STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Complainant, vs. PUBLIC SAFETY EMPLOYEES, LOCAL 519, Respondent.	CASES 9447-U-91-2104 and 9448-U-91-2105 DECISION 4236 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Norm Maleng, Prosecuting Attorney, by Maureen Madion, Deputy Prosecuting Attorney, appeared on behalf of the complainant employer.

Jared C. Karstetter, Attorney at Law, appeared on behalf of the respondent union.

On October 30, 1991, King County filed complaints charging unfair labor practices with the Public Employment Relations Commission, alleging that Public Safety Employees, Local 519, had committed certain unfair labor practices within the meaning of RCW 41.56.140. The complaint docketed as Case 9447-U-91-2104 alleged that the union had engaged in regressive bargaining tactics. The complaint docketed as Case 9448-U-91-2105 alleged that the union unlawfully insisted to impasse on a permissive subject of bargaining. The matters were consolidated for processing. A hearing was conducted on June 18 and July 29, 1992, before Examiner Kenneth J. Latsch. The parties submitted post-hearing briefs on September 17, 1992.

BACKGROUND

King County has had collective bargaining relationships with Public Safety Employees, Local 519 for a number of years. At one time,

the union represented a bargaining unit of the employer's law enforcement personnel (police officers, sergeants and lieutenants), from which law enforcement personnel in the ranks of captain, major and chief were excluded. The salary rates of the employer's unrepresented personnel are set by county ordinance. Thus, the salaries of law enforcement personnel in the ranks of captain and major were set by ordinance, rather than by any collective bargaining process or agreement.

The parties' last collective bargaining agreement covering the law enforcement bargaining unit was to expire on December 31, 1990. Events leading to the instant unfair labor practice complaints arose in the context of collective bargaining negotiations for a successor collective bargaining agreement.

On May 15, 1990, Business Manager Dustin Frederick sent a letter to King County Personnel Director James Yearby, asking that negotiations begin for a new contract. Yearby sent a letter to Frederick on June 12, 1990, setting several meeting dates for negotiations. At the same time, Yearby informed Frederick that Labor Relations Specialist Nancy Carlson would represent the employer in the impending contract negotiations.

The parties established ground rules for negotiations, dealt with matters such as bargaining team size, scheduling of negotiating meetings and designation of chief spokespersons. As to the submission of new proposals, the ground rules provided:

> It is agreed that there shall be no new proposals presented by either party after the conclusion of the fourth bargaining session unless such proposals are germane to subject matter previously presented.

The record does not indicate that the parties agreed to any "off the record" discussions as part of the negotiation process. The

parties did hold approximately eight negotiation sessions, but were unable to reach settlement on a successor collective bargaining agreement.

On September 27, 1990, the union filed a request for mediation with the Commission. A mediator was assigned from the Commission staff, and a meeting was set. The parties' positions as of that time are readily ascertainable. The union had accompanied its mediation request with its view of the parties' respective positions on unresolved issues. In the area of wages for 1991, the union stated:

COUNTY	ISSUE	UNION
4.5% plus amount necessary to equal Seattle Police rates.		Essentially the same with some adjustments for Sergeants & Lieutenants

Carlson calculated the total cost of the employer's wage offer to be 4.86%, including longevity and educational incentive pay.

Shortly before mediation was to have begun, an independent organization known as the King County Police Officers' Guild filed a representation petition with the Commission, seeking to replace Local 519 as the exclusive bargaining representative of the employer's police officers and sergeants. Activity at the bargaining table was thereupon suspended.

On January 17, 1991, the King County Council enacted Ordinance 9775, setting forth certain salary and wage increases. That ordinance stated, in pertinent part:

> Section 4. Employees of the executive branch, non-elected employees of the department of assessments, and employees of the Seattle-King County department of public health; **except** employees included in collective bargaining units and **employees holding the rank of Captain and Major in the department of public**

> **safety**, those holding the rank of Lieutenant and Captain in the department of adult detention, those defined as first level supervisors in the department of public works, and the airport security chief shall have their salaries increased by 5.49% effective January 1, 1991. **Captains and Majors in the department of public safety shall have their salaries increased by the percentage increase accorded Lieutenants in the Police Bargaining Unit for 1991.** ...

