STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1445, Complainant, vs. CITY OF KELSO, Respondent.	CASE NO. 5435-U-84-989 DECISION NO. 2120 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Tedesco and Tedesco, by Michael J. Tedesco, attorney at law, appeared on behalf of complainant at the hearing, with Rosemarie Tedesco, attorney at law, on the brief.

Davis, Wright, Todd, Riese and Jones, by Mark A. Hutcheson, attorney at law, appeared on behalf of respondent at the hearing, with Carol S. Gown, attorney at law, on the brief.

On September 4, 1984, International Association of Firefighters, Local 1445 (complainant) filed a complaint charging unfair labor practices against the City of Kelso (respondent), alleging that respondent violated RCW 41.56.140(4) by failing to bargain in good faith about the contracting of respondent's fire services. Complainant further alleged that respondent violated RCW 41.56.470 by unilaterally changing wages, hours and conditions of employment during the pendency of interest arbitration proceedings. A hearing was conducted at Kelso, Washington, on November 30, 1984. The parties submitted briefs setting forth their legal arguments.

BACKGROUND

The City of Kelso is a municipality located in Cowlitz County, Washington. The city operates under a "mayor-council" form of government, and an appointed city manager supervises the city's daily activities. To provide services to local residents, several departments have been created. The departments receive operating funds through budget requests submitted to the city council. The council's appropriations establish the level of services that the departments can provide.

The city has collective bargaining relationships with several employee organizations, including International Association of Firefighters, Local 1445. The union represents a bargaining unit of employees in the city's fire department who are "uniformed personnel" within the meaning of RCW 41.56.030(6). At the time of the hearing in this matter, there were 11 employees in the bargaining unit.

The city's fire hall is located in downtown Kelso, adjacent to the employer's administrative offices. Situated on a busy thoroughfare, the old building is in need of extensive renovation. The department has three firefighting vehicles. The firefighters work rotating 24 hour shifts to provide continuous fire protection services. There are four work platoons in the fire department; two are staffed by two firefighters, and the other two are staffed by three firefighters. The department does not have ambulance services nor does it operate an "aid car" staffed by paramedics. Apparently, Kelso residents have expressed an interest in emergency medical services, but voters refused to pass the ballot measure to fund such an operation. Two nearby jurisdictions provide a different range of firefighting services.

The neighboring City of Longview has a larger firefighting force and offers a comprehensive fire suppression and emergency medical service program for its residents. Longview and Kelso provide "mutual aid" responses in severe emergencies. In addition, the cities have participated in an "automatic fire response assistance" agreement to cover certain parts of the cities.

Cowlitz County Fire Protection District No. 2 provides firefighting services for residents in the county's unincorporated areas. Organized under terms of Title 52 RCW, the district is under the policy supervision of an elected three member commission. Daily operations are supervised by a fire chief. At the time of hearing, the district's firefighting force consisted exclusively of volunteers, rather than full-time paid employees. The district has 23 vehicles spread throughout its area of responsibility. Four of the vehicles are aid cars, and one fire engine is also licensed as an aid vehicle. Every fire call receives a minimum response consisting of two fire engines, two tanker vehicles and 13 volunteer firefighters.

The fire district has taxing authority to provide funds for its operation. Such funds are derived from property tax assessments within the district's boundaries. Several unincorporated areas subject to the fire district's taxing authority and fire prevention activities are located within Kelso's city limits. While tax revenue from these areas is directed to the district, primary fire suppression responsibility has, by an agreement, rested with the City of Kelso. The city has provided such services at an established rate billed to the district. In addition, the city and fire district have been parties to a series of intergovernmental agreements since 1956, providing that the city would retain primary firefighting responsibilities for certain areas outside the city limits. The last such agreement was entered by the city and the fire district in 1978 and ran for calendar year 1979. The agreement contained an automatic renewal clause which would extend the terms of the agreement unless a party gave notice of intent to discontinue the arrangement.

