STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 29, Complainant, vs. CITY OF SPOKANE, Respondent.	)	CASE NO. 6126-U-85-1152 DECISION NO. 2398 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-entitled matter on November 25, 1985. The allegations involve unilateral changes of work hours for fire inspection employees.

The matter was referred to an examiner on January 24, 1986. It thereafter became known that the parties were arbitrating similar issues under their collective bargaining agreement. The appointment of the examiner was then withdrawn and the matter was deferred to arbitration by a letter dated March 18, 1986.

Arbitrator J. Martin Smith issued his arbitration award on the grievance on June 18, 1986, concluding:

> 1. The city has not created a binding past practice of paying compensatory time for the extra four hours used for "night surveys" in the fire marshall's department. Overtime pay, as well as compensatory time on an hour-for-hour basis, has consistently been offered, as per Article XXI of the collective bargaining agreement.

2. The night surveys are "special assignments outside of..." the normal 8:00 am to 9:00 pm fire inspectors' shift and hence the city may alter starting times or durations of each shift, under Article XV of the contract.

3. The City of Spokane was entitled by the collective bargaining agreement to implement the changes of hours of work of fire prevention inspectors at issue in this proceeding.

The grievance is DENIED.

The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.

The Public Employment Relations Commission defers the processing of unfair labor practice allegations where an employer's alleged "unilateral change" action is "arguably protected or prohibited" by an existing collective bargaining agreement between the parties. If the arbitrator concludes that the employer's action was, in fact, prohibited by the contract, then the arbitrator will remedy the problem and the Commission (which does not assert jurisdiction through the unfair labor practice provisions of the statute to remedy violations of collective bargaining agreements) will dismiss the case. At the opposite pole, if the arbitrator concludes that the employer's action was neither protected nor prohibited by the contract, the arbitrator will likely have cleared away any potential "waiver by contract" defenses, leaving the employer vulnerable to a finding that it committed a "refusal to bargain" unfair labor practice by taking unilateral action. But where, as here, the arbitrator finds that the employer's action was protected by the collective bargaining agreement, the arbitration award will not only deny the grievance but will also fore-ordain dismissal of "unilateral change" unfair labor practice charges on the basis of "waiver by contract".

By notice issued on September 17, 1986, the parties were ordered to show cause, on or before September 26, 1986, why the Commission should not defer to the arbitration award issued by Arbitrator J. Martin Smith in the above captioned matter. Neither party has filed any response thereto.

NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 10th day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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