There was no contract between the employer and Local 519 at the time that ordinance was enacted.

The representation proceedings were concluded by a certification issued on March 7, 1991. King County, Decision 3672-A (PECB, 1991). As a result, the King County Police Officers' Guild became the representative of the police officers and sergeants, and Local 519 continued to represent only the police lieutenants. At about the same time, Carlson left employment with King County, and Larry Miner was named as the employer's representative in the negotiations.

On March 21, 1991, Frederick sent a letter to Miner, asking that collective bargaining resume regarding the lieutenants. Frederick expressed the union's view of negotiations in the following terms:

> ... Since the Lieutenants are within the former bargaining unit and we commenced negotiations pursuant to RCW 41.56, it is the position of Local 519 that we are in the mediation process with this bargaining unit and that **our respective positions are as they were when mediation temporarily ceased** for the decertification vote. ...

[Emphasis by **bold** supplied.]

The March 21, 1991 letter was not identified as a "what if" or "off the record" offer by the union. The employer assumed that the

union's bargaining position remained at 4.86%, including longevity and educational incentive, as previously computed by Carlson.

On May 6, 1991, Frederick submitted a new proposal to resolve the remaining contract issues. The letter detailed the following:

> Wages: Parity with Seattle Police Department wages for all classifications covered under the bargaining unit. Said parity will not include Social Security contribution on the part of King County, nor the loss of disposable income on the part of bargaining unit members. Other forms of compensation would be calculated and agreed upon such that the total compensation package for King County classification would be identical to the total compensation for Seattle Police classifications.

The union also requested "executive compensatory time" for the bargaining unit. The union had not made such a proposal before the May 6, 1991 letter. The proposal specified:

> Provide eighty (80) hours per year of Executive comp time for all classifications. Said comp time may be redeemed for cash payment at the end of each calendar year if not used.

The letter further detailed the union's assertion that the City of Seattle may not be "comparable" within the meaning of the comparability factors stated in RCW 41.56.440, et seq., and that the union believed that certain California jurisdictions may be more appropriate as comparables.[1]

Miner reviewed the union's wage parity proposal, and calculated the wage component to equal approximately five percent (5%). Miner did further calculations, and determined that the executive compensato-

---

[1] The letter stated that Alameda County, Contra Costa County, Los Angeles County, Orange County, and Santa Clara County, California, were proper comparables.

ry time provision amounted to an additional five percent (5%) increase in the union's proposal. The union did not couch the May 6, 1991 proposal as an "off-the-record" proposal, or as a "what if" offer. Frederick testified, however, that he would have titled the May 6, 1991 proposal as a "contract proposal" if it was to have been a formal proposal. There is no evidence that Frederick ever spoke with Miner about any special significance that should be attached to the form in which proposals from the union appeared.

On June 3, 1991, the employer voluntarily recognized the union as the exclusive bargaining representative for its law enforcement personnel holding the rank of captain. The captains were made part of the existing bargaining unit of lieutenants. The record indicates that the union was particularly concerned with three issues related to the captains: Executive compensatory time; acting rank pay; and compensation for the command duty program.

On July 12, 1991, the union demanded extension of the benefits provided by the parties' expired contract to the captains. The employer refused, and a grievance on the issue was submitted to arbitration.[2]

On July 26, 1991, Frederick submitted a "final contract proposal" on behalf of the union. At that point, the union was proposing a 20-month contract, covering the period from January 1, 1991 through August 31, 1992. Frederick explained the union's position in the following terms:

> This compromise proposal is made in an effort to settle all issues in this contract and should not be construed as the Union's posi-

---

[2] On April 26, 1992, Arbitrator George Lehleitner found that the employer had violated the collective bargaining agreement by not extending contractual benefits to captains, and ordered the employer to take corrective action.

> tion if binding arbitration is necessary to reach final agreement. If binding arbitration is requested, this proposal will not represent the Union's position in the arbitration process.

