PECB
	)	
CITY OF SEATTLE,	)	
	)	
Respondent.	)	
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SEATTLE POLICE OFFICERS' GUILD,	)	
	)	CASE 13234-U-97-03218
Complainant,	)	
	)	DECISION 6034-B - PECB
vs.	)	
	)	
CITY OF SEATTLE,	)	CONSOLIDATED FINDINGS
	)	OF FACT, CONCLUSIONS OF
Respondent.	)	LAW, AND ORDER
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Aitchison & Vick, by Roger C. Cartwright, appeared on behalf of the Seattle Police Officers' Guild.

Webster, Mrak and Blumberg, by James H. Webster, Lynn D. Weir, and Mark E. Brennan, appeared on behalf of the Seattle Police Management Association.

Mark H. Sidran, City Attorney, by James C. Webber, Assistant City Attorney, and Danford Grant, Assistant City Attorney, appeared on behalf of the City of Seattle.

This decision concerns unfair labor practice complaints filed by two different unions, each claiming that the City of Seattle refused to bargain by unilaterally changing the composition of a Firearms Review Board without bargaining with the exclusive

bargaining representatives of its employees as to the decision or its impact.

Case 13306-U-97-03245

On February 4, 1997, the Seattle Police Officers' Guild (SPOG) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC. The SPOG represents a bargaining unit of approximately 1,100 non-supervisory law enforcement officers in the Seattle Police Department. That complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a preliminary ruling issued on August 28, 1997, described a cause of action, as follows:

A unilateral change, implemented during or about February of 1997, of the procedure for review of discharge of firearms by police officers, whereby an unsworn citizen is to be appointed as an observer of such proceedings.

The undersigned was assigned as Examiner. A hearing was held on January 21, 1998, and those parties filed post-hearing briefs to complete the record in that case.

Case 13234-U-97-03218

On June 11, 1997, the Seattle Police Management Association (SPMA) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC. The SPMA represents a

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<sup>1</sup> At that stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

bargaining unit of approximately 50 supervisory law enforcement officers (lieutenants and captains) in the Seattle Police Department. That complaint was also reviewed under WAC 391-45-110, but a deficiency notice gave the SPMA a period of 14 days in which to file and serve an amended complaint or face dismissal. The Executive Director analyzed an amendment filed by the SPMA in light of IAFF, Local 1052 v PERC (City of Richland), 113 Wn.2d 197 (1989), concluded that it failed to relate the changes to the "wages, hours, and working conditions" of bargaining unit employees, and dismissed the case. On appeal, the Commission noted the Executive Director had found a cause of action to exist on the parallel complaint attacking the same change from the perspective of the rank-and-file law enforcement officers in the department. The Commission thus vacated the dismissal, and remanded the case for reconsideration in light of the preliminary ruling in the parallel case.<sup>2</sup> The undersigned Examiner was subsequently assigned to conduct further proceedings on the case.

After counsel for the SPMA had opportunity to review the transcript of the hearing in Case 13306-U-97-03245, a briefing schedule was established for the SPMA. Other parties were afforded the opportunity to file responsive briefs, if they desired. The SPMA

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<sup>2</sup> City of Seattle, Decision 6034-A (PECB, 1998). While the Commission noted there was a potential for two different labor organizations and their separate legal counsel to frame allegations in ways that would warrant divergent results, it found the commonality of facts in these cases warranted closer examination.

filed a brief on September 21, 1998.<sup>3</sup> There were no responsive briefs.

The Examiner dismisses the complaints filed by both unions concerning the decision to change the composition of the firearms review board. In regard to the impacts of that decision, the Examiner rules that the charges filed by both unions have merit.

#### BACKGROUND

The City of Seattle (employer) and SPOG were parties to a three-year collective bargaining agreement signed in November of 1996. The employer and SPMA were parties to a collective bargaining agreement that was effective through December 31, 1997.<sup>4</sup>

The City of Seattle Firearms Review Board was established by city ordinance over 25 years ago. Seattle Police Department policy requires all of the employer's law enforcement officers to report all discharges of firearms. The Firearms Review Board is charged with reviewing all of the facts and circumstances surrounding the firing of police weapons by law enforcement officers employed in

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<sup>3</sup> In addition to its brief, the SPMA included three declarations by Seattle Police Department employees and eight other documents. The declarations were not taken under oath or subject to cross-examination, and thus have not been considered in this decision. The other documents were not admitted into evidence, although some were identical to documents admitted at the hearing. Had the SPMA moved to reopen the record to receive testimony and/or documentary evidence, such a motion would have been granted forthwith.