Events leading to this unfair labor practice case can be traced to 1983. Traditionally supervised by a fire chief, the Kelso Fire Department lost its chief to retirement. Rather than appointing a new fire chief, the city council decided to merge supervision of the police and fire departments under the direction of Tony Stoutt, Kelso Police Chief. Stoutt was given the title of public safety director and assumed his responsibilities on March 1, 1983. Stoutt's tenure as public safety director has been troubled with particularly harsh feelings evidenced between the firefighters and the public safety director.

Apart from any personal difficulties he encountered as director, Stoutt had to deal with a number of monetary problems. In 1983, the city undertook a number of cost saving steps designed to reduce expenditures for the ensuing year. As part of this effort, the city approached the firefighters union and asked the employees to forego a salary increase scheduled under terms of the collective bargaining agreement then in effect. The union declined to follow the employer's suggestion and the wage increase took place. Shortly thereafter, a series of budget cuts were announced that would affect the various city departments. The record indicates that the fire department absorbed a very severe funding reduction of approximately $100,000 while most other departments lost $8,000 to $10,000 each. In some cases, such as the police department, the total budget allocation was slightly increased. As a result of the cutbacks, several layoffs occurred, but again the record reflects a harsher impact on the fire department where four firefighters were terminated. The layoffs forced the creation of the work shift manpower levels set forth above.

Given the deteriorating state of the fire department's operation, Stoutt looked for alternative methods of fire protection. A private consulting company was retained and a study was undertaken from June through August, 1983. As a result of the study, four options were identified: retain the fire department supplemented with a volunteer program; merge operations with the City of Longview; merge operations with Cowlitz County Fire District No. 2; or have a private company provide firefighting services. Stoutt testified that he favored retention of the department with the assistance of a new volunteer program. Stoutt discussed the alternatives with the Kelso City Council at least twice after the consultant's report was prepared.

On December 15, 1983, Fire District No. 2 sent the city formal notification of the district's intention to cancel the fire service agreement in effect from 1978. District No. 2 Fire Chief Dan Baxter testified that the agreement was terminated because the fire district had to re-evaluate its priorities in firefighting matters.

During the course of events detailed above, the city and the union were engaged in collective bargaining negotiations in an effort to reach agreement on a successor contract to the document that expired on December 31, 1983. However, the parties were not successful in their efforts and a contract was not reached. At the time of hearing, the contract dispute was pending in the interest arbitration procedures outlined in RCW 41.56.430 et seq.

In the early part of spring, 1984, Jay Haggard, the new city manager, began examining the use of an intergovernmental agreement between the city and Fire District No. 2 to provide fire suppression and emergency services. Haggard was aware that similar arrangements existed in several areas throughout the state and believed that such a cooperative effort would be beneficial for the Kelso vicinity. While the examination of alternatives continued, the city was informed that the City of Longview intended to terminate a cooperative firefighting arrangement. On April 12, 1984, Haggard received a letter from Longview City Manager J. Walter Barham, stating that Longview could no longer accept Kelso's "two man emergency response" for purposes of an agreement establishing "automatic fire response assistance." The separate mutual aid agreement between the two cities would continue to be in full force and effect.

On June 29, 1984, the city issued a press release, stating that the Kelso City Council would consider a resolution which, if passed, would allow the city to investigate the possibility of providing fire services to city residents through an intergovernment agreement with Fire District No. 2. The press release was reported in the local newspaper on July 2, 1984. On that same date, the city's labor counsel, Mark Hutcheson, contacted the union's counsel, Michael Tedesco. Hutcheson informed Tedesco that the city was considering whether it should discontinue its fire fighting services with those services to be provided by some other public agency.

On July 3, 1984, the Kelso City Council passed a resolution authorizing Haggard to enter negotiations with Fire District No. 2 for the purpose of:

> ... the mutual provision of fire suppression, prevention and emergency medical services through intergovernmental cooperation.

