

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY))	
AND CITY EMPLOYEES, LOCAL 270,))	
)	
Complainant,))	CASE 13252-U-97-3223
)	
vs.))	DECISION 6232 - PECB
)	
CITY OF SPOKANE,))	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.))	AND ORDER
)	
)	

David M. Kanigel, Attorney at law, appeared on behalf of the complainant.

James C. Sloane, City Attorney, by Michael J. Piccolo, and Pat J. Dalton, Assistant City Attorneys, appeared on behalf of the respondent.

On June 18, 1997, the Washington State Council of County and City Employees, Local 270, AFSCME, (WSCCCE or union) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, alleging that the City of Spokane (employer) violated RCW 41.56.140(4) by refusing to bargain concerning the transfer of bargaining unit work to an excluded supervisory position. The Executive Director issued a preliminary ruling on July 9, 1997, finding a cause of action to exist. The employer filed an answer, and a hearing was held at Spokane, Washington, on November 14, 1997, before Examiner Walter M. Stuteville. The parties filed post-hearing briefs to complete the record.

BACKGROUND

The employer and union have had a collective bargaining relationship for many years, covering approximately 180 clerical, adminis-

trative, laborer, and technical classifications in the municipal government. Positions in the employer's public library system are included in the bargaining unit, and nine of the classifications listed in the parties' contract are identified as library classifications. They include custodian and caretaker classifications which were nominally supervised by a facilities and maintenance manager excluded from the bargaining unit.

The facilities and maintenance manager position was left vacant from 1989 to 1997, partly because of budget constraints and partly because the employer was constructing a new main library and new branch libraries. During this period, the main library was located in leased premises in downtown Spokane. According to undisputed testimony, the leased facility required substantially less maintenance from library staff, because the building owner was responsible for some of the building maintenance. Thus, library management decided that the maintenance department would not need a full-time manager during the interim period, and instead, implemented a lead worker position titled "caretaker foreperson".

According to the library's human resources manager, the caretaker foreperson classification had been in existence since 1984, but was not implemented until Steve Hendricks was upgraded to that title in 1989. Previously, Hendricks had primarily performed bargaining unit work in his position as a caretaker II, but he had also taken on some the responsibilities of his supervisor Ken Vigue prior to Vigue's retirement in 1989. After his promotion to caretaker foreperson, Hendricks reported to various library managers and consulted with them on decisions such as calling in contractors or purchases over \$100. After Vigue's retirement, the supervisory position was left vacant.

In January of 1994, the main library was moved into a new, employer-owned facility, also in downtown Spokane. The new building is larger and contains more technologically complex

systems (e.g., heating and air conditioning) than the leased premises. As a consequence, the employer proposed to reclassify Hendricks to a newly-created "facilities maintenance supervisor" position which was to be excluded from the bargaining unit. On March 28, 1994, Human Resources Manager Monica Fox sent a letter to WSCCCE Field Representative Randy Withrow, as follows:

The Library is requesting a labor/management meeting to discuss reclassification of the Library Caretaker Foreman position. Since moving to the new Downtown library, and with the addition of the Hillyard Branch Library, the Caretaker Foreman position currently held by Steve Hendricks has changed significantly. Because the new automated HVAC, alarm and security systems are highly sophisticated, the Foreman is no longer performing hands-on repair and maintenance work. The Library has invested in costly professional training to prepare the Foreman to handle his new role of overseer and diagnostician of these systems. Also, the Foreman's supervisory responsibilities have increased significantly with the additions of two new FTE [full-time equivalent] custodial staff, increased square footage and altered expectations regarding cleanliness and maintenance. His role has become one of scheduling, monitoring, training and appraising the work of custodial and maintenance staff. He no longer has the time to perform routine maintenance duties, or to fill in for custodial staff who are vacationing or ill.

The library has chosen to keep custodial work in house rather than investigate other contractual arrangements, but a management level position to oversee these operations has become necessary. We anticipate that additional custodial FTE's will be needed as new branches open. With added staff and facilities the need for adequate management will become ever more apparent.

