STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Local Union No. 1296, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, Complainant, vs. CITY OF KENNEWICK, Respondent.	CASE NO. 897-U-77-112 DECISION NO. 334-PECB ORDER OF DISMISSAL

This matter is before the Executive Director for a preliminary ruling under WAC 391-20-310. The complaint was filed on May 12, 1977. The factual allegations of the complaint are:

> "4. On May 1, 1977, respondent refused to bargain with Complainant, the representative of a unit of firefighters, as required by the statute hereinafter cited, in that respondent, unilaterally, illegally and in bad faith, changed the established work week of such firefighters from 49 hours to 56 hours without the concurrence of or approval from Complainant."

The Respondent filed an answer to the complaint on May 27, 1977, to which it attached a copy of the 1976-1977 collective bargaining agreement between the parties. The Respondent also attached to its answer a copy of the "Complaint for Damages" filed by the individual employees against the City in the Benton County Superior Court with respect to the change of hours, and a copy of the City's "Answer and Cross Claim For Money Damages" filed in the same proceedings. The letter covering transmittal of the Respondent's answer indicates a carbon copy to the Union.

The collective bargaining agreement between the parties contains the following provisions:

> "Article VIII HOURS OF WORK. Section I. Fifty-six (56) hours shall constitute the standard work week and twenty-four (24) hours the standard work shift. The Fire Chief, subject to the approval of the City Manager, shall establish appropriate work shifts commencing at 8:00 a.m. and scheduled days of rest."

The collective bargaining agreement also contains a grievance and arbitration procedure applicable to: "Union employee grievances or disputes which may arise, including interpretation of this agreement". That procedure terminates in final and binding arbitration.

In City of Richland, Decision No. 246 (PECB, 6/77), the Examiner dismissed unfair labor practice allegations and deferred to a contractual grievance procedure, relying on the decision of the National Labor Relations Board in Collyer Insulated Wire, 192 NLRB 837 (1971). No appeal was taken to the Commission in that case. As noted by the Examiner in Richland, the NLRB will defer to arbitration where two basic conditions have been met:

(1) The disputed issues are, in fact, issues susceptible of resolution under the operation of the grievance machinery agreed to by the parties, and

(2) There is no reason to believe that the use of that grievance machinery by the parties could not or would not resolve such issues in a manner compatible with the purposes of the Act.

The undersigned had previously dismissed unfair labor practice cases at the preliminary ruling stage on the basis that the Commission does not have a "violation of contract" jurisdiction through the unfair labor practice provisions of RCW 41.56. [1/] It was pointed out at the same time that violations of collective bargaining agreements are justiciable in the courts and through grievance arbitration processes.

Had the City not filed a copy of the collective bargaining agreement with its answer, a copy of the collective bargaining agreement in effect on the date of the alleged violation would have been requested from the parties prior to the entry of a preliminary ruling on the complaint. The Court pleadings attached to the answer clearly indicate that the dispute is one which traces back to the 1974-1975 collective bargaining agreement between the parties and the interest arbitration proceedings conducted by the parties in connection with that agreement. Thus, in addition to the availability of grievance arbitration under the terms of the collective bargaining agreement, the parties have in fact invoked the jurisdiction of the Courts in connection with the same change of work week referenced in the complaint now under review.

Not only is the refusal to bargain allegation susceptible to resolution under the grievance procedure of the contract, but interpretation of the contract would be controlling. There is no reason to believe that the underlying contract interpretation dispute will not be resolved through arbitration and/or the Courts. The tests for deferral are clearly met in this case.

1/ City of Walla Walla, Decision No. 104 (PECB, 1976); Thurston County Communications Board, Decision No. 103 (PECB, 1976).

NOW, THEREFORE, it is

ORDERED

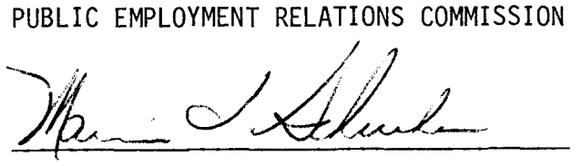
The complaint of unfair labor practices filed in the above entitled matter is dismissed without prejudice to a later refiling upon a proper showing that either:

(1) The dispute has not, with reasonable promptness after the issuance of this decision, been resolved by amicable settlement, by grievance arbitration or by the Courts, or

(2) Grievance arbitration proceedings resulting in the final resolution of the dispute have not been fair and regular or have reached a result which is repugnant to the Act.

DATED at Olympia, Washington this 21st day of December, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director