Michael Tedesco attended the council meeting when the resolution was adopted and made a presentation on behalf of the firefighters, expressing their concern about the implications of the resolution.

On July 5, 1984, Fire District No. 2 passed a resolution authorizing Chief Parker to negotiate a contract with the City of Kelso whereby the district would provide a number of specific services in exchange for reasonable charges for services rendered.

On July 9, 1984, Tedesco sent a letter to Hutcheson demanding that the employer "bargain both the decision and the impact of any subcontracting plans which the city is considering." On July 19, 1984, Hutcheson contacted Tedesco to schedule a meeting to discuss the fire department situation. The meeting was set for July 27, 1984.

On July 25, 1984, City Manager Haggard sent local union president, Larry Hendrickson, a letter informing him that the city had not reached a final decision on the future of the city's firefighting services. The letter further stated:

> The City is not considering the "subcontracting" of part of the bargaining unit's work as contemplated by Mr. Tedesco. We believe that any decision to discontinue fire prevention, fire suppression and emergency medical services, disband the City's fire department, and let the District expand its present operation and assume the responsibility for providing those services is not a mandatory subject of bargaining. Any such decision will be made for legitimate business and governmental reasons unrelated to labor relations. As noted above, the primary considerations include efficiency of operations and better provision of services.
>
> Without prejudice to our position that we have no duty to do so, without admitting that we have any such duty, and without waiving our defenses in this matter, the City is willing to bargain with you the decision we are considering. And of course, we are willing to bargain about the effects of any such decision. We will be scheduling a mutually convenient time to discuss these matters further.

On July 27, 1984, the scheduled meeting took place. In attendance for the city were Haggard, Stoutt and Hutcheson. Tedesco, Hendrickson and two other firefighters attended on behalf of the union. During the course of the meeting, the city reviewed the background surrounding its desire to enter into an agreement with Fire District No. 2. The union expressed its point of view on the subject. The union also asked the city to consider submitting a bond issue for fire hall and equipment improvements and hiring a fire chief. In addition, the union asked the city to investigate a cooperative agreement with the City of Longview and asked what Fire District No. 2 policy would be with respect to hiring Kelso Fire Department employees. The city stated that it would attempt to supply the requested information.

On August 6, 1984, Stoutt wrote to the Longview fire chief inquiring about the possibility of a cooperative fire service agreement. On August 8, 1984, Stoutt received a letter from the Longview fire chief stating that the City of Longview was not interested in such an arrangement.

On September 4, 1984, the union filed the unfair labor practice complaint at issue in these proceedings. On September 10, 1984, Hutcheson wrote to

Tedesco, setting a meeting to discuss the situation further. The letter also mentioned that collective bargaining negotiations were continuing in an effort to resolve the contract without resorting to interest arbitration.

On September 21, 1984, the parties met again to discuss the city's proposed change of operation. The status of negotiations was reviewed, and the fire district's position on hiring Kelso firefighters was explained. City representatives informed the union that the city could not guarantee that the fire district would hire the affected firefighters if the district assumed primary firefighting responsibilities. The city then made a proposal to the union containing layoff procedures and referral of the employees to Fire District No. 2 for consideration. The union rejected the proposal and counterproposed that the parties retain the existing wage rate and work schedule for 1985. The city rejected the counterproposal.

On September 28, 1984, Hutcheson sent Tedesco a letter confirming a telephone conversation they had earlier. The letter confirmed that the parties were at impasse and went on to state that the city felt that it no longer had an obligation to bargain with the union.

On October 9, 1984, at 3:30 PM, the union presented a new bargaining proposal to the city. The proposal called for an increase in the work week, a two-year wage freeze, the implementation of a volunteer program "with active participation from the local," and an increase of the number of firefighters on each shift within the confines of the existing 11 member firefighting force. The increase in work hours combined with the wage freeze resulted in an actual salary reduction for bargaining unit employees. The proposal also called for an increase in vacation time to adjust the amount of vacation accrual in light of the extended work week. The city did not accept the proposal.