For your perusal, please find enclosed a copy of a new job description for the proposed position of Maintenance and Facilities Supervisor. We anticipate classifying the position at grade 36 on the management and professional salary schedule.

Withrow replied in a letter to Fox dated April 21, 1994, as follows:

This will confirm my receipt of your letter dated march 28, 1994, regarding two issues: the first is the Library Caretaker Foreman position ...

For the record, I have reviewed the information contained in your letter about the current Library Caretaker Foreman and at this point, must advise you that Local 270 is not in agreement with the removal of this position from the bargaining unit. However, in an interest to hear any further information that you may have, I have left a message on your voice mail system for a meeting of May 4, 1994, at 10:00 a.m. in the Spokane Public Library.

At this meeting we can discuss any further information that you may have regarding the exemption proposal of the Library Caretaker Foreman position. ...

The meeting described by Withrow was apparently held at or about the time mentioned in his letter and voicemail message.

After the parties met, Withrow sent a letter dated May 12, 1994 to inform the employer of the union's decision on the matter, as follows:

In response to the meeting of last week, we are writing to inform you of our decision regarding the proposed exclusion of the position currently held by Steve Hendricks.

After review of the information that you gave us concerning this position, we made inquiries with other jurisdictions as to the placement of this proposed classification. In addition, we reviewed similar classifications represented by Local 270 at this time.

Based upon the information provided by you, we see no valid reason to concur with the request for exclusion. It is our belief that your proposed position clearly falls within the jurisdiction of classifications currently and historically represented by this Union.

If you have additional information or any further facts you wish us to consider, please let me know. ...

The employer replied with a letter dated June 10, 1994, stating as follows:

In response to your letter of May 12, 1994, we are requesting that the Union reconsider its decision regarding the Library's proposed reclassification of the Caretaker Foreperson position.

You indicated that the Union's decision was based on a comparison to positions currently and historically represented by Local 270. I would remind you that there previously was a management level position within the Library's facilities department. A copy of that position description is enclosed for your information. When the incumbent retired in March, 1989, the position was not filled. However, as we have discussed, circumstances have now changed.

In addition, you stated that inquiries had been made to other jurisdictions as to the placement of similar positions. For your use in further studying this issue I have enclosed copies of non-represented position descriptions from Fort Vancouver Library District, Tacoma Public Library and Seattle Public Library, all represented by AFSCME Locals. These positions appear to be very similar in nature to that which we have proposed.

It was the library's intent to protect the standing of a long term employee and to establish the necessary staffing structure by reclassifying the foreperson position. Should the Union's decision stand the Library must either take the question to PERC for a ruling, or reestablish the former facilities management position and recruit to fill it. It is our hope that neither alternative will be necessary.

Should you so desire, I would be happy to meet with you to further discuss this issue. Please advise as to how you would like to proceed.

The union responded on June 20, 1994, as follows:

Thank you for your most recent correspondence of June 10, 1994, providing further information on the reclassification issue of the Caretaker foreperson. I will convene the Classification Review Committee to peruse the material that you provided in your correspondence. It would be prudent for us to investigate any and all available information that we may have on this. As a result, I will convene the Committee. ...

Withrow wrote Fox again on August 18, 1994, to inform her of the results of the union committee's deliberations:

The Job Classification Committee has met once again to review the position that the library has requested be exempted from coverage under Local 270's contract. In the process of the meeting, the Committee reviewed jobs currently covered by the Local within the City of Spokane. The Committee reviewed jobs that are both of equal and higher responsibilities and duties than the position that you have requested be exempt.

The sum of the positions reviewed to compare with the Library Caretaker Foreman position were the Building Engineer II, Electronics Technical Foreperson, Water Hydroelectric Maintenance Foreperson, Environmental Systems Specialist and Water Service Foreperson. It was found that these covered positions are equal or greater in responsibility to the one that you have requested be exempt.

At the conclusion of their meeting, the Job classification Committee made the following recommendation to me to pass on to you. The recommendation is that it is appropriate for the Library position held by Steve Hendricks to be included in the positions covered by Local 270.

