STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 469,	)	CASE 9230-U-91-2049
Complainant,	)	DECISION 3974 - PECB
vs.	)	
CITY OF YAKIMA,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Webster, Mrak & Blumberg, by James H. Webster and Lynn D. Weir, Attorneys at Law, appeared on behalf of the complainant.

Menke & Jackson, by Mark A. Kunkler, Attorney at Law, appeared on behalf of the respondent.

On June 26, 1991, International Association of Fire Fighters, Local 469 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Yakima (employer) had violated RCW 41.56.140(4) and (1), by its unilateral implementation of changes to civil service rules.

At the time this complaint was filed, the Commission had already ruled in City of Yakima, Decisions 3503-A, 3504-A (PECB, 1990) that matters delegated to the civil service commission operated by the City of Yakima do not qualify for exemption from collective bargaining under RCW 41.56.100, and the parties were in litigation before the Supreme Court of the State of Washington on multiple related appeals. The parties were notified on August 19, 1991 that the above-captioned matter would be held in abeyance pending a decision from the Supreme Court.

The Supreme Court issued its decision on the several appeals on November 7, 1991. City of Yakima v. International Association of Fire Fighters, 117 Wn.2d 655 (1991) affirmed the decision issued by the Commission in City of Yakima, Decisions 3503-A, 3504-A, supra. Among the issues decided there was that the employer's substitution of a "rule of 3" for the "rule of 1" formerly contained in its civil service rules was an unlawful unilateral change.

A notice of hearing was issued on November 13, 1991, setting December 18, 1991 as the date for hearing in this matter, and calling for the employer to file its answer to the complaint.[1]

The answer filed by the employer in this matter on December 16, 1991, did not deny any of the facts alleged in the complaint. The employer represented in its answer that its civil service commission had acted, on November 11, 1991, to reinstate the rules and regulations as they existed prior to January 18, 1989, that it would comply with the previous order of the Commission as affirmed by the Supreme Court, and that the above-captioned case was moot.

In a letter directed to them on December 19, 1991, the parties were advised that the hearing was canceled, and the parties were invited to state their positions by January 9, 1992 on "summary judgment" and "remedies" in this case.

The union's response, filed on January 9, 1992, details the nature of the civil service rules change disputed in this case, as follows:

> The Union's complaint in this case challenged the amendment adopted on or about May 22, 1991, and retroactively effective to April 1, 1991, to [the rules of the civil service

---

1 An amended notice of hearing issued on November 18, 1991 changed the hearing date, but made no change of the answer date.

> commission] by adding a new Section 6. That section modified the "Rule of 3," which was adopted on January 18, 1989 ... The purpose of the modification at issue in this case was to give the City the option of appointing from a promotional register of less than three names or of demanding [the conduct of] "open" testing to produce a list of three names. The rule was specifically made applicable to "the current Fire Investigator register which contains only 2 names.

The union requested that the employer be ordered to cease and desist from unlawful conduct, that it be required to post a notice to employees, that the status quo ante be restored, that the employer be ordered to bargain with the union, upon request, and that the employer reimburse the union for its attorney fees and litigation costs.

The employer's response, filed on January 10, 1992, reiterated the claims that the challenged civil service rule had been withdrawn, that it will engage in good faith bargaining on "civil service" matters, and that this case is moot. The employer did not otherwise oppose entry of a summary judgment. It did argue against the imposition of any extraordinary remedies.

The parties filed additional letters on January 14 and 22, 1992,[2] but they relate only to the appropriate remedy in this case.

DISCUSSION

The employer has not denied that it implemented a unilateral change of civil service rules affecting wages, hours or working conditions of bargaining unit employees. It has committed an unfair labor

[2] The reference lines of those letters cite Case 8878-U-90-1949, but their texts clearly relate to Case 9230-U-91-2049.

practice. The case is not rendered "moot", and the union's right to a remedial order correcting that violation of the statute is not diminished, by the employer's new-found willingness to bargain on matters delegated to the civil service commission.