At 7:00 PM, on October 9, 1984, the Kelso City Council approved an "interlocal agreement" with Fire District No. 2. The fire district approved the agreement on October 11, 1984. Due to take effect January 1, 1985, the agreement requires the fire district to provide a variety of fire suppression, fire prevention and emergency medical services to city residents. In exchange for these services, the city provided that it would pay 71 percent of its 1985 property tax assessment to the district. The record indicates that the city will pay almost the identical amount to the fire district as the fire department budget for 1984. That amount would be increased by six percent in 1986 and 1987. The fire district would assume possession of all city fire fighting equipment as part of the agreement.

At an unspecified time during the course of events detailed above, Cowlitz County Fire District No. 2 began construction of a new fire hall and administration office facility within the Kelso city limits. At the time of the hearing, the structure was not yet completed. Until the building is finished, sometime in mid-1985, the fire district will use the city's existing fire hall. The fire district was in the process of hiring full-time firefighters who would be supported by the existing volunteer force.

POSITIONS OF THE PARTIES

Complainant argues that the situation presented in this case is similar to that found in City of Vancouver, Decision 808 (PECB, 1980) and City of Kennewick, Decision 482 (PECB, 1978). Relying upon standards set forth in Fibreboard Paper Products vs. NLRB, 379 U.S. 203 (1964), complainant maintains that respondent has subcontracted its firefighting operation and must negotiate both the decision and effects of such action. Complainant argues that respondent has failed to take part in such negotiations in violation of RCW 41.56.140(4). In addition, complainant contends that respondent violated RCW 41.56.470 because the proposed changes are scheduled to occur during the pendency of interest arbitration proceedings, and such modifications in the mandatory subjects of bargaining cannot take place until the complete dispute resolution process, including interest arbitration, has been completed.

Respondent maintains that it did not commit an unfair labor practice. Respondent contends that the city is not subcontracting its fire service operation but rather is "going out of business" with respect to fire services. Respondent argues that the city government has statutory authority to disband its fire department, and that the city acted responsibly in this case. Respondent further contends that the underlying issue involved a managerial decision concerning an integral part of the city's total operation and such decisions are not mandatory subjects of collective bargaining within the meaning of Chapter 41.56 RCW.

DISCUSSION

This dispute is subject to several interpretations. While complainant alleges that the City of Kelso has subcontracted its firefighting operations to Cowlitz County Fire Protection District No. 2, respondent maintains that it has completely and irrevocably disbanded its fire department. The characterization of the issue is critical to later analysis of what bargaining duty is owed.

If an employer chooses to close either part or all of its operation due to economic necessity, the underlying closure decision does not require prior negotiations with affected employee organizations. In First National Maintenance Corp. vs. NLRB, 452 U.S. 666 (1981), the United States Supreme Court explained the latitude given an employer facing a total or partial shutdown:

> ... Nonetheless, in view of an employer's need for unencumbered decision-making, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business.

The court was careful to point out that its ruling dealt only with an employer's obligation to negotiate about the decision to quit operations. The employer's obligation to negotiate concerning the effects of such an action was not changed.

Clearly, the Supreme Court has created a balancing test in cases involving the complete cessation of an employer's business. If the affected employee organization cannot demonstrate that negotiations over the closure decision would be beneficial to the bargaining relationship, the employer's right to manage its business is considered to be more important, and the decision would not become a mandatory subject of bargaining. Admittedly, the employee organization faces a difficult task in attempting to prove that bargaining would be beneficial. However, the balancing test assumes that the employer has already made difficult choices in reaching its closure decision. In Otis Elevator Co., 269 NLRB No. 162 (1984), an employer consolidated operations, and, in the process, terminated one of its research and development facilities. The National Labor Relations Board ruled that the company's decision to terminate part of its operation was not a mandatory subject of collecctive bargaining. As long as labor costs did not provide the only basis for the decision, the employer did not have to negotiate about that decision.