<sup>4</sup> The brief filed by the SPMA indicates that, as of the date of it was filed, the parties had not signed a successor agreement.

the Seattle Police Department. That review is required regardless of whether the firearm was discharged intentionally or accidentally, and regardless of whether the discharge resulted in an injury or death. The review includes gathering evidence concerning the weapons discharge, and then deliberating on the appropriate departmental response to the incident. Evidence may include testimony from witness(es) to the shooting, including both law enforcement officers and civilians. The deliberation process involves answering a series of 8 to 10 questions that review the evidence. The board members then vote on each question. Finally, the board prepares written findings of fact and conclusions as to the circumstances and propriety of the weapons discharge under review. The board may determine that the firing of an officer's weapon was justified, accidental or not justified.

The employer's procedures manual concerning this Board are as follows:

PURPOSE

The Firearms Review board shall investigate and review the circumstances attending each intentional discharge of a firearm by an officer and the accidental discharge of a firearm by an officer resulting in injury or death. This review shall encompass the contributing causes of the incident to determine what circumstances brought about the discharge of the firearm. All accidental firearm discharges not resulting in injury or death, shall be investigated and reviewed by the affected officer's chain of command, except as provided below.

...

II.

...

B. If facts indicate that an inquest will be held or criminal charges may be filed against an officer as a result.

C. **In all other cases, the Firearms Review Board shall make findings of fact and conclusions as to the circumstances surrounding any shooting incident involving death or bodily injury. These findings, along with a determination by the Chief as to whether or not the shooting was justified, shall be made available to the public through the office of the Chief of Police.**

D. At the Board's option, it may file with the Chief of Police a separate report which would include comments, opinions, and general recommendations which would be intended to assist the Chief in making a final decision on the matter. At the Chief's discretion, this report may be treated as confidential.

E. **Upon approval of the Chief of Police,** one of the following steps shall be taken if the findings indicate that a firearm discharge was not justified:

1. If a violation of law or a serious violation of Department rules or regulations is indicated, the matter shall be referred to the Internal Investigations Section and processed in accordance with the Departments disciplinary system.

2. If an incident is clearly due to inadequate training, or a failure to follow training procedures regarding the handling, use or care of a firearm, the matter shall be referred to the Commander of the Training, Procedures, and Audit Section so that additional training may be afforded to the officer. Discharges resulting from violation(s) of training procedures may result in discipline.

3. If the discharge was accidental and resulted in injury or death, a recommendation shall be made as to whether or not discipline or correc-

tive training is necessary. A completed report shall be forwarded to the Assistant Chief of the Professional Responsibilities Bureau. . . .

[Emphasis underline in original; emphasis by **bold** supplied.]

Prior to the change at issue in these proceedings, the Firearms Review Board consisted entirely of law enforcement officers employed within the Seattle Police Department. The membership of the board included the assistant police chief who heads a "Professional Responsibility Bureau", a captain, and a lieutenant appointed by that assistant chief, and the commander of a "Training, Procedures and Audit Section." By policy and practice, an attorney and/or bargaining unit member was permitted to attend, if requested by the officer(s) involved in an incident being studied.<sup>5</sup>

Soon after signing its 1997 collective bargaining agreements with both of these unions, the employer began internal discussions concerning the membership on the Firearms Review Board. On December 23, 1996, the SPOB sent a letter to the employer, as follows:

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<sup>5</sup> The unions have not complained against an amendment of the Firearms Review Board Policy to mention union representatives, made as of May 28, 1997, as follows:

I. Membership

A. . . .

5. An attorney and/or bargaining unit representative shall be permitted to attend the Firearm's Review Board if requested by the involved officer. The attorney and/or bargaining unit representative may not participate except to counsel the involved officer and must comply with the provisions of all applicable bargaining agreements.

The Seattle Police Officers' Guild has learned that the City is proposing creating a Citizen Observer position with authority to attend each meeting of the Seattle Police Department Firearms Review Board (Board). The Citizen Observer would participate in the Board's activities as a non-voting observer.

