STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 876,<br><br>Complainant,<br><br>vs.<br><br>SPOKANE COUNTY FIRE PROTECTION DISTRICT 1,<br><br>Respondent. | ) | CASE 7718-U-88-1631<br><br>DECISION 3447-A - PECB<br><br>DECISION OF COMMISSION |

Barry E. Ryan, Attorney at Law, appeared on behalf of the union.

Dellwo, Rudolf and Schroeder, by Richard Schroeder, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on cross-petitions for review in which both parties seek reversal or modification of a decision issued by Examiner Katrina I. Boedecker.[1]

## BACKGROUND

International Association of Fire Fighters (IAFF), Local 876, is the exclusive bargaining representative of paid fire fighters employed by Spokane County Fire Protection District 1. The bargaining unit involved consists of "uniformed personnel" within the meaning of RCW 41.56.030(7). The bargaining relationship between the parties is subject to the "interest arbitration" provisions of RCW 41.56.430, et seq.

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[1] Decision 3447 (PECB, March 23, 1990).

The parties had a collective bargaining agreement in effect through December 31, 1988 that contained a reopener for calendar year 1988 that was limited to bargaining "wages". The parties commenced negotiations on that reopener, but were unable to reach agreement. The Commission provided mediation services under RCW 41.56.440. The pleadings and the evidence presented at the hearing in this matter establish that the employer offered a wage increase during the negotiations and mediation, and later indicated that it was relying on particular "comparables".[2]

In January of 1988, the Executive Director initiated interest arbitration under RCW 41.56.450 on the sole issue of "wages for 1988". The parties selected Kenneth McCaffree as neutral chairman of the interest arbitration panel, and an interest arbitration hearing was set for August 30, 1988.

In its pre-hearing submission to the interest arbitration panel filed on August 17, 1988, the employer proposed that there be **no** wage increase for 1988. At the interest arbitration hearing, the

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[2] For purposes of this decision, the term "comparables" is used with reference to the lists of other employers put forth by the parties for consideration by the interest arbitration panel under RCW 41.56.460, which specifies:

> RCW 41.56.460 Uniformed Personnel--Interest Arbitration Panel--Basis for Determination. In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
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> ...
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> (c) ... (ii) For [fire fighters], comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. ...

employer also relied on the concept of a "model fire fighter" for the purpose of making comparisons with other employers. The compensation listed for a "model fire fighter" included an adjustment for longevity pay.

In the presentation of its case, the union also introduced a new method of drawing comparisons between employers. The union inflated the wages paid in other fire departments by mathematically increasing each monthly salary by the percentage that the work week of the employer's fire fighters bore to the work week in each comparable jurisdiction.

The union raised objection before the interest arbitration panel with respect to the employer's "zero wage increase" position and its reliance on "comparables" which included longevity pay as a basis for comparison, but it nevertheless proceeded with the interest arbitration hearing. Arbitrator McCaffree issued a decision on November 15, 1988 in which he awarded a wage increase for 1988 that was greater than the "zero" offered by the employer at the interest arbitration hearing, but less than the wage increase offered by the employer during mediation.

The union filed this complaint charging unfair labor practices with the Commission on December 12, 1988, alleging that the employer had violated RCW 41.56.140(4), RCW 41.56.450 and WAC 391-355-220, by withdrawing all bargaining offers and injecting new issues during interest arbitration.

Examiner Boedecker issued a decision on March 23, 1990. The Examiner's discussion indicated that the employer's actions were unfair labor practices, but she did not make conclusions of law to that effect. Instead, she determined that the union had "waived" its right to pursue this unfair labor practice case, by proceeding with the interest arbitration process. The union petitioned for review; the employer filed a timely cross-petition for review.

POSITIONS OF THE PARTIES ON REVIEW

The union seeks review of paragraphs 4, 5 and 6 of the Examiner's findings of fact, and of paragraphs 2 and 3 of the Examiner's conclusions of law. The objections to the findings of fact are based on the omission of a ruling that the employer had committed unfair labor practices. The union states that the Examiner's "waiver by the union" conclusion necessitates a finding that the employer committed unfair labor practices. The union challenges the Examiner's conclusion that the union waived its rights under RCW 41.56.140, and asks us to examine whether the Examiner based her conclusions on the facts contained in the record.

