

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF RICHLAND,	)	
	}	
Complainant,	}	CASE NO. 3556-U-81-529
	}	
vs.	}	DECISION NO. 1225 - PECB
	}	
LOCAL 1052, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,	}	
	}	
Respondent.	}	ORDER OF DISMISSAL
	}	

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The complaint charging unfair labor practices was filed in the above-entitled matter on July 29, 1981. The material allegations of the complaint are:

"The City of Richland and the Firefighters Local 1052 have been engaged in negotiations for a new collective bargaining agreement. Throughout the negotiations, the Union has demanded, to the point of impasse, that there be a minimum manning clause included in the new collective bargaining agreement. The City has maintained that minimum manning is a management right and, furthermore, a non-mandatory subject of bargaining.

In accordance with RCW 41.56.440 (as amended), the City and the Union have negotiated, and tentatively agreed upon, a number of matters. However, the issue of minimum manning remains in dispute."

Under the heading of RELIEF SOUGHT, the complaint requests:

"That the Union cease and desist from bargaining in bad faith and from bargaining to impasse on a non-mandatory subject of bargaining. Furthermore, it is requested that pursuant to WAC 391-21-550 and PERC's decisions in similar cases, the issue of minimum manning be withdrawn from bargaining between the parties."

The cited rule has been supplanted by WAC 391-45-550, which provides:

WAC 391-45-550 COLLECTIVE BARGAINING--POLICY. It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and

which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), S 391-45-550, filed 9/30/80, effective 11/1/80.

The matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. Notice is taken of the docket records of the Public Employment Relations Commission, which indicate that on August 3, 1981 the respondent herein filed a request with the Commission for mediation of its negotiations with the complainant herein.

Although no case has been decided concerning "minimum manning" proposals made in firefighter bargaining units, unfair labor practice violations have been found in law enforcement bargaining units. City of Wenatchee, Decision 780 (PECB, 1980); City of Yakima, Decision 1130 (PECB, 1981). A key fact in both such cases which is missing from the allegations in this complaint is that of a union seeking to submit the claimed permissive subject to interest arbitration under RCW 41.56.450.

Either party may declare under RCW 41.56.440 that an impasse exists. Neither the declaration of impasse by one party or even the concurrence of both parties is conclusive as to whether an impasse actually exists. Rather, it is the statutory duty of the Executive Director of the Commission, acting on recommendation of the mediator assigned pursuant to RCW 41.56.440, to determine the existence of an impasse and to invoke interest arbitration under RCW 41.56.450. The union has only recently declared impasse, and there has been no order to initiate interest arbitration.

Like repealed WAC 391-21-550, current WAC 391-45-550 encourages free and open exchange of proposals in bargaining without regard to whether the subject may be a "mandatory" or "nonmandatory" subject for bargaining in the eyes of the law. In the context of a two-step statutory impasse procedure which is obligatory on both parties, the Commission has previously identified only pursuit of nonmandatory subjects in interest arbitration as being violative of the duty to bargain. It thus appears that the complaint in this matter is premature, and that it presently does not state a cause of action.

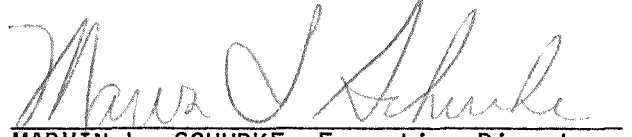
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington this 12th day of August, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director