City of Bellevue, Decision 9343 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1604, Complainant, vs. CITY OF BELLEVUE, Respondent.	CASE 18830-U-04-4783 DECISION 9343 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Lori M. Riordan, City Attorney, by *Cheryl A. Zakrzewski*, Assistant City Attorney, appeared for the employer.

Webster Marak Blumberg, by *James H. Webster*, Attorney at Law, appeared for the union.

On September 15, 2004, the International Association of Fire Fighters, Local 1604 (union) filed unfair labor practice charges against the City of Bellevue (employer). The union represents approximately 180 fire fighters for purposes of collective bargaining, and it and the employer are parties to a collective bargaining agreement which expires December 31, 2006. The union charged that the employer interfered with employee rights and refused to bargain when it reduced the minimum staffing of the employer's "light force 3" fire station, by reducing the usual assigned crew of fire fighters from five to four fire fighters. It alleged that the employer took this action unilaterally, over its objections and in violation of 41.56 RCW.

A preliminary ruling was issued on October 15, 2004, which forwarded the union's charges for further proceedings under Chapter 391-45 WAC. Examiner Walter M. Stuteville held the hearing on July

26 and 27, 2005. The parties filed responsive briefs, the last of which was received in February 2006.

ISSUES

1. Did the employer violate the statute and interfere with employee rights when it did not bargain the decision or the impacts of its decision to eliminate one fire fighter position from its light force 3 station?

2. Did the union waive its right to bargain equipment staffing issues by the terms of the parties' collective bargaining agreement?

3. Did the union file a timely complaint?

Based on the basis of the record presented the Examiner finds that staffing decision made by the employer in relation to the light force 3 station was a mandatory subject of bargaining. The Examiner finds, however, that the union waived its statutory bargaining rights on the employer's decision on equipment staffing by the specific language of the parties' collective bargaining agreement. The Examiner further finds that the evidence does not support the union's allegation that the complaint was filed on a timely basis.

STATUTORY PROVISIONS APPLICABLE TO THE ISSUES

Once an organization becomes the exclusive bargaining representative for an appropriate bargaining unit, Chapter 41.56 RCW imposes duties on both the employer and the union. Those duties stem from the definition of collective bargaining in RCW 41.56.030(4):

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions . . .

The "wages, hours and working conditions" in that section outline the so-called mandatory subjects of collective bargaining. *See Federal Way School District*, Decision 232-A (EDUC, 1977), citing *NLRB v. Wooster Division of Borg-Warner*, 356 U.S. 342 (1958).

The union is charging that the employer violated RCW 41.56.140(1) and (4), which provides:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

An employer commits an unfair labor practice if it implements a unilateral change on a mandatory subject of bargaining for its union-represented employees, without having exhausted its obligations under the collective bargaining statute. *Lake Washington Technical College*, Decision 4721-A (PECB, 1995); *Grays Harbor County*, Decision 8043-A (PECB, 2004). Thus, if one of the parties wants to change a mandatory subject of bargaining during the term of a collective bargaining agreement, the normal rule is that the party must give notice to the other party sufficiently in advance to allow time for bargaining prior to the change. If the party receiving the notice makes a timely request for bargaining, the normal rule is that the moving party must then bargain in good

faith concerning the proposed change. *City of Pasco*, Decision 4197 (PECB, 1992). This is a bargaining unit of "uniformed personnel" where the parties submit unresolved issues to interest arbitration. Thus, neither party is entitled to unilaterally change a mandatory subject of bargaining. *City of Seattle*, Decision 1667-A (PECB, 1984). Instead, the mediation and interest arbitration procedures established in RCW 41.56.440 through .490 apply to these parties in this situation.

And finally, RCW 41.56.160 states:

> (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: *PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.* This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(Emphasis added). The Commission has consistently held that the six month filing limitation is jurisdictional. *City of Seattle*, Decision 4057-A (PECB, 1993).

