

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL NO. 1604,)	
)	
Complainant,)	CASE NO. 7143-U-87-1458
)	
vs.)	DECISION 3156 - PECB
)	
CITY OF BELLEVUE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Webster, Mrak and Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of the complainant.

David Kahn, Assistant City Attorney, appeared on behalf of the employer.

International Association of Fire Fighters, Local No. 1604, filed a complaint charging unfair labor practices with the Public Employment Relations Commission on November 18, 1987, and an amended complaint on March 3, 1988, wherein it alleged that the City of Bellevue had violated RCW 41.56.140(1) and (4), by unilaterally adopting new civil service rules which changed conditions of employment of bargaining unit employees in regard to hiring, discipline, layoff, recall, promotion, transfer and appeal.

The Executive Director of the Commission issued a preliminary ruling on August 24, 1988, pursuant to WAC 391-45-110, concluding that the complaint, as amended, did not state a cause of action to the extent the alleged changes in civil service rules relate to "new hires", to the extent that they

relate to promotions to positions outside of the bargaining unit represented by the union, or to the delegation of authority among management officials. The remaining allegations were set for hearing on November 9, 1988, before William A. Lang, Examiner. Post-hearing briefs were filed by both parties on December 30, 1988.

BACKGROUND

International Association of Fire Fighters, Local 1604, is the exclusive bargaining representative of "uniformed personnel" within the meaning of RCW 41.56.030(7) employed as fire-fighters, fire lieutenants and fire captains by the City of Bellevue. The employer and union have had a collective bargaining agreement.

The Police and Firemen Civil Service was established by ordinance of the Bellevue City Council in 1973, to "substantially accomplish the purpose of RCW 41.08 and 41.12". The civil service commission, composed of five members appointed by the city manager for terms of six years, is to "exercise the powers and perform the duties established by state law in connection with the selection, appointment, promotion, demotion and employment of firemen." The ordinance provides in Section 3.72.020 that the provisions of Chapters 41.08 and 41.12 RCW shall control the actions of the commission "except as hereinafter specifically provided, and as may otherwise be provided by rules and regulation of the civil service commission."

Under the civil service rules, the secretary-chief examiner is to be a regular employee of the city recommended by the city manager and confirmed by the Civil Service Commission to perform, as a part of his/her duties as a city employee, the

responsibilities of the secretary-chief examiner. Kerry Schaefer, the current secretary-chief examiner, is also the assistant director of personnel for the city. Her duties as secretary-chief examiner include the administration of the civil service rules and the performance of all other functions essential to the effective administration of the civil service system. The city attorney provides legal counsel to the Civil Service Commission.

On October 22, 1986, the Civil Service Commission began an extensive review of its rules and regulations. By February of 1987, the Civil Service Commission had completed its review and had fashioned a draft of proposed rules which was forwarded for comment to various interested persons and organizations, including Local 1604. On March 25, 1987, the Civil Service Commission began a series of public meetings for the discussion of the proposed rules. Officers of Local 1604 attended these meetings.

On June 17, 1987, Local 1604 advised the Civil Service Commission that some of the proposed rule changes not only encompassed mandatory subjects of bargaining, but re-stated the employer's position on issues currently being bargained with the union. The union observed that the proposals were also inconsistent with the collective bargaining agreement between the city and the union. The union complained, further, that some of the proposed changes would, if enacted, establish outcomes favorable to the employer in disputes pending before the Public Employment Relations Commission. Local 1604 asked the Civil Service Commission to not adopt the rules, and to refer them to the collective bargaining forum.

The Civil Service Commission did not reply to the union's June 17 letter, and continued to discuss the rule changes at

meetings held on July 22, 1987, and September 30, 1987. The disputed rules were adopted by the Civil Service Commission at its meeting on November 2, 1987. Representatives of the union were in attendance at that meeting.

POSITIONS OF THE PARTIES

The union argues that the revisions to the civil service rules alter the conditions of employment of bargaining unit personnel and must, therefore, be bargained. It contends that Chapter 41.56 RCW does not exempt the Civil Service Commission actions from the employer's obligation to bargain.