Under PERC's decision in *Spokane Police Guild and City of Spokane*, Decision 5054, PECB (Washington PERC Hearing Examiner 1995), changes in the degree of civilian oversight of potential disciplinary matters involving police officers is a mandatory subject of bargaining, See also *Pontiac Police Officers Association v. City of Pontiac*, 246 N.W.2d 831 (Mich. 1976). As such, before the City may make changes in the composition of the Board, the City must first collectively bargain the issue with the Guild.

Please consider this as an assertion of the Guild's bargaining rights in this matter. If the City is willing to bargain over this matter, please give me a call so that we can set up a time and place for negotiations.

On January 29, 1997, Fred Treadwell, the employer negotiator responsible for the collective bargaining agreement with the SPOG sent the following letter to that organization:

Enclosed is a copy of the proposed ordinance adding a citizen observer to the Police Department's Firearms Review Board. The ordinance was approved by the Public Safety Committee of the City Council on January 28, 1997.

In response to your letter of December 23, 1996, it is the City's position that adding a citizen observer to the Firearms Review Board whose authority is strictly limited in the manner of the proposed ordinance does not constitute a mandatory subject of bargaining. Although a Firearms Review Board may review an incident and recommend that it become the subject of a disciplinary investigation, the



citizen observer will not participate in the decision making process of the Board and will have no influence or input on the decision to investigate an officer for misconduct or to impose discipline on an officer. As the ordinance specifies at Section 4.C.1, the role of the citizen will be to prepare an annual statistical report and to make recommendations regarding officer training and potential changes to Department policy and procedures.

Also enclosed is a draft revision of Article I, Chapter 305, of the Department Policies and Procedures regarding the Firearms Review Board. We would appreciate meeting to discuss these changes and obtain your input.

The composition of the Firearms Review Board was changed by city Ordinance No. 118482, on February 3, 1997. The mayor was authorized to appoint an unsworn citizen observer to the Board, and the ordinance requires that the observer file a written report annually with the mayor, the city council, the chief of police and the city clerk. Sections 1 and 3 of the ordinance specifically lay out the authority of the citizen observer and references the purpose of the board.

Section 1. Firearms Review Board Citizen Observer Position Created: Purpose There is created a Firearms Review Board Citizen Observer position (hereinafter "Citizen Observer") with authority to attend each meeting of the Seattle Police Department Firearms Review Board as a non-voting observer, to report annually to the mayor and Council on the proceedings of the Firearms Review Board, and to increase the confidence of the general public in the review process.

Section 2. Definitions As used in this Subchapter, the following definitions apply:

A. "Firearms Review Board" refers to the Seattle Police Department's internal review board (or successor unit), currently referenced in Section 1.305 of the Seattle Police

Department's Policies and Procedures Manual, whose purpose is to investigate and review the circumstances attending each discharge of a weapon by an officer.

Section 3. Appointment of the Citizen Observer

A. The Mayor shall appoint as his or her representative, a Citizen Observer, subject to confirmation by the City Council, to observe the proceedings of the Firearms Review Board. The Citizen Observer shall serve a term of three (3) years and may be reappointed to one subsequent three year term by the Mayor, subject to confirmation by the City Council.

C. Citizen Observer to Prepare Annual Report The Citizen Observer shall prepare an annual report of his or her observations about the proceedings of the Firearms Review Board. This report shall be forwarded to the Mayor, City Council, Chief of Police, City Attorney, and City Clerk for filing as a public record. The Citizen Observer's report shall be prepared in accordance with the following provisions:

1. The Citizen Observer's report shall contain a general description of the Firearms Review Board proceedings she or he has attended in the past year, including, but not limited to:

- a. the number of proceedings attended by the Citizen Observer.
- b. a breakdown of the recommendations of the proceedings (e.g., whether the discharge of the firearm was determined by the Chief of Police as justified or unjustified);
- c. a summary of issues, problems, and trends noted by the Citizen Observer as a result of his or her review;
- d. any recommendations that the Department consider additional officer training; and
- e. any recommendations that the Department consider policy or procedural changes within the framework of applicable law and labor agreements.

2. The Citizen Observer's report shall not contain any recommendations concerning any particular police officer or information

leading to the identity of a specific incident, nor shall the report comment upon or make recommendations concerning potential civil or criminal liability of specific employees, police officers, or citizens.

3. The Citizen Observer shall deliver a confidential preliminary draft of his or her annual report to the Chief of Police for review and comment. The Chief of Police shall report and comment on the preliminary report within twenty (20) working days after receipt of the report. The Citizen Observer shall submit the final report within thirty (30) days after receipt of the Chief's comments. The Citizen Observer's final report shall be submitted no later than the first day of December each year.