While a remedial order containing the "conventional" remedies ordered for such situations is warranted, the extraordinary remedy requested by the union has not been justified in this case. The Commission has, and has exercised, authority to award attorney fees to complainants in unfair labor practice cases, where frivolous defenses are asserted or where it is necessary to make effective the Commission's order. This is not such a case. Although the "civil service" issue decided in City of Yakima, Decisions 3503-A, 3504-A, supra, was not a case of first impression among Examiners on the Commission's staff, it was a case of first impression before the Commission itself and before the Supreme Court. The change at issue in this case was made while the related litigation was pending before the Supreme Court, and added no new dimension to that legal debate. Upon receiving a contrary ruling from the Supreme Court, the employer promptly announced its abandonment of its previous resistance to bargaining civil service matters. It thus has not prolonged the question of its liability in this case, so as to warrant an extraordinary remedy.

The fact that the parties have framed a potential compliance issue does not constitute a basis for delaying the issuance of a summary judgment on this case. The employer's letter filed on January 10, 1992 represents:

> It is our understanding that no bargaining unit member had been adversely affected by the amendment or implementation of the rule change.

The union's letter filed on January 9, 1992 had claimed that there was an adversely affected employee, as follows:

> We understand that, although the City has for the most part promoted those individuals who would have been entitled to promotion under the prior rules, the City has refused to promote Tony Sloan, who was one of the two employees on the Fire Investigator register and the one whose score was the highest. Under the civil service rules as they existed prior to January 18, 1989, the City was required to promote Mr. Sloan to the fire investigator position.

Accordingly, the union requested a hearing concerning the situation of Mr. Sloan.

The "conventional" remedy in such a situation is to require the employer to reconstruct the situation as if all transactions had been lawful. The employer will need to review any promotion(s) made to the Fire Inspector job during the April to June, 1991 time frame at issue in this case. If the employer actually implemented the unlawfully adopted rule, it will be required to remove the employee(s) who benefitted from the unlawfully adopted rule, and to promote the employee(s) who should have had the promotion under the previous rule. On the other hand, if the employer never made any promotions under the unlawfully adopted rule, then there will be no basis for requiring the promotion of any particular individual as a result of this case. The employer will be required to notify both the union and the Commission of the steps it has taken to comply with the remedial order issued in this case. If a dispute persists, a hearing may be necessary at the "compliance" stage of the proceedings.

FINDINGS OF FACT

1. The City of Yakima is a municipality of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(2).

2. International Association of Fire Fighters, Local 469, a bargaining representative within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of non-supervisory fire fighting personnel of the City of Yakima who are "uniformed personnel" within the meaning of RCW 41.56-.030(7).

3. On June 26, 1991, Local 469 filed certain unfair labor practice allegations against the City of Yakima.

4. By reason of the failure of the City of Yakima to file an answer which denies the facts alleged in the complaint charging unfair labor practices filed against it on June 26, 1991, the following facts are deemed admitted as true pursuant to WAC 391-45-210:

> On May 22, 1991, at the request of the Employer and over the objections of the Union, the Yakima Civil Service Commission approved and implemented retro-actively to April 1, 1991, unilateral changes to the Civil Service Rules governing certification of Fire Department promotional lists, as set forth in attachment "A". These changes affect promotions to positions within the bargaining unit and therefore the wages, hours and working conditions of bargain-ing unit employees.
>
> Attachment "A"
>
> Amendment to Rule VII, of the Specific Rules and Regulations of the Civil Service Commission for Fire Employees of the City of Yakima by adding a new Section 6.
>
> "Section 6. Certification of Promotion.
>
> The provision of Rule XI, Subsection B of the General Rules and Regulations of the Civil Service

Commission for Police and Fire of the City of Yakima shall not apply to Fire Department promotional appointments. Effective April 1, 1991, and inclusive of the Fire Investigator register, when the number of names certified on a promotion register is less than three, the appointing authority may fill any vacancy from the list certified, or, return the list and require certification of three names. In the later event, the Secretary Chief Examiner shall test and certify names from an open competition register. Such testing shall be open to those with equivalent experience, in the opinion of the Secretary Chief Examiner, to meet the qualifications prescribed by Rule VII of the Specific Rules and Regulations of the Civil Service Commission for Fire Employees of the City of Yakima. New scores shall be integrated onto the register.

