STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 469, Complainant,	)	CASE 7900-U-89-1699
	)	DECISION 3564-A - PECB
vs.	)	
CITY OF YAKIMA, Respondent.	)	DECISION OF COMMISSION

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

Menke and Jackson, by Anthony F. Menke, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a timely petition for review filed by the City of Yakima. The employer seeks to overturn a decision issued by Examiner William A. Lang.[1]

BACKGROUND

The City of Yakima provides fire suppression and related services to its residents. International Association of Fire Fighters, Local 469 (IAFF), is the exclusive bargaining representative of all "uniformed personnel" of the Yakima Fire Department,[2] excluding the fire chief, the deputy fire chief and temporary employees.

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[1] Decision 3564 (PECB, 1990).

[2] As defined by RCW 41.56.030(7), "uniformed personnel" includes fire fighters subject to the Law Enforcement Officers and Fire Fighters (LEOFF) retirement system created by Chapter 41.26 RCW.

The parties executed a collective bargaining agreement on September 22, 1988, which was in effect from January 1, 1988 through December 31, 1989.[3] During the negotiations leading up to that agreement, discussions took place relating to modifications of Article IV, the "Management Rights" provision, of the contract. In the predecessor agreement, Article IV had provided as follows:

> The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities, powers and authority. Affairs of the City concerning which such prerogative is reserved include, but are not limited to, the following matters which are not included within negotiable matters pertaining to wages, hours and working conditions:
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> a. Right to establish reasonable work rules.
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> b. The right to schedule overtime work in a manner most advantageous to the City and consistent with the requirements of municipal employment and the public interest.
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> ...
>
> e. The right to determine reasonable schedules of work and to establish the methods and processes by which work is to be performed.
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> Further, it is understood by the parties that every incidental duty connected with operations enumerated in job descriptions is not always specifically described, but that nevertheless, it is intended by both parties that all such duties shall be performed by the employee.

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[3] Paragraph 3 of the Examiner's findings of fact states that the union and employer were engaged in collective bargaining negotiations during "the time pertinent hereto", to replace their agreement which expired on December 31, 1987. In fact, the parties had already entered into their 1988-1989 contract when most of the events pertinent to this proceeding took place.

As a result of the negotiations leading up to their 1988-1989 contract, Article IV was amended to read as follows:[4]

> The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities, lawful powers and legal authority. City ((A))affairs ((~~of the City concerning which such prerogative is reserved include, but are not limited to, the following matters~~)) which are not included within negotiable matters pertaining to wages, hours and working conditions are inclusive of the following, but not limited thereto:
>
> ((~~a.~~))
> 4.1 The ((R))right to establish and institute ((~~reasonable~~)) work rules upon reasonable notice to bargaining unit members. All personnel rules and policies developed by the Employer which are intended to be applicable to Union members shall be in written form and posted in the departmental manual.
>
> ((~~b.~~))
> 4.2 The right to determine reasonable schedules of work, overtime and all methods and processes by which said work is to be performed in a manner most advantageous to the ((~~City~~)) Employer ((~~and consistent with the requirements of municipal employment and the public interest~~)). Changes to work schedules which are intended to be applicable to Union members shall be in written form and posted in the departmental manual.
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> ...
> 4.5 The right to assign incidental duties reasonably connected with but not necessarily enumerated in job descriptions, shall nevertheless be performed by employees when requested to do so by the Employer.

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[4] New/changed material indicated by underlining; deletions indicated by ((~~strikeout within parenthesis~~)).

4.6 The right to take whatever action the Employer deems necessary to carry out services in an emergency.

((~~e. The right to determine reasonable schedules of work and to establish the method and processes by which work is to be performed.~~

~~Further, it is understood by the parties that every incidental duty connected with operations enumerated in job descriptions is not always specifically described, but that nevertheless it is intended by both parties that all such duties shall be performed by the employee.~~))

Prior to the signing of the 1988-89 contract, the Yakima Fire Department had a "Department Manual" in effect, specifying various policies under numbered "directives".

On December 1, 1988, March 10, 1989, and November 1, 1989, Fire Chief Gerald A. Beeson issued amendments to Fire Department Directive 3.001, changing department operational policies and procedures concerning "assignments and time off". On January 24, 1989, Beeson revised Directive 3.010, concerning "Kelly Days". On March 2, 1989, Chief Beeson revised Directive 3.009, concerning "Acting Assignments".

When the president of the local union, Wendlin Geffre,[5] heard about these directives, he spoke to Chief Beeson and pointed out that they affected working conditions. Geffre asked Beeson to rescind the directives, citing that the labor agreement provides that all matters pertaining to wages, hours and working conditions are negotiable. Beeson told Geffre that his actions were authorized under the management rights clause.