In the area of wages, the union's July 26, 1991 proposal called for the following:

> 1991: For calendar year 1991 - establish parity with the Seattle Police Department classifications of Lieutenant and Captain. Said parity will be based on total compensation but will not include the Social Security contribution paid by King County. Likewise, it will not include the loss of disposable income on the part of bargaining unit members. Other forms of compensation will be calculated and agreed upon such that the total compensation package for King County classifications will be identical to the total compensation for Seattle Police classifications retroactive to January 1, 1991. Parity will be maintained throughout calendar year 1991. This will require a wage adjustment for King County classifications effective September 1, 1991 to coincide with the increase specified in the Seattle Police Management Association contract.

The same proposal detailed the union's position on the issues of executive compensatory time and acting rank pay:

> In recognition of the fact that Lieutenants and Captains devote a considerable amount of time to their job over and above their normal eight (8) hour workday, they will be compensated for said additional time with Executive Comp Time of eighty (80) hours per year. Said comp time will be provided to (sic) each employee at the beginning of the year to use as vacation and may be redeemed at the employee's option for cash payment at the end of each calendar year if not used. Said redemption shall be based on the employee's hourly rate.

> . . .Lieutenants or Captains who are given any of the duties of higher rank, either orally or in writing, for a continuous period exceeding four hours in duration, shall be paid at the first step of the higher rank to which the duties belong for all time they were required to perform said duties or responsibilities.

The proposal was not characterized as an "off-the-record" or "what if" proposal when it was submitted by the respondent.

Miner testified that he calculated the union's proposal for captains to be approximately 9% and that he was concerned about the union's offer because it appeared to be an escalation in demands from earlier offers. Miner was also concerned because the offer called for retroactive payment for the captains. Miner raised his concerns with Frederick, and stated that unfair labor practice litigation would result if the union insisted on the escalation and the request for retroactive payment.

On August 15, 1991, Director Yearby sent Frederick a letter detailing the employer's bargaining position. In the area of wages, the employer offered:

> EFFECTIVE 1-1-91: 4% across the board for Captains and Lieutenants. We are making this offer in light of the fact that we are not obligated to include retroactive pay for employees who were not covered by a previous collective bargaining agreement...

As to the union's executive compensatory time proposal, Yearby wrote:

> We have included a proposal on this subject. We are open to discussion on this issue. We are even open to retaining overtime for lieutenants if that is your desire. However, we want to make two things absolutely clear:

> (a) We are unwilling to give Lieutenants overtime and executive leave. If Lieutenants are to receive overtime, we have issues that we need to resolve.
>
> (b) Captains are clearly management-level employees. They are not eligible for overtime and we will not, under any circumstances, agree to pay them overtime. We are however, willing to negotiate an equitable executive comp leave for these employees.

Yearby went on to counterpropose on the issue of "acting rank pay", offering to provide additional compensation if a captain or lieutenant served in a higher capacity for 30 continuous days.

The parties met in further negotiations on August 27, 1991. During the course of that meeting, the employer asked the union for a list of comparable jurisdictions that the union would use in interest arbitration. The union refused to provide such information.

On September 17, 1991, Miner sent Frederick a letter, again asking for the comparability information, and providing several Public Employment Relations Commission decisions on point.[3] The union did not send comparability information after receipt of Miner's letter.[4]

On October 7, 1991, Miner sent Frederick a document titled "WHAT IF PROPOSAL". The document contained a complete contractual proposal indicating additional movement the employer was willing to make to resolve the negotiations. In the introduction to the proposal, Miner stated:

---

[3] See: City of Bellevue, Decisions 3084-A and 3085-A (PECB, 1988).

[4] The record indicates that the respondent had provided some comparability information earlier, in its May 6, 1991 letter.

> ...This proposal is submitted for your consideration. If you reject it or if you do not accept it within fifteen (15) days, it will be withdrawn...

On the same date, Miner sent Frederick the list of comparable jurisdictions that the employer would use for interest arbitration purposes. Miner further warned Frederick that the employer would use "every county on the West Coast" if the union insisted on using Alameda and Contra Costa Counties as part of its comparables.