The employer's cross-petition for review asks the Commission to modify the Examiner's statement that the employer's contested actions constituted unfair labor practices. The employer contends that its behavior is normal and accepted practice. It states that the issue on which it submitted a position and information in interest arbitration, namely wages, was the same issue that the parties had been bargaining prior to interest arbitration. It does not dispute that its position on the wage issue was different in interest arbitration than it had been in mediation, but contends that this follows the rules of sensible bargaining. The employer contends that the purpose of its "model fire fighter" argument in interest arbitration was to be illustrative, i.e., to help the neutral chairman compare the duties, as well as the compensation, between fire fighters in various districts.

DISCUSSION

The disposition of this case rests on determining two issues. First, we must determine whether the employer's contested actions constituted unfair labor practices. If the answer to that question is in the affirmative, we must then inquire as to the meaning of

the language in WAC 391-55-215 that states "deemed to have waived its right to object". The Commission concludes that the employer did commit an unfair labor practice in violation of RCW 41.56.140 (4), and that the cited language in WAC 391-55-215 refers only to the right to object within the context of the interest arbitration process, so that the right to charge the other party with unfair labor practices remains unaffected. Our reasoning follows.

## Applicable Rules

This case arises out of a special "impasse resolution" procedure that is applicable to only a small segment of the labor-management community subject to the jurisdiction of the Commission.[3] The rules and procedures governing the interest arbitration process are set forth in a subchapter of Chapter 391-55 WAC, beginning at WAC 391-55-200.

## Did the Employer Breach its Good Faith Obligation?

The employer seeks review of the Examiner's statement at page 12 of her decision, as follows:

> By advancing a proposal for a 0% percent wage increase for the first time during the exchange of proposals for the interest arbitration hearing, the employer demonstrated a lack of good faith bargaining. By submission of the "model fire fighter" concept as justification for its proposal for the first time at the interest arbitration hearing, the employer demonstrated a lack of good faith bargaining. Both these acts constitute unfair labor practices.

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[3] It is estimated that there are only 11 of the state's 39 counties and only about 35 of the state's 265+ cities that have law enforcement personnel who qualify as "uniformed personnel" under RCW 41.56.030(7). It is estimated that there are only about 75 bargaining units of fire fighters under that statute.

As stated in its brief to the Examiner, the employer has contended in this case:

> In negotiations and mediations it is necessary that offers of compromise not be binding and be considered only for the purpose of trying to resolve the immediate dispute, since in many instances, a party may offer more than it really wants to pay in an effort to compromise and to resolve the matter amicably. (Citation omitted).
>
> The whole concept of negotiation and mediation is one of good faith give and take, offer and counter offer, and certainly should not result in binding either party to an offer made in an effort to compromise. ...

The duty to bargain enforced by RCW 41.56.140(4) arises from the definition of collective bargaining applicable to all public employers and all public employees:

> RCW 41.56.030 DEFINITIONS. As used in this chapter:
> ...
> (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, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. ... (emphasis supplied)

Nothing in RCW 41.56.430 et seq. indicates that the duty to bargain in good faith imposed by RCW 41.56.030(4) is suspended or otherwise ceases to operate while parties to bargaining relationships involving "uniformed personnel" are engaged in interest arbitration

proceedings. See, City of Bellevue, Decision 3084-A (PECB, 1989), where the Commission held that there is an ongoing duty to provide relevant information, upon request. The employer in that case was found to be in violation of RCW 41.56.140(4), when it refused to provide information relating to bargaining positions that were to be taken to interest arbitration.[4]

Conduct referred to as "moving the target", i.e., changing demands or proposals at an advanced stage of the bargaining process, has been an issue in other cases. Such behavior is subject to "close scrutiny", and can constitute unlawful conduct. See, e.g., City of Snohomish, Decision 1661-A (PECB, 1984), citing Sunnyside Irrigation District, Decision 314 (PECB, 1977).