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[5] Geffre is employed as a lieutenant in the Yakima Fire Department.

On April 12, 1989, the union filed this unfair labor practice complaint, alleging that the employer had violated RCW 41.56.140(1) and (4), by unilaterally changing conditions of employment. Prior to assignment of the case to an Examiner, the Executive Director inquired of both parties whether these "unilateral change" allegations could properly be deferred to arbitration under Commission policy. The employer replied that it would assert procedural defenses to arbitration. The union asserted that deferral would not be appropriate, because the employer intended to raise procedural defenses. In making his preliminary ruling under WAC 391-45-110, the Executive Director noted that "deferral" had been considered and rejected.

At the hearing before the Examiner, the employer argued that this case centers on interpretation of the collective bargaining agreement, and it moved that the case be deferred to arbitration. Examiner Lang denied that motion, on the grounds that the employer had previously stated it would assert, and had asserted, procedural defenses to arbitration. Following submission of briefs, Examiner Lang found that the employer had committed unfair labor practices by making unilateral changes in working conditions.

POSITIONS OF THE PARTIES

The main thrust of the employer's argument is that, by ignoring the bargaining history, the express language of the management rights provision, as well as the incorporation by reference of specific Yakima Municipal Code provisions into the labor agreement, the Examiner erroneously concluded that the collective bargaining agreement did not contain clear waivers of the union's bargaining rights. The employer next argues that the Examiner erroneously concluded: (1) That Chief Beeson had issued a directive changing the scheduling of "Kelly Days"; and (2) that the union made timely demands to bargain. Finally, the employer argues that it was error

for the Executive Director and the Examiner to refuse to defer the issues in this case to the contractual grievance arbitration machinery.

The union fully supports the decision of the Examiner.

DISCUSSION

The Legislature has delegated authority to the Public Employment Relations Commission to prevent unfair labor practices arising under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW:

> RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS. The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. **This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.** [emphasis by **bold** supplied]

That provision closely parallels Section 10(a) of the National Labor Relations Act (NLRA), which empowers the National Labor Relations Board (NLRB) to determine and remedy unfair labor practice allegations.

We have before us a case involving alleged unilateral changes. An employer can be found guilty of a "refusal to bargain" under RCW 41.56.140(4), if it makes changes of the wages, hours or working conditions of bargaining unit employees without first giving notice

to the union and, upon request, bargaining in good faith with the union concerning the matter.

Deferral to Arbitration

A union may waive its statutory bargaining rights by contractual language which permits an employer to make changes on mandatory subjects of bargaining without fulfilling the notice and bargaining obligations that would otherwise be imposed upon it by statute. Seattle School District, Decision 2079-A (PECB, 1985). Indeed, among the defenses commonly asserted by employers in unfair labor practice cases involving "unilateral change" allegations is that the disputed change was permitted by a contract between the employer and the union. When such a defense is raised, interpretation of the collective bargaining agreement is necessary.

Early in the history of the National Labor Relations Act (NLRA), the Supreme Court of the United States decided that the National Labor Relations Board (NLRB) has jurisdiction to decide contract interpretation issues, to the extent necessary to resolve pending unfair labor practice charges. See, e.g., J. I. Case v. NLRB, 321 U.S. 332 (1944). The contention that the NLRB lacked power to decide cases involving contract interpretation was revived after Section 203(d) was adopted as part of the Taft-Hartley amendments in 1947,[6] but subsequent court decisions have firmly established

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[6] Using language nearly identical to Section 203(d) of the Taft-Hartley Act, our Legislature has also expressed a preference for grievance arbitration as the most desirable method for resolving contract interpretations:

> **RCW 41.58.020 POWERS AND DUTIES OF COMMISSION. ...**
>
> (4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

that the authority of the NLRB to determine and remedy unfair labor practices as "public rights" under Section 10(a) of the NLRA cannot be limited by private contracts or arbitration awards. See, e.g., Carey v. Westinghouse Electric, 375 U.S. 261 (1964); Machinists Lodge 743 v. United Aircraft, 337 F.2d 5 (2nd Circuit, 1964), cert. denied 380 U.S. 908 (1965).

Clearly, the NLRB (and this Commission) could refuse to "defer" to arbitration in **any** unfair labor practice case, and could interpret any collective bargaining agreement **to the extent necessary to decide a pending unfair labor practice case.** Both the NLRB and this agency have exercised their discretion, however, in seeking to harmonize efforts taken pursuant to their statutory unfair labor practice jurisdiction with the grievance arbitration process. See, Spielberg Manufacturing Co., 112 NLRB 1080 (1955);[7] Collyer Insulated Wire, 192 NLRB 837 (1971);[8] and Stevens County, Decision 2602 (PECB, 1987). Arguments advanced by the employer in this case, and in another case decided today involving the same parties,[9] have caused us to reconsider and restate our policy on "deferral".

