STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PASCO, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1433, Respondent.	CASE 8124-U-89-1760 DECISION 3641 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Joseph Ramirez, Attorney at Law, appeared on behalf of the complainant.

Critchlow, Williams & Schuster, by Alex J. Skalbania, Attorney at Law, appeared on behalf of the respondent.

On August 10, 1989, the City of Pasco (employer) filed a complaint charging unfair labor practices against International Association of Fire Fighters, Local 1433 (union) alleging that the union failed to bargain in good faith, by refusing to negotiate the proposed removal of fire code enforcement work from the bargaining unit.

On October 9, 1989, the union filed a motion for summary judgment, arguing that the complaint did not, as a matter of law, state a cause of action within the Commission's jurisdiction. On October 20, 1989, the employer filed a memorandum in opposition to the motion for summary judgment. The Executive Director did not grant summary judgment, and the case was assigned to the undersigned Examiner on May 22, 1990.

On June 1, 1990, the employer amended the original complaint to seek additional remedies. Specifically, the employer asked that the union be barred from opposing the employer's position concern-

ing fire code enforcement work in forthcoming interest arbitration proceedings.

On June 7, 1990, the employer filed a motion seeking summary judgment on its complaint. On July 3, 1990, the union filed an additional memorandum in support of its summary judgment motion. On July 11, 1990, the employer filed a responsive memorandum to the union's last summary judgment request. The motions for summary judgment were not granted, and the matter was set for hearing.

A hearing was conducted on August 22, 1990, in Pasco, Washington. The union submitted a post-hearing brief on October 3, 1990. The employer did not submit a post-hearing brief.

BACKGROUND

The City of Pasco offers a number of municipal services to local residents through various departments. Under the direct supervision of Fire Chief Larry Dickinson, the Pasco Fire Department is responsible for fire suppression and prevention activities.

International Association of Fire Fighters, Local 1433 represents a bargaining unit of Pasco Fire Department personnel who are "uniformed personnel" within the meaning of RCW 41.56.030(7).

The parties' collective bargaining relationship predates 1980. The instant unfair labor practice complaint arose in 1989, in the context of collective bargaining negotiations for a successor collective bargaining agreement. This dispute concerns the parties' differing views of the negotiability of a proposal to remove fire code inspection work from the scope of bargaining unit work. To understand the negotiating history on that issue, some background is necessary.

The record indicates that the parties have had a long-standing disagreement over both the bargaining unit status of the "fire marshall" position and the work traditionally performed by that position. Since the mid-1970's, the employer has proposed removing the "fire marshall" from the bargaining unit. In 1985, the person who was the incumbent in the "fire marshall" position was promoted to a position outside of the bargaining unit, and the "fire marshall" position was left vacant. The former "fire marshall" continued to perform fire code enforcement work, however. As a result, the union presented the issue for unit clarification before the Commission, and also filed a grievance against the employer for removing bargaining unit work.

The unit clarification proceeding came to a conclusion in City of Pasco, Decision 2294 (PECB, 1986), where the Commission rejected the employer's contention that the "fire marshall" position should be excluded from the bargaining unit. The employer's contentions were found to be too speculative, and did not relate to the work actually performed by the "fire marshall".

The grievance proceeding followed a more tortured course. On May 21, 1987, Arbitrator Martin Haney ruled in favor of the union. The employer did not abide by the arbitrator's decision, however. The union brought the matter before the Superior Court, which granted the union's motion for summary judgment. The employer appealed the Superior Court decision ordering compliance with the arbitration award. On March 2, 1989, Division Three of the Washington State Court of Appeals affirmed the lower court's ruling. The employer appealed to the Supreme Court of the State of Washington. On June 6, 1989, the Supreme Court refused to accept the appeal, thereby allowing the Court of Appeals ruling to stand.