The SPOG filed its unfair labor practice complaint on the day after the ordinance was adopted;<sup>6</sup> the SPMA filed its unfair labor practice complaint about four months later, in June of 1997.

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<sup>6</sup> On September 11, 1997, the SPOG sent the following letter to the employer:

On behalf of the Seattle Police Officers' Guild which is the recognized bargaining agent, please accept this letter as notice of the following:

1. The SPOG renews its [sic] objection to the presence of a civilian observer at any firearms review board as set forth in a currently pending unfair labor practices complaint which addresses this issue.
2. The SPOG renews its objection to any limitation on the right of the SPOG representative attending any firearm review board to fully participate in all aspects of the proceedings.
3. All attendance and/or participation in any firearm review board is made under the protest of the above listed objections. Nor should it be viewed as a change in the position of the SPOG nor a waiver of bargaining rights. ...

POSITIONS OF THE PARTIES

The SPOG argues that the composition of the Firearms Review Board is a mandatory subject of bargaining, and that the employer committed an unfair labor practice when it did not negotiate the addition and role of a citizen observer on the board. The SPOG asserts that the fact the board only recommends discipline does not sufficiently remove the board from the employer's disciplinary procedures to make the membership of the board a permissive subject of bargaining. It argues that the employer should be required to negotiate with the representatives of its employees concerning the addition of a civilian observer.

The SPMA asserts some of the same arguments as the SPOG, but its focus is more on the failure of the employer to impose a confidentiality requirement on the citizen observer. The SPMA argues that without a guarantee of confidentiality, the participants in the board meetings will not speak freely or candidly concerning shooting incidents. The SPMA believes the board would lose its effectiveness as a vehicle for determining training issues and priorities, if it was not able to obtain a full and complete picture of each instance when a police firearm is discharged.

The employer argues that the composition of its Firearms Review Board should not be considered to be a part of "hours, wages, and working conditions", because the Firearms Review Board process is not related to discipline or a recommendation of discipline. It further asserts that the addition of a citizen observer does not change the procedures of the board, but only its composition.

DISCUSSION

Mandatory Subjects of Bargaining

The "law" on "mandatory - permissive" subjects of bargaining, and particularly related to discipline and disciplinary procedures, has been stated many times. Recently, in Community Transit, Decision 6375 (PECB, 1998), it was stated:

In determining whether a particular matter constitutes a mandatory or permissive subject of bargaining under Chapter 41.56 RCW, the Commission looks to its impact on the wages, hours or working conditions of bargaining unit employees. The Commission had held that procedure manuals and so-called "standard operating procedures" are mandatory subjects of bargaining, when they contain provisions that impact employee wages and other working conditions. King County Fire District 11, Decision 4538-A (PECB, 1994). **Washington law is well-settled that changes in disciplinary procedures constitute mandatory subjects of bargaining.** City of Spokane, Decision 5054 (PECB, 1995) citing City of Yakima, Decision 3503-A (PECB, 1990, affirmed, 117 Wn. 2d 655 (1991)).

[Emphasis by **bold** supplied.]

In its December 23, 1996 letter to the employer, the SPOG cited City of Spokane, Decision 5054 (PECB, 1995), a case with a fact pattern similar, but not identical, to these cases. The Spokane decision reviewed Commission precedent concerning law enforcement review boards as mandatory subjects of bargaining, including City of Pasco, Decision 4197-A (PECB, 1994), where:

... the employer had a procedure in which police-related traffic accidents and discharges of firearms were submitted to a "board of review", and a system of point values was used to classify police vehicle accidents and recommend disciplinary outcomes. The police chief **replaced the "board of review" with a**

**new "management review" procedure** to deal with the same subject matters. The union sought to bargain over the board of review during the negotiations on a successor agreement, but the employer refused to bargain on those issues. In finding the City of Pasco guilty of having committed unfair labor practices by unilaterally implementing changes in its disciplinary procedures, the Commission noted that **"Discipline can affect tenure of employment, which is the ultimate 'working condition' within the traditional scope of 'wages, hours and working condition.'** RCW 41.56.030(4)."