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[7] In Spielberg, the NLRB set forth its standards for deferring to an arbitration award already issued: The arbitration proceedings must have been fair and regular, all parties must have agreed to be bound, and the arbitrator's decision must not be repugnant to the purposes and policies of the NLRA.

[8] In Collyer, the NLRB set forth its standards for deferring to grievance and arbitration proceedings that had not been completed. The Board allows the contractual grievance machinery to proceed, while retaining jurisdiction to reconsider the matter upon a showing that: (a) The dispute has not been resolved or submitted to arbitration with reasonable promptness; (b) the grievance or arbitration procedures have not been fair and regular; or (3) the grievance or arbitration procedure has reached a result which is repugnant to the Act.

[9] City of Yakima, Decision 3880 (PECB, 1991).

Types of Cases Appropriate for "Deferral" -

A debate has been carried on at the NLRB about the types of cases which should be subject to "deferral". This Commission has taken a conservative approach, limiting "deferral" to situations where an employer's conduct at issue in a "unilateral change" case is **arguably protected or prohibited by an existing collective bargaining agreement.** Stevens County, supra; METRO, Decision 2746-A (PECB, 1989). The goal of "deferral" in such cases is to obtain an arbitrator's interpretation of the labor agreement, to assist this Commission in evaluating a "waiver by contract" defense which has been or may be asserted in the unfair labor practice case.

There is no legislative preference for arbitration on issues other than "application or interpretation of an existing collective bargaining agreement". RCW 41.58.020(4). We do not defer to arbitrators on other types of issues.[10]

Conditions for "Deferral" -

As a discretionary, rather than mandatory, policy of the Commission, "deferral" is ordered only where it can be anticipated that the delay in processing of the unfair labor practice case will

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[10] Other "refusal to bargain" claims dealing with "good faith" or refusals to provide information often put the legitimacy of the contract or the grievance procedure itself in question. Arbitrators have no special expertise on "interference" claims. King County, Decision 2955 (PECB, 1988); Kitsap County Fire District 7, Decision 3105 (PECB, 1989). In deciding "discrimination" claims under the statute, the Commission applies the shifting of burdens called for in City of Olympia, Decision 1208-A (PECB, 1982), citing Wright Line, 251 NLRB 1083 (1980), rather than the "just cause" test customarily used by arbitrators. See, also, City of Kelso, Decision 2633-A (PECB, 1988). Jurisdiction to decide unit determination matters is specifically vested in the Commission by RCW 41.56.060, and agreements made by parties on such issues do not bind the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981); Port of Seattle, Decision 3421 (PECB, 1990).

yield an answer to the question that is **"of interest to the Commission to resolve the pending unfair labor practice".** Several pre-conditions to "deferral" have been identified:

1. Existence of a Contract. The collective bargaining process contains many checks and balances. The subjects discussed between employers and unions in collective bargaining are traditionally divided under three headings: Mandatory, permissive and illegal. Waivers of statutory bargaining rights are not, themselves, a mandatory subject of bargaining. Employers are sometimes willing to agree on a "permissive" subject, knowing that they will be able to back out of that agreement when the contract expires. See, e.g., WAC 391-45-550. Employers are sometimes willing to make concessions on other issues, in order to obtain waivers of union bargaining rights giving them a free (or less hindered) hand in administering their operations during the life of the contract. In practical application, one of the principal distinctions between "mandatory" and "permissive" subjects is that the status quo must be maintained on mandatory subjects after the expiration of a collective bargaining agreement, while obligations concerning a permissive subject expire with the contract in which they were contained.[11] One of the inherent forces which motivates employers to sign contracts (or contract extensions) with unions is the preservation of contractual waivers of union bargaining rights.[12]

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[11] While included in a contract by agreement of the parties, a "permissive" subject is subject to enforcement through grievance arbitration or a violation of contract lawsuit on the same basis as any other contract term.

[12] For example, in Seattle School District, supra, the union had waived bargaining rights concerning "hours" by agreeing to contract language which permitted the employer to adjust shift schedules within a specified range of hours. If the contract were expired in that case, the employer again owed the union notice and an opportunity for bargaining under RCW 41.56.030(4) prior to each and every change of employee hours.

The existence of a contract is thus an essential element to finding a "waiver by contract".