The parties continued to meet in mediation, but were unable to resolve their remaining contractual differences. It became apparent that interest arbitration would be necessary. The parties scheduled a meeting for October 29, 1991 to identify the issues to be certified for submission to interest arbitration. In a telephone conversation shortly before the meeting, Frederick informed Miner that the respondent would request 15% if interest arbitration was needed. Miner responded that unfair labor practice charges would be filed if such a bargaining demand was made. The record does not reveal Frederick's reply.

The parties did meet on October 29, 1991. The employer stated its wage position as four and one-half percent (4.5%). The employer also proposed a form of executive compensatory time and other improvements from its initial position. The union stated its wage position as 15% for lieutenants and captains, but modified its proposal concerning the captains' retroactivity to June 3, 1991, the date of the voluntary recognition.

Miner warned Frederick that the employer would file unfair labor practice charges if the 15% wage offer and the retroactivity offer were not removed from the bargaining table. The union did not remove the issues, and the instant complaints were filed.

On November 26, 1991, the Executive Director of the Public Employment Relations Commission certified issues for submission to interest arbitration. See: King County, Case 9470-I-91-207. At the time of hearing in the instant unfair labor practice proceedings, the interest arbitration was held in abeyance while the underlying litigation was resolved. The record indicates that the parties continued to meet in an effort to resolve their contractual differences, but were unsuccessful in their efforts. The subjects at issue in the instant unfair labor practice proceedings were "suspended" from consideration by the interest arbitration panel pending the results of the instant litigation.

POSITIONS OF THE PARTIES

The employer argues that the union failed to bargain in good faith by escalating bargaining demands and by insisting to the point of impasse on a permissive subject of bargaining. The employer contends that the union inflated its wage proposal far beyond anything discussed during negotiations, and insisted that retroactivity be extended to the recently recognized captains. The employer asserts that the union's obstructionist attitude made meaningful bargaining impossible. As a remedy, the employer asks that the union be ordered to cease and desist from its prohibited activity, to post appropriate notices, and to return to its lowest stated position on wage issues for the lieutenant classification.

The union denies that any unfair labor practices were committed. The union argues that it was engaged in good faith negotiations and followed a well-established bargaining pattern in making its proposals to the employer. The union maintains that the lack of specific ground rules requiring "what if" offers to be identified as such estops the employer from alleging that the union's offers were "formal". The union further contends that the issue of retroactivity for captains was appropriately on the bargaining

table, and that the employer's own actions in enacting a salary ordinance for captains is dispositive. The union notes that an arbitrator has already ruled that the employer violated the contract by refusing to extend contractual benefits to the captains, and argues that a similar result should be reached in the instant matter.

DISCUSSION

Retroactivity for the Captains

The parties have a fundamental disagreement over the propriety of bargaining retroactivity for the captains. It is undisputed that captains were added to the bargaining unit by agreement of the parties after expiration of the last collective bargaining agreement. It is also undisputed that captains were not represented for purposes of collective bargaining before the employer's voluntary recognition. Had the employer given captains a wage increase in January, 1991, it would have been free to do so. Had the employer unilaterally altered the captains' wages, hours or working conditions after recognition, it would have committed an unfair labor practice. See: City of Richland, Decision 2448-B (PECB, 1987). The issue is whether retroactivity is permitted for a previously unrepresented group when that group is added to a bargaining unit eligible for retroactivity.

The issue of retroactivity arises from interpretation of Article 8, Section 7 of the Washington State Constitution, which states:

> No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

An employer violates Article 8, Section 7 by granting a retroactive wage increase after an employee has been working under agreed-to conditions of employment. Christie v. Port of Olympia, 27 Wn.2d 534 (1947). As the employer properly notes in its closing brief, the Washington Supreme Court has ruled that "deferred" compensation earned under an agreement executed before the work was performed is lawful. Christie v. Port of Olympia, at page 543. In other words, an agreement to continue to work in exchange for additional compensation would not violate the constitutional prohibition against "gifts of public funds".[5]

The Washington State Legislature dealt with the retroactivity issue in 1973 by enacting RCW 41.56.950. The statute states:

> Whenever a collective bargaining agreement between a public employer and a bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the date after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section.

