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STATE OF WASHINGTON

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

SEATTLE OFFICE  
300 West Harrison  
Seattle, Washington 98119

May 19, 1976

Mr. W. Mitchell Cogdill  
Law Offices of Cogdill & Deno  
607 Medical-Dental Bldg.  
Everett, Washington 98201

Mr. Steven J. Mace, President  
International Association of Fire  
Fighters, Local 1997  
15332 Meadow Road  
Lynnwood, Washington 98036

Chief John Degnin  
Snohomish County Fire Protection  
District No. 1  
16819 Meadow Road  
Lynnwood, Washington 98036

*211-*  
Re: Case No. ULW-122  
Unfair Labor Practice Charges

DECISION NO. 64 PECB

Gentlemen:

This Commission, on March 29, 1976 received a "Charge Against Employer" filed by Mr. W. Mitchell Cogdill, on behalf of Fire Fighters Union Local 1997, against Chief John Degnin, Snohomish County Fire District No. 1. The Charges protest the two-day suspension without pay of Mr. Steven J. Mace, President of the local union. The Charges were very specific and well-written but lengthy, and need not be restated here for reasons which will become apparent in the following discussion. Mr. Jim Irwin, State Labor Mediator, was assigned to conduct an investigation in accordance with RCW 41.56.180 and WAC 391-20-311.

Mr. Mace was suspended without pay for two days because of his activities relating to inquiries about Mr. Thomaier who had been recently hired by the Fire District as an Administrative Assistant. Inasmuch as the current collective bargaining agreement provides for suspension without pay, those provisions under Article A-7 Union Rules and Regulations, even though lengthy, must be quoted in full:

7.3 Tenure of employment: Grounds for discharge, reduction or deprivation of privileges; the tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any

such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

- (a) Incompetency, inefficiency or inattention to, or dereliction of duty.
- (b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission on the part of the employee to properly conduct himself; or any willful violation of the provisions of this chapter or the Rules And Regulations to be adopted hereunder:
- (c) Mental or physical unfitness for the position which the employee holds;
- (d) Dishonest, disgraceful, immoral or prejudicial conduct;
- (e) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drugs, liquid or preparation to such an extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under this Department;
- (f) Conviction of a felony, or a misdemeanor, involving moral turpitude;
- (g) Any other act or failure to act which in the judgement of the Commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

7.5 Procedure for removal, suspension, demotion or discharge: No person covered under this contract who shall have been permanently appointed or inducted into civil service under the provisions of said acts shall be removed, suspended, demoted, or discharged, except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer: A written statement of which accusation in general terms shall be served upon the accused and a duplicate filed with the Commissioners. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge file with the commission, a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons

and was or was not made in good faith or cause.

After such investigation, the Commissioners may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith, or cause, shall order the immediate reinstatement or reemployment of such person in the office, position, place or employment from which said person was removed, suspended, demoted or discharged, which reinstatement shall, if the commissioners so provide in their discretion, be retroactive and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The Employer, upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension without pay for a given period and subsequent restoration to duty, or demotion in classification, grade or pay. The findings of the Employer shall be certified in writing to the appointing power and shall be forthwith enforced by such officer. All such investigations made by the Employer shall be by public hearing after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The accused may appeal from such judgement or order to the Superior Court of Snohomish County, Washington, as provided by said acts respectively.

The Contract also contains a Grievance Procedure (Art. A-8) wherein " A grievance is defined as any dispute between the Employer and the Union as to the interpretation or violation of the provisions of this agreement." The final step of the Grievance Procedure, states that "If a settlement cannot be reached within five working days of the date the Employer received the petition, either party may then request the Department of Labor and Industries to facilitate an agreement in accordance with the Public Employees' Collective Bargaining Act (RCW 41.56)."

Mr. Cogdill's letter of March 26, 1976 which accompanied the charges refers to the above thusly: "As you can see, paragraph 8.2(c) requires that your office be the ultimate determiner of facts anyway. Additionally, we believe this would be a useless act to attempt to resolve this by grievance and because of the fact that the grievance procedure does not provide a realistic remedy." This Commission, however, need not comment on the grievance procedure of the contract because the parties have agreed to a completely different process in resolving disputes over disciplinary actions.

The Union and the Employer have agreed to the very comprehensive and detailed procedure quoted above in Article A-7, 7.3, and 7.5, to be followed in cases of "removal, suspension, demotion, or discharge." The procedure provides for an

investigation, public hearing, and an affirmation or reinstatement by the Commissioners. The employee may then appeal any decision to the Superior Court of Snohomish County.

We agree with Mr. Cogdill that there is no requirement in the Public Employees' Collective Bargaining Act that the grievance procedure be exhausted before an unfair labor practice charge is filed. But the Department of Labor and Industries (now Public Employment Relations Commission) did face this issue several times. In Cases O-1320, O-1321, and O-1558, the Authorized Agent dismissed charges based upon violations of the contract and deferred to the grievance procedures of the agreements. These dismissals were all appealed and were sustained. The Director, in sustaining the dismissals relied upon Collyer Insulated Wires, 192 NLRB 837, 77 LRRM 1931; and J. Weingarten, Inc., 202 NLRB 69, 82LRRM 1559.

In the instant case the parties to the collective bargaining agreement have agreed upon a specific procedure to be utilized in case of a dispute over a suspension without pay. It would not only be legally inappropriate to assume jurisdiction under such circumstances, but, as well to do so would be an invasion of the contractual obligations of the parties. For the reasons cited herein, and pursuant to WAC 391-20-311, the Commission has no alternative except to defer to the agreed-upon contract procedure and dismiss the charges.

Sincerely,



Willard G. Olson  
Associate Chief Labor Mediator

WGO:je

cc: Mr. Marvin L. Schurke