The legislative preference for grievance arbitration is explicitly tied to "an existing collective bargaining agreement". RCW 41.58.020(4), supra. Support for deferral in any other circumstance would have to come from some other source. The unfair labor practice proceedings properly go forward, and "deferral" should be rejected, in any case where there was no collective bargaining agreement in effect at the time of the alleged unilateral change.[13]

2. Provision for Final and Binding Arbitration. Administrative agencies are created by legislative bodies to relieve the courts of relatively minor disputes within specific areas of expertise. In addition to conferring unfair labor practice jurisdiction on this Commission in terms virtually identical to Section 10(a) of the NLRA, the Legislature has entrusted this Commission with "arbitration" functions under both Chapter 49.08 RCW and RCW 41.56.125. Thus, the Commission is equipped to make any contract interpretations that are necessary to resolve a pending unfair labor practice case. The Constitution of the State of Washington creates the superior courts of this state as courts of general jurisdiction. Cases involving enforcement of collective bargaining agreements can be, and have been, litigated in the courts in the absence of procedures for final and binding arbitration.[14] While there is thus a vehicle for obtaining a contract interpretation outside of either the Commission or arbitration, to say that this Commission should withhold administrative processing

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[13] Examples of cases applying this principle include: Kitsap County Fire District 7, Decision 2872 (PECB, 1988); City of Olympia, Decision 2629 (PECB, 1987) and City of Kelso, Decision 2633-A (PECB, 1988); City of Yakima, Decision 3880, supra.

[14] To the same effect, Section 301 of the Taft-Hartley Act provides that a cause of action exists in the federal courts for "violation of contract" claims arising under the federal law.

of an unfair labor practice case while the parties go to court to obtain a contract interpretation turns the entire concept of administrative law upside down.

In enacting RCW 41.58.020(4), our Legislature distinguished procedures for "final adjustment of ... grievances" from all other dispute resolution mechanisms. Support for deferral in any other circumstance would have to come from some other source. The unfair labor practice proceedings properly go forward, and "deferral" should be rejected, in any case where there is no agreement to accept an arbitration award as "final and binding".[15]

3. Waiver of Procedural Defenses. Collective bargaining agreements typically contain time limits on the filing and/or processing of contract grievances, and a union subjects itself to forfeiture of its contract rights if it fails to conform to such time limits. At the same time, the six-month statute of limitations which applies to the statutory rights of the union and/or employees under Chapter 41.56 RCW cannot be altered or diminished by a contract between the parties. A union's failure to implement contractual dispute resolution machinery does not alter the Commission's limited interest in obtaining an interpretation of the contract "to resolve the pending unfair labor practice". Nor does a union's failure to file a timely grievance under the contract preclude deferral of unfair labor practice allegations under the statute. Tumwater School District, Decision 936 (PECB, 1980).

We find no merit in the employer's claims that current Commission policy on "deferral" undermines the effectiveness and validity of grievance arbitration procedures, that the Commission is overruling contractual time limits by applying the statutory six-month statute of limitations to contractual issues, and that a union must make an "election of remedies" between filing a

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[15] Examples of cases applying this principle include: City of Seattle, Decision 3593 (PECB, 1990); City of Pasco, Decision 3804 (PECB, 1991) and Manson School District, Decision 3813 (PECB, 1991).

grievance or filing an unfair labor practice. All of these arguments ignore that two separate sets of rights are being invoked. The employer also seems to forget or ignore that the genesis of the Commission's policy on "deferral" to arbitration is not statutory, but is a discretionary policy based in NLRB precedent in cases such as Collyer, supra, and Spielberg, supra. To protect its separate statutory and contractual rights, a union may well need to file **both** a grievance and an unfair labor practice complaint concerning a particular incident. The timeliness of each will be tested under the applicable standard: For the unfair labor practice complaint, against the six-month limitation set forth in RCW 41.56.160; for the contract violation, against any grievance filing time limit set forth in the contract.[16]

The deferral policy is not a tool by which respondents can avoid determinations as to whether they committed an unfair labor practice. It simply allows the parties an opportunity to utilize their contractual grievance and arbitration procedure to obtain a contract interpretation for consideration by the Commission. It should be obvious that there will be no arbitration award "on the merits" of a grievance if the employer prevails on a procedural defense to arbitration. Only a decision "on the merits" is of interest or use to the Commission **"to resolve the pending unfair labor practice"**. The NLRB also denies "deferral" where an employer refuses to agree affirmatively to arbitrate, or to waive its timeliness objections to arbitration. Southwestern Bell Tel. Co,

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[16] Tardiness in filing of an unfair labor practice will not be excused because the parties were engaged in the processing of a contract grievance. King County, Decision 3558-A (PECB, 1990); North Franklin School District, Decision 3844 (PECB, 1991). At the same time, a union's failure to file a timely grievance could be to its ultimate prejudice. The Commission does not assert jurisdiction to remedy what are purely contract violations through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). If the union has foregone or lost its access to arbitration, it could be left without any remedy.