In the instant case, it appears that the union **assumed** that retroactivity would be available for captains, just as it would be

---

[5] As a practical matter, public employers avoid the constitutional problem detailed above by executing so-called "Christie agreements" with newly certified or recognized bargaining representatives. Typically, these contracts are simple reassertions of existing employment practices coupled with indications that wage increases from that date would be subject to the results of collective bargaining. However, by placing these terms and conditions of employment in contract form, the "Christie agreement" sets a point to which retroactivity can be applied.

for the lieutenants who were already represented in the bargaining unit. There is no question that the union could bargain for retroactivity for the lieutenants because they were covered by the expired collective bargaining agreement. Rather than looking at the bargaining unit as a whole, however, the analysis must focus on the group of employees affected by the retroactivity dispute.

The captains were not previously represented. While they were added to an existing bargaining unit, the Christie holding is not abrogated. The union did not ask the employer to execute a separate agreement for the benefit of the captains when voluntary recognition was extended. Without such a prior contract to use as a starting point, the employer could not legally offer retroactivity for the captains.

This conclusion is not affected by the grievance arbitrator's decision relating to retroactivity. The arbitration award is confined to interpretation of the collective bargaining agreement. While the arbitrator found that the complainant violated the agreement by not extending retroactive benefits for the captains, the Examiner is not bound by arbitration awards when faced with statutory interpretation. The constitutional and statutory limitations on retroactivity are not diminished by the arbitrator's award, and the Examiner cannot "defer" to it as an interpretation of the law.

Similarly, the passage of a resolution setting captains' wage rates prior to their inclusion in the bargaining unit is not supportive of the union's position. The employer has wide discretion to deal with unrepresented employees as it sees fit, and it is common to have unrepresented employees get the same wage increase negotiated for the represented employees. In addition, the wage resolution was passed in the context of unrepresented employees only. It was not intended to set terms and conditions of employment in a collective bargaining setting, nor can it be characterized as a contract. It is inappropriate to use that ordinance, enacted in

one employment setting, as evidence that the employer had legislatively enacted some sort of retroactivity for employees not yet participating in the collective bargaining process.

Given the facts presented, the employer could not legally negotiate retroactivity for the captains. The union's insistence to impasse on retroactivity for the captains is an unfair labor practice. To remedy the unfair labor practice, the union shall be ordered to delete its retroactivity demand for captains from the list of issues to be submitted to interest arbitration. See: City of Wenatchee, Decision 780 (PECB, 1980), and City of Pasco, Decision 3582 (PECB, 1990).

Escalation of Bargaining Demands

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 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.

Collective bargaining between King County and Local 519 for this bargaining unit is carried out in the context of interest arbitration procedures set forth in RCW 41.56.400 et seq.[6] Parties subject to interest arbitration participate in negotiations and mediation, and may submit unresolved issues concerning mandatory

---

[6] Interest arbitration is available only to certain "uniformed employees". See: RCW 41.56.030 (7).

subjects of bargaining to a neutral panel of arbitrators for final determination as a "strike substitute". The possibility of interest arbitration proceedings may affect the strategies with which collective bargaining negotiations are conducted, but the interest arbitration procedure cannot be viewed as a separate process from collective bargaining. In particular, the availability of interest arbitration does not relieve either the public employer or the employee organization from their statutory duty to bargain in good faith.

> An employer or the bargaining representative of uniformed personnel cannot rely on the availability of interest arbitration as an excuse for serious efforts to resolve negotiating impasses. Interest arbitration would become the primary forum where public employers and uniformed personnel would fashion collective bargaining agreements. As the foregoing illustrates, the Legislature did not intend statutory interest arbitration to displace the negotiating process; it intended it to be used to promote uninterrupted and dedicated service by uniformed personnel and to avoid strikes. RCW 41.56.430. Thus, it is more appropriate to view interest arbitration not as a substitute for collective bargaining, but as an instrument of the collective bargaining process that displaces certain economic tactics.

Bellevue v. International Association of Fire Fighters 119 Wn.2d 373 (1992), affirming City of Bellevue, Decision 3084-A (PECB, 1990). The requirements of good faith extend to the interest arbitration proceedings themselves. The Public Employment Relations Commission does not relinquish jurisdiction once issues are certified for interest arbitration proceedings.