Use of the "Model Fire Fighter" Analysis -
There is no question that the "model fire fighter" computation relied upon by the employer at the interest arbitration hearing included recognition of "longevity" payments to employees in other fire departments. Since "longevity" was not a topic open for negotiations between these parties for 1988, the union has raised a question as to whether the employer's conduct in this regard was a breach of the "good faith" obligation.

Apart from its potential use in interest arbitration, it appears that part of the employer's purpose in adopting the "model fire fighter" comparison was to try to persuade the union - at the bargaining table - that the wages of bargaining unit employees would be competitive without the larger wage increase sought by the union. The employer's attempt to communicate appears to be consistent with our rules, which encourage free and open exchange

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[4] We are aware of the decision of the Court of Appeals in City of Kelso, ___ Wn.App. ___ (Division II, 1990) and believe that, until the state Supreme Court rules on the subject, Kelso should be limited to its facts. The Court of Appeal rendered its decision on what it acknowledged was probably a moot issue and an unclear record.

of proposals and positions on all matters coming into dispute between parties in collective bargaining. WAC 391-45-550.

It is undisputed that the new method of comparison was presented to the union in May of 1988, over three months before the parties began the interest arbitration hearing. At least one union witness conceded that the employer's May proposal (which adopted the "model fire fighter" comparison) was an effort to resolve the parties' wage dispute without the trouble and expense of interest arbitration. It appears, therefore, that the union had sufficient notice to adequately respond to the employer's method of comparison.

Once the parties were in interest arbitration, the "model fire fighter" method of comparison was used to clarify and reinforce the employer's position, by alerting the interest arbitration panel that, although other fire departments had titles similar to the "top fire fighter" used by these parties, the duties of a "top fire fighter" were not the same in all of the districts. That would have been a valid consideration for the interest arbitration panel to use in making its decision, even if the employer had not developed its concept of the "model fire fighter".

The employer did not ask the union to bargain, or the interest arbitration panel to determine, any change of the "longevity" benefits to be provided to employees in this bargaining unit. Its evidence and arguments continued to be directed to the "wages" issue separating the parties.

Under the circumstances of this case, we have difficulty applying the "moving target" precedent with respect to this issue. We are unable to conclude that the employer breached the good faith bargaining obligation of RCW 41.56.030(4), or violated RCW 41.56.140(4), by its development or use of the "model fire fighter" comparison.

The "Zero Increase" Position -

There is no question that this employer retrenched from the offer of a wage increase that it had maintained in mediation. The union has raised a question as to whether the employer's conduct in this regard was a breach of the "good faith" obligation.

A similar situation arose in City of Spokane, Decision 1133 (PECB, 1981). At the threshold of interest arbitration, the employer in that case withdrew all of the improvements it had offered to the involved union during the preceding negotiations and mediation. The employer was found to have committed a refusal to bargain in violation of RCW 41.56.140(4).

The employer's actions in City of Spokane were described as having "frustrated any settlement attempt the [union] might have been preparing to make before going all the way through the [interest] arbitration hearing", and as giving "the impression that there was no opportunity for settlement". In the context of National Labor Relations Board precedent, the absence of the right to strike under Chapter 41.56 RCW, and the Legislature's imposition of the interest arbitration process on bargaining units consisting of "uniformed personnel", the employer's conduct in City of Spokane was described as a per se violation of the statute.

Our policy of giving close scrutiny to withdrawals of bargaining proposals has been applied to unions and employers alike. In City of Clarkston, Decision 3246 (PECB, 1989), a union was found to have violated RCW 41.56.150(4), by escalating its demands and positions before an interest arbitration panel. In Columbia County, Decision 2322 (PECB, 1985), it was held that the employer violated RCW 41.56.140(4), by making reductions in its bargaining proposals in retaliation for the union's rejection of a complete package offer. It was noted there:

> While bargaining can be difficult, it cannot be allowed to become a forum in which punitive measures are taken because of a perceived reluctance to accept a party's proposal on a mandatory subject of bargaining.