In the case at hand, the City of Spokane has similarly effected **changes in disciplinary procedures**. Prior to the unilateral imposition of the CRP, an officer would not face discipline if the chief concluded that the conduct was justified, or that there was insufficient evidence of misconduct, or if the charges were false. The CRP that was unilaterally imposed on these two bargaining units was specifically created to review officer conduct only if the chief failed to find misconduct. The CRP can **recommend an increase in discipline from what the chief had decided. The recommendation of any discipline at all by the CRP is a greater sanction than a finding of no sustainable misconduct.** Such procedures subject the bargaining unit members to institutionalized double jeopardy. "Institutionalized double jeopardy" is a working condition and should have been bargained prior to its implementation. The employer's argument that since the CRP can only recommend discipline its acts do not constitute a working condition, is not persuasive. The record shows that the CRP can now **publicly disclose information** regarding unsustained information about bargaining unit members which had previously been considered confidential internal investigation material. In 1993, the State Supreme Court ruled in Dawson v. Daly, 120 WN.2d 782, (1993), that disclosure of a performance evaluation of a public employee would be "highly offensive to a reasonable person" and "not of legitimate concern to the public"

unless there were specific acts of misconduct found in the evaluation. If all evaluations were open to scrutiny by "co-workers, neighbors, the press, or anyone else who made a request," the high court concluded that "employee morale would be seriously undermined, likely resulting in reduced job performance."

[Emphasis by **bold** supplied]

This situation is thus distinguishable from Spokane and Pasco, however, on the basic facts that gave rise to each case.

#### Disciplinary Authority -

These cases present the narrow issue as to whether the addition of a citizen observer has any impact on the discipline of police officers. It is clear, from Spokane and Pasco, that a bargaining obligation arises if an employer alters a disciplinary procedure or process. The authority and procedures of the Seattle Firearms Review Board, particularly in regard to discipline, were not changed by this new ordinance, however. The Firearms Review Board has only limited functional options involving discipline:

- One option is invoked, under Section II. E. 1., if the board finds a violation of department rules or regulations occurred; the board then refers the matter to the Internal Investigation Section, which conducts an independent investigation.
- A second option is utilized, under Section II. E. 2., if it appears that the firearm discharge has training or department procedure implications; the board then refers the matter to the Commander of the Training, Procedures, and Audit Section for additional training of the officer.
- A third option may exist where an accidental firing results in injury or death, where the language of Section II. E. 3. suggests the board could send a recommendation of discipline

or corrective action to the assistant chief of the Professional Responsibility Bureau; the evidence admitted at the hearing indicates, however, that the board is primarily viewed as a fact-finding body.

While exercise of the latter option would insert the Firearms Review Board into the employer's disciplinary procedure, the president of the SPOG, Michael Edwards, described its actual practices as follows:

... it was a fact finding hearing to determine what occurred, what impact that had on department policies and procedures, if any, training issues that may have been of some concern. And to do an internal review so that if there was something that was necessary to be changed or benefit for the department either in training for other personnel that may be involved in similar incidents to determine that information and then provide a recommendation to the department itself on their findings.

His statement clearly does not include a disciplinary element in the purpose of the board. Likewise, the employer argued specifically that the board cannot recommend discipline.

The Supreme Court of the State of Washington has announced strong public policy reasons for reliance upon written records in transaction of public business, including collective bargaining agreements negotiated under Chapter 41.56 RCW. State ex rel. Bain v. Clallam County, 77 Wn.2d 542 (1970). It may well be that in practice, as opposed to written procedure, the board limits itself to issues of training and procedure. Because Section II, E. 3. of Policy 305 specifically allows for a recommendation of discipline, the Examiner concludes that the policies and procedures of the board could constitute a mandatory subject of bargaining.



Board Composition -

The ultimate issue here concerns only the addition of a citizen observer to the existing board. In Pasco, the employer **abolished an established board** that was an intermediary disciplinary step for situations involving traffic accidents and firearms usage involving police officers; in Spokane, the employer **established a new board** with disciplinary authority in regard to citizen complaints. In contrast, this case does not involve either the creation or abolition of the employer's Firearms Review Board. Only the composition of the board, which has existed for about 25 years, has been changed. Having established that the board could have a disciplinary role, it is necessary to evaluate the impact of the city council decision adding a citizen observer.

The addition of a citizen observer does not change the board's recommendation procedures, nor did it alter the rights of either union concerning attendance or participation at meetings of the board. The employer states that the amendment was intended to insert citizen input into the firearms review process, not to change existing disciplinary procedures, and it aptly points out that the citizen observer has no vote in the final recommendations of the board. Now, as before, only the commissioned law enforcement officers on the board decide whether a shooting was within department guidelines.

