STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF TUKWILA, Complainant, vs. UNITED STEELWORKERS OF AMERICA, Respondent.	CASE NO. 4441-U-83-717 DECISION NO. 1975 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Williams, Lanza, Kastner, and Gibbs, by Franklin L. Dennis, Attorney at Law, and Lee W. Brillhart, III, Legal Intern, appeared on behalf of the complainant.

Aitchison and Sherwood, by Will Aitchison, Attorney at Law, appeared on behalf of the respondent.

On January 20, 1983, the City of Tukwila (city) filed a complaint with the Public Employment Relations Commission (PERC), charging that the United Steelworkers of America (union), had committed unfair labor practices in violation of RCW 41.56.150(4), by insisting to impasse on the retention of an interest arbitration clause in the collective bargaining agreement between the parties. Notice of hearing was issued in the matter on July 5, 1983, directing that respondent answer the specific allegations of the complaint by July 13, 1983. In its answer, respondent admitted all of the factual allegations of the complaint, but denied that it had committed an unfair labor practice. It appearing that there were no factual disputes, the examiner contacted the parties to determine whether stipulations might be entered in the matter. The parties thereupon agreed to meet and enter stipulations as the record in this proceeding, which they did on August 2, 1983. The parties submitted briefs.

FACTS

The City of Tukwila is located in the south suburbs of Seattle, at the intersection of two major interstate highways. A large shopping mall and a sizeable number of retail and wholesale businesses have chosen to locate in Tukwila. Although its current resident population is approximately 3500 people, the daytime population of the city ranges between 60,000 and 100,000 persons, depending upon the time of year.

The record does not reflect a precise date for the onset of collective bargaining activity, but police officers of the city apparently organized

and became represented by the Tukwila Police Officers Association (association) in 1973.

In 1973, the Washington State Legislature enacted the provisions of RCW 41.56.030(6) and 41.56.430 et. seq., providing for resolution of bargaining disputes involving certain law enforcement personnel through a mediation, factfinding and interest arbitration procedure. The legislature then defined "uniformed personnel" as:

> (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of AA counties or
>
> (b) firefighters as that term is defined in RCW 41.26.030, as now or hereafter amended.

RCW 41.56.030(6) (emphasis supplied)

Based on the size of the city's resident population, the police officers of the City of Tukwila were not taken to come under that definition. Neither party asserts that the eligibility determination should be made on the basis of the "daytime" population.

The city and the association have entered into a series of collective bargaining agreements, the first of which covered the term of January 1 through December 31, 1974.

An interest arbitration provision was first incorporated into the parties' agreement in 1975, apparently at the suggestion of the mayor then in office. That provision was contained in the grievance procedure article, and provided that issues unresolved after bargaining would be submitted to either factfinding or binding interest arbitration. The parties stipulated in this proceeding that the negotiating teams for the 1975 collective bargaining agreement agreed that the basis for having interest arbitration in Tukwila was the unique nature of the City of Tukwila, characterized by a small resident population contrasted with a high level of retail sales, assessed valuation, and need for a significantly larger police force than a city with a comparable resident population. The parties further stipulated that Tukwila's is the largest police force in the state operating without statutorily-provided interest arbitration.

The collective bargaining agreement between the parties for the period January 1, 1977 through December 31, 1978 provided for interest arbitration in Article XXII, Duration of Agreement, as follows:

> Any impasse occurring during future contract negotiations will be referred to binding arbitration.

On December 28, 1978, the association initiated a lawsuit in King County Superior Court for specific performance of that collective bargaining agreement, claiming that the city was breaching the contract by its refusal to submit to interest arbitration as a means of resolving an impasse in bargaining. At that time, the parties had been in negotiations and had also been involved in several mediation sessions, yet had been unable to reach agreement on a new contract. In its answer to that complaint, the city asserted, among other defenses, that the arbitration provisions of the collective bargaining agreement were void and unenforceable because the legislature did not give the city the authority, in RCW 41.56.430, to submit to binding (interest) arbitration of contract disputes. The city argued that delegation of its authority to fix terms and conditions of employment was unlawful and unconstitutional.