Negotiations for a successor collective bargaining agreement began in 1989 in the context of the continuing litigation on the grievance. City Attorney Greg Rubstello acted as chief spokesman

for the employer, while Captain Pat Henrickson served as spokesman for the union bargaining team.

The Bilateral Negotiations Stage

The record indicates that the parties held their first negotiating meeting on July 11, 1989, when initial proposals were exchanged. As part of its initial proposal, the employer sought removal of fire code enforcement work from the scope of bargaining unit work.[1] The union proposed a "structured duty day", with specific duties, including fire code enforcement and physical training, to be performed at set times. The parties attempted to identify areas of agreement that could be settled quickly, but the union did not want to address the fire code issue when it was raised. Henrickson stated that the matter was still in litigation, and should be resolved in that forum.[2] Rubstello stated the employer's contention that the matter must be addressed through collective bargaining negotiations.

The parties met again on July 19, 1989. During the course of that meeting, each contract article was reviewed in light of proposed changes. When the parties reached the fire code inspection issue, the union reiterated its resistance to negotiating the subject. Rubstello testified that he informed the union that the court action was collateral to the bargaining process, and that he believed that the union could not rely upon the court decision to escape from its bargaining obligation.

The parties continued negotiations on August 1, 1989. During the course of that meeting, Rubstello expressed concern that the union

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[1] The record reveals that the employer sought to have fire code enforcement work performed by employees in the City of Pasco Building Department.

[2] Henrickson was not aware that the Supreme Court had earlier rejected the employer's appeal.

had not discussed the code enforcement issue, and indicated that the employer would file an unfair labor practice complaint if the union maintained its existing bargaining stance. Rubstello testified that the union bargaining team did not seem concerned about the possibility of unfair labor practice litigation, and the meeting ended shortly thereafter. The employer filed the instant unfair labor practice case on August 10, 1989.

The parties met on August 15, 1989, but little progress was made to resolve the remaining issues. During the course of that meeting, Rubstello asked the union negotiating team on several occasions to bargain the code enforcement issue, but the union declined.

The parties met again on September 8, 1989. At that meeting, Henrickson explained that the union wanted to allow existing court procedures to finish before the code enforcement issue could be discussed.[3] The parties did not reach agreement at that meeting.

On September 26, 1989, the Superior Court entered an order directing the City of Pasco to show what steps it had taken to comply with court orders concerning the removal of the fire marshall position from the bargaining unit.

On September 29, 1989, the parties met again for negotiations. The union negotiating team informed the employer's team that it would "listen" to the employer's proposals concerning removal of code enforcement work from the bargaining unit. Rubstello detailed the employer's position. The union did not make any substantive response to the employer's position at that time. At the conclu-

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[3] The record reflects that the parties were in the midst of enforcement litigation in Superior Court concerning the fire marshall issue detailed above. The record further indicates that no specific court action had been taken by September 8, 1989.

sion of Rubstello's presentation, the union team stated that it might prepare a response to be presented at the next meeting.

On October 4, 1989, the parties met in further negotiations. At that time, the union made a "package proposal" dealing with a number of issues, including code enforcement. To address the code enforcement issue, the union proposed that the parties agree to a multi-year contract and re-open the contract in 1991 to negotiate the issue. The union saw this as eliminating the need to negotiate the issue specifically as part of the current bargaining process. The employer refused the union's approach, and the parties filed for mediation shortly thereafter.

On October 23, 1989, the Superior Court ruled in favor of the employer on the motion to show cause filed by the union. The court found that the City of Pasco had taken affirmative steps to comply with the earlier court decisions concerning removal of the fire marshall position from the bargaining unit.

Rubstello testified that the union's refusal to negotiate the code enforcement work effectively blocked negotiations on the structured duty day and physical training issues. Since the code enforcement work was still being performed by bargaining unit employees at the time of the negotiations, the employer wanted to address removal of that work in relation to the work day issues. The employer reasoned that removal of the fire code enforcement work could re-order the rest of the assigned duties, and that such a change could materially affect the employer's decision on whether to accept the union's proposals on hours of work and physical training.