The latter decision clarifies that the finding of a violation in such cases does not depend upon availability of the "interest arbitration" procedure.

The employer argues it should not be forever bound by rejected compromises offered during the mediation of a labor dispute. If a conditional offer, e.g., one made in response to a "what if" inquiry from the mediator, does not produce agreement during mediation, we would agree that the party making that offer retains the right to change its position. The same is not true for unconditional offers. The fact an unconditional offer is made during mediation does not provide the offeror with the absolute right to change it thereafter. Absent intervening circumstances that justify the change in position, i.e., to establish that the diminishing of an offer was not done in bad faith, the offeror should be bound.

Here, the employer withdrew a wage offer that it made in negotiations prior to mediation. It did so just days before the interest arbitration hearing. The employer contends that it was motivated by further research that led it to believe no wage increase was justified. We find it significant, however, that the employer did not go to its "zero increase" position until after comparisons based on its "model fire fighter" method of analysis had failed to produce agreement.[5]

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[5] The employer had already done a lot of research by May, 1988, when it first presented the "model fire fighter" method of analysis to the union. The record indicates no suggestion then that the employer felt a "zero" increase was justified.

In contrast to the employer's actions in making the "model fire fighter" comparison and communicating it in a timely manner in an effort to reach agreement and avert interest arbitration, we find the employer's actions in reducing its pending wage offer to 0% inconsistent with the mental state of trying to reach an agreement. Judged in the totality of the circumstances, it is reasonable to infer a punitive motive for the changes in wage offer, despite the denials of the employer's negotiators. See, City of Snohomish, supra. Regressive bargaining proposals made to punish the opposite party raise an inference of bad faith. Columbia County, supra.

Offers can be changed after interest arbitration has been invoked, particularly when there is an apparent attempt to narrow the parties' differences. When the change has the effect, however, of increasing those differences, the party changing its offer bears the burden of justifying that change on the basis of some business necessity. There may be occasions when because of intervening events a reduction in prior offers does not reflect bad faith bargaining. For example, changed economic circumstances may leave a public employer unable to afford the previously offered increase. No such showing was made in the present case.

We find that the reduction of the employer's wage offer from 3% to 0% violated the obligation of good faith bargaining imposed by Chapter 41.56 RCW. We thus concur with the Examiner's discussion indicating that the employer's conduct in moving to a "zero increase" position with no explanation or justification other than the onset of interest arbitration was a breach of the good faith obligation and a violation of RCW 41.56.140(4).

## The Examiner's "Waiver" Conclusion

The task of an interest arbitration panel, and of its neutral chairman, is set forth by RCW 41.56.460. The role is fundamentally

a practical one, establishing the terms of a contract between the parties.

The power and authority of the Commission to determine and remedy unfair labor practices is set forth by RCW 41.56.160. By the terms of that statute, the Commission's authority is not affected or impaired by any other means of adjustment that may be available.

Parties to "interest arbitration" proceedings under RCW 41.56.430 et seq. may have occasion to claim that a proposal advanced by the other party in interest arbitration is unlawful. Under a procedure that dates back to the proceedings which led to City of Wenatchee, Decision 780 (PECB, 1980), such a party may file and obtain a ruling on an unfair labor practice complaint prior to risking submission of the issue to an interest arbitration panel. The Executive Director "suspends" interest arbitration proceedings on issues where their bargainability and/or the good faith of their proponent have been called into question by the filing of an unfair labor practice complaint. See, King County Fire District 39, Decision 2328 (PECB, 1985). If the unfair labor practice case results in a conclusion that the proposal was unlawful, or was unlawfully advanced, the proponent will be ordered to withdraw it from the bargaining table and from interest arbitration. See, City of Yakima, Decision 1130 (PECB, 1981). If the unfair labor practice case results are otherwise, suspended issues can be remanded to the interest arbitration panel for a ruling on their merits.