Precedent on Fire Department Staffing

The Commission has a long history of dealing with thorny issues of whether fire fighter staffing changes are a mandatory subject of bargaining. One decision by the Supreme Court of the State of Washington and two decisions by the Commission stand out as laying the groundwork for a decision in this case:

- *International Association of Fire Fighters, Local 1051 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989) distinguished between shift staffing (which was found to invoke a strong managerial prerogative), and

equipment staffing (which was found to be "not so importantly reserved to the prerogative of management"). The Supreme Court wrote:

> When staffing levels have a demonstratedly direct relationship to employee workload and safety, however, we believe that, under appropriate circumstances, requiring an employer to bargain over them will achieve the balance of public, employer and union interests that best furthers the purposes of the public employment collective bargaining law. . . . [T]he size of the crew might well affect the safety of the employees and would therefore constitute a working condition, within the meaning of RCW 41.56.030(4) defining collective bargaining.

Thus, the Court found that equipment staffing may be an appropriate subject for collective bargaining.

- *City of Centralia*, Decision 5282-A (PECB, 1996) applied the "shift staffing" vs. "equipment staffing" analysis in the specific context of a single-truck fire operation. The Commission stated that when the employer decided to staff the shifts with fewer personnel, the result was to staff the employer's first-response equipment with fewer personnel. Thus, shift and equipment staffing became one-in-the-same and the Commission found that the decision resulted in an increased general workload, including: cleaning vehicles, equipment, and work areas; performing fire prevention inspections; and post-fire salvage and cleanup.

- *City of Wenatchee*, Decision 8802 (PECB, 2006) found that staffing was a mandatory subject of bargaining.[1] The record showed a sufficiently significant impact on employee safety

---

[1] The cited decision by another examiner was on appeal to the Commission when the parties filed their final briefs in this case. The Commission's partial reversal on a "waiver by contract" issue does not alter the staffing precedents cited in that decision. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

supporting bargaining under *City of Richland*, 113 Wn.2d 197 and *City of Centralia*, Decision 5282-A, as well as under the "cost of wage" analysis from *First National Maintenance Corporation v. NLRB*, 452 U.S. 666, cited by the Commission in *City of Centralia*. On balance, the union's safety concerns appeared stronger than the employer's interest in reducing its costs of operation.

ANALYSIS OF ISSUE 1 - EQUIPMENT STAFFING

The union alleges that the employer interfered with employee rights and refused to bargain by unilaterally implementing a change in the staffing of the light force 3 station. Essentially, the employer shifted one light force 3 fire fighter position to a newly-created "staff assistant to the battalion chief" position.

Throughout the relevant events described herein, Fire Chief Peter Lucarelli headed the Bellevue Fire Department.[2] He had been recruited to that position after 27 years of service in the Los Angeles Fire Department, where he was promoted from recruit to assistant fire chief. In implementing the changes at issue, Lucarelli worked with recommendations from a team consisting of the department's deputy fire chiefs, all experienced fire service officers.

Light Force Companies

The employer operates nine fire stations. Among those, seven house engine companies equipped with a single fire engine staffed with a minimum of three fire fighters.[3] The remaining two stations,

---

[2] Lucarelli had retired by the time of the hearing in this case.

[3] Fire department personnel dedicated to medical aid work at stations 1 and 2 are not included in these staffing counts. Their presence is irrelevant to the issues here.

numbered 3 and 7, are the light force companies. They are equipped with both an aerial ladder truck and a fire truck with water capacity and a water pump. Chief Lucarelli first saw the light force concept when it was implemented by the Los Angeles Fire Department. In Bellevue, he saw it as a response to a growing community which required more fire and medical protection while at the same time coping with pressure to maintain or reduce personnel expenses.

The light force 7 unit was established in 1994, and the light force 3 unit was established in 2002, and since being established, each station has been staffed with five fire fighters.[4] When the light force companies are dispatched to alarms, they always respond with both pieces of equipment. It was clear from the testimony of the fire department managers that neither of the light force companies (nor any other single fire company in Bellevue) is expected to engage in all of the responsibilities of rescue and fire suppression without other companies also assisting. On the other hand, it is also clear that fire fighters arriving first on a fire scene will attempt to do whatever is necessary to save lives and prevent further fire damage or escalation of the fire.