276 NLRB 1053 (1985). The unfair labor practice proceedings properly go forward, and "deferral" should be rejected, in any case where there is or will be a dispute concerning arbitrability.

If the conditions for "deferral" are not met, the Commission processes the unfair labor practice case under the jurisdiction conferred on it by RCW 41.56.160. The procedures used are those set forth in RCW 41.56.160 through .190, those set forth in the "adjudicative proceedings" provisions of the Administrative Procedures Act,[17] and those set forth in the rules adopted by the Commission in Chapter 391-45 WAC. Contract interpretations will be made by the Commission, to the extent necessary to decide the pending unfair labor practice case.[18]

Docket Status of "Deferred" Cases -
The NLRB preserves the union's statutory rights during the time that the NLRB withholds action by dismissing the unfair labor practice case "subject to a motion for further consideration" by the NLRB. Rather than issuing an order of dismissal and later having to reopen the case, our practice at least since Stevens County, supra, has been to keep "deferred" unfair labor practice cases open on the agency's docket while the related grievance is processed before an arbitrator.[19] We see this as a distinction without a difference.

It is clear that the NLRB does not lose or surrender jurisdiction over the unfair labor practice case by its procedure. Our procedure assures that cases will not slip between cracks.

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[17] Chapter 34.05 RCW, at RCW 35.05.410 through .494.

[18] Examples of cases applying this principle include: Aberdeen School District, Decision 3063 (PECB, 1988) and Mason County, Decision 3108 (PECB, 1989).

[19] Some of the Commission's earliest "deferral" cases used the "dismiss subject to ..." approach of the NLRB, but that procedure has not been used for several years.

Post-arbitral Consideration by the Commission -
Regardless of whether a question of contract interpretation is decided by the Commission or by an arbitrator, there are three likely results:

1. Action protected by contract. If it is determined that the contract authorized the employer to make the change at issue in the unfair labor practice case, that conclusion by either the Commission or an arbitrator will generally result in dismissal of the unfair labor practice allegation. The parties will have bargained the subject, and the union will have waived its bargaining rights by the contract language, taking the disputed action out of the "unilateral change" category prohibited by RCW 41.56.140(4).[20]

2. Action prohibited by contract. If it is determined that the employer's conduct was prohibited by the contract, that conclusion by either the Commission or an arbitrator will also generally result in dismissal of the unfair labor practice allegation. Again, the parties will have bargained the subject, taking it out of the category of "unilateral change" prohibited by RCW 41.56.140(4).[21]

3. Action neither protected nor prohibited by contract. If it is determined that the employer's conduct was not covered by the parties' contract, further proceedings will be warranted in the unfair labor practice case. Whether the Commission makes that determination itself, or merely accepts an arbitrator's decision on

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[20] Examples of cases applying this principle include: City of Richland, Decision 2792 (PECB, 1987); King County, Decision 2810 (PECB, 1987) and King County, Decision 3204-A (PECB, 1989).

[21] Examples of cases applying this principle include: Anacortes School District, Decision 2464-A (EDUC, 1986); Spokane Transit Authority, Decision 2597 (PECB, 1987) and King County, Decision 3587 (PECB, 1990). A union needs to look to arbitration for a remedy in such a situation.

the issue, such a finding will be conclusive against any "waiver by contract" defense asserted by the employer in the unfair labor practice case. Unless the employer is able to establish some other valid defense, a finding of an unfair labor practice violation generally follows. See, e.g., Clover Park School District, Decision 2560-B (PECB, 1988).

Applying the "Deferral" Policy in This Case

This case involves alleged "unilateral changes". The complaint was filed within six months following the acts or events complained of, thus bringing the case before the Commission under RCW 41.56.160.

The parties had a contract in effect when the disputed changes were made, and it included provision for final and binding arbitration of grievances. The employer has asserted that its conduct was protected by the collective bargaining agreement. Thus, a question of contract interpretation was "of interest to the Commission to resolve the pending unfair labor practice". Under Stevens County, supra, the basic conditions for "deferral" were present. The Executive Director initiated the appropriate "deferral" inquiry.

Given an opportunity to have the inevitable contract interpretation made by an arbitrator, rather than by this Commission or its Examiner, the employer indicated that it would assert procedural defenses to arbitration. Deferral of this case in the face of the employer's resistance to arbitration would not have assured the desired contract interpretation, and would have been inconsistent with the Commission's policy on "deferral". The Commission agrees with the rulings made by the Executive Director and Examiner.