Henrickson testified that the union's stance on the code enforcement issue did not damage the ongoing negotiations. Henrickson noted that the employer's initial wage offer was not presented until September, 1989. According to Henrickson's recollection, the

parties addressed the union's position on the code enforcement issue and then proceeded to negotiate on a number of other issues.

Henrickson's recollection of events was supported by the testimony of Fire Chief Dickinson, who attended the negotiations as a member of the employer's bargaining team. Dickinson testified that the parties moved on to other issues when the union expressed its opposition to discussing the fire code enforcement matter.

The Mediation Stage

The parties met in mediation conducted by a member of the Commission staff, but were unable to resolve their differences.

In a mediation session conducted on December 20, 1989, the employer made a "package proposal" covering a number of unsettled issues. The union rejected the proposal, but further explanation of certain parts of the package proposal was needed.

The parties met again in mediation on January 2, 1990. At that time, the employer offered to increase its contribution toward medical insurance, to accept the union's physical fitness article, and to retain existing management rights and prevailing rights articles, all in exchange for removal of code enforcement work from the bargaining unit. The offer was not accepted.

The Interest Arbitration Stage

An interest arbitration case was docketed under RCW 41.56.450 as City of Pasco, Case 8351-I-90-189 on January 8, 1990. Code enforcement was one of several unsettled matters certified for interest arbitration. The record indicates, however, that the parties did not move ahead with interest arbitration for a number of months after the issuance of that certification.

The union contacted the employer in February and March, 1990, to discuss the outstanding issues. The record reflects that the parties were able to resolve some of their differences, thus eliminating several issues from the list to be presented in interest arbitration. The issue concerning code enforcement work was not one of those resolved.

During the informal meetings, the union proposed that the employer could remove fire code inspection work from the bargaining unit in exchange for a one-time payment of $2,500 to each bargaining unit member.[4] As an alternative to its $2,500 per employee proposal, the union proposed that the employer could remove the disputed work in exchange for paying the premiums for supplemental disability insurance designed to enhance "LEOFF II" coverage to the level of the "LEOFF I" plan.[5] The employer considered the union's proposals, but did not believe it could afford to provide additional compensation.

The code enforcement issue was presented to an interest arbitration panel chaired by Arbitrator Thomas Levak in August, 1990, prior to the hearing on this unfair labor practice case. By letter to the parties and Arbitrator Levak issued on August 29, 1990, Executive Director Marvin L. Schurke removed the code enforcement issue from

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[4] The union derived its figure by estimating the fire marshall's annual salary and dividing it by the number of fire fighters in the bargaining unit.

[5] "LEOFF" refers to the "Law Enforcement Officers' and Fire Fighters' Retirement System" established by Chapter 41.26 RCW. Employees hired prior to October 1, 1977 are covered under Plan I (LEOFF I), and are provided medical benefits and disability retirement protection. In 1977, the Washington State Legislature changed the statute, reducing the level of coverage and benefits for employees hired on or after October 1, 1977 and covered under Plan II (LEOFF II). One response to those legislative changes has been for local unions representing fire fighters to seek supplemental insurance coverage to attain the level of benefits once provided by the LEOFF I plan.

the jurisdiction of the interest arbitration panel, pending decision of the instant unfair labor practice complaint.

POSITIONS OF THE PARTIES

The employer argues that the union did not bargain in good faith concerning the proposed removal of fire code enforcement work from the work jurisdiction of the bargaining unit. The employer contends that the union's refusal to address the fire code enforcement issue effectively prevented the parties from reaching agreement on a successor collective bargaining agreement. The employer argues that the union's attempts to address the issue after the commencement of interest arbitration proceedings came too late in the bargaining process to have meaningful effect. As a remedy, the employer asks that the union be prevented from presenting its position on the code enforcement issue in interest arbitration, and that the employer's position be awarded by the interest arbitration panel.

