

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                              |   |                      |
|------------------------------|---|----------------------|
| INTERNATIONAL ASSOCIATION OF | ) |                      |
| FIRE FIGHTERS, LOCAL 469,    | ) | CASE 9472-U-91-2110  |
|                              | ) |                      |
| Complainant,                 | ) | DECISION 3975 - PECB |
|                              | ) |                      |
| vs.                          | ) |                      |
|                              | ) |                      |
| CITY OF YAKIMA,              | ) | FINDINGS OF FACT,    |
|                              | ) | CONCLUSIONS OF LAW   |
| Respondent.                  | ) | AND ORDER            |
|                              | ) |                      |
|                              | ) |                      |

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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.

The allegations at issue in this proceeding were originally filed with the Public Employment Relations Commission on February 21, 1990, as part of an amended complaint in Case 7800-U-89-1657. The allegations concern the refusal of the employer to negotiate with the union on "standards for discipline of employees" and "promotion to positions within the bargaining unit" in connection with collective bargaining negotiations between the parties for a collective bargaining agreement to replace a contract which expired on December 31, 1989.<sup>1</sup>

In May of 1990, the Superior Court for Yakima County asserted jurisdiction on the matters raised in the February 21, 1990 amended complaint in Case 7800-U-89-1657, based on a lawsuit filed by the

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A vague allegation of refusal to bargain on "other conditions of employment" was, and remains, insufficient to state a cause of action under WAC 391-45-110.

employer.<sup>2</sup> The Commission thereafter proceeded to decide the issues raised in the original complaint in Case 7800-U-89-1657, but it suspended the processing of the issues raised in the amended complaint. City of Yakima, Decision 3503-A, 3504-A (PECB, 1990). The union made no effort to broaden or refine the issues of the amended complaint before the Commission, however.<sup>3</sup>

The Supreme Court of the State of Washington issued its decision on several consolidated appeals on November 7, 1991,<sup>4</sup> affirming the decision issued by the Commission on the original issues in Case 7800-U-89-1657, and reversing the assertion of jurisdiction by the

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<sup>2</sup> The same court had previously declined to assert jurisdiction on the "unilateral change of civil service rules" issues raised in Case 7800-U-89-1657, but distinguished the issues of the present case based on the expiration of the parties' collective bargaining agreement.

<sup>3</sup> With the benefit of the parties' full proposals and other documents before them, the Examiner and Commission had described the issues of the contract negotiations as follows:

During the course of negotiations for a new collective bargaining agreement with the IAFF, the employer refused to bargain on certain union proposals concerning:

1. A requirement that any rule, regulation, procedure or policy affecting wages, hours or working conditions be negotiated with the union (or awarded by an interest arbitration panel) before implementation;
2. Imposition of discipline only for just cause;
3. Promotional standards addressing examination procedures, experience requirements and selection criteria; and
4. Expansion of the contractual grievance procedure to include disputes involving conditions of employment, as well as disputes involving the interpretation of the labor agreement.

City of Yakima, Decision 3503-A at page 5.

<sup>4</sup> City of Yakima v. International Association of Fire Fighters, 117 Wn.2d 655 (1991).

Superior Court for Yakima County on the issues of the amended complaint filed on February 21, 1990. The issues of that amended complaint were remanded to the Public Employment Relations Commission for further proceedings.

A preliminary ruling letter issued on November 13, 1991 advised the parties that the issues of the amended complaint filed on February 21, 1990 had been docketed separately as the above-captioned case, and that the Executive Director had assigned himself as Examiner. A notice of hearing was issued on the same day, setting December 18, 1991 as the date for hearing in the matter, and setting December 1, 1991 as the date for the employer to file its answer.<sup>5</sup>

The employer did not file an answer.<sup>6</sup> 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".

The union's response, filed on January 9, 1992, requests 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,<sup>7</sup> and that the employer be ordered to bargain with the union, upon request, for a successor contract. There was no request for any extraordinary remedies.

