STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1433,	)	CASE 8577-U-90-1858
Complainant,	)	DECISION 3736 - PECB
vs.	)	
CITY OF PASCO,	)	ORDER OF DISMISSAL
Respondent.	)	

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

Greg A. Rubstello, City Attorney, appeared on behalf of the employer.

On May 3, 1990, International Association of Fire Fighters, Local 1433, filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union alleged that the City of Pasco had made collective bargaining proposals on certain non-mandatory subjects, namely management rights and prevailing rights, and that the employer was continuing to insist upon its proposals beyond impasse and in interest arbitration. The union requested that the disputed employer proposals be removed from the issues certified by the Commission for interest arbitration.

The employer filed a motion for summary judgment on May 21, 1990. Citing King County Fire District 39, Decision 2328 (PECB, 1985), the employer argued that the union's complaint failed to allege that any claimed defect in the employer's proposals had been called to the attention of the employer during the negotiations and mediation which preceded the certification of issues for interest arbitration.

The complaint was reviewed by the Executive Director for the purpose of making a preliminary ruling pursuant to WAC 391-45-110. In a letter dated June 22, 1990, the union was advised that its claims could not be properly evaluated without: (1) a more detailed statement of facts, in accordance with WAC 391-45-050; and (2) copies of the employer's proposals at issue.

On June 29, 1990, the union filed an amended complaint and its own motion for summary judgment. The union supplied copies of the employer's proposals on management rights and prevailing rights.

In its motion for summary judgment, the union took the position that King County Fire District 39, supra, should not be applied in the instant matter, citing the following reasons: (1) it would lead to an inequitable result; (2) it would lead to a result in conflict with the intent behind RCW 41.56.430 et seq.;[1] and (3) it would conflict with the principles enunciated in Klauder v. San Juan County Deputy Sheriffs' Guild, 107 Wn.2d 338 (1986).[2] The union argued that, as the employer's negotiator was an "experienced labor attorney", the employer "undoubtedly knew that its proposals concerned non-mandatory subjects ..." The union claimed that allowing the employer to pursue non-mandatory subjects before an

---

[1] RCW 41.56.430 and following sections provide for the resolution of bargaining disputes between employers and their "uniformed personnel" by submission to interest arbitration.

[2] That case involved perpetuation of an "interest arbitration" process agreed to by parties not subject to RCW 41.56.430 et seq. After agreeing to include interest arbitration in the contract in 1980 and using it in 1981, the employer sought its removal from the contract in 1982. An interest arbitrator continued the provision in existence and the employer sued for judicial relief. Citing, with approval, City of Tukwila, Decision 1975 (PECB, 1985), the Supreme Court held that interest arbitration was not a mandatory subject of collective bargaining under Chapter 41.56 RCW, and that the arbitrator's decision perpetuating that procedure in the contract was in violation of state labor policy.

interest arbitrator would conflict with the intent of the interest arbitration statute and would allow the employer to circumvent that statute's intent on a "technicality". The union also argued that allowing the employer to proceed to interest arbitration with these proposals would conflict with the principle, enunciated in Klauder, supra, that "labor policy favors the exclusion of non-mandatory subjects from collective bargaining agreements or interest arbitration proceedings unless both parties have agreed to the inclusion of that subject."

On July 5, 1990, the employer filed a responsive memorandum and a supplemental affidavit of City Attorney Greg A. Rubstello. The affidavit stated that both the union and the employer submitted management rights and prevailing rights proposals during the negotiations, and copies of those proposals were attached. The affidavit also stated:

> Both parties bargained to impasse on their proposals and proceeded through mediation without objection to the other party's proposal as including permissive subjects, illegal subjects or otherwise constituting a [unfair labor practice].

The employer's July 5, 1990 memorandum indicated that the union still had not pointed out the aspects of the employer's proposals which it claimed were non-mandatory subjects. The employer argued that, by failing to question the employer's proposals as containing permissive subjects, the union had implicitly communicated to the employer that those subjects would be determined by an interest arbitrator along with other unresolved issues. The employer urged that the union should be held to the requirements of King County Fire District 39, supra.

On August 13, 14, 15 and 17, 1990, the parties presented their arguments to an interest arbitration panel headed by Neutral Chairman Thomas F. Levak. The "management rights" and "prevailing

rights" subjects had not been stricken from the list of issues for interest arbitration, and they were included in the presentations made by the parties to the interest arbitration panel.

On October 4, 1990, Arbitrator Levak issued an interest arbitration award which included, among others, the subjects at issue in this unfair labor practice complaint.

The above-captioned matter was again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. A December 14, 1990 letter informed the parties that the union's amended complaint stated a cause of action. The case was assigned to an examiner for further proceedings. That letter did not discuss the employer's arguments concerning the arguments based on King County Fire District 39, supra, holding.

The Examiner assigned to conduct further proceedings in the matter detected the omission of discussion concerning the applicability of King County Fire District 39, supra, and asked the Executive Director for clarification.

Commission precedent precluding the submission of non-mandatory subjects to interest arbitration dates back to at least City of Wenatchee, Decision 780 (PECB, 1980), where the employer objected to the submission of a "minimum manning" proposal to interest arbitration. King County Fire District 39, supra, dealt with the problem of untimely framing of such issues, and adopted a policy for processing "scope of bargaining" disputes involving parties entitled to interest arbitration, as follows:

> For the future, it will be the policy of this office, in the absence of an allegation that the claimed "scope" defect was in each case called to the attention of the proponent in collective bargaining and in mediation, to dismiss unfair labor practice charges alleging

> unlawful pursuit of permissive or illegal subjects in interest arbitration.

Of its nature, a "permissive" subject may be something that both parties desire to bargain. If one party does object, early notice gives the proponent sufficient time to consider those objections and to modify its bargaining positions accordingly.

On January 9, 1991, the Executive Director wrote to the parties, noting that the letter assigning the Examiner had not dealt with the question of compliance with the "notice" policy of King County Fire District 39. It was observed that neither the original or amended complaint alleged that the employer had been notified of a claimed "scope" defect during negotiations or mediation. The union was advised that the complaint would be dismissed in the absence of a response, and was given 14 days to respond. Nothing further has been heard or received from the union.

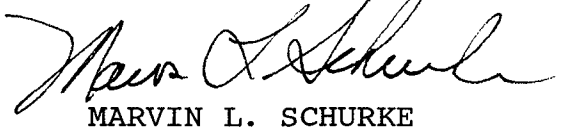
NOW THEREFORE, IT IS

ORDERED

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 18th day of March, 1991.

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 391-45-110.