On January 29, 1979, the association moved for a preliminary injunction and restraining order against the city. In its motion, the association argued that the public policy of the state of Washington favored arbitration of interests disputes for fire and police personnel, and that the clause of the collective bargaining agreement providing for such arbitration was lawful. The city again argued that there was no legislative authority for Tukwila to enter into interest arbitration and, in any event, that the provision contained in the parties' agreement was so vague as to be unenforceable. On February 1, 1979, the court entered its judgment, finding that the parties were at impasse; that the intent of the arbitration clause in the labor agreement was to follow the procedures for arbitration as outlined in RCW 41.56.450 and 41.56.460; that the parties could provide contractually for binding interest arbitration; and that such a provision was enforceable by the court. The court ordered the parties to proceed to select arbitrators and commence interest arbitration proceedings in conformity with the provisions of the statute.

On March 12, 1979, the parties selected Philip Kienast as arbitrator, and commenced interest arbitration proceedings. The issue of continued inclusion of the interest arbitration provision in the contract was among the issues submitted to the arbitrator. The city urged removal of the interest arbitration provision from the collective bargaining agreement and the union wanted it to remain. Kienast issued his opinion and award on June 25, 1979. Stating that "the party desiring a change in a current contract provision carries an additional burden of showing why what it previously found reasonable to agree to is now unreasonable to continue," Kienast found that the city had not met its burden, and ordered the continued inclusion of that provision in the contract.

In 1979, the Tukwila Police Officers Association affiliated with the United Steelworkers of America. The subsequent contracts executed between the city

and Steelworkers Local 911, for 1979-1980 and 1981-1982, contained the same language as the 1977-1978 agreement regarding arbitration of disputes arising during negotiations for a future contract.

In negotiations for a successor agreement in 1982, the city again proposed deletion of the interest arbitration provision. The union proposed no change in that provision. The parties reached impasse when neither altered its position. The city then filed the instant unfair labor practice charge.

DISCUSSION

This case presents an issue of first impression for PERC, to wit: Whether insistence to impasse upon inclusion of an interest arbitration provision in a collective bargaining agreement constitutes an unfair labor practice.

Res Judicata Issue

The union argues that the issue before the examiner is barred from prosecution by the principles of res judicata and collateral estoppel, in that the city has litigated the issue in superior court and before an interest arbitrator. The city argues to the contrary.

The examiner does not find the union's arguments persuasive. Neither of the tribunals mentioned has ruled on the specific issue herein involved, i.e., whether insistence to impasse on inclusion of an interest arbitration clause covering future contract negotiations is an unfair labor practice. Nor has either tribunal specifically ruled on the underlying issue of the mandatory/permissive nature of an interest arbitration clause. The Superior Court matter was a contract enforcement proceeding. While the interest arbitrator offered his opinion on the mandatory/permissive issue, he correctly noted that the issue was outside his jurisdiction to determine.

Case Law

As the parties note, the National Labor Relations Board (NLRB) and several federal courts of appeals have dealt with this issue under the terms of the federal statute.

In Mechanical Contractor's Association of Newburgh, 202 NLRB 1 (1973), the NLRB reversed its trial examiner and found no violation where the union had insisted upon inclusion in a collective bargaining agreement of a clause which referred unsettled issues to an Industrial Relations Council (IRC) for decision. The NLRB differed with the examiner's finding that the IRC was

constituted in a manner giving it the characteristics of an interest arbitration panel. Since the panel was composed of equal numbers of representatives of the interested parties, and since any decision regarding contract clauses had to be unanimous, the NLRB found the IRC to be the next level of the collective bargaining process. Therefore, the parties had not reached impasse, and the threshold question for a violation had not been met.