The union denies that an unfair labor practice has been committed. It argues that the parties continued to negotiate on a number of other issues, and that substantial progress was made in reaching agreement on a successor contract. The union maintains that it did present several options for the employer to consider on the fire code enforcement issue, and that the employer's proposed remedy is punitive. The union asks that the complaint be dismissed.

DISCUSSION

The Merits

In its opening statement, the employer explained its perception of the bargaining obligation as being "required to dance, but not

required to kiss". RCW 41.56.030(4) defines "collective bargaining" as:

> [T]he performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. [emphasis supplied]

See: Fort Vancouver Regional Library, Decision 2396-A (PECB, 1987). The question in this case is whether the union has been willing to "dance".

To determine whether good faith bargaining has taken place, the "totality of circumstances" must be analyzed. Walla Walla County, Decision 2932-A (PECB, 1988). The burden of proof in "refusal to bargain" cases rests with the complaining party. City of Clarkston, Decision 3246 (PECB, 1989).

In City of Clarkston, supra, the employer alleged, among other charges, that the union committed an unfair labor practice by not presenting its wage proposal until after the parties had met several times in collective bargaining. In analyzing the facts presented there, the Examiner held that the conduct complained of did not constitute an unfair labor practice:

> While the union's approach appears to be different from the parties' tradition, the record does not support the employer's claim that an unfair labor practice was committed. The parties continued to negotiate on other items, and the employer has not established

> that the delay in negotiating wages caused any meaningful disruption in the overall bargaining process.

(Id, at PD 3246-8)

The union argues that the Clarkston case is determinative of the instant unfair labor practice complaint, but the Examiner finds the situation presented in that case to be much different from that presented in the instant case.

In Clarkston, the parties' disagreement over the wage issue did not prevent them from making substantial progress on other issues open for negotiation. The employer in Clarkston did not allege that the wage issue was significantly tied to other bargaining items, so as to impede the process or render negotiations meaningless. In contrast, there is evidence on which to conclude here that the union's refusal to deal with the code enforcement issue affected the negotiations on the work schedule and physical training issues even before the union made its "reopener", "one-time payment" and "supplemental insurance" proposals.

In Clarkston, the union's delay in presenting its wage proposal occurred near the beginning of the negotiation process. The parties had a realistic opportunity to explore possible avenues of settlement once the wage demand was made. In contrast, the union appears to have remained steadfast in its refusal to address the code enforcement issue here until after the close of mediation and certification of the dispute for interest arbitration.

Most important, the Clarkston case was decided on grounds other than those relied upon by the union here. The union was found to have committed a violation of RCW 41.56.150(1) and (4) in Clarkston, by escalating its wage demand and by changing its proposed list of "comparable jurisdictions" during the interest arbitration proceedings. In other words, the union presented a timely wage

offer, but then escalated its demands at an advanced stage in the proceedings, thus violating its duty to bargain in good faith.

In this case, the union maintains it was only required to listen to the employer's proposal and then reject it. If that argument is taken to its logical extreme, all "bargaining" would be limited to a series of proposals and rejections, without any attempt to reach agreement. The collective bargaining process cannot be reduced to such a useless exercise. While neither party is required to make concessions, good faith collective bargaining anticipates rational responses based upon studied reflection of each proposal made. The union's complete refusal to deal with the code enforcement issue here clearly shows that it did not bargain in good faith.

The union was aware that the code enforcement issue was linked to issues concerning hours of work and physical fitness, and cannot claim surprise by the bargaining stance taken by the employer. Throughout the course of negotiations and mediation, the employer advanced its position seeking elimination of code enforcement work from the bargaining unit in the context of those other matters.

