STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1760, Complainant, vs. KING COUNTY FIRE DISTRICT NO. 4, Respondent.	CASE NO. 2787-U-80-410 DECISION NO. 1369 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

W. Mitchell Cogdill, Attorney at Law, appeared on behalf of the complainant.

Larry T. Yok, Labor Relations Consultant, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on May 27, 1980 wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. Rex L. Lacy was designated to act as Examiner and to make and issue Findings of Fact, Conclusions of Law, and Order. Pursuant to notice issued by the Examiner, hearing on the complaint was held on June 12, 1981 at Everett, Washington. The parties submitted post-hearing briefs.

BACKGROUND:

King County Fire District No. 4 is governed by a three member Board of Fire Commissioners. Prior to May, 1980, the district employed a fire chief, battalion chief, fire marshall, 3 captains, 3 lieutenants and 27 uniformed firefighters. Additionally, the district employs a secretary, mechanical support personnel and approximately twenty (20) hourly paid employees who assist the uniformed personnel in the district's five service programs. Clinton Maehl is Fire Chief, Alfred Baker and William McDaniel are Deputy Chiefs.

International Association of Fire Fighters, Local 1760 is the exclusive bargaining representative of all uniformed personnel excluding the Fire Chief and Deputy Chiefs. Richard LaDue is president of I.A.F.F., Local 1760.

The parties had a collective bargaining agreement which was due to expire December 31, 1980. In the spring of 1980, Local 1760 conducted an opinion

poll amongst its membership to determine what amendments to the collective bargaining agreement should be proposed to the district. The results of the opinion poll were discussed at meetings in April and May, 1980, and eight items that the membership desired to improve were identified, discussed, and ranked by order of their importance. Additionally, the "bottom line" (minimum level of acceptance) was established for each item. Battalion Chief Baker and Fire Marshal McDaniel were members of the bargaining unit at the time of the meetings. They participated in the discussions, and in the decisions that ultimately produced the union's prioritized bargaining proposals.

I.A.F.F., Local 1760 requested that negotiations for the successor agreement to the 1979-80 collective bargaining agreement commence in early May, 1980. The employer was then in the process of hiring Larry Yok as its Labor Relations Consultant, and did not agree to commence negotiations as early as was requested. The union filed unfair labor practice charges with PERC, but that unfair labor practice was later withdrawn.

In May, 1980, the district decided to reorganize its chain of command. The reorganization eliminated the battalion chief and fire marshal classifications and replaced them with a new classification, deputy chief. The deputy chief classifications were to be excluded from the bargaining unit and, in addition to other duties, their job descriptions provided that:

> "Included in the regularly assigned duties, are responsibilities for: budget recommendations and preparation; authority to prepare charges and to immediately suspend personnel for disciplinary purposes; make recommendations for dismissal; recommend personnel selection and appointment; participate in labor relations, including collective bargaining and formulating labor policy." (Emphasis added).

Negotiations for the 1980 collective bargaining agreement commenced on June 5, 1980. Yok, Baker, and McDaniel represented the employer. LaDue, Gary Proudlock, Gary Castelano, Larry Blanchard, and Dan Smith were the union's representatives in the bargaining sessions.

Prior to and during face-to-face bargaining, Local 1760's representatives objected to the district's using Baker and McDaniel at the bargaining table. The district refused to exclude the deputy chiefs and the union filed the unfair labor practice in this matter which alleges:

> "Local 1760, IAFF, filed an 'Unfair Labor Practice' with the Commission on 5/5/80, Case 2748-U-80-401, concerning the unwillingness of the employer to negotiate. The employer finally agreed to meet on June 5, 1980.
>
> On May 20, 1980, the employer promoted two members of Local 1760 to positions of Deputy Chief, see attach. 1 & 2, which is outside of the bargaining unit and a newly created position. On that same date, a job description was issued, see Attach. 3, indicating that these men will be negotiating for the employer. This was

> confirmed during a meeting between Pres. LaDue and Chief Maehl - At which time Chief Maehl made the remark that would make an interesting court case. This meeting was on May 22, 1980, during which Pres. LaDue made it clear that we felt it was improper to use these men for management's side, when, in fact, they helped to formulate the Local's bargaining package.
>
> Although Local 1760, IAFF, commends the promotion of our members, we feel, and request from the Commission, that because of the confidential information and knowledge obtained by these two members during the formulation of our package, that the promotions stand uncontested, but they not be allowed to represent the employer against us during this new contract period only.
>
> By these acts the above-named employer has interfered with, restrained and coerced employees in the exercise of the rights guaranteed by Chapter 41.56 RCW."