The NLRB has decided in numerous cases that interest arbitration clauses which relate to resolution of disputes over negotiation of the terms of future contracts are permissive subjects of bargaining. The federal case most often cited is Columbus Printing Pressmen, 219 NLRB 268 (1975), enf. 543 F2d 1161 (1977). The facts in that case closely parallel the facts in Tukwila. The parties therein had included an interest arbitration provision in their contract since 1947. In 1970, the employer sought to have the provision removed, and the parties submitted the issue to interest arbitration. The arbitrator ordered the continued inclusion of the clause in the collective bargaining agreement. In 1973, the employer again resisted inclusion of the interest arbitration clause in the contract, and it filed unfair labor practice charges against the union, claiming the union had violated the statute by insisting to impasse on inclusion of a permissive subject in a collective bargaining agreement. The opinion of the NLRB majority barely dealt with the subject of the mandatory/permissive nature of the interest arbitration clause. Rather, it dealt at length with the question of deferral to arbitration. The opinion of the administrative law judge is much more illuminating with regard to the mandatory/permissive issue. The administrative law judge found that interest arbitration clauses do not pertain to setting wages, hours and terms and conditions of employment in the contract being negotiated, and do not vitally affect such terms. Rather, he found that such clauses change the method by which the parties might arrive at future contract terms, from one of collective bargaining to a compelled arbitrated agreement. Member Jenkins, in his concurrence, noted that cases interpreting Section 8(d) of the act make clear that any contract provision which subverts the rights of the parties to negotiate to impasse, and, if necessary, to resolve that impasse through a test of their respective economic strengths, must not be deemed a mandatory subject. The fifth circuit affirmed the NLRB, reasoning that an interest arbitration clause only affects wages and working conditions during future contracts, and is not a mandatory subject of bargaining, since its effect on terms and conditions of employment is at best remote.

The decisions of the NLRB and of the fourth circuit in Greensboro Printing Pressmen No. 319, 222 NLRB 893 (1976), enf. 549 F.2d 308 (1977), support, but do not further illuminate, the rationale regarding the mandatory/permissive nature of an interest arbitration clause. Massachusetts Nurses Association, 225 NLRB 678 (1976), enf. 557 F.2d 894

(1977), applied the rationale to the health care industry, and found that the health care amendments to the act pre-empted state law which outlawed strikes and provided for mandatory interest arbitration.

In Sheet Metal Workers Local 59, 227 NLRB 520 (1976), the NLRB held that it was a violation of the Act to insist upon inclusion of a contract clause requiring the parties to submit disputes concerning the terms of future agreements to the National Joint Adjustment Board. There the NLRB held, as it did in Columbus Printing Pressmen, supra, that the clause did not relate directly to wages, hours and terms and conditions of employment, but instead applied only to the processes available to the parties in the event they could not reach agreement. They distinguished that case from Mechanical Contractors Association, supra, since the employer had no representative on the National Joint Adjustment Board. The NLRB was sharply divided in that matter, as they were again in Sheet Metal Workers Local 38, 231 NLRB 699 (1977) enf. 575 F.2d 394 (1978), where the majority found the facts closely paralleled Sheet Metal Workers Local 59 and, therefore, found the union had unlawfully insisted to impasse on the inclusion of an interest arbitration clause in its contract. The second circuit enforced that order, finding that the impact of an interest arbitration clause was too speculative to qualify it as a mandatory subject, and reasoning that such a clause rather determines the procedure by which terms of a subsequent contract will be established.

The NLRB has further distinguished its holdings on this subject in Sea Bay Manor Home, 253 NLRB 739 (1980), where it found that, unlike prior cases, this case involved a voluntary agreement between the parties to resolve their differences over the terms of the contract then under negotiation by interest arbitration. As such, the clause had an immediate and significant effect on unit employees. In those circumstances, the NLRB found that the agreement to arbitrate was so intertwined with and inseparable from the mandatory terms and conditions of the contract then being negotiated as to take on the characteristics of the mandatory subjects. The NLRB found the agreement to arbitrate not only to be the result of the collective bargaining process but central to it, and therefore found no violation.