The employer argues that the Civil Service Commission is not a public employer under RCW 41.56.030(4), and is not required to bargain its rules. At the hearing in this matter, the employer moved to file an answer to complaint on behalf of the Civil Service Commission. The union opposed the motion as untimely and because the commission was not a party, while the employer argued that WAC 391-45-230 permits the respondent to amend its answer at any time prior to the hearing. The employer also contends that the union waived its right to bargain.

DISCUSSION

City's Motion to File an Answer on behalf of the Civil Service Commission

The Examiner deferred ruling on the motion of the employer to amend its answer. The complaint and amended complaint name the "City of Bellevue and its Bellevue Civil Service Commission" as respondents in this case. The employer's answer was timely filed, and it responded to the union's allegations concerning

both the city and its Civil Service Commission. The employer admitted that the answer it sought to file at the hearing is the same as its initial answer, modified only to the extent of showing that it emanates from the "Civil Service Commission" as well as from the City of Bellevue.

In view of the facts that: (1) The union itself has named the Civil Service Commission as an agent of the city, and (2) the initial answer filed by the employer fully responds to the allegations, it would seem that the pleadings are sufficient to frame the issues in this controversy. Both the employer and the union have denied in various arguments that the Civil Service Commission is a separate employer. It would therefore seem unnecessary to have a separate answer on behalf of the Civil Service Commission. The motion to file the separate answer is denied, but the employer will be permitted to amend its original answer to show that it includes the Civil Service Commission as a potential separate employer if that is decided.

On the Merits

The Public Employment Relations Commission has previously determined that the Bellevue Civil Service Commission and its rules are not exempt from collective bargaining pursuant to RCW 41.56.100, because that Civil Service Commission is not similar in "scope, structure and authority to the State Personnel Board." City of Bellevue, Decision 839 (PECB, 1980) and City of Bellevue, Decision 2788 (PECB, 1987). The City of Bellevue now contends that its Civil Service Commission is not a public employer as defined in RCW 41.56.030(1), because the Civil Service Commission does not act on behalf of the city, but adopts its rules apparently as an independent entity. The city observes that:

... it would be a dangerous precedent to invalidate the commission's properly enacted rules and regulations, and would defeat the clear legislative intent expressed in RCW 41.08.040 that the Bellevue Civil Service Commission has the authority to make and change its rules independent of collective bargaining.

These arguments are nonsense, and are barely worthy of comment.

The argument that the legislative intent of Chapter 41.08 RCW is to give the Civil Service Commission the right to adopt rules independent of collective bargaining shows a basic lack of understanding of the legislative process, and of labor-management relations. The Legislature must be presumed to have been aware of the existence of Chapter 41.08 RCW when it enacted Chapter 41.56 RCW, and specifically RCW 41.56.100, in 1967. The only statutory exception to the obligation to bargain collectively is under RCW 41.56.100. The interface is narrowly defined, limited to a merit system administered with the broad and pervasive authority of the State Personnel Board. If the Legislature had desired to permit another exception to the obligation to bargain collectively, or a blanket exception of "civil service" matters as the employer here essentially seeks, it could have done so. The Legislature did not do so. As earlier precedents noted, RCW 41.56.100 is inapplicable here. As conceded by its argument, the city no longer even claims an exception under RCW 41.56.100.

Collective bargaining is a method of communication and a process which encourages agreement. Negotiation is the cornerstone of the legislative process. Elected representatives bargain with other elected representatives on behalf of their constituents. When they reach agreement it is in the form of legislative enactments which, like a contract, are binding on those involved. The Civil Service Commission could

similarly utilize the processes of communications and negotiation, adopting rules only after agreement has been reached with the exclusive representative on their content.¹

The employer also argues that the Civil Service Commission does not have the authority to bargain collectively on wages, hours, or working conditions, and therefore cannot act "on behalf of" the city.² The city cites METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977) as its authority, but its reliance on that case is misplaced. METRO dealt with the exclusion of supervisors from a bargaining unit in a representation case, not with the definition of a public employer.