Negotiations continued, with Baker and McDaniel continuing to assist Yok, until, with the assistance of a PERC mediator, an agreement was reached effective from January 1, 1981 to December 31, 1981.

POSITIONS OF THE PARTIES:

The union contends that Baker and McDaniel participated in the formulation of the union's proposals, knew the union's negotiating teams parameters, and were aware of the union's minimum levels of acceptance on each and every proposal; that the employer's use of the deputy chiefs created a favorable bargaining atmosphere for the employer; that the employer's use of the deputy chiefs created distrust and, therefore, endangered the collective bargaining process; and that the employer should not be allowed to use Baker and McDaniel during the next collective negotiations between the parties.

The employer contends that Alfred Baker and William McDaniel did not possess confidential union bargaining material that endangered the collective bargaining process; that the employer should be free to select managment personnel of its own choosing to serve on the employer's negotiations teams; and that the remedy requested by the union is inappropriate because it is punitive rather than remedial in nature.

DISCUSSION:

Local 1760 supports its argument by providing the Examiner with a copy of the unpublished decision issued in Bellingham Education Association v. Bellingham School District, Whatcom Co. Sup. Ct., Cause No. 48376, Oral Decision, 6/3/74. In that case, the school district used an "administrator" (Ford) who was a member of the teacher bargaining unit to assist the school board in its negotiations with the association representing its teachers.

Ford had served as the association's chief negotiator during the previous year. Because of the inability to serve two masters, the Court in that case excluded Ford from participation on behalf of the employer in the negotiations. This case is only superficially similar to the Bellingham case. It is true that Ford had been instrumental in drafting association proposals in prior years, and that Baker and McDaniel had attended union strategy meetings preparatory to bargaining. Baker had even offered assistance to the union in drafting language on a particular issue applicable to staff officers. This case differs, however, in that Baker and McDaniel had not participated in bargaining sessions on behalf of Local 1760 since 1975, whereas Ford had been his union's chief spokesman the preceding year. Additionally, Baker and McDaniel are now excluded from the bargaining unit involved, whereas Ford was still a member of the association against which he was negotiating. The decision of the Court emphasizes Ford's dual interests in the process.

The Bellingham case arose and was decided in the context of the now-repealed "Professional Negotiations Act", Chapter 28A.72, and it is not at all clear that the same result would be reached under the current teacher bargaining law, Chapter 41.59 RCW. In particular, the law in effect at the time of the Bellingham case did not contain a separation of management and labor at the same levels or on the same basis as are found in the National Labor Relations Act, in Chapter 41.59 RCW or in Chapter 41.56 RCW as it has been interpreted by the Public Employment Relations Commission and by the Courts. See: City of Tacoma, Decision 95-A (PECB, 1977); City of Yakima, 91 Wn.2d 101 (1978). The right of parties engaged in collective bargaining to select negotiations representatives of their own preference, absent circumstances that clearly endanger the collective bargaining process, is well established by the Courts and the National Labor Relations Board.[1/] Section 8(b)(1)(B) of the National Labor Relations Act makes it unlawful for a union to refuse to bargain with a particular person, or agency, chosen by an employer as its representative as follows:

> "(b) It shall be an unfair labor practice for a labor organization or its agents--"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;... (Emphasis added).

1/ See: General Electric Company v. NLRB, 412 F.2d 512 (1969); NLRB v. ILGWU, 274 F.2d 376, 379 (1960); NLRB v. Kentucky Utilities Co., 182 F.2d 810 (1950); NLRB v. Brotherhood of Teamsters, 459 F.2d 694 (1972).