Battalion Staff Assistant

The fire department's deputy chiefs recognized the increasing responsibilities of the battalion chiefs by the early 1990's. The addition of two new fire stations in 1994-95 increased the need for staff clerical and command support to the battalion chiefs on a 24 hour basis. By 1995, the department began developing a job description and seeking funding for a new position to assist the department's battalion chiefs.

---

[4] Station 3 also has a separate medical aid unit staffed by two fire fighters. When available, they accompany the light force 3 equipment and personnel on calls.

However, at the same time the employer determined that it was experiencing financial difficulties and instigated a "status quo, hold the line" fiscal policy with no tax increases and no increases in the number of full time equivalent positions throughout its departments. As a result, the managers in the Bellevue Fire Department concluded that their desired battalion staff assistant position could only be created by exchanging it for a fire fighter position at one of the stations.

On May 4, 1995, the deputy chiefs proposed a "revenue neutral" plan to the chief. The "battalion staff assistant" was to be a new fire fighter in the bargaining unit and was to be created by moving a fire fighter position from station 3 and assigning the position new duties. The deputy chiefs proposed that the position be moved to station 1, where the battalion chiefs are located, and assigned to perform the duties of driving for and otherwise assisting the battalion chiefs.

By the autumn of 2003, the addition of computers to the command vehicles compounded the problems faced by the battalion chiefs. Now they were called upon to use the radio, use the computer, and drive their command vehicle, all at the same time.[5]

The employer and union had been discussing the staff assistant concept for some time, and the union was aware of the proposal made by the deputy chiefs. While generally supportive of the staff assistant concept, the union did not support the funding method recommended by the deputy chiefs. In a memo sent to Lucarelli on November 13, 2003, Union President Bruce Ansell stated:

---

[5] The MDT AVL computer system is used to analyze an incident as information is typed in, and is programmed to call in staff and equipment assistance as necessary.

> Any reduction of staff assigned to LF3, or other existing equipment, will have significant and unacceptable workload and safety impacts at the company level. As our personnel are already spread far too thin over far too many apparatus, we feel this proposal will only exacerbate this situation.

The union identified a variety of issues that it stated had not been fully discussed and agreed upon, including workload, safety procedures, degree of experience required to hold the new position, pay for the new position, and how the position was to be filled or vacated. The union made an information request relating to both the staffing of the light force company and the battalion staff assistant position.

The parties continued to discuss the issues. On January 9, 2004, the union gave the employer an economic proposal which the union believed would fund the battalion chief assistant position without reducing the light force 3 staffing. Before that bargaining process was completed, however, the employer began the application process to fill the battalion staff assistant position. The successful applicants were announced on January 22, 2004. The employer then announced a reduction of the light force 3 staffing on March 11, 2004, effective for one fire fighter on March 14, 2004. The battalion staff assistant assignments were effective March 17, 18 and 19, 2004. The union filed its complaint on September 15, 2004.

Was the light force 3 change a mandatory subject of bargaining?

Both parties presented extensive arguments about whether the employer's decision had equipment staffing implications, which could make it a mandatory subject of bargaining. In examining all of the material and arguments presented in this case, several facts stand out:

First, the employer had previously determined that the appropriate staffing for its light force companies was five fire fighters. That was the staffing level implemented when the light force 7 was established in 1994. It repeated that same staffing level in 2002 when light force 3 was established. These decisions provide the basis for an inference that staffing with five fire fighters had proven effective over time. Further, the department did not change the staffing levels until city officials put the fire department management into a staffing dilemma by not funding an additional position.

Second, the record establishes that the reduction of the light force 3 staffing from five fire fighters to four had an actual impact on the procedures used at fire scenes:

- Both parties agreed that four fire fighters probably would not do a "forward lay" procedure when arriving at a fire scene. The employer provided evidence that a "reverse lay" procedure could be used, but it also acknowledged that was not the preferable procedure.

- Unrebutted testimony established that the officer in charge of a light force unit arriving first at a fire scene probably would not be able to assign two fire fighters to do a roof ventilation procedure which, if done early enough, can significantly slow the progress of a fire.[6]

- The reduced staffing level prevents light force 3 from following a "two-in, two-out" procedure established in Section 6.9.1 of the Bellevue Fire Department policies for interior fire attack and rescue. This procedure enables two fire fighters to engage in interior operations while two fire

---

[6] A specific fire which occurred in Bellevue on April 26, 2004, illustrated this concern.

fighters standby outside the structure to assist them. The alternative "two-in, one-out" procedure is to be used only in special circumstances in the initial stages of a fire, and is considered more dangerous.