The Committee also asked me to relay to you that they understand that you have the right to request a Unit Clarification hearing in front of the Public Employment Relations Commission on this matter and if you do so, we

will be prepared to defend the decision made by the Committee. If you intend to file for a hearing, please provide me with copies of your filing papers to PERC. With all due respect, we understand the contents of your letter but cannot deny that the duties and responsibilities are appropriate to the community of interest in the work performed by other classifications covered by Local 270. ...

The employer concluded from that response that its negotiations with the union had not been successful, but it did not file a unit clarification petition. Instead, a recommendation that the long-vacant "facilities and maintenance manager" position be funded in the library budget for 1997 was forwarded to the library board in August of 1996. The board accepted that recommendation.

The employer prepared a position announcement for the "facilities and maintenance manager" position, which was only posted in-house. Hendricks was the only applicant, and he was promoted to the position on January 12, 1997.

On February 26 and 27, 1997, the union received copies of memoranda announcing "predisciplinary hearings" concerning union-represented employees. The memos were sent by Hendricks, under the title "manager, facilities and maintenance department". Withrow immediately wrote to Fox, and inquired as to whether Hendricks' job or title had been changed, and as to what was the status of his position as of February 1997. Fox replied on March 6, 1997:

Your inquiry concerning staffing in our Facilities and Maintenance Department comes as a bit of a surprise as changes had been under consideration since late summer 1996. Beginning last August, during budget presentations to the Library Board, staff recommended reinstatement of the Manager, Facilities and Maintenance position, which was vacated in 1989 when Kenneth Vigue retired. The addition of a management and professional level position in the facilities and maintenance department was

also discussed during the Board's budget presentation to the City Council. The position was approved for the 1997 budget year and was advertised in late December, 1996. Mr. Hendricks was the successful candidate, his promotion was effective January 12, 1997.

In February, after studying current and anticipated department needs, it was decided that a lead position on the 2:00 to 10:30 p.m. was needed, but not at the Foreman level. The vacated Foreman position was reclassified to a Caretaker I and a position announcement was posted. Herschel Main applied, interviewed, and subsequently was offered the position. His promotion was effective February 23.

The vacated Custodian I position was advertised internally with a closing date of February 26. Interviews for the position will be scheduled and the position filled as soon as possible, hopefully before the March 15 opening of the new 18,000 square foot Shadle Branch Library.

The net result is that Facilities and Maintenance Department staffing has been increased by one FTE at the M & P level. The FTE represented staff remains constant. The new staffing configuration is working well and seems to have solved many of the problems the department was experiencing. Please feel free to contact me should you have further questions regarding these changes.

The union filed the complaint to initiate this unfair labor practice proceeding on June 18, 1997.

POSITIONS OF THE PARTIES

The union contends the employer had a duty to bargain transfers of bargaining unit work to persons outside of the unit it represents, and that the employer committed an unfair labor practice by failing to do so in this case. It urges that the employer presented the union with a fait accompli, when it unilaterally transferred bargaining unit to a supervisory position.

The employer argues that the creation and/or filling of a management position outside of the bargaining unit is a management prerogative, and not a mandatory subject of bargaining. It cites Fire Fighters, Local 1052 v. PERC (City of Richland), 113 Wn.2d 197, 200 (1989) for the principle that managerial decisions that only remotely affect "personnel matters", and decisions that are predominantly "managerial prerogatives" are not mandatory subjects of bargaining. It further argues that its filling of a vacant managerial position with a bargaining unit member in this case did not transfer any work out of the bargaining unit.

DISCUSSION

The Duty to Bargain Transfers of Unit Work

The Commission has long held that transfers of bargaining unit work to employees outside the bargaining unit (commonly referred to as "skimming") is a mandatory subject of bargaining. South Kitsap School District, Decision 472 (PECB, 1978); Spokane County Fire District 9, Decision 3482-A (PECB, 1991). While employers have a right to create management positions, under Lakewood School District, Decision 755-A (PECB, 1980) and City of Mercer Island, Decisions 1026-A, 1026-B (PECB, 1982),¹ they fall afoul of the "skimming" precedents when they have new positions perform non-

¹ Chapter 41.56 RCW covers "supervisors". Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). They are excluded from bargaining units containing their subordinates to avoid potential conflicts of interest. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Thus, job tasks which involve supervision of subordinate employees are looked at in a different manner than are functions which could be performed by either a rank-and-file employee or a supervisor.

supervisory work historically performed by bargaining unit employees.