The Commission has set forth rules for the conduct of interest arbitration proceedings, leaving room for the neutral chairman to regulate the proceedings. WAC 391-55-200 et seq. In City of Seattle, Decision 2735 (PECB, 1987), the Commission held that the neutral chairman of an interest arbitration panel has authority to deal with defective submissions of proposals by one of the parties, saying:

> It is the province of the neutral chairman, rather than the Commission, to impose appropriate sanctions in the interest arbitration proceedings for any failure to comply with WAC 391-55-220.

It follows, in the instant case, that the union had the option to present its objections to the neutral chairman, and that the neutral chairman had the authority to impose or not impose sanctions, as he so chose.

Among the rules adopted by the Commission for the conduct of interest arbitration proceedings is WAC 391-55-215:

> WAC 391-55-215 UNIFORMED PERSONNEL--CONDUCT OF INTEREST ARBITRATION PROCEEDINGS. Proceedings shall be conducted as provided in WAC 391-55- 200 through 391-55-260. The neutral chairman shall interpret and apply these rules insofar as they relate to the powers and duties of the neutral chairman. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection thereto in writing, shall be deemed to have waived its right to object.

After stating that the employer committed unfair labor practices in this case, the Examiner went on to invoke the language of WAC 391-55-215 as a basis for finding that the union had "waived" its rights under RCW 41.56.140. The Examiner reasoned that, by going ahead with the interest arbitration proceedings and by failing to file an unfair labor practice complaint prior to the conclusion of the interest arbitration proceedings,[6] the union waived its right to file such a claim.

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[6] This unfair labor practice case was not filed until after the interest arbitration award was received.

We believe that the Examiner misapplied WAC 391-55-215. WAC 391-55-200 through 391-55-260 relate only to interest arbitration proceedings; it follows that individual sentences or phrases of WAC 391-55-215 also relate only to interest arbitration proceedings. The "right to object" in WAC 391-55-215 refers to the right of the parties to present objections to the neutral chairman about contested behavior in the interest arbitration proceedings. In WAC 391-55-291, the sentence just preceding the sentence that contains the "right to object" language refers to the "neutral chairman" who shall:

> [I]nterpret and apply these rules insofar as they relate to the powers and duties of the neutral chairman. (emphasis supplied)

The major "power and duty" of the neutral chairman is to evaluate the evidence and arguments made by the respective parties. She or he is not empowered to decide claims of unfair labor practices.

Given the limitation on the powers of the neutral chairman, the "right to object" language of WAC 391-55-215 comes into clearer focus. If that language referred to the right of parties to file unfair labor practice complaints, the neutral chairman would not be aided by such an interpretation in performing the tasks assigned by RCW 41.56.460. For example, a party could come into an arbitration hearing with a new or contestable position, the other party might object at the hearing, and the neutral chairman would have no stated means for resolving the situation.

Under the Commission's interpretation, the resolution of such situations is straightforward: The Commission will decide unfair labor practices and the neutral chairman will decide contract terms. A party faced with claimed unlawful proposals or conduct can obtain a ruling from the Commission by filing an unfair labor practice complaint prior to the conclusion of the interest arbitration proceedings, but does so knowing that there will be a

delay of the interest arbitration on the disputed issue or issues.[7] A party which decides to not pursue an unfair labor practice claim can put the issue before the neutral chairman without waiving its rights under RCW 41.56.160, but does so knowing that it will not be allowed to object later if it does not like the result reached by the neutral chairman on the terms of the future contract.[8]

In this case, the union both "wins" and "loses". The union "wins" in that it is entitled to reversal of the Examiner's "waiver" conclusions, and to a remedial order requiring the employer to post notices to employees and to cease and desist from unlawful conduct in the future. Having given up the right to object to the outcome of the interest arbitration proceedings, the union "loses" in that it is not entitled to have the Commission review, vacate or overturn the interest arbitration award.

For all of the foregoing reasons, the decision of the Examiner is affirmed in part and reversed in part.

## AMENDED FINDINGS OF FACT

1. The Spokane County Fire Protection District 1 is a public employer within the meaning of RCW 41.56.030(1).

2. The International Association of Fire Fighters, Local 876, is a bargaining representative within the meaning of RCW 41.56-.030(3).