The Secretary Chief Examiner shall give written notice prior to any new test to those persons listed on the original register allowing them the option to retest or be integrated on a new register according to score. Failure to make an election shall result in such names being integrated on the register according to score. The new register shall be in effect for one year after its creation.

5. No contested issues of fact have been raised in this proceeding as to the existence of an unfair labor practice violation.

CONCLUSIONS OF LAW

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

2. The promotion of employees within the bargaining unit is found, in the absence of any contest or evidence to the contrary, to be a mandatory subject of collective bargaining under RCW 41.56.030(4).

3. By unilaterally changing its civil service rules pertaining to the promotion of employees within the bargaining unit, the City of Yakima has committed unfair labor practices under RCW 41.56.140(4) and (1).

ORDER

The City of Yakima, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

    a. Refusing to bargain collectively, in good faith, with International Association of Fire Fighters, Local 469, concerning the wages, hours or working conditions of employees represented by that organization.

    b. In any other manner, interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

    a. Revoke the change of civil service rules adopted on or about May 22, 1991, retroactive to April 1, 1991, concerning promotions within the bargaining unit represented by International Association of Fire Fighters, Local 469.

b. Revoke each and every promotion made under authority of the civil service rule change adopted on May 22, 1991.

c. For each and every promotion revoked under the preceding paragraph of this order, identify the employee(s) who would have been entitled to promotion to any such position under the latest rules lawfully in effect prior to May 22, 1991, and promote each and every such employee to the position they would have been entitled to hold but for the unlawful conduct of the employer.

d. Make each and every employee promoted under the preceding paragraph of this order whole, by payment to them of the difference in pay and benefits between what they would have received in the promotional position and what pay and benefits they actually received, for the period from the date they should have been promoted to the effective date of the promotion implemented under this order.

e. Upon request, bargain collectively in good faith with International Association of Fire Fighters, Local 469, concerning the wages, hours and working conditions of employees represented by that union, including promotions within the bargaining unit represented by the union.

f. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

g. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

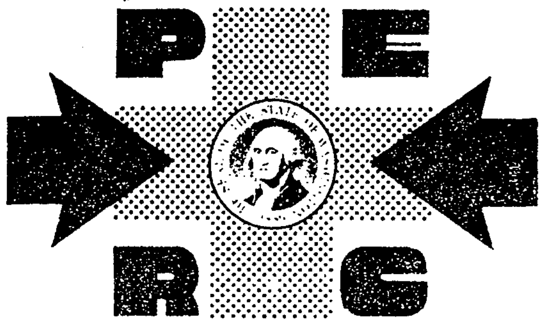
h. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Dated at Olympia, Washington, on the 23rd day of January, 1992.

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING AND HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT refuse to bargain in good faith with International Association of Fire Fighters, Local 469, concerning the wages, hours or working conditions of employees represented by that organization.

WE WILL NOT, in any other manner, interfere with, restrain or coerce our employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

WE WILL revoke the change of civil service rules adopted on or about May 22, 1991, concerning promotions within the bargaining unit represented by IAFF Local 469, and will revoke each and every promotion made under authority of that civil service rule change.

WE WILL identify any employee(s) who would have been entitled to promotion under the rules lawfully in effect prior to May 22, 1991, and will promote each and every such employee to the position they would have been entitled to hold but for our unlawful conduct.

WE WILL pay back pay to each and every employee promoted under the preceding paragraph, for the difference in pay and benefits between what they would have received in the promotional position and what pay and benefits they actually received, for the period from the date they should have been promoted to the effective date of the promotion implemented under this order.

WE WILL, upon request, bargain collectively in good faith with IAFF Local 469, concerning the wages, hours and working conditions of employees represented by that union, including promotions within the bargaining unit represented by the union.

DATED: ____________________

CITY OF YAKIMA

BY: ______________________________
Authorized Representative

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. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Bldg., P.O. Box 40919, Olympia, WA 98504-0919. Telephone: (206) 753-3444.