- The reduced staffing level requires the officer-in-charge of light force 3 to either actively participate in fire suppression activities such as those noted above or to observe and coordinate a reduced number of activities. A significant role for the officer-in-charge is to ensure that all safety precautions are observed.

- On March 1, 2004, Lucarelli wrote in response to concerns from the union president: "On the occasions when the light force 3 is responding with four (4) persons I do not expect that they will operate as though they had five (5) persons. Their inherent capability will be less . . . " And "I understand and agree with out need to identify any and all operational issues associated with a four (4) person Light Force and to modify our procedures and policies to address and overcome these issues."

All of these facts point to the existence of workload and safety impacts typical of bargainable "equipment staffing" decisions. The reduction of the number of fire fighters assigned to the light force 3 company had an impact on how equipment was to be used and how fire fighters were to be deployed. Clearly these are issues that impact "working conditions" and they should be bargained, unless there is a legitimate "waiver by contract" in the parties' collective bargaining agreement. Furthermore, the "zero net sum" swap within an unchanged overall workforce discredits any suggestion this was only a "shift staffing" transaction.

The employer relies on *Tacoma-Pierce County Health Department*, Decision 6929-A (PECB, 2001), but that case focused on staffing

changes indicative of basic changes made by the employer in program mission and emphasis. Such staffing changes were at the core of that employer's entrepreneurial control and are clearly distinguishable from the staffing changes at issue in this case. In that case staffing changes were found to be consistent with the underlying program changes and to be outside of the scope of mandatory bargaining. The *Tacoma-Pierce County Health Department* case does not support the employer's position here.

In contrast, the staff changes at issue in this case do not accompany or implement any program change. Indeed, the mission and emphasis of both the Bellevue Fire Department as a whole, and of its light force 3 unit in particular, remain unchanged. The employer itself stated, "Station 3, in concert with other stations, is still charged with the exact same tasks." The only reason for the reduction of the fire fighting staff at Station 3 was to fund the new battalion staff assistant position without changing total staffing levels.

Conclusion

The facts present a clear picture. The employer's staffing decision at issue here is an "equipment staffing" decision that impacts the methods of operations at fire scenes, how and when equipment is used, and employee working conditions. The employer's cost/benefit analysis resulted in a conclusion that the benefit of adding the Battalion Staff Assistant position was greater than the risks or costs of reducing the light force 3 staffing. But that decision was not so closely related to core entrepreneurial prerogatives as to relieve the employer of its statutory duty to bargain with the union representing its fire fighter employees. The reduction of the light force 3 staff and the ensuing impacts of that decision were mandatory subjects of collective bargaining under RCW 41.56.030(4).

ANALYSIS OF ISSUE 2 - WAIVER BY CONTRACT

Even if a matter is generally within the mandatory subjects of collective bargaining under RCW 41.56.030(4), parties to bargaining relationships can (and commonly do) waive their statutory bargaining rights by the terms of the collective bargaining agreements they sign.

> Thus, there is no duty to bargain for the life of the contract on the matters set forth in a collective bargaining agreement, and an employer action in conformity with that contract will not be an unlawful unilateral change. *City of Yakima*, Decision 3564-A (PECB, 1991). Waiver by contract is an affirmative defense, and the employer has the burden of proof. *Lakewood School District*, Decision 755-A (PECB,1980).

Yakima County, Decision 6594-C and 6595-C (PECB, 1999). If a union waives its bargaining rights by contract language, an employer action in conformity with that contract will not be an unlawful unilateral change. *City of Wenatchee*, Decision 6517-A (PECB, 1999), citing *City of Yakima, v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655 (1991). Thus, the question arises in this case as to whether the employer acted within its rights under the parties' collective bargaining agreement when it made the disputed decision to remove one fire fighter position from the light force 3 company.