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[7] The "gain" for such a party is retention of its remedy and appeal rights in the unfair labor practice case.

[8] The "gain" for such a party is that the dispute proceeds to arbitration quickly, without the lengthy delay occasioned by the process of hearing and determining the unfair labor practice case.

3. IAFF Local 876 is the exclusive bargaining representative of paid fire fighters employed by Spokane County Fire Protection District 1 who are "uniformed personnel" within the meaning of RCW 41.56.030(7).

4. IAFF Local 876 and the employer were parties to a collective bargaining agreement which was effective from May 16, 1986 through December 31, 1988. That agreement contained a wage reopener for 1988. During negotiations and mediation on that wage reopener, the parties always referred to "top fire fighter base wage". During mediation, the employer had made an unconditional offer of a 3% wage increase. The parties were unable to resolve their differences, and the sole issue of "Wages for 1988" was certified for interest arbitration under RCW 41.56.450.

5. After the certification of the dispute for interest arbitration, the employer's arguments concerning the issue of wages for 1988 introduced and relied upon a "model fire fighter" computation that took into consideration the "longevity" benefits provided for separately in the parties' collective bargaining agreement, but did not seek a determination from the interest arbitration panel on the longevity benefits of bargaining unit employees for 1988.

6. In the required pre-hearing submission of proposals, the employer withdrew its previous offer of a wage increase for 1988, and proposed that there be no wage increase for 1988. Such position was taken only in contemplation of the interest arbitration proceedings. No good faith basis was advanced for the change of its position from that offered in negotiations and mediation.

7. The union knowingly choose to proceed with the interest arbitration hearing, as scheduled, and did not file the

complaint charging unfair labor practices in this proceeding until after the interest arbitration panel had issued its final and binding interest arbitration award pursuant to RCW 41.56.450.

## AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter to decide the unfair labor practice allegations made against the employer pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By relying in its presentation on the issue of "wages for 1988" on a "model fire fighter" computation which included reference to "longevity" benefits, the employer did not violate its obligation to bargain in good faith under RCW 41.56.140(4).

3. By withdrawing its previous proposal on the only issue open for negotiations as described in paragraph 6 of the foregoing findings of fact, under circumstances that suggest the withdrawal was punitive in nature, Spokane County Fire District 1 breached its obligation to bargain in good faith under RCW 41.56.030(4) and so committed an unfair labor practice under RCW 41.56.140(1) and (4).

4. By consciously choosing to proceed with the interest arbitration proceedings, as described in paragraph 6 of the foregoing findings of fact, after the employer engaged in the unlawful conduct described in paragraph 5 of the foregoing findings of fact and paragraphs 3 of these conclusions of law, the union waived its right to protest the actions and decisions of the neutral arbitration chairman under WAC 391-55-215.

5. The Public Employment Relations Commission lacks authority to review, modify or overturn the interest arbitration award resulting from proceedings under WAC 391-55-200, et seq. in which International Association of Fire Fighters, Local 876 participated after waiver of its objections under WAC 391-55-215.

Based on the above and foregoing Amended Findings of Fact and Amended Conclusions of Law, the Public Employment Relations Commission makes and enters the following:

ORDER

Spokane County Fire District 1, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Withdrawing proposals made in collective bargaining, unless such action is taken in good faith.

   b. 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. 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.

b. Notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

c. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, the 31st day of December, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Janet L. Gaunt

JANET L. GAUNT, Chairperson

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner

APPENDIX

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 NOT breach the obligation of good faith imposed by RCW 41.56.030(4) of the Public Employees' Collective Bargaining Act by withdrawing offers made in collective bargaining negotiations and mediation merely because of the onset of interest arbitration proceedings under RCW 41.56.430, et seq.

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: _____

Spokane County Fire District 1

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.

