

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

THE CITY OF WENATCHEE,	}	
	}	
Complainant,	}	CASE NO. 1408-U-78-174
	}	
vs.	}	DECISION NO. 780 PECB
	}	
THE WENATCHEE POLICE GUILD,	}	
	}	
Respondent.	}	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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Perkins, Coie, Stone, Olsen & Williams, by J. David Andrews, attorney at law, appeared on behalf of the complainant.

Daniel R. Breda, President, appeared on behalf of the respondent.

Perkins, Coie, Stone, Olsen & Williams, by J. David Andrews, attorney at law, appeared for Clark County Board of Commissioners, Washington Council of Personnel Administrators, City of Spokane, Association of Washington Cities, City of Moses Lake, City of Richland and Chelan County Board of Commissioners, amicus curiae in support of the position of the complainant.

Douglas N. Jewett, City Attorney, by P. Stephen DiJulio, assistant, appeared for City of Seattle, amicus curiae in support of the complainant.

The captioned matter came on for hearing before the Executive Director of the Commission on October 10, 1979. Under the "default" circumstances described below, the matter has been transferred to the full Commission for issuance of an Order, and the members of the Commission have read and considered the entire record in the matter.

This case presents an attempt by various public employers to maneuver the Commission into establishing by rule, (though in form of a decision in a contested case) that minimum manning clauses are non-mandatory subjects of bargaining for uniformed employees. This the Commission will not do. It will continue to decide questions of mandatory or non-mandatory subjects of bargaining on a case by case basis after being fully apprised of the facts in each case.

The City of Wenatchee filed its complaint against the Wenatchee Police Guild on February 23, 1978. The Guild never answered. The notice of hearing which issued on September 10, 1979 fixed September 17, 1979 as the date for filing an answer.

At the hearing on October 10, 1979 the representative of the Guild, Officer Breda, in an unsworn statement, said the Guild had decided it would be too expensive to litigate the issues raised by the complaint and had decided to concede the City's position. It withdrew the minimum manning issue from interest arbitration and from the bargaining table. The City's proffered exhibit 6 tends to show that the Guild went even further and, on May 23, 1978, signed a two year contract with the City containing a Management's Rights clause in which it specifically waived its right to bargain about the number of personnel to be assigned duty at any time, leaving that determination to the City. See: City of Kennewick, Decision 482-B (PECB, 1980).

Nevertheless, the City insists that the issue is not moot, that what's done is done and cannot be undone, that the moving finger has written and having writ, moved on, and all of the Guild's piety and wit cannot call it back to cancel half a line, nor all its tears wipe out a word of it. In view of the Guild's failure to answer, we agree with the City up to this point.

However, the City and the impressive array of amici curiae would have us go further and declare this default judgment, as it were, to establish a state-wide precedent that minimum manning is not a mandatory subject of bargaining. We will do no such thing on the record before us.

All of the amici curiae support the position of the City of Wenatchee. We have nothing before us from any representative of any employee or organization of employees, except Officer Breda's statement to the Examiner at the hearing. In the course of his statement, Officer Breda said:

"It is inconceivable to me that PERC, while hearing only one side of the issue, could render a decision binding upon all the cities and all the counties, all the police officers, firefighters and deputy sheriffs in the State of Washington. This violates any sense of fairness."

We agree with him.

The City's brief, in footnote 6, cites City of Everett v. Everett Firefighters Local 350, 87 Wn.2d 572 (1974), in which the Supreme Court of this state refrained from deciding this issue because the issue had not been adequately argued below. We have no more temerity than the Supreme Court.

Parties default at their peril, but not at the peril of every other unformed employee under the jurisdiction of the Commission. This is not a rule-making proceeding. If it were, appropriate notice would have been given as required by law. A default by a respondent in an unfair labor practice proceeding cannot be allowed to circumvent the Administrative Procedure Act, Chapter 34.04 RCW.

Following the Executive Director's ruling that all of the facts alleged in the complaint were deemed to be admitted, the employer made an offer of proof proposing to expand on the allegations of the complaint. Exhibit 1 (Guild proposals to the City for 1977), Exhibit 5 (1976 contract of the parties) and any testimony relating thereto all concern a time period prior to the conduct complained of in this case. Exhibit 2 (Guild proposals to the City for 1978) contains the specific language complained of by the City in these proceedings, and supplements the complaint only to that extent. Exhibits 3 (Complaint of unfair labor practices) and 4 (Executive Director's letter of March 13, 1978) are already a part of the record in this proceeding. Exhibit 6 (1978 collective bargaining agreement of the parties) appears to have resulted from interest arbitration proceedings which occurred subsequent to the filing of the unfair labor practice complaint and which excluded the subject of "minimum manning" per the instructions given the parties by this agency. Exhibits 7 and 8, and testimony relating to them, were proposed to prove facts which were not in issue in these proceedings. The offer of proof was properly rejected.

The following findings of fact are based exclusively on the admissions of the respondent in this case, and they establish no precedent except as to these parties and facts.