As an alternative defense, the union maintains that unresolved court litigation prevented it from making a reasoned response to the employer's position on code enforcement. The Examiner is not persuaded, however, that reliance on such litigation could or should excuse a party from its bargaining obligation. In this case, the courts ordered the employer to return the disputed work to the bargaining unit. That order was in response to a previous improper attempt by the employer to unilaterally remove the work from the scope of bargaining unit work. The courts did <u>not</u> say that the employer was precluded from seeking removal of the disputed work through appropriate means.

Employer attempts to unilaterally "contract out" or "skim" bargaining unit work have been at issue in a number of cases before

the Commission dating back to at least South Kitsap School District, Decision 472 (PECB, 1978) and City of Kennewick, Decision 482-B (PECB, 1980). Employers have repeatedly been admonished to give notice to the incumbent exclusive bargaining representative prior to deciding to transfer bargaining unit work to employees outside of the existing bargaining unit. Newport School District, Decision 2153 (PECB, 1985) and Spokane County, Decision 2377 (PECB, 1986) are relatively rare among the litigated cases, in that they found employers to have given proper notice of proposed removals of bargaining unit work.[6]

An additional complication arises here, where the bargaining unit involved consists of "uniformed personnel" eligible for the interest arbitration procedure of RCW 41.56.430, et seq. In City of Seattle, Decision 1667-A (PECB, 1984), the Commission ruled that an employer subject to interest arbitration must attempt to negotiate proposed changes in wages, hours, and conditions of employment and, failing to reach agreement in negotiations or mediation, must present unresolved issues for final determination in interest arbitration proceedings. That precedent precludes the possibility of a unilateral implementation of changes upon reaching an impasse in collective bargaining, as in Pierce County, Decision 1710 (PECB, 1983).

Even if the transfer of bargaining unit work was prohibited by the parties' expiring contract, the statute appears to place a three-year limit on the length of contracts,[7] and the employer was free to propose changes in the terms of the contract. In the instant case, the employer properly sought to address the transfer of code enforcement work in collective bargaining negotiations. Applying

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[6] In Newport and Spokane County, unions faced with timely notice from employers failed or refused to respond with timely proposals on the subject, and were found to have waived their bargaining rights by inaction.

[7] See, RCW 41.56.070.

the rationale used by the Commission in the cited City of Seattle case, the employer was prepared to address the matter in bilateral negotiations and mediation, and to submit it, if necessary, to interest arbitration.

The record reveals that, while the employer followed the proper procedure to address the issue, the union failed to respond in a lawful manner. The union's bargaining stance during negotiations and mediation prevented settlement of the issue and evidenced a refusal to bargain in good faith. The union's attempts to address the code enforcement issue after initiation of interest arbitration proceedings were far too late in the process to be meaningful.

In reaching the conclusion that the union has committed an unfair labor practice in this case, the Examiner expressly rejects the employer's contention that the initiation of interest arbitration proceedings effectively ends the collective bargaining process. Following the employer's reasoning to its logical extreme, parties would not have any obligation to negotiate once issues have been certified for interest arbitration. Such a position is not supported by the statutory scheme establishing the interest arbitration process. Nothing in Chapter 41.56 RCW suspends the duty to bargain created by RCW 41.56.030(4) other than the termination of the entire collective bargaining relationship.[8] Review of RCW 41.56.430 et seq. reveals that the Legislature did not express any intention to stop collective bargaining once interest arbitration proceedings are begun.[9] In fact, some of the employer's strongest evidence against the union in this case arose

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[8] See, Vancouver School District, Decision 2575-A (PECB, 1987), where the Commission ruled that a "refusal to bargain" cause of action ceases to exist after the decertification of the union.

[9] This analysis is consistent with the decision in City of Clarkston, supra, wherein the union was found to have bargained in bad faith by escalating demands after certification of issues to interest arbitration.

in the context of the negotiations conducted after the dispute was certified for interest arbitration. The union's refusal to address the code enforcement issue at early stages of the process was compounded by the escalation of its bargaining demands which took place in negotiations after certification of issues to interest arbitration.[10] Taken together, the totality of circumstances reveals that the union has not bargained in good faith concerning the fire code enforcement issue.