The cited precedents propound a two-part, or sometimes a five-part, analysis to determine whether employer has a duty to bargain a transfer of work to persons outside of the bargaining unit. In this instance however, the answers to two questions provide the Examiner with the appropriate decision:

1. Is the excluded position performing work that was historically performed by one or more bargaining unit employees?²
2. If so, are some or all of the transferred tasks of a type that would not warrant exclusion from the bargaining unit as a "supervisor" under Commission precedent?

If the answer to both questions is in the affirmative, the employer will have been obliged to give notice to the union, provide opportunity for bargaining, and bargain in good faith if requested, before transferring the work to the excluded position.

Application of Legal Standard

Close analysis of the facts discloses that the employer made three distinct decisions in relation to this situation:

- First, it was undisputed at the hearing that the employer shifted some responsibilities of the previous facilities and maintenance manager position to Hendricks even before his

² This question is answered by a simple factual analysis: "Was the work in dispute performed by bargaining unit members at any time?" Whether the same or similar work has also been performed by persons outside the bargaining unit is irrelevant at this point in the analysis. Spokane Fire District 9, Decision 3482-A (PECB, 1991).

promotion to the lead worker position within the bargaining unit. Specifically, this included working with vendors and contractors in the context of a leased facility.

- Second, the employer's letter of March 28, 1994, proposed to upgrade Hendricks from his lead worker position within the bargaining unit to a supervisory position excluded from the bargaining unit, based on the change of circumstances with the opening of a new main library facility. Fox described the proposed position as "one of scheduling, monitoring, training and appraising the work of custodial and maintenance staff", but that proposal was never implemented.
- Third, about two years after it was unable to reach agreement with the union concerning the proposed "supervisor" position, the employer made budgetary provision for refilling the "maintenance and facilities manager" position which had been an empty box on its table of organization for several years.

Each of those decisions/actions is looked at separately under the headings which follow.

Caretaker Foreperson -

The first management decision, by which Hendricks was reclassified to the caretaker foreperson position in 1989, appears to have actually resulted in work being added to the work jurisdiction of this bargaining unit. Pertinent parts of the employer's job description for that position read as follows:

NATURE OF WORK

Perform supervisory work of maintenance crew and may participate in the general maintenance, repair and upkeep of all Spokane Public Library buildings and grounds within prescribed limits.

Perform skilled work in maintenance and repair activities such as: painting, electrical,

plumbing, carpentry, steam heat system, ventilating and servicing elevators.

...

Perform work which is medium-to-heavy in nature and may be performed under some disagreeable or hazardous condition, e.g. adverse weather, working in high places, or working with electricity, steam, chemicals and power tools, as required. Requires normal, sometimes concentrated attention.

...

SUPERVISION

Perform duties which are outlined in conferences with the Library Facilities Planning Maintenance Manager and are inspected occasionally while in process and upon completion. Unusual or questionable cases are referred to the supervisor.

Check work of a small crew performing duties of a similar nature or may instruct and supervise the work of Library Caretakers/Messenger I in the performance of more difficult or specialized tasks.

EXAMPLES OF SPECIFIC DUTIES (Illustrative only)

...

Assist in interviewing salespeople and contractors, and making recommendations for purchases and services.

Assist in maintaining files of information regarding sources of equipment, building materials and supplies.

Assist in preparing purchase requests and check for accuracy and completeness.

[Emphasis by **bold** supplied.]

Under direct examination by the employer's counsel, Fox described Hendricks' work after the transfer, as follows:

Q [By Mr. Piccolo] Starting in 1994, you may have already answered this, what type of additional job responsibilities did the library ask of the foreperson?