#### FINDINGS OF FACT

1. The notice of hearing issued in the captioned matter on September 10, 1979 established September 17, 1979 as the date for filing of an answer.
2. The Wenatchee Police Guild failed to file an answer in the captioned matter.
3. The Wenatchee Police Guild appeared at the time and place designated in the notice for the hearing in the matter, but declined at that time to answer or defend the allegations against it.
4. The following facts are, pursuant to WAC 391-21-520, deemed to be admitted as true:  

"The Complainant is The City of Wenatchee; whose address is City Hall, 129 South Chelan Street, P. O. Box 519, Wenatchee, Wash., 98801; the principal representative of the Complainant is J. David Andrews; whose address is 1900 Washington Building, Seattle, Washington 98101; and whose telephone number is: Area Code (206) 682-8770.

The Respondent is The Wenatchee Police Guild; whose address is: Police Department, City of Wenatchee, P. O. Box 519, Wenatchee, Wa. 98801, Attn. Dan Breda.

The City of Wenatchee (the "City") and the Wenatchee Police Guild (the "Guild") are presently<sup>1/</sup> engaged in bargaining for a new collective bargaining agreement. Throughout the negotiations, the Guild has insisted, to the point of impasse, on bargaining over a minimum manning clause the Guild seeks to have included in the contract. Minimum manning is a non-mandatory subject of bargaining, and the Guild has therefore engaged in bad faith (sic) bargaining.

Pursuant to RCW 41.56.450, an interest arbitration panel has recently been appointed to resolve the dispute between the parties. The Guild has informed the City that it intends to unilaterally submit the issue of minimum manning to the arbitration panel. The unilateral submission of a non-mandatory subject of bargaining constitutes a refusal to bargain in good faith."

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter, pursuant to RCW 41.56.160 through .190.

2. A refusal by a bargaining representative to bargain collectively in good faith, including insistence on bargaining of non-mandatory subjects while at impasse and attempting to submit non-mandatory subjects of bargaining for interest arbitration under RCW 41.56.450, is an unfair labor practice in violation of RCW 41.56.150(4).

#### ORDER

The Wenatchee Police Guild, its officers and agents, shall immediately:

1. Cease and desist from:

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<sup>1/</sup> The Complaint was filed on February 23, 1978.

(a) Refusing to bargain in good faith as the exclusive bargaining representative of employees of the City of Wenatchee.

(b) Insisting, to point of impasse, on bargaining of matters other than "grievance procedures...and personnel matters, including wages, hours and working conditions" as a condition of bargaining or agreement on such mandatory subjects of collective bargaining.

(c) Submitting or attempting to submit, matters other than "grievance procedures...and personnel matters, including wages, hours and working conditions" for interest arbitration pursuant to RCW 41.56.450.

2. Take the following affirmative action which will effectuate the policies of RCW 41.56:


(a) Notify all employees, by posting the notice attached hereto and marked "Appendix A" in conspicuous places on the employer's premises where notices to all employees are usually posted. Such notices shall, after being duly signed by an authorized representative of the Wenatchee Police Guild, by and remain posted for sixty (60) days. Reasonable steps shall be taken by the Wenatchee Police Guild to ensure that said notices are not removed, altered, defaced or covered by other material.

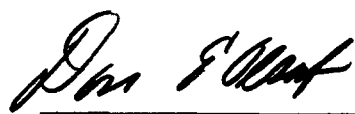
(b) Notify the Executive Director of the Commission, in writing, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice posted in accordance with this order.

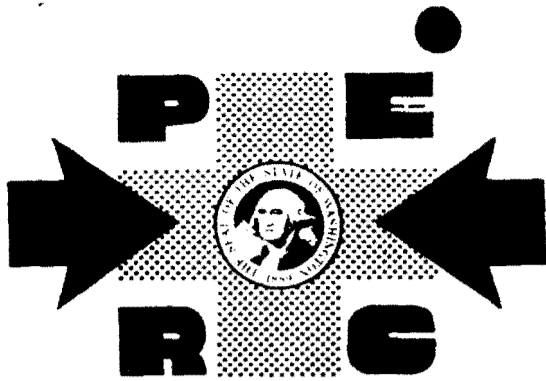
DATED this 16th day of January, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARY ELEN KRUG, Chairman

  
R. J. WILLIAMS, Commissioner

  
DON E. OLSON, JR., Commissioner



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 EMPLOYEES OF THE CITY OF WENATCHEE THAT:

WE WILL NOT fail or refuse to bargain in good faith as the exclusive bargaining representative of employees of the City of Wenatchee.

WE WILL NOT insist to the point of impasse on bargaining of matters other than "grievance procedures...and personnel matters, including wages, hours and working conditions" as a condition of bargaining or agreement on such mandatory subjects of bargaining.

WE WILL NOT submit or attempt to submit matters other than "grievance procedures...and personnel matters, including wages, hours and working conditions" for interest arbitration pursuant to RCW 41.56.450.

DATED \_\_\_\_\_

WENATCHEE POLICE GUILD

By: \_\_\_\_\_

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 any 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.