Mandatory Subjects of Bargaining

The first of several contract interpretations that are necessary in this case concerns the identification of what remained bargainable

during the life of the 1988-89 collective bargaining agreement. Article XI of the parties' 1988-89 contract is titled: "Collective Bargaining Procedure", and Section 11.1 preserves the union's bargaining rights, as follows:

> 11.1 General All negotiable matters pertaining to wages, hours and working conditions shall be established through the negotiation procedure as provided by RCW 41.56. No ordinance existing at the time of execution of this Agreement relating to wage, hours and working conditions for members of the bargaining unit shall be amended or repealed during the term of this Agreement without written concurrence of both parties.

The "wages, hours and working conditions" terms of art used in that section are the same as the definition of collective bargaining set forth in RCW 41.56.030(4), and nothing in the evidence or the arguments of the parties suggests that the parties intended the contract to have a meaning different from the statute.

The employer argues, generally, that the directives issued by Fire Chief Beeson involved only permissive subjects of bargaining. In its brief to the Examiner, the employer relied on Fire Fighters v. PERC, 113 Wn.2d 197 (1989), in support of its contention that the changes in leave scheduling were necessary to assure sufficient staffing for its operations, but it offered no other legal authority to support its position. The union claims that all of the disputed directives required bargaining. Before determining the various "waiver" defenses asserted by the employer, it is necessary to determine whether a duty to bargain arose in the first instance. We implement the case-by-case approach called for in Fire Fighters, as follows:

Vacation Scheduling / Number of Employees on Leave

Vacation and other paid leaves directly affect the "hours" that an employee works, and are alternative forms of "wages". Just as the

arrangements for payment of wages are closely related to the wages themselves, and hence a mandatory subject of collective bargaining,[22] the use of accumulated leave rights is closely related to the existence of those rights.

It is clear from Chief Beeson's testimony that his amendments to the departmental directives altered established practices. The new selection procedure would tend to impose rigidity on employees, where greater flexibility had existed in the past. The reduction of the number of employees who may be on leave from five to four would clearly limit the use of leave rights by employees during the more popular vacation periods.

The employer's argument based on Fire Fighters misses the mark. The employer did not establish that these changes were necessary to assure minimum staffing on any particular day. As pointed out by the Examiner, the employer had options other than requiring employees to change their leave plans, including requesting voluntary changes or having other employees work overtime. We thus affirm the Examiner's conclusion that the amended directives concerning vacation scheduling and the number of employees to be on leave changed employee wages, hours and working conditions, giving rise to a duty to bargain under both the contract and statute.

Vacation / Sick Leave Exchange -

Situations may arise from time to time where an employee who is on one type of paid leave (e.g., vacation) may acquire a claim for another type of paid leave (e.g., falling ill so as to be eligible for sick leave). Again, the use of accumulated leave rights is closely related to the existence of those rights. The real issue here is whether the amended directives dated in March and November of 1989 constituted any change of the status quo with regard to

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[22] City of Auburn, Decision 455 (PECB, 1978); City of Anacortes, Decision 1493 (PECB, 1982).

employees' use of sick leave while on vacation. No duty to bargain arises from a reiteration of established policy, or from a change which has no material effect on employee wages, hours or working conditions. Clark County Fire District 6, Decision 3428 (PECB, 1990).

Chief Beeson testified that the disputed directives were issued to correct a misapplication of an existing policy that sick leave could not be taken during an employee's vacation. He testified that one of the three battalion commanders had been permitting vacationing employees to call in and change their status from vacation to sick leave, contrary to both established policy and the Yakima Municipal Code.[23] The union offered no evidence to rebut Beeson's testimony, and did not address the question of whether there was an actual change of the status quo. The Examiner made no credibility determination to discredit Chief Beeson's assertion concerning the established policy on sick leave.

The Commission reverses the Examiner's decision on this subject, and concludes that there was no material change giving rise to a duty to bargain on this subject.

Acting Assignments -

The parties' 1986-87 contract included an "Appendix A" which set forth wage rates for "Battalion Chief", "Captain", "Lieutenant" and "Fire Fighter" classifications within the bargaining unit. It is clear that temporary assignments of bargaining unit employees to work in a higher classification were accompanied by increased

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[23] The cited Municipal Code provision requires employees electing to take sick leave to report the reason for the absence as far in advance of "the starting time of his scheduled work day as possible". The ordinance provides that employees accrue sick leave at the rate of "one working day of leave for each full calendar month of the employee's service with the city", which might also demonstrate an intent that sick leave is to be used only for days on which the employee was scheduled to work.

"wages". Under an "Appendix B" to that contract, the only possible "acting" assignment for an employee in the "fire fighter" classification was to the rank of lieutenant.[24] Just as promotions to positions within the bargaining unit are a mandatory subject of collective bargaining,[25] the distribution of work opportunities in "acting" status among bargaining unit employees is closely related to the "wages" to be earned.