The Examiner is not persuaded by any SPOG arguments that the presence of the citizen observer "diminished" its role at review board hearings and/or compromised its ability to "effectively represent its members" in Firearms Review Board meetings. An example of this diminishment was that the SPOG representative was required to get "permission" to question witnesses. If the process utilized by the board is a fact-finding "hearing" (as it was

described by the SPOG president in his testimony, and as it was characterized in the SPOG brief), then such formalities would seem to be entirely appropriate. There is no basis for a finding that board meetings are, or ever have been, conducted informally or in the give-and-take manner of collective bargaining negotiations. The SPOG made no effective argument as to why informality lends itself to more effective union representation, or as to what the presence of the citizen observer has to do with formality or informality.

Nor is the Examiner persuaded by any SPOG argument that the citizen observer not only observes, but also participates, and thus somehow changes the quality of the questions asked by the uniformed participants. The president of the SPOG testified that very basic, routine, rudimentary, and significant questions were not asked in recent board proceedings, when the observer was present. The SPOG did not, however, provide any further explanation of this phenomenon. Without further detail, its objection is not credible.

#### Effects of Citizen Observer -

The SPMA advances a legitimate concern that the citizen observer could have a significant impact on the confidentiality of the board's proceedings. It argues that the sworn law enforcement officers on the board would be subject to departmental discipline if they violated the privacy of either: (1) The officer who discharged the firearm; (2) a citizen who testifies before the board; or (3) departmental witnesses to the firearms discharge. Both prior to and subsequent to the amendment at issue, the policy has specified that the board's findings would be made public only through the office of the Chief of Police. While that is not an absolute prohibition against disclosure, it is of some significance that no such confidentiality strictures are placed on the citizen observer. The contents of the report to be filed by the citizen

observer are delineated in the amended ordinance, but other comments or behaviors of the citizen observer concerning the board's work are not addressed.

The concern advanced by the SPMA goes less to the appointment of the citizen observer than to potential effects of his or her presence at board proceedings. Public disclosure of sensitive information could affect the reputation and standing of either the commissioned officer(s) or civilian(s) involved in a firearms situation. City of Spokane, supra, and Cowles Publishing Company v. Washington State Patrol, 109 Wn.2d 712 (1988). It thus appears to this Examiner that the employer had, and has, a duty to bargain with these unions concerning the effects of adding the citizen observer to the Firearms Review Board, and particularly as to any changes to the confidentiality of that board's proceedings.<sup>7</sup>

#### Conclusions and Remedy

The decision to add a citizen observer to the Firearms Review Board was not a mandatory subject of bargaining under Chapter 41.56 RCW, and was made within the employer's entrepreneurial responsibilities related to its accountability to the public for the training and supervision of its commissioned law enforcement officers. The employer thus did not commit any unfair labor practice when it added a citizen observer to its Firearms Review Board without having first negotiated that decision with the SPOG and/or SPMA, and no remedy is warranted on those claims.

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<sup>7</sup> The amendment formalizing the presence of a union attorney or union official who is not an employee of the Seattle Police Department also creates a potential for confidentiality concerns.

The addition of persons who are not subject to departmental discipline to the participants in Firearms Review Board proceedings creates a potential for breaches of the confidentiality historically maintained with respect to those proceedings and other potential impacts, so that the employer has a duty to bargain with the SPOG and SPMA, upon their respective requests, concerning the impacts of that change. The employer committed an unfair labor practice when it altogether refused to bargain with the SPOG and/or SPMA concerning any aspect of the changes adopted on February 7, 1997. The remedy for this refusal to bargain "effects" is adapted from the Commission's decision in Entiat School District, Decision 1361-A (PECB, 1982) where, quoting from Transmarine Navigation Corp., 170 NLRB 389 (1968), the Commission wrote: "Meaningful bargaining cannot now be assured until some measure of ... strength is restored to the union." In these cases, where all of the employees involved are "uniformed personnel" under RCW 41.56.030(7) and any unresolved issue must be submitted to interest arbitration under City of Seattle, Decision 1667-A (PECB, 1984), the Examiner deems a 60-day suspension of the citizen observer (matching the 60-day period for bilateral negotiations specified in RCW 41.56.440) to provide that measure of strength.