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<sup>5</sup> An amended notice of hearing issued on November 18, 1991 changed the hearing date, but made no change of the answer date.

<sup>6</sup> The employer did file an answer to the complaint in Case 9230-U-91-2049, which was set to be heard on the same date as the above-captioned matter. That answer did not deny any of the alleged facts, however.

<sup>7</sup> This particular request was curious. These allegations arose out of bargaining for a successor contract, rather than from a unilateral change.

The employer's response, filed on January 10, 1992, does not oppose entry of a summary judgment. It states that the City of Yakima will engage in good faith bargaining on "civil service" issues, and recommends entry of bargaining order with appropriate compliance notice, but argues against any extraordinary remedies. Another response filed by the employer on January 14, 1992 alleges, however, that the union has improperly sought to expand the scope of the proceedings, and it attaches copies of "Discharge and Discipline" and "Promotional Standards" issues which it alleges were the only matters at issue in this case.<sup>8</sup>

In fashioning a remedy here, notice is taken of the docket records of the Commission for Case 8442-M-90-3280 (a mediation case opened in February of 1990 for negotiations on a contract to replace the contract which expired on December 31, 1989), and for Case 8840-I-90-198 (an interest arbitration proceeding initiated under RCW 41.56.450 concerning the same negotiations). Both cases remain pending in the absence of a contractual agreement between the parties.

#### 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).

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<sup>8</sup> The employer contended that other issues have been litigated by the parties in another proceeding currently pending before an Examiner.

3. On February 21, 1990, 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, when required to do so, to the unfair labor practice allegations filed against it on February 21, 1990, the following facts are deemed admitted as true pursuant to WAC 391-45-210:

The employer has refused to negotiate about standards for discipline of employees, promotion to positions within the bargaining unit and other conditions of employment in the course of the parties' negotiations for a new labor agreement. In refusing to bargain collectively on these issues, the Employer asserts that it is immune from any obligation to do so based on the Civil Service proviso of RCW 41.56.100.

5. No affirmative defenses or other contested issues of fact have been raised in this proceeding.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter, pursuant to Chapter 41.56 RCW.
2. The proposals advanced by the union in collective bargaining in 1990 concerning discipline of bargaining unit employees and promotions within the bargaining unit are found, in the absence of any evidence or argument to the contrary, to be matters of wages, hours or working conditions, so as to be considered mandatory subjects of collective bargaining under RCW 41.56.030(4).

3. By refusing to engage in collective bargaining concerning matters delegated to its civil service commission, the City of Yakima has committed unfair labor practices under RCW 41.56-.140(4) and (1).

ORDER

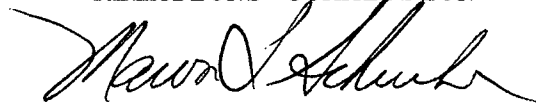
The City of Yakima, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

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, including "standards for discipline" and "promotions within the bargaining unit".
  - 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. 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 matters that have been or may be delegated to the civil service commission operated by the City of Yakima.

- b. 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.
- c. 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.
- d. 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.

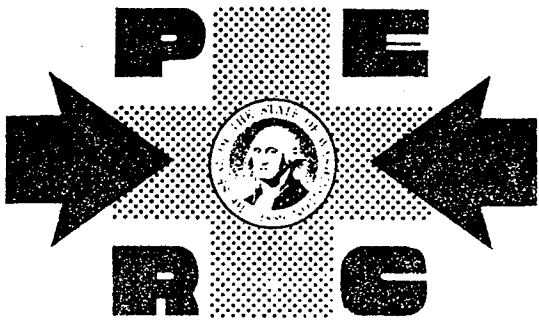
Dated at Olympia, Washington, on the 23rd day of January, 1992.

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, including "standards of discipline" and "promotion within the bargaining unit".

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, 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 matters that have been or may be delegated to the civil service commission operated by the City of Yakima.

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.