# EXCERPTS FROM CHAPTER 391-55 WAC - IMPASSE RESOLUTION RULES

WAC 391-55-200 UNIFORMED PERSONNEL--INTEREST ARBITRATION. If a dispute involving uniformed personnel within the meaning of RCW 41.56.030(6) has not been settled after a reasonable period of mediation and the mediator is of the opinion that his or her further efforts will not result in an agreement, the mediator shall notify the parties of intent to recommend that the remaining issues in dispute be submitted to arbitration. If the dispute remains unresolved, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator and any statements of position filed by the parties as to the existence of an impasse warranting arbitration. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, written notice shall be given to both parties.

WAC 391-55-205 UNIFORMED PERSONNEL--APPOINTMENT OF PARTISAN ARBITRATORS. Within seven days following the issuance of the notice by the executive director, each party shall name one person who is available and willing to serve as its member of the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the person so designated. The members so appointed shall proceed as provided in RCW 41.56.450.

WAC 391-55-210 UNIFORMED PERSONNEL--SELECTION OF IMPARTIAL ARBITRATOR. (1) If the appointed members agree on the selection of a neutral chairman, they shall obtain a commitment to serve, and shall notify the executive director of the identity of the neutral chairman so selected.

(2) If the appointed members agree to have the commission appoint a neutral chairman, they shall file with the executive director a written joint request. The parties and the appointed members are not entitled to influence the designation of an arbitrator under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairman to be appointed by the commission. Upon the filing of a request in compliance with this subsection, the executive director shall appoint a neutral chairman from the commission staff or the dispute resolution panel.

(3) If the appointed members desire to select a neutral chairman from a panel of arbitrators, they shall attempt to agree as to which of the agencies designated in RCW 41.56.450 will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of five arbitrators. If the appointed members are unable to agree within seven days following their first meeting as to which agency is to supply the list of arbitrators, either of them may apply to the executive director for a list of five available neutral chairmen other than agency staff members and the neutral chairman shall be selected from the commission's dispute resolution panel. All request for panels under this subsection shall specify: "For interest arbitration proceedings under RCW 41.56.450." The selection of the impartial arbitrator shall be made pursuant to the rules of the agency supplying the list of arbitrators, and the parties shall notify the executive director of the identity of the arbitrator so selected.

WAC 391-55-215 UNIFORMED PERSONNEL--CONDUCT OF INTEREST ARBITRATION PROCEEDINGS. Proceedings shall be conducted as provided in WAC 391-55- 200 through 391-55-260. The neutral chairman shall interpret and apply these rules insofar as they relate to the powers and duties of the neutral chairman. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection thereto in writing, shall be deemed to have waived its right to object.

WAC 391-55-220 UNIFORMED PERSONNEL--SUBMISSION OF PROPOSALS FOR ARBITRATION. At least seven days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues before the mediator under WAC 391-55-070 and before the executive director under WAC 391-55-200.

WAC 391-55-225 UNIFORMED PERSONNEL--HEARING. The arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties. For good cause shown, the neutral chairman may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

WAC 391-55-230 UNIFORMED PERSONNEL--ORDER OF PROCEEDINGS AND EVIDENCE. The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairman. The neutral chairman shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be filed with the neutral chairman and copies shall be provided to the appointed members and to the other parties. The exhibits shall be retained by the neutral chairman until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairman.

WAC 391-55-235 UNIFORMED PERSONNEL--ARBITRATION IN THE ABSENCE OF A PARTY. The neutral chairman may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a party, and the neutral chairman shall require the participating party to submit such evidence as may be required for making of the findings of fact and determining the issues.

WAC 391-55-240 UNIFORMED PERSONNEL--CLOSING OF ARBITRATION HEARINGS. The neutral chairman shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and filing of briefs within agreed time limits.

WAC 391-55-245 UNIFORMED PERSONNEL--INTEREST ARBITRATION AWARD. The determination of the neutral chairman shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the appointed members. Such determinations shall not be subject to review by the commission.

WAC 391-55-255 UNIFORMED PERSONNEL--EXPENSES OF ARBITRATION. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairman appointed pursuant to WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairman appointed by the commission pursuant to WAC 391-55-210(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription thereof or the services of a court reporter, shall be paid by the commission.