STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PASCO, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1433, Respondent.	)	CASE NO. 7613-U-88-1601 DECISION 3107 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-captioned matter on October 12, 1988. A preliminary ruling letter issued on December 12, 1988, brought supplemental materials from the employer (complainant) on December 19, 1988, and the matter is again before the Executive Director for preliminary processing in accordance with WAC 391-45-110.

At this point in the proceedings, it is assumed that all of the facts contained in the complaint are true and provable. This convoluted situation is understood from the documents to be:

* In January, 1988, the Fire Chief issued changed procedures to reduce the maximum number of employees granted time-off requests from three per shift to two per shift.

* On February 1, 1988, the union protested the changes and requested bargaining. On February 2, 1988, the union filed a grievance alleging that the changes violated the parties' collective bargaining agreement.

* The parties proceeded to arbitration in June, 1988, on the issue of whether the changes relating to "time-off requests" violated the parties' collective bargaining agreement. The union relied on a "prevailing rights" clause contained in the contract which states:

  > All rights and privileges held by employees at the present time which are not included in this Agreement shall remain in force, unchanged and unaffected in any manner.

  The employer relied on a "management rights" clause contained in the agreement.

* The arbitrator's award issued on August 4, 1988, holds that the employer's changes violated the "strong, undiluted and muscular" language of the "prevailing rights" clause of the collective bargaining agreement. The arbitrator rejected the "management rights" clause as providing relief for the employer. The arbitrator ordered the city to restore the past practice.

* On September 21, 1988, the city demanded bargaining on the "time-off requests" issue.

* On September 27, 1988, the union refused to open negotiations, relying on "supplemental agreements" language of the collective bargaining agreement which limits changes to situations where both parties concur. While the union indicated that it did not concur in opening the contract, it would discuss the matter informally.

* On September 30, 1988, the city made a renewed demand for bargaining and threatened the filing of unfair labor practice charges if the union refused.

* This unfair labor practice case followed.

It is evident that the complaint fails to state a cause of action. This employer has entered into a collective bargaining agreement which contains a "prevailing rights" clause. That provision is enforceable during the life of the contract, and the union has enforced it through the grievance and arbitration machinery also provided in the contract. The contract was not specific on the matter of time-off requests, but neither was it silent. The arbitrator issued a final and binding decision holding that, at least for the remaining life of the contract, the union was entitled to have time-off procedure continued at the "three" level. The union was not obligated to come to the bargaining table in response to the employer's demand for a mid-term modification of the time-off procedure.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-entitled matter is dismissed as failing to state a cause of action.

Issued at Olympia, Washington, the 23rd day of January, 1989.

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.