The record shows that the Bellevue Civil Service Commission was created by ordinance of the City of Bellevue,³ that it is funded entirely by the City of Bellevue pursuant to Chapter 41.08 RCW, and that the city manager of Bellevue appoints the five members of the Civil Service Commission. Secretary-Chief Examiner Schaefer has served in that capacity for over eight years. Schaefer reviewed and drafted changes in the civil service rules on March 5, 1987. The city attorney acts as legal counsel for the Civil Service Commission, and assisted in the preparation of the disputed changes. It is clear that the Bellevue Civil Service Commission is a creature of the city

¹ Commission precedent would preclude a public employer or its agents from unilaterally adopting changes of wages, hours or working conditions for a unit of "uniformed personnel" such as that involved here. City of Seattle, Decision 1667-A (PECB, 1984).

² See, RCW 41.56.030(1), which extends the obligations of the Public Employees' Collective Bargaining Act to "any officer, board, commission, council or other person or body acting on behalf of any public body...." (emphasis supplied).

³ It is noteworthy that the ordinance which creates the Civil Service Commission can be changed at will.

government, and is subject to legislative supervision and recall by the City of Bellevue. If the Bellevue Civil Service Commission acts on behalf of the City of Bellevue, as the evidence suggests, then the either the city (or the Civil Service Commission on its behalf) must bargain rules changes affecting mandatory subjects of bargaining.

RCW 41.56.020 makes the Public Employees' Collective Bargaining Act applicable to any municipal corporation or political subdivision of the state of Washington. The City of Bellevue is certainly a public employer within the coverage of the statute. If, for the sake of argument, the Bellevue Civil Service Commission were found to have the authority to act independently of the City of Bellevue, it would be no more than another municipal corporation or political subdivision and, as such, would have a duty to bargain on mandatory bargaining subjects which are within its authority to adopt rules. Thus, under either option presented here, there is an obligation to bargain.

Waiver

The union made a timely demand to bargain on June 17, 1987. The Civil Service Commission and the city ignored the demand, and continued with the process of adopting new civil service rules. The fact that the union attended the meetings of the Civil Service Commission while the rules were being discussed cannot constitute a basis for finding a waiver when, by its own actions, the employer made it clear that it would not bargain.

The obligation to bargain, especially for uniformed personnel who are eligible for the "interest arbitration" dispute resolution procedures of RCW 41.56.430, et seq., requires the good faith discussion of issues and attempts at compromise

through counter-proposals. An invitation to comment at a public meeting does not rise to a level sufficient to meet the statutory duty to bargain. Kitsap County Fire District 7, Decision 2872 (PECB, 1988), aff. Decision 2872-A (PECB, 1988).

Are the Proposed Rule Changes
Mandatory Subjects of Bargaining?

The employer does not take a position in its post-hearing brief on whether the rule changes at issue in this proceeding are mandatory subjects of bargaining. Whether a subject is mandatory or not depends on whether it substantially affects wages, hours or working conditions.⁴ Upon review of the disputed changes to determine the obligation to bargain, the following are found to deal with mandatory subjects:

1. Criteria for promotions within the bargaining unit, including ranking, qualifications, review of examination results, authority to change the criteria, authority to remove candidates from consideration, and appeals.
2. Probationary periods.
3. Criteria for layoffs, appeals and recalls.
4. Provisions for re-employment rights within five years of resignation.
5. Maximum length of acting assignments.
6. Disciplinary procedures and rights of appeal.

⁴ Changes in the overall format and organization of the civil service rules could become mandatory subjects if they substantially affect other rights.

As already observed by the Executive Director in limiting the scope of issues for further proceedings in this unfair labor practice case, changes relating to who in management will act in determining eligibility for appointments is not a mandatory subject for bargaining.

Conclusion and Remedy

The union asks for its litigation costs and for the return to the status quo ante. In view of the history of litigation on this issue between these same parties, these requests shall be granted. The orders of the Public Employment Relations Commission are not to be ignored or held hostage by nonsensical argument.

FINDINGS OF FACT

1. The City of Bellevue, Washington, is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. International Association of Firefighters, Local 1604, is a "bargaining representative" within the meaning of RCW 41.56.030(3), and has been, at all times pertinent, the exclusive bargaining representative of non-supervisory uniformed firefighter personnel employed by the City of Bellevue.
3. The employer and the union were parties to a collective bargaining agreement effective from January 1, 1984, to December 31, 1986. On June 17, 1987, while negotiations for a successor collective bargaining agreement were pending, the Bellevue Civil Service Commission took steps to change its rules affecting, among other things,

criteria for promotion within the bargaining unit represented by Local 1604, probationary periods, criteria for layoff, recall and appeals thereof, re-employment, acting assignments, disciplinary procedures and appeals therefrom. Local 1604 made a timely written demand on the employer for bargaining on the proposed changes in the civil service rules.