A [By Ms. Fox] His work had really shifted from hands-on work. He was no longer

doing courier runs. He was no longer doing custodial work. He was no longer participating in hand-on maintenance work. He was assigning other staff members to do those kinds of duties. Overseeing the department. We'd had some problems with some personnel and there were instances when he was counseling other union members regarding their performance. Really it had shifted from a hands-on doing the work kind of position, to oversight and management of the department.

[Transcript, page 78, lines 11 - 22]

In direct examination by the employer's counsel, Hendricks described his change in responsibilities, as follows:

Q [By Mr. Piccolo] And what were your job responsibilities in terms of Caretaker II, and what Ken Vigue was asking you to do?

A [By Mr. Hendricks] My official position as Caretaker II was to supervise the work of the caretakers, and to also participate in that work. At that time Ken wasn't doing everything the management position was supposed to do. So I was doing part of his job.

Q What type of activities, or what part of Ken's job were you doing?

A Working with vendors and contractors.

Q Do you commit the full extent of Mr. Vigue's responsibilities, as far as committing the city with vendors or contractors at that time?

A He should have been, I guess, dealing exclusively with the custodial and maintenance vendors that we needed to buy supplies and perform some of the work at the library.

Q Did the union complain to management when you were doing these tasks?

A I believe so.

Q What was the reaction, how was the problem solved?

A The problem was solved when Ken retired, then they promoted me to foreman, and gave me some of those responsibilities.

[Transcript, page 113-114, lines 17-25; 1-19]

The vendor/contractor responsibilities Hendricks was performing would not have created a potential for conflicts of interest between himself and other members of the bargaining unit. Thus, some of the work done by a bargaining unit employee since the late 1980's was the result of retrenchment of the former supervisor's activities, rather than an inheritance from previous bargaining unit employees, and the employer's decisions resulted in an expansion of the work jurisdiction of the bargaining unit. It was undisputed that the union had full knowledge of these actions. While the employer might have prevailed in a unit clarification proceeding concerning an exclusion based on the "supervisor" duties given to Hendricks in 1989, it did not choose to file such a petition at that time.

Proposed Maintenance and Facilities Supervisor -

The second employer action, which was to propose reclassification of Hendricks to a new supervisory position in 1994, never came to fruition. The parties put their full correspondence on the issue into the record, and it is clear from review of that correspondence that the union did not focus on what work was being lost to the bargaining unit. Rather, the union appears to have been negotiating from the premise that this position should be included in the bargaining unit if similar positions in other libraries were included in their bargaining units. The issue now before the Examiner was not altogether ignored, however. Pertinent parts of the job description proposed by the employer at that time include:

NATURE OF WORK:

Directs the activities of workers engaged in the operation, maintenance, and repair of var-

ious systems and services in the downtown and branch libraries, including custodial and courier services; and fully automated HVAC, security and alarm system.

EXAMPLES OF WORK

...
Obtains bids from outside contractors, and directs contracted projects to ensure adherence to specifications.

Supervises maintenance personnel including primary responsibility for employee selection, instruction in work methods and procedures, establishment of work priorities and schedules, assignment of work, review of work in progress and completed work, and formal evaluation. Participates in disciplinary proceedings.

...
Orders and purchases building maintenance supplies, machinery, equipment and furniture.

[Emphasis by **bold** supplied.]

Thus, the employer signaled its desire to move the vendor/contractor responsibilities back outside of the work jurisdiction of this bargaining unit.

The parties did not reach an agreement on the employer's proposal, but it was thoroughly discussed. In its last correspondence on the issue, the employer indicated that it would either abandon the new position and promote Hendricks to the vacant facilities and maintenance manager position, or refer the issue to the Commission.³ Curiously, it took neither of those potentially appropriate actions in a timely manner after the negotiations came to an end in 1994.

³ The significant change of circumstances created by the then-recent move into the new main library facility could well have provided a sufficient basis for a unit clarification mid-term in a collective bargaining agreement, under WAC 391-35-020.