Subcontracting is one step removed from a business closure. Instead of abandoning its operation entirely, the employer determines that it will eliminate part of its workforce in favor of contracting with a separate entity which promises to provide the same or similar services. As might be expected, the employer owes a different bargaining obligation in a subcontracting setting.

In Fibreboard Paper Products vs. NLRB, 379 U.S. 203 (1964), it was determined that the decision to contract out work previously performed by members of an established bargaining unit, which results in the termination of bargaining

unit employees, is a mandatory subject of bargaining. The Public Employment Relations Commission has adopted the principles set forth in the Fibreboard decision. In South Kitsap School District, Decision 472 (PECB, 1978) the school district was found to be in violation of RCW 41.56.140(1) and (4) by unilaterally implementing a new instructional plan which caused the transfer of bargaining unit work and a number of layoffs. A similar result was reached in City of Kennewick, Decision 482-B (PECB, 1980) where the Commission reasoned that the employer's action was a severe departure from past practice and affected a serious change in working conditions. In City of Vancouver, Decision 808 (PECB, 1980) the employer contracted with a private company to provide sewage treatment services at the expense of terminating the city's existing waste treatment plant employees. Since the employer did not give the affected employee organization notice of the subcontracting until the new service was already in place, a violation was found. While the cases detailed above arose in different factual settings, one common circumstance exists. In each of the subcontracting disputes, the employer did not change its business character, and it provided the same services to the public. The only evident change was the removal of the employees performing the work from the bargaining unit and from the employer's payroll.

Turning to the instant case, respondent maintains that its actions should be judged according to the First National Maintenance Corp. criteria, and stresses that its decision to enter into an intergovernmental agreement is not a mandatory subject for bargaining. As respondent notes in its closing brief, a municipality such as the City of Kelso has specific rights to pass certain ordinances and to disband its fire department. See: RCW 35.23.440. However, such municipalities are also required to engage in collective bargaining under provisions of Chapter 41.56 RCW. To the extent that the public employees choose to participate in the bargaining process, the employer's actions with regard to subjects considered mandatory for bargaining must be carefully analyzed. A municipality's decision to enter into an intergovernmental agreement with another governmental entity may not be mandatory for purposes of collective bargaining. However, the underlying decision to terminate its existing workforce, in the conditions present in this case, must be considered to be mandatory.

Contrary to the characterization placed on the situation by the city, the fire district will not merely expand its operations to become the taxing body providing fire services in Kelso. Rather, the respondent has obligated itself to raise property tax revenues and to make payments to the fire district to help finance the district's firefighting activities. In addition, the city and fire district have entered into an agreement which provides scheduled increases in the amount that the city is required to pay for fire protection services. Respondent has also agreed to provide equipment for the fire district's use. The examiner is aware that the fire

district will provide certain new services, but the primary firefighting function will remain the same. Given these factors, it appears that the City of Kelso has chosen to replace its existing firefighting workforce by contracting the work traditionally performed by those employees to a separate public employer which promises to provide similar service at a specified rate. Respondent still raises money for firefighting services and provides apparatus to the new employer. Respondent has subcontracted its firefighting function, and must bargain the underlying decision.

Respondent's contention that complainant waived its right to negotiate about the decision is not supported by the record. The parties met repeatedly to deal with the situation, but respondent plainly informed complainant that the decision at issue was not open for negotiation. Even with that admonition, the union presented a comprehensive proposal which included a number of concessions in the areas of wages and hours of work. Simply because complainant's proposal did not address all of the city's concerns does not mean that the absence of a specific item is some kind of waiver. The examiner is satisfied that complainant made a sincere effort to negotiate about the employer's proposed course of action.