Just as in the case of "traditional" collective bargaining, the parties' totality of conduct must be considered to determine whether good faith obligations have been met. See: City of Clarkston, Decision 3246 (PECB, 1989). As noted in Clarkston, an

escalation of bargaining demands violates the duty of bargaining in good faith.

In the instant case, the characterization of the union's bargaining proposals is crucial in determining whether an unfair labor practice has been committed. The union argues that it made a series of "off-the-record" proposals in an effort to reach settlement, but the parties could not reach agreement. By characterizing its proposals as "off-the-record", the union maintains that it had latitude to seek a substantial wage increase through interest arbitration. The use of "off-the record" or "what-if" proposals is routine where the employer or the union is concerned about maintaining formal bargaining proposals on certain issues. If such a proposal is to be made, however, the party advancing that proposal must clearly identify it as such. The union's evidence to support its claim concerning "off-the-record" proposals is equivocal, at best. The record reveals that the respondent never made a clear statement concerning "off the record" proposals. In fact, the only proposal clearly showing that it was "informal" was submitted by the complainant. In any event, the union cannot rely on characterization of its proposals to excuse its escalation of demands. The parties were negotiating within a limited range of wage increase discussions. The union's claim that its proposals were anything but true contract proposals designed to reach agreement on a collective bargaining agreement is not persuasive.

Even if the proposals are found to be "on-the-record", the respondent argues that it had the authority to modify its position in interest arbitration. The respondent relies upon the certification of issues to interest arbitration, wherein the term "wages" was used to cover the economic differences detailed herein. The respondent's position cannot be supported. The union had entered mediation on a wage demand fairly computed as being in the vicinity of 9.5%. The issues certified for interest arbitration do not

detail the parties' positions on every issue remaining for resolution. The parties are expected to be engaged in an effort to reach agreement. If either party escalates its bargaining position, unfair labor practice proceedings can be initiated. As noted in City of Clarkston, supra, the interest arbitration proceeding is not a mechanism to renegotiate issues submitted for determination:

> If the union's argument is taken to its logical conclusion, however, either party could invent any type of proposal that it desired after it entered interest arbitration. Such a procedure can work two ways, both of which are detrimental to the "good faith" collective bargaining process. Thus, while a union could propose a much higher wage rate than was discussed in negotiations and mediation, the union's theory would also open the way for an employer to dramatically reduce its wage offer, or for an employer to demand concessions in interest arbitration that had never been discussed at the bargaining table. Such consequences may occur in the negotiation of adversarial matters such as civil lawsuits on commercial contracts, where neither party is under a statutory duty to bargain in good faith. The interest arbitration process was designed, however, to be the final step in a collective bargaining process centered upon good faith, and a late escalation of demands by either party violates that duty. (Emphasis supplied.)

The Clarkston holding is determinative here. The union escalated its bargaining demands at an advanced stage of negotiations, and attempted to enter interest arbitration with much higher wage demands than were discussed during collective bargaining. In like manner, the decision issued in Spokane Fire District No. 1, Decision 3447-A (PECB, 1990), demonstrates the Commission's close scrutiny of the interest arbitration process. In Spokane, the employer "escalated" bargaining demands by lowering its wage offer once interest arbitration proceedings commenced. The Commission

found that the employer violated its duty to bargain in good faith, and ordered the employer to restore its wage position as of the date that interest arbitration commenced. It is clear that the Commission will not allow either union or management to use the interest arbitration process as a forum to gain tactical advantage in the collective bargaining arena.

As a remedy in the instant case, the union shall be ordered to cease and desist from its illegal activity, to post appropriate notices, and to enter interest arbitration at its July 26, 1991 wage demand (9.5%).

FINDINGS OF FACT

1. King County has collective bargaining relationships with a number of bargaining representatives, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Public Safety Employees, Local 519, represented a bargaining unit of non-supervisory uniformed employees in the King County Sheriff's Department, and is a "bargaining representative" within the meaning of RCW 41.56.030(3). At all times pertinent to these unfair labor practice proceedings, Dustin Frederick served as the union's chief spokesman in collective bargaining negotiations.