#### FINDINGS OF FACT

1. The City of Seattle, a municipal corporation and political subdivision of the State of Washington within the meaning of RCW 41.56.020, is a public employer within the meaning of RCW 41.56.030(1). Norman Stamper is the Chief of Police of the Seattle Police Department.
2. The Seattle Police Officers' Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive

bargaining representative of non-supervisory law enforcement officers employed by the City of Seattle in the Seattle Police Department. Michael D. Edwards is the president of the guild.

3. The Seattle Police Management Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain supervisory law enforcement officers employed by the City of Seattle in the Seattle Police Department. Daniel J. Oliver is the president of the association.
4. Approximately 25 years ago, the City of Seattle established a Firearms Review Board associated with the Seattle Police Department. The purpose of the board is to investigate incidents of firing of weapons by Seattle police officers. The board's review consists of interviewing witnesses to the weapons discharge and preparing written findings of fact and conclusion concerning the circumstances and propriety of the weapons discharge under review.
5. Until 1997, the Firearms Review Board was composed only of sworn law enforcement officers employed within the Seattle Police Department.
6. By Ordinance 118482 passed by the Seattle City Council on February 3, 1997, the ordinance concerning the Firearms Review Board was amended to add a citizen observer to the board with specified responsibilities, and to allow the presence of an attorney or union official representing the employee(s) involved.
7. The citizen observer added to the Firearms Review Board, as described in paragraph 6 of these Findings of Fact, was vested

with the authority to attend meetings of the board as a non-voting member.

8. The citizen observer added to the Firearms Review Board, as described in paragraph 6 of these Findings of Fact, was vested with the authority to prepare an annual report which contains statistics concerning the overall work of the board, but does not include specific recommendations or information leading to the identity of a specific incident or comment upon potential criminal or civil liability of specific employees of the city, police officers, or citizens. Such reports are to be submitted to the mayor and city council.
9. Under Seattle Police Department Policy 305, as amended on May 28, 1997, the Firearms Review Board may make four recommendations concerning the discharge of firearms:
  - 1) Justified, and no further review is necessary;
  - 2) Not justified and a possible violation of law or department rules or regulations, and referred to the Internal Affairs Section for possible disciplinary action;
  - 3) Not justified and due to inadequate training, and a review of training procedures is recommended; or
  - 4) Accidental and resulted in injury or death, and a review for possible disciplinary action is recommended.

In actual practice, the Firearms Review Board has acted as a fact-finding body, and has not recommended discipline of employees represented by the SPOG and/or SPMA.

10. Although certain policies and procedures of the Firearms Review Board were changed at the time the citizen observer was

added, those changes did not relate to the presence or participation of the observer or to the annual report required of that position.

11. Since the addition of the citizen observer, the Firearms Review Board has had several occasions to review incidents of employees in the bargaining units represented by these unions having discharged their weapons in the line of duty.
12. Commissioned law enforcement officers employed in the Seattle Police Department and their exclusive bargaining representatives have a substantial interest in preserving the confidentiality of sensitive information concerning matters that are subject to review by the Firearms Review Board.
13. Prior to the changes described in paragraphs 6 and 7 of these Findings of Fact, the employer's practices and procedures made findings of the Firearms Review Board public only through the chief of police and all acknowledged participants in the Firearms Review Board process were subject to discipline by the chief of police for any improper disclosure of such information.
14. The non-employee participants admitted to Firearms Review Board proceedings by the changes described in paragraphs 6 and 7 of these Findings of Fact are not subject to discipline by the chief of police for any improper disclosure of confidential information of the type described in paragraph 12 of these conclusions of law.

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. The decision to add a citizen observer to the Firearms Review Board, as described in paragraphs 6 and 7 of the foregoing Findings of Fact, is not a mandatory subject of bargaining under RCW 41.56.030(4), inasmuch as the unions involved in these proceedings have not established that the presence of the citizen observer changed any procedures or policies of the board relating to the discipline of employees represented by those unions, or otherwise affecting the wages, hours or working conditions of those employees.
3. The effects of adding a citizen observer to the Firearms Review Board, including maintaining the historical confidentiality of proceedings before that board, are a mandatory subject of collective bargaining under RCW 41.56.030(4), so that the employer committed unfair labor practices in violation of RCW 41.56.140(4) and (1) by its refusal to bargain with the Seattle Police Officers' Guild and/or Seattle Police Management Association concerning any aspect of the changes it adopted as described in paragraphs 6 and 7 of the foregoing Findings of Fact, including the effects of adding individuals not subject to departmental discipline to those participating in Firearms Review Board proceedings.