It is clear from the testimony that the amended directives issued by Chief Beeson made some change in the distribution of opportunities for "acting" assignments. In particular, they opened the possibility for employees to hold acting assignments in positions more than one grade higher than their own, thus reducing the opportunities remaining for employees already in the higher classifications. We affirm the Examiner's conclusion that the amended directives concerning acting assignments both concerned a mandatory subject of bargaining and made actual changes of employee wages, hours and working conditions.

Kelly Day Scheduling -

The "Kelly Day" is an arrangement agreed upon by parties to reduce the average work hours of employees in the context of 24-hour shifts.[26] In this case, the parties had agreed-upon a 52-hour work week for some bargaining unit employees, to be accomplished by periodically giving employees 16 hours "off" during what would otherwise be their scheduled 24-hour shift. Just as scheduling of work and rest periods within a 24-hour shift has been found to be

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[24] The other rates listed were for lieutenants acting as captains, and for captains acting as battalion chiefs.

[25] Spokane County Fire Protection District 9, Decision 2860 (PECB, 1988); City of Wenatchee, Decision 2216 (PECB, 1985).

[26] A system using 3 platoons and 24-hour shifts results in an average of 56 hours per week on a cycle which repeats after 21 days.

a mandatory subject of collective bargaining,[27] the implementation of the Kelly Day right is closely related to its existence.

As with the "leave conversion" controversy discussed above, the real issue here is whether the disputed directive altered the status quo. The transcript discloses a conflict between the testimony of Chief Beeson and that of union President Geffre, and the Examiner made no specific credibility determination.

It was Beeson's testimony that the manner in which employees would be allowed to use the 2/3 Kelly Day had been determined by the employer almost a year and a half before the original directive was issued. He described the policy as being that employees would work the first 8 hours of their shift, and then get the next 16 hours off.[28] This testimony was not persuasively contradicted.

According to Geffre, the past practice was that employees had a choice in the matter, and could take the 16 hours off either at the beginning or end of their 24-hour shift. It is not clear, however, whether Geffre was asserting that such a past practice prevailed for all bargaining unit employees, or just for some of them. Beeson testified that two of the three battalion chiefs interpreted the policy as stated by Beeson, and that a different interpretation by the third battalion chief prompted the issuance of the January 24, 1989 directive requiring employees to work the first 8 hours.[29]

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[27] City of Clarkston, Decision 3286 (PECB, 1989).

[28] It is undisputed that an employee had the option of working or taking earned leave or holiday pay for the 8-hour period.

[29] Beeson also testified, without contradiction, that the complaint about the third battalion chief's enforcement of the policy was that he wanted to get his people to come to work for the last 8 hours, not that he was permitting them to take the 16 hours off at the beginning or end of the 24-hour shift.

Based on the record, the Commission concludes that there was no material change giving rise to an occasion for bargaining. The employer established that a policy existed long before the original directive was issued, and that the disputed directive merely made certain that the original intent of the policy would be followed by all employees. Erroneous enforcement of a rule by one supervisor (who is, himself, a bargaining unit employee) does not, by itself, change the rule or create a new status quo. The Commission thus reverses the Examiner's decision on this subject, and concludes that there was no material change giving rise to a duty to bargain on this subject.

Demand for Bargaining / Waiver by Inaction

The unilateral changes remaining at issue in this proceeding were presented to the union and the affected employees as fait accompli. Although the employer claims that the union failed to establish that it requested bargaining, we do not find support in this record for a finding of "waiver by inaction".

The burden of proof is with the party claiming waiver. City of Wenatchee, Decision 2194 (PECB, 1985). Here, union President Geffre credibly testified that he told Beeson that "all of the directive changes were negotiable under our current contract". The record is persuasive that Geffre requested Chief Beeson to rescind the disputed directives, and that Beeson replied that the management rights provision authorized him to take such action. These facts do not establish waiver by inaction.

Waiver by Management Rights Clause of Contract

The question arises as to whether the language in the management rights provision of the parties' contract (Article IV) constituted a waiver of the union's right to bargain over the remaining disputed subjects, or otherwise made them non-mandatory subjects.

In considering this question, it is significant that the employer does not argue that the language formerly contained in Article IV gave it the right to make the unilateral changes announced in the disputed directives. Therefore, a waiver, if any, must appear in the new language that was agreed upon in the 1988-89 contract.

The change in Article IV which now appears in subsection 4.6 seems to be meaningful and substantive. It gives the employer "the right to take whatever actions the Employer deems necessary to carry out services in an emergency". That provision has no relationship to the disputed directives issued by Chief Beeson, however, and is not relied upon by the employer here.