3. King County and Local 519 were parties to a collective bargaining agreement that expired on December 31, 1990. In the latter part of 1990, the parties entered into negotiations for a successor collective bargaining agreement.

4. The parties met several times in negotiations, but were unable to reach agreement. On September 27, 1990, Local 519 filed a

request for mediation with the Public Employment Relations Commission.

5. Before mediation could begin in earnest, the county's chief negotiator, Nancy Carlson, left employment with the county. Shortly thereafter, a representation petition was filed with the Commission, seeking a proposed bargaining unit of police officers below the rank of lieutenant. In King County, Decision 3672-A (PECB, 1991), a separate bargaining unit of police officers below the rank of lieutenant was certified. Local 519 remained the representative of the lieutenants.

6. Due to the representation proceedings, Local 519 and the county did not engage in collective bargaining negotiations for several months. On March 21, 1991, Frederick sent a letter to Larry Miner, recently hired by the county as a labor relations specialist, asking that negotiations resume. Frederick's letter stated that the parties were still in mediation, and in the same relative positions that were stated prior to the representation proceedings.

7. Miner calculated the union's position on wages to be approximately 4.86%. The union did not refute this calculation, nor did it state that its March 21, 1991 letter was "off-the-record".

8. On May 6, 1991, the union submitted a letter detailing a wage demand whereby bargaining unit employees would be at parity with similarly situated employees of the City of Seattle. The proposal also called for an "executive compensatory time" program that had not been previously negotiated. The proposal was not captioned as "off-the-record". Miner calculated the wage demand to equal a five percent (5%) increase, while the executive compensatory time demand would be worth an additional five percent (5%).

9. On June 3, 1991, the county voluntarily recognized Local 519 as the bargaining representative of personnel in the rank of captain.

10. On July 12, 1991, the union demanded that contractual benefits be extended to captains. The county refused, and the issue was submitted to grievance arbitration. An arbitrator subsequently ruled that the county violated the contract by refusing to extend contractual benefits to the captains.

11. On July 26, 1991, the union submitted a "final contract proposal" to reach agreement on a successor collective bargaining agreement. The proposal called for a wage increase of approximately nine percent (9%). Miner was concerned because of the increased wage demand and because the proposal called for full retroactivity for the recently-recognized captains.

12. The parties exchanged several letters concerning the state of negotiations. The county asked the union to provide specific comparability information, but the union did not.

13. On October 29, 1991, the parties met to list issues for submission to interest arbitration. The union stated that it would seek a wage increase of 15% in interest arbitration. The wage demand would be fully retroactive for the lieutenants, and retroactive to June 3, 1991 for the captains.

14. The county filed the two instant unfair labor practice complaints in a timely manner on October 30, 1991.

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 Finding of Fact 13, above, the respondent committed unfair labor practices within the meaning of RCW 41.56.150(4), by bargaining to impasse on an illegal subject of bargaining.

3. By events described in Findings of Fact 11 through 13, above, the respondent committed unfair labor practices within the meaning of RCW 41.56.150(4) by escalating bargaining demands at an advanced stage of the collective bargaining process.

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that Public Safety Employees, Local 519, its officers and agents immediately:

1. Cease and desist from:

    a. Insisting to impasse on retroactivity for captains.

    b. Escalating bargaining demands beyond the wage level stated in the July 26, 1991 wage offer.

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

    a. Withdraw the issue of retroactivity from consideration before the interest arbitration panel.

b. Enter interest arbitration seeking the wage level set forth by the union on July 26, 1991.

c. 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 Public Safety Employees, Local 519, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the union to ensure that said notices are not removed, altered, defaced, or covered by other material.

d. Notify the complainants, in writing, within twenty (20) days following the date of the 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.

e. 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.

ENTERED at Olympia, Washington, this 20th day of November, 1992.

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

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION 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 insist on retroactivity for captains before an interest arbitration panel.

WE WILL NOT escalate bargaining demands for wages beyond the level set forth in the July 26, 1991 offer.

WE WILL negotiate in good faith with King County on mandatory subjects of bargaining.

PUBLIC SAFETY EMPLOYEES, LOCAL 519

By:_____
Authorized Representative

DATED_____

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 Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.