

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL NO. 1747,

Complainant

vs

CITY OF KENT,

Respondent

CASE NO. 2708-U-80-393

DECISION NO. 920-PECB

ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the captioned matter on April 7, 1980. The material allegations of the complaint are:

"3. Unfair Labor Practices: The City of Kent, particularly through its chosen representative, Cabot Dow, has failed to comply with the rules of the commission concerning the designation of a member of the Arbitration Panel within the five days allowed by the rule. The City of Kent by its failure to act in an expeditious manner in accord with the agency rules has completely thwarted the progress of the collective bargaining towards an eventual contract. Accordingly, it has acted in bad faith and has refused to bargain in accord with law.

4. RCW Section Violated: RCW 41.56.140 (4)."

The docket records of the Public Employment Relations Commission currently indicate that the parties have selected Arbitrator Robert Sutermeister as their arbitrator in interest arbitration Case No. 2678-I-80-70.

The legislature has specified, in RCW 41.56.430 through 41.56.490, very specific procedures for the resolution of bargaining impasses involving "firefighters" including the employees represented by the complainant in this case. Those procedures end in "interest arbitration" and are, therefore, the exception rather than the rule. See: Columbus Printing Pressmen, 219 NLRB 268 (1975). Those procedures self-contain provision for their enforcement:

"RCW 41.56.480 UNIFORMED PERSONNEL--REFUSAL TO SUBMIT TO PROCEDURES--INVOKING JURISDICTION OF SUPERIOR COURT--CONTEMPT. If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose."

Consistent with RCW 41.56.480 and with the last sentence of RCW 41.56.450: "That determination (of the arbitration panel) shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision was arbitrary or capricious.", WAC 391-21-735 adopted by the Commission to implement RCW 41.56.450 expressly precludes involvement by the Public Employment Relations Commission as an appellate body concerning interest arbitration awards. In the case at hand, the Commission has not been asked to invoke the jurisdiction of the superior courts; and the facts now reflected in the Commission's files would indicate against doing so. The interest arbitration procedures claimed violated do not arise out of, but are an exception to, the duty to bargain defined in RCW 41.56.030(2). Therefore, even assuming all of the facts alleged to be true and provable, no unfair labor practice violation could be found.

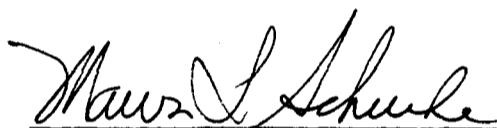
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 27th day of June, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

cc: Richard C. Cushing
Cabot Dow Associates
Thomas H. Grimm