STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2916,	)	
Complainant,	)	CASE NO. 7301-U-88-1507
vs.	)	DECISION 3021 - PECB
SPOKANE COUNTY FIRE DISTRICT NO. 9,	)	
Respondent.	)	PRELIMINARY RULING

On March 10, 1988, International Association of Firefighters, Local 2916, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Spokane County Fire District No. 9 had committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4), by requiring bargaining unit employees to perform new "computer" duties.

The matter previously came before the Executive Director for initial processing pursuant to WAC 391-45-110, and a letter was directed to the union on September 13, 1988, pointing out a number of problems with the complaint as filed. The union was permitted a period of time in which to file and serve amended facts. The union responded by a letter filed on September 26, 1988, amending the statement of facts in support of the complaint. At this stage of the proceedings, it is assumed that all of the facts contained in the union's amended statement of facts are true and provable. The question at hand is whether the complaint states a cause of action.

The complaint first indicates that the employer purchased a computer and made it operational in April of 1987. The complaint is untimely under RCW 41.56.160 as to changes implemented prior to September 10, 1987, which is the date six (6) months prior to the filing of the complaint. The fact of the computer's existence is thus taken only as background to other allegations.

The complaint next indicates that, on an unspecified date after April of 1987, the employer began ordering firefighters to use the computer to do a number of reports,

> ... when they had no ability as, suppression firefighters, to utilize computer equipment save, the Columbus method of "seek and land'. [punctuation in original]

Additionally, bargaining unit employees in the Captain classification were required to do reports that had been the responsibility of dispatchers. The lack of specification of a time frame was a defect pointed out in the previous preliminary ruling, and is fatal to these allegations. In addition, neither "skimming of unit work" principles, as in South Kitsap School District, Decision 473 (PECB, 1977), nor "contracting out of unit work" principles, as in City of Kennewick, Decision 482-B (PECB, 1980), apply to transfers of work within a bargaining unit.[1]

---

[1] Although not entirely clear, the amended statement of facts could be interpreted as complaining of a more pervasive shift of assignments between two groups of employees within the bargaining unit. The first difficulty with such an inference is that the past history of such other work assignments is not set forth in the complaint. The second difficulty is that the Executive Director will not glean a cause of action from bits and pieces. Brewster School District, Decision 2779 (EDUC, 1987).

The union next alleges that, on an unspecified date, the union requested negotiations on

> ... not only ... changes to job assignments and job descriptions, but also the effects of those decisions and orders on wages, hours, and conditions of employment. One of the key issues was whether or not the membership being ordered to utilize the computer would be provided with skills training so as to facilitate the task assigned and, in addition, whether or not the members were going to be subject to discipline because of their inability to use the computer with any degree of efficiency.

Later, the union alleges that "The key concern of Local 2916 in requesting negotiations was the lack of training while still being subjected to discipline." The September 13, 1988 preliminary ruling letter distinguished two classes of bargaining subjects, as follows:

> ... certain employer decisions to implement new methods or services may not be subjects for bargaining or capable of being challenged through the unfair labor practice procedure. The employer's duty to bargain is limited to wages, hours and working conditions, and may thus be limited to the "effects" of decisions that do not directly affect wages, hours, and working conditions.

The union's factual allegations were, and remain, insufficient to base a conclusion that the employer has, or ever had, any duty to bargain concerning the <u>decision</u> to computerize. Indeed, the union's own characterization of its proposals looks more to the <u>effects</u> of computerization. Even if proposals had been made, and were more clearly pleaded here, a decision to make a capital expenditure on computer hardware and software is

difficult to distinguish from the decision to build a new firehouse.[2] Similarly, the types of service[3] and level of service[4] to be provided are traditionally left to the discretion of the employer. In apparent response to that portion of the September 13 preliminary ruling, the union now states:

> With regard to the issue of whether or not there was a duty to bargain, the facts of this case point out that, yes, the decisions of the Chief do affect wages, hours, and conditions of employment but, of even more importance, is the fact that this employer engaged, for some ten months, in negotiations and discussions before unilaterally ceasing and refusing to negotiate and bargain. This employer can hardly be in a position to now claim that they need not bargain because now, all of a sudden, they deem that this is not a mandatory subject of bargaining. [punctuation in original]

With respect to a duty to bargain the decision to computerize, the argument is totally without merit. In WAC 391-45-550, the Commission encouraged free and open discussion by precluding a finding of the sort the union suggests. Discussion of a matter cannot make that matter a mandatory subject of bargaining. It is therefore concluded that the complaint is subject to dismissal to the extent that it alleges that there is, or was, any duty to bargain the decision to computerize or the

---

2 See, City of Kelso, Decision 2633 (PECB, 1988), with respect to the employer's decision to contribute to the construction of a new facility.

3 See, Federal Way School District, Decision 232-A (EDUC, 1977), concerning the employer's right to establish its curriculum.

4 See, City of Yakima, Decision 1130 (PECB, 1981) and Pierce County, Decision 1710 (PECB, 1983), concerning the employer's right to unilaterally determine the number of employees to be on duty.

employer's assignment of tasks which require utilization of that new technology.

Turning to the "effects" of the unilaterally implemented computerization decision, the union would evade the time bar of RCW 41.56.160 by asserting that the employer engaged in negotiations for a period of time "as late as February of 1988", after which the employer refused to bargain further on the matter. Notice is taken of the docket records of the Commission, which indicate that the parties are currently engaged in collective bargaining negotiations, and that they are engaged in mediation under the auspices of a member of the Commission staff.[5] The demands for "training", and for accommodation of inefficiency for disciplinary purposes pending the acquisition of such training, would seem to be legitimate and ongoing "effects" issues as to which the employer would have a duty to bargain. The complaint thus states a cause of action to the limited extent of a refusal by the employer to bargain such effects.

NOW, THEREFORE, it is

ORDERED

1. The complaint charging unfair labor practices filed in the above-captioned matter fails to state a cause of action, and is dismissed, to the extent that it concerns the purchase of computer hardware and software, the decision of the employer to use computerization in its operations, and the assignment of such tasks to its employees.

---

[5] Case No. 7252-M-88-2887, filed February 8, 1988.

2. Examiner Kenneth J. Latsch of the Commission staff is designated to conduct further proceedings in this matter pursuant to Chapter 391-45 WAC to the limited extent of the allegations that the employer has failed and refused to bargain concerning demands made by the union regarding "training" for bargaining unit employees on the use of the computer, and concerning accommodation of inefficiency for disciplinary purposes pending the acquisition of such training.

DATED at Olympia, Washington, this 4th day of October, 1988.

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.