The Remedy

Fashioning a proper remedy must take into account the type of violation committed and the Commission's duty to correct unfair labor practices in a remedial, rather than punitive, manner.

The employer argues that the union waived its bargaining rights concerning the code enforcement issue. A waiver of statutory collective bargaining rights can be found on the basis of the terms of a collective bargaining agreement.[11] Similarly, a party's inaction following notice of an opportunity for bargaining or its actions during the bargaining process can constitute a waiver of bargaining rights.[12] The party seeking to prove that a waiver has occurred faces a heavy burden of proof. See: Spokane County, supra. In this case, a remedy based on "waiver" would be complete-

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[10] Similarly, a union's actions at the interest arbitration proceeding were found to be determinative in City of Clarkston, supra, where the union escalated bargaining demands for wage increases and changed its list of comparable jurisdictions without prior notice to the employer.

[11] See: Snohomish County, Decision 2234 (PECB, 1985).

[12] See: City of Yakima, Decision 1125-A (PECB, 1981), where the union failed to respond in a timely manner after receiving notice that the employer was considering transfer of fire inspection work to employees in another department of the city.

ly inconsistent with the employer's theory of the case up to this point. The employer did not follow the tactic of unilaterally implementing a change and standing ready to defend against a union unfair labor practice charge on the basis of "waiver by inaction".[13] Instead, it filed its own unfair labor practice charge and kept pressing the issue through negotiations and mediation to certification of the issue for interest arbitration. The interest arbitration process is loath to find a default, and is designed to produce rational results under the criteria set forth by the Legislature in RCW 41.56.160. Interest arbitration panels are required to decide disputes upon justifying evidence, even in the absence of a party.[14] A remedy based on a "waiver" finding would tend to lead to a default judgment, and so is rejected in the interest arbitration setting of this case.

The employer requests, alternatively, that the interest arbitration panel be directed to find in favor of the employer, because of the union's actions. It is clear that the parties to the instant case engaged in some negotiations concerning the removal of fire code enforcement work from the bargaining unit, but the union's negotiating stance demonstrated that it was not sincerely interested in reaching agreement on the matter during the negotiations and

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[13] The potential risks of such a tactic should be obvious, in light of City of Seattle, Decision 1667-A, supra.

[14] See, WAC 391-55-235, which specifies:

> UNIFORMED PERSONNEL--ARBITRATION IN THE ABSENCE OF A PARTY. The neutral chairman may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a party, and the neutral chairman shall require the participating party to submit such evidence as may be required for making of the findings of fact and determining the issues. [emphasis supplied]

mediation processes. The best that can be said for the union is that its inclusion of time for fire code enforcement duties in its work schedule proposal implied a "no" response to the employer's proposal that the work be removed from the bargaining unit. The Examiner cannot intrude into the interest arbitration process to "direct a verdict" on a lawful proposal, but the unfair labor practice powers of the Commission have been invoked in the past to prevent a party from gaining acceptance of an unlawful proposal in interest arbitration. In other words, the Commission's regulation of the parties' conduct extends into the interest arbitration process, if either party acts in a manner contrary to the good faith obligations of the collective bargaining statute. Apart from its breach of the good faith obligation during the negotiations and mediation, the union has advanced altogether new proposals in interest arbitration that were never made during negotiations or dealt with by the mediator. The employer is entitled to have those "late hit" proposals by the union removed from the bargaining table, in much the same way that late proposals ordered removed from the union position in City of Clarkston, supra.[15] While the Commission cannot dictate a specific result in bargaining or, in like manner, cannot mandate a specific result in interest arbitration, an order limiting the interest arbitration proceedings to lawfully advanced proposals is completely consistent with the Commission's responsibility for protecting the collective bargaining process while the parties deal with the substance of negotiations.[16] The employer will be entitled to have its evidence justifying transfer of the code enforcement work considered by the interest arbitration panel. The union will be limited to a "no"

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[15] See, also, City of Spokane, Decision 1133 (PECB, 1981), where an employer was found to have breached its good faith obligation by a late proposal.