The Facilities and Maintenance Manager -

The employer's third decision in this series of events did not occur until mid-1996 and then January of 1997, when it funded and then filled the facilities and maintenance manager position after an eight-year vacancy. The job description for that position contains the following material pertinent to this controversy:

This position performs difficult and independent management and supervisory work associated with the maintenance of library facilities, including fully automated HVAC, security and alarm systems in the downtown and branch libraries. Work includes planning, developing and administration of maintenance and courier services, and supervision of custodial and caretaker staff, as well as the design and implementation of special projects as assigned.

EXAMPLES OF WORK

* **Supervises caretaker and custodial personnel involving primary responsibility for employee selection, instruction in work methods and procedures, establishment of work priorities and schedules, assignment of work and review of work in progress and completed work, and formal evaluation. Participates with superiors in the disciplining of employees.**

...

* **Obtains bids from outside contractors, and directs contracted projects to ensure adherence to specifications.**

...

Orders and purchases building maintenance supplies, machinery, equipment and furniture.

[Emphasis by **bold** supplied]

Two facts clearly distinguish this employer action from the effort advanced and then abandoned in 1994: (1) The employer did not provide any contemporaneous notice or provide opportunity for discussion with the union; and (2) the employer actually went ahead with implementing its proposal.

While the 1996 job description might well support a conclusion that the position has supervisory authority which would warrant exclusion from the bargaining unit, the union is not disputing an exclusion on that basis. Instead, the union's concerns in 1997 are with the "skimming" of the vendor/contractor work that has been performed within the bargaining unit since the 1980's. The work of obtaining bids and ordering supplies and machinery does not present any evident potential for conflicts within the bargaining unit, yet it has been moved from a bargaining unit position to an excluded position without notice and bargaining. Under City of Dayton, Decision 2111 (PECB, 1984) and Washington Public Power Supply System, Decision 6058-A (PECB, 1998), the notice given by the employer more than six months before it took action, and which concerned a different proposal, does not suffice to satisfy its obligations under the collective bargaining law. The union has been presented with a fait accompli, which relieves it of having to request bargaining. Similarly, even if the union may have waived its right to bargain the "skimming" question by inaction in regard to the second of the three employer actions, such a waiver does not carry over to the third action taken two years after the second action.

Analysis of the first of these employer actions is complicated by the fact that some, but not all, of the functions of the excluded position were moved to the bargaining unit position even before Hendricks was promoted. It is clear from the testimony of both Fox and Hendricks, however, that the vendor/contractor responsibilities were part of Hendricks' job throughout the time he held the lead worker classification. Therefore, that work effectively became bargaining unit work by 1989. Commission precedent supports this conclusion: In Pierce County Fire District 9, Decision 4547 (PECB, 1993), job descriptions and testimony that paramedics had been "involved" in EMS training was sufficient to establish that such training was bargaining unit work; in Spokane County Fire District 9, supra, evidence that off-duty employees were paid to stand-by at

fire stations was sufficient to establish that was bargaining unit work, even though volunteer firefighters had also been called in for such duty (without compensation) on some occasions. It is not necessary that a task be performed exclusively by bargaining unit employees to give rise to a unit work claim. The right of an employer to create new positions or fill vacant position under Yelm School District, Decision 2543 (PECB, 1986) is limited by its obligation to give notice and bargain transfers of bargaining unit work under Lakewood School District, supra. Thus, the employer in this case was obligated to give notice and bargain before transferring the vendor/contractor work outside the bargaining unit.

By failing to meet its bargaining obligations, this employer has committed an unfair labor practice. The union is entitled to an order restoring the "skimmed" non-supervisory work to the bargaining unit, posting of notice by the employer, and reading of the notice into the record of a public meeting of the Spokane City Council.⁴

FINDINGS OF FACT

1. The City of Spokane is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local 270, AFSCME, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of approximately 1000 employees working in 179 classifications and positions in the City of Spokane workforce, including classifications assigned to the employer's municipal library system.

⁴ See, Seattle School District, Decision 5542-C (PECB, 1997) and City of Richland, Decision 6120-C (PECB, 1998).