Analysis of the dispute does not end with a conclusion that the subject is mandatory. It must be remembered that these unfair labor practice allegations arise in a bargaining relationship subject to the provisions of RCW 41.56.430 et seq. Of particular importance to these proceedings is RCW 41.56.470, which deals with the status of the existing employment relationship during the pendency of interest arbitration:

> During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this 1973 amendatory act.

In this case, the parties were in the pendency of arbitration proceedings when the city announced its decision to contract fire services with the fire district. Clearly, the union had not agreed to such an arrangement. Having concluded that the decision is a mandatory subject of bargaining, the examiner finds that respondent violated RCW 41.56.140(4) by refusing to negotiate in good faith. The parties must be placed in a position reflecting the status quo at the time the dispute was submitted to interest arbitration. Neither party is entitled to modify the existing wages, hours or working conditions until the arbitration proceedings have been completed. See City of Seattle, Decision 1667-A (PECB, 1984).

FINDINGS OF FACT

1. The City of Kelso is a municipality located in Cowlitz County and is a "public employer" within the meaning of RCW 41.56.030(1).

2. International Association of Firefighters, Local 1445 is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents certain uniformed employees employed in the Kelso Fire Department. The city and union have a bargaining relationship predating 1982.

3. Cowlitz County Fire Protection District No. 2 is a political subdivision of the State of Washington organized under terms of Title 52 RCW to provide firefighting services for residents in unincorporated Cowlitz County.

4. The union and the city were parties to a collective bargaining agreement which covered calendar year 1983.

5. During 1983, the city encountered financial difficulties and instituted a number of budget cuts affecting city departments. Typical budgets cuts ran between $6,000 to $10,000, but some departments, such as the police department, actually received slight increases in funding. The fire department was severely affected by the budget cuts. The department lost approximately $100,000 in operating funds. The reduction forced the layoff of four firefighters.

6. Apart from the loss of firefighters, the fire chief position was eliminated in 1983. Supervision of the fire department was transferred to Police Chief Tony Stoutt, who was named "Public Safety Director".

7. On December 15, 1983, the fire district notified the city that it was terminating a fire service agreement in effect for a number of years. Loss of the mutual service agreement meant a lack of secondary support from the fire district for fires occurring in the city.

8. During the latter part of 1983, and continuing at all pertinent times in 1984, the city and the union were engaged in collective bargaining negotiations to reach agreement on a replacement contract for the agreement that expired December 31, 1983. The parties were unable to reach agreement, and the matter is currently pending in the interest arbitration procedures set forth in RCW 41.56.430 et seq., having been certified for interest arbitration on May 10, 1984 in PERC case no. 5248-I-84-121.

9. On June 29, 1984, the Kelso City Council issued a press release stating that the council would consider a resolution which would allow the city to enter negotiations with the fire district over supplying fire services to city residents.

10. On July 2, 1984, Mark Hutcheson, the city's labor attorney, contacted Michael Tedesco, union counsel, informing Tedesco that the city was considering discontinuation of the fire department's operation.

11. On July 3, 1984, the city council formally approved the resolution allowing negotiations between the city and the fire district. Tedesco was present at the council meeting and expressed union concerns about the proposal.

12. On July 5, 1984, the fire district passed a resolution allowing its representative to begin negotiations with the city on the fire service issue.

13. On July 9, 1984, Tedesco sent Hutcheson a letter demanding negotiations on the decision and effects of the city's actions.

14. On July 25, 1984, Kelso City Manager Jay Haggard sent union president Larry Hendrickson a letter stating that the city was not subcontracting but rather "going out of business" with respect to the fire department and that such a decision was not mandatory for purposes of collective bargaining. Haggard went on to say that the city was willing to meet and to negotiate the decision and effects of the change, without prejudice to its position.

15. On July 27, 1984, the parties met to discuss the situation. Several alternatives were explored, and the city made a commitment to procure information on a joint operating agreement between Kelso and the City of Longview.