The examiner's research has disclosed one decision from another state concerning the mandatory/permissive nature of interest arbitration clauses. In City of Boynton Beach, 3 NPER-12090 (FL. 1/28/81), the Florida Public Employment Relations Commission determined that the issue of whether to include an interest arbitration clause in a collective bargaining agreement was not a term or condition of employment.

Statutory Background

The union asserts that the question in the instant case is clearly distinguishable from the case law developed under the federal Labor

Management Relations Act (LMRA) because of the entirely different statutory environment existing in the Washington law. The city argues that the Commission should adopt the reasoning of the NLRB and the courts in the cited line of federal cases.

Comparison of the LMRA and the Public Employees Collective Bargaining Act (Chapter 41.56 RCW) reveals that the definitions of collective bargaining are similar in their essential components. The union correctly notes that the Washington law includes in its definition the phraseology concerning matters "peculiar to" a particular bargaining unit. With regard to considerations of policy or purpose, the LMRA specifically notes that encouragement of the practice and procedure of collective bargaining is the policy of the United States. The LMRA further notes that protection of collective bargaining rights safeguards and promotes the free flow of commerce by, among other factors, restoring equality of bargaining power between employer and employees. Balance of bargaining power is not referenced in Chapter 41.56 RCW, the purpose of which is stated as the continued improvement of employer-employee relations by implementing the right of public employees to join and be represented by labor organizations.

The common law of Washington precludes strikes by public employees, Port of Seattle vs. International Longshoremen's Union, 52 Wn.2d 317 (1958). Chapter 41.56 RCW specifically does not permit or grant the right to strike to any public employee. RCW 41.56.120. Those facts, plus the fact that the Washington statute provides, at RCW 41.56.430 et seq., for binding interest arbitration for uniformed employees, distinguish the climate regarding interest arbitration between the statutes. The LMRA clearly preserves the right of employees to strike. As the union notes, the court in Columbus Printing Pressmen, supra, upon ruling that the interest arbitration provision was not a mandatory subject, stated:

> Further support for this result is derived from the rejection by Congress of compulsory arbitration when it passed both the Wagner and Taft-Hartley Acts. Compulsory arbitration would deprive parties of their right to use economic weapons in the same way that successive contract arbitration provisions would. Senator Wagner described compulsory arbitration as "so alien to our American traditions of industrial enterprise that it would provoke extreme resentment and constant discord." 74 Cong. Rec. 7573 (1935). Later, Senator Taft, while recognizing the dangers posed by strikes in key industries and the inability of collective bargaining always to prevent them, rejected the use of compulsory arbitration under any circumstances, stating that this procedure "would interfere with the whole process of collective bargaining." 93 Cong. Rec. 3951 (1947)

At the time Chapter 41.56 RCW was originally enacted in 1967, the laws of the state did not require the same retention of records as is currently demanded. Therefore, information is not readily available as to whether interest arbitration provisions were considered and rejected by our legislature at that time.

When Chapter 41.56 RCW was amended in 1973 to provide for interest arbitration for certain classes of employees, the following policy statement was added to the law:

> The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the State of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the State of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.430

The 1973 legislation went through several substitute versions on its way to passage. However, the original bill contained essentially the same definition of "uniformed personnel" as did the version which became law. Such historical material as is available indicates that the interest arbitration provisions were supported by labor and opposed by management, with management factions at various times proposing elimination of all the mediation, factfinding and arbitration provisions, or proposing that only factfinding procedures be enacted. The legislature did not adopt those management proposals, but the historical files available do not reveal the legislature's rationale.