The parties' collective bargaining agreement for 2002-2004 contained the following language:

> **ARTICLE 20. PREVAILING RIGHTS**
>
> The Union recognizes the prerogative and responsibility of the employer to operate and manage its affairs in all respects in accordance with its lawful authority. The powers and authority, which the Employer has not expressly abridged, delegated, or modified by this Agreement, are retained by the Employer.

> *Management rights and responsibilities* as described above shall *include, but are not limited to,* the following: [For example]
>
> . . . .
>
> D. To *determine number of personnel* (e.g., *total per* shift and per *equipment*), the methods and equipment for operations of the department.
>
> . . . .
>
> The City agrees that a continuing duty to bargain exists as to those enumerated rights that affect wages, hours and working conditions within the meaning of RCW Chapter 41.56.

(Emphasis added). This particular language came into being through an interest arbitration award issued by Arbitrator Janet Gaunt in 1988, under RCW 41.56.430 - 470.

Both parties use quotations from Arbitrator Gaunt to argue their respective positions on the meaning of the language that she drafted from the positions of the parties. The union asserts that Arbitrator Gaunt documented the employer's position as:

> The City does not intend that granting of its management rights proposal would require the Union to waive any bargaining rights it presently has under Chapter 41.56 RCW. To the extent that Chap. RCW 41.56 RCW [sic] requires bargaining over any action or activities enumerated in the City's proposed management rights clause, the City agrees that for the duration of this agreement, the City will bargain that issue and will not assert a waiver against the Union. . . .

However, Arbitrator Gaunt also stated:

> The [Neutral Chair] has considered the fact that disputes will undoubtedly arise as to whether a change affects "wages, hours or working conditions" and thus is not subject to unilateral action. Even allowing for this, however, the City's proposal should reduce conflict in at least some areas. In that sense it represents an improvement over the status quo. It also affords recognition that within some parameters, the City should

> be able to respond to changing operation needs and conditions unilaterally. That does not preclude bargaining over such matters upon the contract's expiration, it just give Department management the latitude to act more expeditiously during the interim. . . .

In this case, the language of the parties' contract is clear. When dealing with clear and precise language, the Commission recently stated:

> In this case, we have specific waivers of certain subjects of bargaining and a more general waiver existing within the same contract. The language used demonstrates that the parties intended those specifically itemized subjects to be within the employer prerogative to change without bargaining. Had the employer been relying upon the more general "and all other functions not expressly limited" language found at the end of the provision, our conclusion would be different. In this case, we find that language in the contract unequivocally grants the employer the right "to determine the number of personnel assigned to duty at any time" and in this case, a contractual waiver exists regarding shift staffing.

City of Wenatchee, Decision 8802-A (PECB, 2006). The Examiner finds that this analysis also applies to the fact pattern of this case, and that the language in Article 20 Section D of the parties' contract allowing the employer "to determine the number of personnel (e.g. total . . . per equipment)" gives the employer the right to change the light force 3 staffing level without bargaining.

If there is any contradiction, it is in the final paragraph of the management rights article awarded by Arbitrator Gaunt. The union argues that the "enumerated rights" phrase in that paragraph negates any and all of the waivers in the lettered subparagraphs which precede it. The Examiner recognizes the appearance of a conflict, and thus needs to determine which language prevails. To resolve this contraction, the Examiner uses the contract interpre-

tation technique of specific language governing general language. *North Franklin School District*, Decision 5945-A (PECB, 1998). To accept the union's interpretation of the language and give equal meaning to the final, general paragraph with the specific words of the last paragraph of Section D would nullify the other subsections, leaving them "with no discernable meaning or effect" in the parties' contract. The Examiner presumes that Arbitrator Gaunt did not intend to award a nullity, and gives weight to Arbitrator Gaunt's description of Section D as allowing the employer to "respond to changing operational needs" which arise during the life of the collective bargaining agreement. That interpretation leaves the subject as a matter available for further negotiation at the expiration of the collective bargaining agreement.

Conclusion

The union waived its right to bargain "the number of personnel (e.g. total . . . per equipment)" in the parties' collective bargaining agreement.