[16] This result is consistent with the underlying collective bargaining obligation set forth in RCW 41.56.030 (4), which specifies that neither party is required to make a concession or to agree to any particular proposal.

response, and will be precluded from presenting its alternative positions concerning compensation of bargaining unit employees for the removal of fire code enforcement work from the bargaining unit. The interest arbitration panel will then decide, based upon the employer's presentation, whether fire code enforcement work should be removed from the bargaining unit. Such a remedy corrects the problem created by the union's refusal to bargain, and still retains the integrity of the interest arbitration procedure.

FINDINGS OF FACT

1. The City of Pasco is a municipality of the state of Washington, and is a "public employer" within the meaning of RCW 41.56.030(1). The employer provides fire suppression and prevention services to local residents through the Pasco Fire Department.

2. International Association of Fire Fighters, Local 1433, a "bargaining representative" within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of a bargaining unit of Pasco Fire Department employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7).

3. The employer and the union have had a series of disputes and litigation concerning the position of "fire marshall". Since at least the mid-1970's, the employer has sought to exclude the fire marshall position from the bargaining unit.

4. In 1985, the individual holding the fire marshall position was promoted to a position outside of the bargaining unit, but continued to perform fire code enforcement duties traditionally performed by bargaining unit employees. The union grieved the removal of the bargaining unit work, and filed a unit clarification petition with the Commission.

5. In City of Pasco, Decision 2294 (PECB, 1986), the Commission rejected the employer's arguments concerning removal of the fire marshall position from the bargaining unit.

6. On May 21, 1987, an arbitration award ordered the employer to return the disputed work to the bargaining unit. The employer did not abide by the arbitration award, and the union filed suit to obtain enforcement of the arbitration award. A superior court decision favoring the union was affirmed on appeal.

7. Negotiations for a successor collective bargaining agreement started on July 11, 1989. As part of its initial contract proposal, the employer sought removal of fire code enforcement work from the bargaining unit. When that issue was raised, union spokesman Pat Henrickson stated that the union was not interested in negotiating the fire code matter.

8. The parties met in further negotiations on July 19, 1989. At that time, the union continued its resistance to negotiating the employer's proposed removal of fire code enforcement work from the scope of bargaining unit work.

9. The parties negotiated other contract items, but the union's refusal to negotiate the transfer of fire code enforcement affected at least two other areas of concern: (1) The union's proposed "structured duty day"; and (2) the union's proposed physical fitness article.

10. The parties met again on August 1, 1989. The union continued to avoid negotiations on the fire code enforcement issue. The employer's spokesman, Greg Rubstello, warned the union bargaining team that the employer was considering filing an unfair labor practice complaint if the union continued its

refusal to negotiate removal of fire code enforcement work. The union did not alter its position on the matter.

11. The employer filed a complaint charging unfair labor practices against the union on August 10, 1989.

12. At a negotiations session conducted on August 15, 1989, the union continued to resist negotiation on the fire code enforcement issue.

13. The parties met again on September 8, 1989. Henrickson explained that the union did not want to negotiate the fire code issue while pending litigation existed. The union had filed a suit seeking enforcement of the earlier court rulings. The court had not yet ruled in the enforcement matter on September 8, 1989.

14. On September 26, 1989, the Superior Court ruled in favor of the employer on the enforcement matter.

15. The parties continued negotiations on September 29, 1989. The union's negotiating team informed the employer that it would "listen" to employer proposals regarding removal of fire code enforcement work from the bargaining unit, and that it might prepare a response to be presented at the next meeting. The employer stated its rationale for its proposal. The union made no substantive response.