Over the years since 1973, numerous attempts have been made to modify the interest arbitration provisions of Chapter 41.56 RCW. Legislation introduced in 1977 and 1980 proposed amendment of the definition of uniformed personnel to extend the interest arbitration procedure to police officers in any county and to port district police. In 1978, legislation was proposed which would have allowed the Commission to institute factfinding or interest arbitration proceedings for any labor dispute involving public employers as defined in Chapter 41.56 RCW. In 1981, legislation was introduced to change the definition of uniformed personnel to include police officers of any city or county. All of this legislation failed, as did legislation in 1983 to make the definition of uniformed personnel more expansive. Legislation was enacted in 1979 to delete the factfinding step from the "uniformed personnel" impasse procedure. In 1984, the legislature changed the definition of "uniformed personnel," effective July 1, 1985, to add law enforcement officers employed by any county of the second class or larger to the coverage

of the "interest arbitration" impasse procedures. The 1984 legislation originated as a proposal to expand the definition to include law enforcement officers of any city or county. The proposed scope of that legislation was changed at various times in committee to cover law enforcement officers employed by municipalities with a population over 7500, or a city or county with more than 20 officers. Thus, there have been no amendments which would alter the coverage as to Tukwila police officers.

While the legislature does not share the complete aversion to interest arbitration exhibited by Congress, it has definitely limited its applicability. The legislature has had the opportunity on numerous occasions to include law enforcement officers of the City of Tukwila within the interest arbitration provisions of the statute, and has not chosen to do so. However, the fact that the legislature has not included police officers of Tukwila and cities of like population within the interest arbitration procedures cannot be deemed to be a conclusive determination that such clauses for such cities are nonmandatory bargaining subjects.

Economic Weapons Argument

The union asserts that one of the two primary underpinnings of the decision of the NLRB and the courts in Columbus Printing Pressmen, supra, and subsequent decisions, was that an interest arbitration clause interfered with the parties' right to use economic weapons and to exert economic power. It claims that the absence, under Washington law, of a union's ability to exercise economic force (go on strike) can only lead to a conclusion that the interest arbitration clause in question here is a mandatory bargaining subject. It claims that only the presence of such a clause in a collective bargaining agreement permits the parties to maintain even a semblance of bargaining power. The city argues, in response, that while public employees do not have the authority to strike, they possess countervailing political power which substitutes for the economic weaponry available to private sector employees. Indeed, the city argues that the Tukwila police force possesses power beyond that normally available to a municipal police force, in that their numbers are far greater than those normally maintained by a city of Tukwila's resident size.

The origins of the present contractual interest arbitration clause notwithstanding, it seems clear from the legislative history that labor believes interest arbitration procedures are to labor's benefit and management generally believes they work to management's detriment. While such beliefs may be completely correct, I find nothing in the policy or purposes of the interest arbitration provisions of the Washington statute which would indicate that maintenance of a power balance was ever a

legislative consideration. The legislative concerns reflected in the statutory language concerning interest arbitration indicate a concern with public safety and strike avoidance, a "protection of the public" rather than a "protection of employees" concern. The legislature, for whatever reason, has not seen fit to provide an alternative methodology to the lack of strike rights, except for particular classes of employees. Nor has it seen fit to modify its collective bargaining definition for those without that avenue. Complainant's arguments regarding political power are not persuasive nor, in light of the foregoing analysis, germane to the issue.

Nexus with Wages, Hours and Working Conditions

The city claims that while interest arbitration may, in a technical sense, touch wages, hours, and terms and conditions of employment, it does so only tangentially, and is therefore outside of the mandatory scope of bargaining of the Washington statute. It argues that because any benefits to be obtained through interest arbitration are speculative and inexplicit, it is reasonable to find that such clauses are nonmandatory subjects of bargaining.

The union argues that an interest arbitration provision does touch and concern wages, hours, and terms and conditions of employment, and likens such a clause to a pension system, as a promise to confer benefits. It asserts that the NLRB's reasoning that such a clause is not mandatory, because it does not affect the relationship of the parties during the contract period, is erroneous. It claims similarity between interest and grievance arbitration clauses, because both settle an aspect of the employment relationship. Additionally, it claims that the Washington statute would appear to allow a fluctuating interpretation of mandatory subjects, because of its definition that collective bargaining encompasses wages, hours, and working conditions "which may be peculiar to an appropriate bargaining unit...". It argues that the unique nature of the City of Tukwila would justify finding an interest arbitration clause a mandatory subject.