4. The employer did not reply to the union's request for bargaining and, on November 2, 1987, following numerous meetings, the Bellevue Civil Service Commission adopted changes in the rules regarding at least the subjects listed in paragraph 3 of these Findings of Fact.
5. The defenses asserted in these proceedings by the City of Bellevue were raised and rejected in previous cases before the Public Employment Relations Commission and are, on the whole, frivolous.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to 41.56 RCW.
2. By refusing to bargain in response to a timely request concerning, and by unilaterally adopting changes in civil service rules concerning criteria for promotion within the bargaining unit represented by Local 1604, probationary periods, criteria for layoff, recall and appeals thereof, re-employment, acting assignments, disciplinary procedures and appeals therefrom, the City of Bellevue has committed

and is committing unfair labor practices in violation of RCW 41.56.140(1) and (4).

3. The defenses asserted by the City of Bellevue in this proceeding are frivolous and indicative of a refusal to obey the past decisions and orders of the Public Employment Relations Commission.

ORDER

IT IS ORDERED that the City of Bellevue, its officers and agents, specifically including the Bellevue Civil Service Commission, shall immediately:

1. Cease and desist from:
 - a. Refusing to bargain changes in civil service rules which affect wages, hours and working conditions.
 - b. In any other manner interfering with, restraining or coercing its employees in the exercise of their right to organize and bargain collectively pursuant to Chapter 41.56 RCW.
2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. Rescind the changes in rules adopted by the Bellevue Civil Service Commission on November 2, 1987, to the extent that they alter or affect the criteria for promotion within the bargaining unit represented by Local 1604, probationary periods, criteria for layoff, recall and appeals thereof, re-employment,

acting assignments, disciplinary procedures and appeals therefrom, and restore to the status quo ante which existed prior to November 2, 1987.

- b. Give notice to International Association of Fire Fighters, Local 1604, of any proposed changes of civil service rules affecting mandatory subjects of collective bargaining under Chapter 41.56 RCW and, upon request, bargain in good faith with the union concerning any such proposed changes, subject to the requirements of RCW 41.56.430, et seq.
- c. Reimburse International Association of Fire Fighters, Local 1604, for its reasonable attorney fees and other costs associated with the prosecution of this case, upon presentation of a sworn and itemized statement of such costs and fees.
- d. 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, after being duly signed by an authorized representative of the respondent, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the respondent to ensure that said notices are not defaced, removed, altered, or covered by other material.
- e. Notify the complainant, in writing, within 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 complainant with a signed copy of the notice required by this Order.

- 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 herewith, and at the same time provide the Executive Director with a signed copy of the notice required by this Order.

DATED at Olympia, Washington, the 10th day of March, 1989.

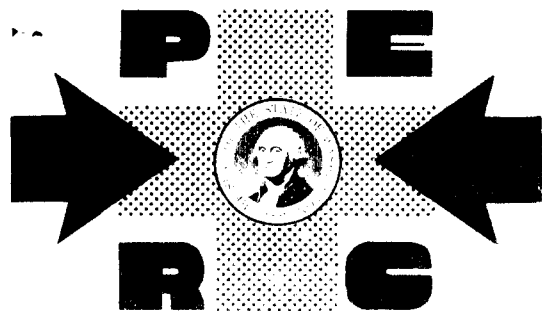
PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, 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

**NOTICE**

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AN AGENCY OF THE STATE OF WASHINGTON, HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. 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.

WE WILL NOT refuse to bargain with International Association of Fire Fighters, Local 1604, concerning changes of civil service rules affecting the wages, hours and working conditions of employees represented by Local 1604.

WE WILL withdraw changes to the civil service rules adopted on November 2, 1987, and restore the conditions which existed prior to that time.

WE WILL reimburse Local 1604 for its reasonable attorney fees and costs incurred in the prosecution of this unfair labor practice case.

CITY OF BELLEVUE

By: _____
Authorized Representative

Dated: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provision may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.