ANALYSIS OF ISSUE 3 - TIMELINESS

The complaint filed by the union in this case on September 15, 2004, alleged that the change of the "light force 3" staffing level occurred on March 17, 2004. If that date was correct, the complaint would have been barely timely under the six-month period of limitations imposed by RCW 41.56.160. All of the facts alleged in a complaint are assumed to be true and provable in the preliminary ruling process under WAC 391-45-110, but a complainant must then prove the facts which it has alleged.

In this case, the evidence presented shows that the change of the light force 3 staffing level was announced in a March 11, 2004, memo addressed to "All Personnel." The staff assistant position was to be effective March 17, 2004 and that implementation would

result in the reassignment of one fire fighter from light force 3. Then, in a March 12, 2004 memo, it was announced that a fire fighter would be leaving station 3 on March 14 and reporting to the staff assistant position on March 19, 2004.

Although the employer did not assert an "untimely complaint" defense at or after the hearing in this case, it had no obligation to do so. The union has the burden of proving that it filed the complaint in a timely manner. *City of Pasco*, Decision 4197-A (PECB, 1994). On the basis of the evidence received in this case, and in the absence of any evidence that the employer concealed the true facts from the union, the union's apparent untimeliness, albeit a matter of one day, provides an alternative basis for dismissing the union's complaint.

FINDINGS OF FACT

1. The City of Bellevue is a "public employer" within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 1604, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of nonsupervisory fire fighter employees of the City of Bellevue.

3. In 1994 and in 2002 the employer established "light force" units at fire stations equipped with an aerial ladder truck and a fire engine. The two pieces of fire apparatus were dispatched together, and each light force station was staffed with five fire fighters.

4. Beginning in the 1990's, managers in the Bellevue Fire Department began seeking approval and funding for employees to assist the battalion chiefs in the department. The need for such positions increased in 2003, when the employer added computers to the command vehicles used by the battalion chiefs.

5. The battalion staff assistant was intended to be a position within the bargaining unit represented by the union.

6. The union generally concurred with the need to have another employee drive the command vehicle while the battalion chief receives information and gives orders via radio and computer on route to fire scenes, and the union knew of a management proposal first advanced in the 1990's by which the position would be staffed by reducing the staffing of some other fire apparatus.

7. In November 2003, the union sent the employer a memo objecting to a plan whereby the light force crew at Station 3 would be reduced by one fire fighter position to permit filling the battalion staff assistant position. The union demanded bargaining on several related issues.

8. In January 2004, the employer advertised for applicants for the battalion staff assistant position.

9. On March 11, 2004, the employer announced personnel assignments which included reduction of the staffing level for the light force 3 units from five fire fighters to four. That reduction had actual effects on the workloads and operational practices of the remaining light force 3 employees.

10. In a March 12, 2004, memo the employer announced employee transfers which included a fire fighter whose last day at station 3 was March 14, 2004, and first day as battalion assistant was March 19, 2004.

11. Beginning on March 17, 18, and 19, 2004, the employer assigned fire fighter employees to work in the battalion staff assistant position.

12. During the period described in paragraphs 6 though 11 of these findings of fact, the employer and union were parties to a collective bargaining agreement, effective through December 31, 2004, which reserved to the employer the right to determine the number of personnel employed, with specific reference to "per equipment" staffing.

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. For the reasons described in paragraph 9 of the foregoing findings of fact, changing the equipment staffing levels for the light force 3 station is a mandatory subject of collective bargaining under RCW 41.56.030(4).

3. As described in paragraph 12 of the foregoing findings of fact, the union's waived its right to bargain equipment staffing decisions by the specific language of the parties' collective bargaining agreement in effect when the employer made the disputed change and therefore the employer did not refuse to bargain in good faith on the issue of changing the

staffing of the light force 3 units and did not violate RCW 41.56.140(4).

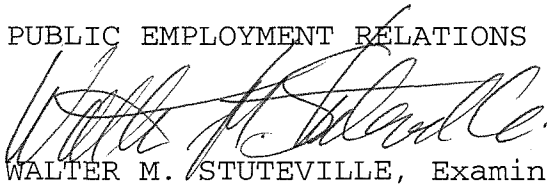
4. As described in paragraphs 9, 10, and 11 of the foregoing findings of fact, the unfair labor practice complaint filed in this matter was untimely under RCW 41.56.160.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 5th day of June, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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.