In the decisions of the NLRB noted above, interest arbitration provisions have been consistently found to be nonmandatory subjects of bargaining. Where the NLRB has appeared to deviate from that standard, it has done so because it found the clause in question not to be an interest arbitration clause (Mechanical Contractor's Association, supra) or because the interest arbitration has been proposed for the current contract term rather than for a future contract (Sea Bay Manor Home, supra). With due respect to the NLRB and the courts, this examiner finds the present/future distinction difficult, and would not base a decision on those grounds. The pivotal issue

is not whether a subject deals with the present or future time period, but whether it can, in fact, be said to be encompassed within "wages, hours, and working conditions".

An interest arbitration clause is not a working condition; rather, it is a methodology which parties may agree to use, absent a negotiated settlement, to determine what the working conditions will be. It is a means to an end rather than a benefit or condition. Contrary to the union's view, the examiner does not agree that an interest arbitration clause is a promise to confer benefits, akin to a pension system. Pensions are deferred compensation (wages) promised on account of present work. An employer does not, by its agreement to an interest arbitration provision, agree thereby to confer benefits. Rather, both parties agree to submit unresolved issues to a neutral party who will then determine what, if any, benefits there might be.

The procedures of collective bargaining are, themselves, not necessarily mandatory subjects for bargaining. There is no doubt that there must be a determination of majority status to start a relationship, and that there must be a determination of the scope of the bargaining unit. While voluntary recognition is permitted under Chapter 41.56 RCW, and while parties may agree on units, the legislature has vested authority in PERC to determine such disputes as may arise. RCW 41.56.050, .060. Representation and unit determination matters are not mandatory subjects of collective bargaining. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wa. App. 599 (1981), cert. den., 96 Wn.2d 1004 (1981); Spokane School District, Decision 718 (EDUC, 1979). Similarily, the unfair labor practice provisions of the statute define certain types of prohibited conduct and provide procedures for administrative dispute resolution separate and apart from the bargaining table. RCW 41.56.140, et seq. The settlement or abandonment of unfair labor practice litigation is not a mandatory subject of collective bargaining. Stackpole Components Company, 232 NLRB 723 (1977), Griffin Inns, 229 NLRB 199 (1977).

Grievance arbitration occupies a quite different place in the statutory scheme. The legislature makes specific reference to grievance procedures within the definition of collective bargaining enacted in 1967. RCW 41.56.030(4). The legislature enacted specific provisions in 1973 to allow grievance arbitration for all public employers and public employees covered by Chapter 41.56 RCW (RCW 41.56.122(2)), and to make members of the Commission staff available to serve as arbitrators (RCW 41.56.125). Additionally, when it created the Public Employment Relations Commission, the legislature endorsed the use of grievance arbitration in RCW 41.58.020(4) as "the desirable method" for the resolution of disputes arising out of interpretation or application of an existing collective bargaining agreement. The historical records available regarding the adoption of RCW 41.56.122 and .125 bear no indication that inclusion of

interest arbitration was ever considered. Indeed, the separate debate during the same legislative session on the "uniformed personnel" impasse procedure, as noted above, suggests a conclusion that interest arbitration was thought of as completely separate and distinct from grievance arbitration. The records which are available reflect a rationale that grievance arbitration provisions may prevent strikes over the meaning of contract terms. While a similar strike avoidance rationale is reflected in the historical documents on the legislation which created the "uniformed personnel" impasse procedure, it is noteworthy that the legislature has chosen entirely different approaches for dealing with these concerns. The grievance arbitration procedures were made a matter for bargaining and contracts, while the interest arbitration procedures were cluttered with statutory time limits and details. A conclusion that interest arbitration and grievance arbitration are alike, in the sense that they are both procedural means, is not enough. They are clearly distinguished from one another in their place in the statute.

Respondent argues that the statute allows a fluctuating definition of what may constitute a mandatory subject. However, while the definition in the statute may allow some fluctuation, it still requires that a subject be within the "wage, hour and working condition" parameter. Because of the extreme day/night population fluctuation of Tukwila, the police operation there is undoubtedly distinct from that of other police departments in this state. Distinct or not, the interest arbitration provision herein is still not, in the view of the examiner, a working condition and therefore does not meet the threshold requirement.