RCW 41.59.140(2)(a)(ii) contains a similar provision. The fact that RCW 41.56.150 does not contain a precisely similar provision among the specifications of unfair labor practices violations committed by unions would be significant if this were an employer complaint against the union, but has less importance in assessing the union's complaints against the employer. It has been the practice of the Commission to consider and, where they do not conflict with the provisions of State law, to follow the rules, practices and precedents of the National Labor Relations Board. The allegations of the union in this case call into question the good faith of the employer in assigning Baker and McDaniel to represent the employer at the bargaining table. If a violation is to be found, it must be by testing the employer's conduct against the "good faith" test used uniformly in the National Labor Relations Act, in RCW 41.59.020(2) and in RCW 41.56.030(2). The union cites no NLRB precedent supporting its position on a similar set of facts.

The "evidence" on employer good faith focuses less on the behavior of the employer during the negotiations or on the behavior of Baker and McDaniel at the bargaining table than on the results of the negotiations as the union sees them. The union's view of the result of negotiations is that the union was able to improve on its "bottom line" minimum acceptable position only in one area, and it attributes that result to knowledge gained by Baker and McDaniel while they were members of the union. As is indicated in the complaint itself, there is no allegation or argument that the selection of the promotees or the timing of the promotions was designed to give the employer any improper advantage at the bargaining table. There is none of the hostility which is the hallmark of the few NLRB cases which come close to the situation at hand. The Examiner is not convinced that the collective bargaining process was clearly endangered in this case. After a delay which may have caused the union some frustration, the employer brought in a professional labor negotiator whose presence would tend to reduce the importance of the role of Baker and McDaniel. The delay allegations were not pursued by the union, and the evidence in this record concerning the delay does not suggest a course of conduct linking those allegations and this case as part of some broader management strategy. The bargaining was eventually concluded in mediation under RCW 41.56.440 without resort to the "interest arbitration" impasse procedures of RCW 41.56.450. The resulting agreement was accepted by the union membership. Collective bargaining is a dynamic process of compromises, wherein expectations and realizations are often at great distances apart from one another. It is impossible, and of no useful purpose, to compare the results to the union's "bottom line" or initial strategies absent evidence that the employer breached its good faith bargaining obligation.

Some final comment is appropriate concerning the union's remedy request. The remedy initially requested was that Baker and McDaniel be precluded from participation in the then-current negotiations. Such a remedy would have some relationship to the danger which the union would seek to have avoided,

i.e., misuse of knowledge gained by Baker and McDaniel while members of the bargaining unit. By the time of the hearing, the union was seeking a remedy precluding Baker and McDaniel from participating in bargaining for the employer in future negotiations. That remedy would, as urged by the employer, be punitive in nature and would also exceed the remedy granted by the Court in Bellingham, supra, where the Court expressly permitted Ford to be a participant on behalf of the employer after his removal from the process for only the round of bargaining immediately following his transition.

FINDINGS OF FACT

1. King County Fire District No. 4 is an employer within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 1760, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all uniformed personnel of King County Fire District No. 4, excluding the fire chief and deputy chiefs.

3. During April and May, 1980, IAFF Local 1760 developed and prioritized proposals that were to be presented to the employer for the purpose of amending the 1978-80 collective bargaining agreement. Alfred Baker and William McDaniel, who were then members of the Local 1760 bargaining unit, attended and participated in the membership meetings that produced the union's collective bargaining demands.

4. On May 20, 1980, as part of the employer's reorganization of the fire department chain of command, Baker and McDaniel were appointed to the newly created classification of Deputy Chief, and were, thereafter, excluded from the bargaining unit. As part of their new duties, Baker and McDaniel were directed to assist the employer's negotiator in bargaining sessions with the union.

5. On June 5, 1980, the parties commenced negotiations for a new collective bargaining agreement. Prior to and during the negotiations, Local 1760 requested that Baker and McDaniel be excluded from the face-to-face bargaining sessions between the parties. The employer refused to withdraw Baker and McDaniel from the negotiations process and they participated in collective negotiations throughout the bargaining that ultimately led to a collective bargaining agreement effective January 1, 1981 through December 31, 1981.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under RCW 41.56.

2. King County Fire District No. 4 did not fail to bargain collectively in good faith and did not violate RCW 41.56 when it appointed Deputy Chiefs Alfred Baker and William McDaniel to serve on the employer's negotiating committee.

On the basis of the foregoing Findings of Fact, and Conclusions of Law, the Examiner makes the following:

ORDER

The complaint filed in this matter is dismissed.

DATED at Olympia, Washington this 5th day of February, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Rex L Lacy

REX L. LACY, Examiner