16. The parties met on October 4, 1989. The union made a "package proposal" covering a number of issues, including fire code enforcement. The union proposed that the fire code enforcement issue be set aside to be the subject of a contract reopener in 1991. The employer did not accept the union's offer.

17. The parties entered mediation under RCW 41.56.440. At a mediation session held January 2, 1990, the employer offered to increase its contribution toward medical insurance premiums and to accept the union's proposed physical fitness article in exchange for removing fire code enforcement work. The union did not accept the offer. The parties were unable to reach an agreement in mediation.

18. Interest arbitration procedures were initiated in January, 1990. The employer's proposal to transfer fire code enforcement work was certified as an issue for interest arbitration.

19. During February and March, 1990, the parties met in an attempt to reach settlement on remaining issues. During the course of these meetings, the union proposed, for the first time, that the employer could remove fire code enforcement work in exchange for a cash payment to each bargaining unit member of $2500. Later, the union proposed, also for the first time, that the disputed work could be removed if the employer agreed to a supplemental disability insurance plan to enhance LEOFF II coverage to the level of LEOFF I. The employer declined both offers.

20. Interest arbitration proceedings were conducted in August, 1990, before Arbitrator Thomas Levak. The union persisted in advancing the proposals raised for the first time after the onset of interest arbitration.

CONCLUSIONS OF LAW

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

2. By events described in paragraphs 7 through 13 and 15 through 17 of the foregoing findings of fact, International Association of Fire Fighters, Local 1433, has failed to bargain in good faith on the issue of removing fire code enforcement work from the bargaining unit, and therefore committed an unfair labor practice within the meaning of RCW 41.56.150(4).

3. By events described in paragraph 19 of the foregoing findings of fact, International Association of Fire Fighters, Local 1433, has made an untimely escalation of its bargaining demands and has failed to bargain in good faith on the issue of removing fire code enforcement work from the bargaining unit, thereby committing an unfair labor practice within the meaning of RCW 41.56.150(4).

ORDER

1. Pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that International Association of Fire Fighters, Local 1433, its officers and agents shall immediately:

   a. Cease and desist from:

      (1) Refusing to bargain collectively in good faith with the City of Pasco concerning the removal of fire code enforcement work from the bargaining unit.

      (2) Advancing proposals in interest arbitration which were not advanced in good faith and a timely manner during the negotiations and mediation conducted by the parties.

b. Take the following affirmative actions to remedy the unfair labor practice and effectuate the purposes of Chapter 41.56 RCW:

(1) Upon request, bargain in good faith with the City of Pasco concerning the removal of fire code enforcement work from the bargaining unit.

(2) Withdraw the union's proposals concerning a cash payment and/or a benefit supplement for LEOFF II employees from the proceedings before Arbitrator Thomas Levak, and confine its position on the fire code enforcement issue in the interest arbitration proceedings to responses to the evidence put forth by the employer.

(3) Post, in conspicuous places on the employer's premises where notices to employees are customarily posted, copies of the notice attached hereto. Such notice shall, after being duly signed by an authorized representative of International Association of Fire Fighters, Local 1433, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the respondent to ensure that said notices are not removed, altered, defaced, or covered by other material.

(4) Notify the complainant, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the complainant with a signed copy of the notice required by this Order.

(5) Notify the Executive Director of the Public Employment Relations Commission, in writing, within

twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time, provide the Executive Director with a signed copy of the notice required by this Order.

DATED at Olympia, Washington, this 6th day of December, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Kenneth J. Latsch

KENNETH J. LATSCH, 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

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT refuse to bargain in good faith with the City of Pasco concerning the removal of fire code enforcement work from the bargaining unit.

WE WILL NOT advance arguments concerning the retention of fire code enforcement work in interest arbitration proceedings before Arbitrator Thomas Levak.

WE WILL, upon request, bargain in good faith with the City of Pasco concerning the proposed removal of fire code enforcement work from the bargaining unit.

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1433

By: _____
Authorized Representative

Dated: _____

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

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by 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, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.