FINDINGS OF FACT

1. The City of Tukwila is a municipal corporation of the state of Washington and a public employer within the meaning of RCW 41.56.030(1).

2. The United Steelworkers of America is a bargaining representative within the meaning of RCW 41.56.030(3), and represents a bargaining unit which includes police officers employed by the City of Tukwila. The Tukwila Police Officers Association represented the same bargaining unit beginning in 1974. In 1979, the association affiliated with the Steelworkers.

3. Chapter 41.56 RCW provides for binding interest arbitration for law enforcement officers of certain cities and counties. The police officers of the City of Tukwila have not been taken to come within those statutory provisions.

4. The city and the bargaining representatives have been parties to several collective bargaining agreements. Since 1975, the collective bargaining agreements have included a provision that any impasse in negotiations for a future contract will be submitted to binding interest arbitration.

5. In negotiations for an agreement successor to their 1981-1982 collective bargaining agreement, the city proposed deletion of the interest arbitration clause. The union proposed no changes in that clause of the collective bargaining agreement. Impasse on the interest arbitration provision was reached when neither party altered its initial position on the provision.

6. An interest arbitration provision is not a wage, hour or working condition, but is rather a methodology which parties may agree to use, absent a negotiated settlement, to effect a determination of what the working conditions will be.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The interest arbitration provision advanced by the union in the instant proceeding is not a mandatory subject of collective bargaining within the meaning of RCW 41.56.030(4).

3. By insisting to impasse on inclusion of the interest arbitration provision in the parties' collective bargaining agreement, the union violated RCW 41.56.150(4).

ORDER

1. The United Steelworkers of America, its officers, agents, and representatives, shall immediately:

   A. Cease and desist from:

      Insisting as a condition to the execution of a collective bargaining agreement in collective bargaining with the City of Tukwila that the city agree to a provision providing that any impasse occurring during future contract negotiations will be referred to binding interest arbitration.

B. Take the following affirmative action which is necessary to effectuate the policies of Chapter 41.56 RCW.

(1) Upon request, bargain collectively with the City of Tukwila and, if an understanding is reached, embody such understanding in a signed agreement.

(2) Post in conspicuous places on the employer's premises where notices to affected employees are usually posted copies of the notice attached hereto and marked Appendix "A". Such notices shall, after being duly signed by an authorized agent of the United Steelworkers of America, be and remain posted for sixty (60) days. Reasonable steps shall be taken to ensure that said notices are not removed, altered, defaced, or covered by other materials.

(3) Notify the Commission, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide a signed copy of the notice required by the preceding paragraph.

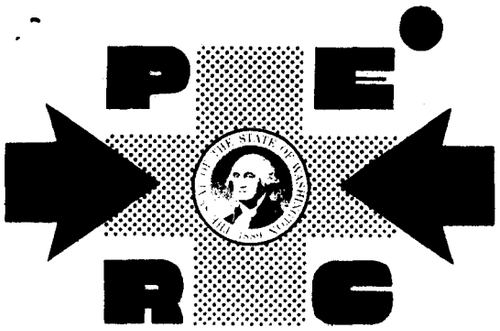
DATED at Olympia, Washington, this 21st day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Martha M Nicoloff

MARTHA M. NICOLOFF, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX "A"

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, UNITED STEELWORKERS OF AMERICA HEREBY NOTIFIES BARGAINING UNIT EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively with the City of Tukwila by insisting as a condition to the execution of a collective bargaining agreement, that the city agree to a provision providing that any impasse occurring during future contract negotiations will be referred to binding interest arbitration.

WE WILL, upon request, bargain collectively with the City of Tukwila and, if an understanding is reached, embody such understanding in a signed agreement.

UNITED STEELWORKERS OF AMERICA

BY: _____
AUTHORIZED SIGNATURE

Dated: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 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.