16. On August 8, 1984, in response to the city's inquiries, the City of Longview declined to enter into such an arrangement.

17. On September 4, 1984, the union filed the unfair labor practice charges litigated in the instant proceedings.

18. On September 21, 1984, the parties met again. The status of negotiations was reviewed, and the city told union representatives that the fire district would not promise to hire Kelso firefighters when the district assumed operations. The city presented a proposal concerning layoff

procedures and a referral service to the fire district. The union rejected the proposal. The union counterproposed that the existing wage rate and work schedule should be extended for calendar year 1985. The city rejected the union's counterproposal.

19. On September 28, 1984, Hutcheson sent Tedesco a letter confirming his understanding that the parties were at impasse. Hutcheson also stated that the city felt that it no longer had an obligation to bargain with the union on the matter.

20. On October 9, 1984, at 3:30 P.M., the union made a proposal to the city in which significant concessions were made in wage rates and hours of work. The proposal did not address the city's desire to provide emergency medical service or fire inspection for Kelso residents. The city rejected the proposal.

21. On October 9, 1984 at 7:00 P.M., the city approved an agreement with the fire district. The district approved the agreement on October 11, 1984.

22. The agreement, scheduled to take effect January 1, 1985, specifies that the fire district will provide fire prevention and suppression services for the City of Kelso. In exchange for such services, the city will continue to collect property tax revenues, and will make payments to the fire district to help pay for the operation. In addition, the agreement provides that the city shall be assessed a six percent increase in its rate for each of the next two years. The city also provides the fire district with the city's existing firefighting apparatus for the district's use.

CONCLUSIONS OF LAW

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

2. By events described in the above findings of fact, the City of Kelso subcontracted its firefighting services to Cowlitz County Fire District No. 2 under circumstances such that the decision was a mandatory subject of bargaining under RCW 41.56.030(4).

3. The union's conduct during the course of events details in the above findings of fact does not constitute a waiver of bargaining rights conferred on it by RCW 41.56 30(4) or RCW 41.56.470.

4. By implementing the procedures necessary for the subcontracting of the fire department's operations without having bargained and submitted any unresolved dispute for interest arbtration as provided in RCW 41.56.430, et seq., the City of Kelso has refused to bargain and has violated RCW 41.56.140(4).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the City of Kelso, its officers and agents shall immediately:

1. Cease and desist from:

   (a) Taking any steps to lay off its firefighting employees or otherwise inplement the intergovernmental agreement described in paragraphs 21 and 22 of the foregoing findings of fact.

   (b) Unilaterally modifying wages, hours and conditions of employment during the pendency of interest arbitration proceedings.

   (c) Refusing to bargain collectively in good faith with International Association of Firefighters, Local 1445 concerning the decision to subcontract firefighting services to Cowlitz County Fire District No. 2 and to submit any unresolved dispute for interest arbitration as provided in RCW 41.56.430, et seq.

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

   (a) Upon request, bargain collectively with International Association of Firefighters, Local 1445 concerning the decision to subcontract firefighting services.

   (b) In the event that resolution is not achieved through negotiations, submit the dispute for mediation and, if necessary, to interest arbitration for determination.

(c) 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 A". Such notices shall, after being duly signed by an authorized representative of the City of Kelso be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Kelso to ensure that said notices are not removed, altered, defaced, or covered by other material.

(d) Notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 28th day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Kenneth J. Latsch

KENNETH J. LATSCH, Examiner

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

"Appendix A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT refuse to bargain collectively with International Association of Firefighters, Local 1445 with respect to wages, hours or conditions of employment.

WE WILL negotiate the decision and effects of the subcontracting of fire services to Cowlitz County Fire Protection District No. 2, and if no agreement is reached, will submit the dispute for resolution pursuant to the procedures of RCW 41.56.430, et seq.

DATED: _____

CITY OF KELSO

By: _____
AUTHORIZED REPRESENTATIVE

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

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