3. Maintenance and custodial employees in the library work in classifications with the titles of "library custodian I" and "library caretaker I."
4. Prior to 1989, the employer shifted some responsibility for vendor and contractor relations from a supervisor excluded from the bargaining unit to a bargaining unit employee.
5. Because of reduced staff and maintenance needs while the library was occupying leased space, the employer took action in 1989 to leave the excluded supervisory position vacant, and it created a "caretaker foreperson" classification within the bargaining unit. The new position performed some hands-on maintenance work, but also took over some functions formerly performed by the excluded supervisor, specifically including dealing with vendors and outside contractors. The union was aware of the situation at that time.
6. In 1994, the employer gave the union notice of a proposal to implement a new classification which was to be titled "facilities and maintenance supervisor". The proposed position was to be excluded from the bargaining unit, and was to have some of the responsibilities previously delegated to the caretaker foreperson. After negotiating with the union, the employer dropped its proposal.
7. Without giving contemporaneous notice to the union or providing opportunity for collective bargaining, the employer took steps in 1996 to reactivate the "facilities and maintenance manager" position which had been vacant since 1989, effective in 1997. The employer promoted the caretaker foreperson to the position, and assigned him responsibilities in addition to the supervision of personnel, specifically including the vendor and contractor responsibilities which that individual had performed while a member of the bargaining unit.

8. The vendor and contractor responsibilities do not present a potential for conflicts within the bargaining unit so as to be characterized as supervisory responsibilities.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By its assignment of non-supervisory tasks of its former facilities and maintenance manager to a bargaining unit employee since an unspecified date prior to 1989, and specifically including responsibility for vendor and contractor relationships, that work effectively became bargaining unit work and gave rise to an obligation on the employer to give notice and bargain under RCW 41.56.030(4) prior to transfer of such tasks to persons outside of the bargaining unit.
3. By its removal of non-supervisory tasks performed by Steve Hendricks as a bargaining unit employee from the scope of bargaining unit work in 1997, when it promoted Hendricks to the restored facilities and maintenance manager position, without having given notice to Local 270 and provided opportunity for collective bargaining on the decision or its effects, the employer engaged in unilateral conduct and committed an unfair labor practice in violation of RCW 41.56.140(4)

ORDER

The City of Spokane, 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 with Local 270 concerning the skimming of bargaining unit work to a supervisory position excluded from the bargaining unit.
 - b. In any other manner, interfering with, restraining or coercing its employees in the exercise of their rights under Chapter 41.56 RCW.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:
- a. Restore the non-supervisory functions of the "caretaker foreperson" position to the bargaining unit represented by Local 270
 - b. Give notice to and, upon request, bargain collectively with Local 270 concerning any future proposals to transfer non-supervisory functions, and specifically including responsibility for vendor and contractor relationships, from the bargaining unit represented by Local 270 to persons outside of that bargaining unit.
 - c. 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.
 - d. Read the notice attached hereto at the regular public meeting of the City Council of the City of Spokane which next follows the receipt of this decision, and perma-

nently append a copy of the attached notice to the official minutes of the meeting where the notice is read as required by this paragraph.

- e. 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.

- f. 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.

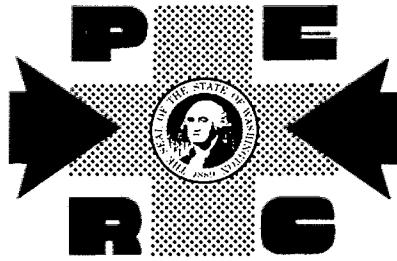
ISSUED at Olympia, Washington, this 26th day of March, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner

This order will be the final order of the agency unless 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, 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 restore the non-supervisory functions of the "caretaker foreperson" position to the bargaining unit represented by Local 270.

WE WILL NOT refuse to bargain collectively with the Washington State Council of County and City Employees, Local 270, concerning any future proposals to transfer non-supervisory functions, specifically including vendor and contractor relationships, from the bargaining unit represented by Local 270 to persons outside of that bargaining unit.

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

DATED: _____

CITY OF SPOKANE

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 Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.