ORDER

THE CITY OF SEATTLE, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:



1. CEASE AND DESIST from:
  - a. Refusing to bargain with the Seattle Police Officers' Guild concerning the effects, upon non-supervisory employees represented by that organization, of adding non-employee participants to the proceedings of the Firearms Review Board.
  - b. Refusing to bargain with the Seattle Police Management Association concerning the effects, upon supervisory employees represented by that organization, of adding non-employee participants to the proceedings of the Firearms Review Board.
  - c. In any other manner interfering with, restraining or coercing its employees in their 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. Suspend the attendance and participation of the citizen observer on the Firearms Review Board with respect to proceedings involving employees in the bargaining units represented by the SPOG and/or SPMA until there has been opportunity for collective bargaining on the effects of that attendance and participation, particularly with respect to the confidentiality of the Board's proceedings. Such suspension shall be in effect, as follows:
    - (i) If the Seattle Police Officers' Guild fails to request effects bargaining and advance proposals

within 20 days following the date of this Order, the suspension shall end, as of that date, with regard to proceedings involving employees represented by that organization.

(ii) If the Seattle Police Management Association fails to request effects bargaining and advance proposals within 20 days following the date of this Order, the suspension shall end, as of that date, with regard to proceedings involving employees represented by that organization.

(iii) If effects bargaining is requested and proposals are advanced, the suspension shall end with regard to proceedings involving employees represented by the requesting organization on the earlier of the dates when an agreement is effectuated or 60 days after the commencement of the negotiations.

b. Give the Seattle Police Officers' Guild advance notice of any further changes to the composition and/or functions of the employer's Firearms Review Board and, upon request, bargain in good faith with that organization concerning any decision which is a mandatory subject of bargaining and as to the effects of any change on the employees represented by that organization.

c. Give the Seattle Police Management Association advance notice of any further changes to the composition and/or functions of the employer's Firearms Review Board and, upon request, bargain in good faith with that organization concerning any decision which is a mandatory subject

of bargaining and as to the effects of any change on the employees represented by that organization.

- 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 by other material.
- e. Read the notice attached hereto and marked "Appendix" aloud at the next public meeting of the City Council of the City of Seattle, and append a copy thereof to the official minutes of said meeting.
- f. Notify the Seattle Police Officers' Guild, 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 that organization with a signed copy of the notice required by the preceding paragraph.
- g. Notify the Seattle Police Management Association, 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 that organization with a signed copy of the notice required by the preceding paragraph.
- h. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days follow-

ing 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 the preceding paragraph.

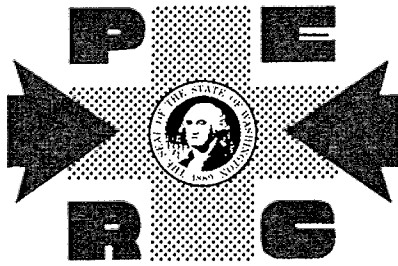
Dated at Olympia, Washington on the 27th day of April, 1999.

PUBLIC EMPLOYMENT/RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Walter M. Stuteville".

WALTER M. STUTEVILLE, 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 OUR EMPLOYEES:

WE WILL suspend the attendance and participation of the citizen observer on the Firearms Review board with respect to proceedings involving employees in the bargaining units represented by the SPOG and/or SPMA until there has been opportunity for collective bargaining on the effects of that attendance and participation, particularly with respect to the confidentiality of the Board's proceedings.

WE WILL give the Seattle Police Officers' Guild advance notice of any further changes to the composition and/or functions of the employer's Firearms Review Board and, upon request, bargain in good faith with that organization concerning any decision which is a mandatory subject of bargaining and as to the effects of any change on the employees represented by that organization.

WE WILL give the Seattle Police Management Association advance notice of any further changes to the composition and/or functions of the employer's Firearms Review Board and, upon request, bargain in good faith with that organization concerning any decision which is a mandatory subject of bargaining and as to the effects of any change on the employees represented by that organization.

WE WILL read this notice aloud at the next public meeting of the City Council of the City of Seattle, and append a copy thereof to the official minutes of said meeting.

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

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

CITY OF SEATTLE

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