The employer relies upon the "manning" and "scheduling" functions mentioned in Article IV, claiming that they are the equivalent of the power to determine the conditions under which employees will be allowed to take leave, as well as the power to determine the number of employees that can be on vacation at a given time. However, there is no specific language in Section 4.2, or elsewhere in Article IV, that limits the vacation rights provided to employees elsewhere in the contract or gives management the right to determine the number of employees that can be on vacation at a given time.

The other provisions of Article IV were merely reworded in the 1988-89 contract. They are subject to an interpretation that they add no substance whatsoever, or to an interpretation that they are ambiguous.[30] Assuming that the employer may have envisioned the changes in Article IV as conferring upon it the prerogative to

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[30] In fact, it can be argued that certain of the changes made in 1988 place more restrictions on management than the original language. For example, subsection 4.2 requires that changes in work schedules must be in written form and be posted in the department manual. No such requirements appeared in former subparagraph IV(e).

unilaterally revise the disputed directives,[31] it has not sustained the burden of proof necessary to establish a waiver by contract. In order to show a waiver, the employer would have to demonstrate that the union also understood, or could reasonably have been presumed to have known, what was intended when it accepted the language relied upon by the employer. We find no evidence of such a meeting of the minds in this case.

Based upon the language of amended Article IV alone, the Commission concurs with the Examiner's conclusion that the union did not waive its right to bargain over the disputed "number of employees on leave", "vacation scheduling", or "acting assignments". The specific provisions of Article XI, requiring that "all negotiable matters pertaining to wages, hours and working conditions shall be established through the negotiation procedures, as provided by RCW 41.56", must prevail over the general statements made in Article IV of the contract.

Waiver by Contract References to Yakima City Code

Article XXX of the parties' 1988-89 contract is titled: "Municipal Code Sections Pertaining to Fire Department LEOFF Employees". The text of that article consists of **only** a list of section numbers and section titles. The employer argues that the ordinances referred to in Article XXX are incorporated into the parties' contract, and are not negotiable. We conclude that Article XXX of the parties' contract does not constitute a waiver of bargaining rights as to matters covered by the listed ordinances.

Identical citations were contained in Article XXXI of the parties' 1986-1987 contract, but apparently were not relied upon by the

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[31] For example, the employer might have been hoping for an interpretation that subsection 4.2 gives it the right to make any change of work rules without bargaining, so long as it gives the required notice to the union.

employer for the purpose claimed here. The employer has not provided any evidence of bargaining history from the negotiations for 1988-89 to support its apparent change of position regarding the meaning and application of Article XXX.

Section 11.1 of the parties' contract specifically requires "concurrence", and hence bargaining, on matters covered by city ordinances.[32] Further, whether a matter is negotiable under Chapter 41.56 RCW depends, in part, on whether it constitutes a change of the status quo. We do not read Article XXX as clearly reflecting an intent to waive bargaining as to changes of practices that fall within the scope of the listed ordinances.

Neither the language of Article XXX nor the testimony gives any indication of the original intent of the parties. It could have been purely informational, it might have been intended to list the ordinances frozen in place by Article XI, it could have been a contractual incorporation giving the parties access to contractual enforcement or determination of alleged breaches, or it could have been some other reason not known to the Commission. The most that can be said is that Article XXX is ambiguous.

The employer points to subparagraphs C and D of Municipal Code Section 2.22.060, which provide that vacations be requested in advance, be approved by the chief or his designee, and be taken at such times as an employee can be spared. The employer argues that these provisions clearly recognize management rights to schedule and approve requested leave. The employer relies upon Seattle

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[32] That section provides, in part:

> No ordinances existing at the time of execution of this Agreement relating to wages, hours and working conditions for members of the bargaining unit shall be **amended** or **repealed** during the term of this Agreement without written **concurrence of both parties.** [emphasis supplied]

School District, Decision 2079-B (PECB, 1986), as authority for its right to alter vacation scheduling procedures, but we conclude that the cited case offers no support for the employer's argument. In Seattle, an arbitrator had previously interpreted the labor agreement to give management the right to reclassify school buildings, as well as "the authority to alter the system by which it does so". In this case, there was no binding contract interpretation giving the employer the right to alter established procedures, and Article XI of the parties' contract explicitly requires that "all negotiable matters ... shall be established through the negotiation procedure as provided by RCW 41.56".[33]

The record does not demonstrate that the union understood, or could reasonably have been presumed to have known, that the mere references to various ordinances would give them force or effect as a contractual waiver of bargaining rights. Accordingly, the employer has not sustained its burden of proof on this issue.

Waiver by Bargaining History

In the absence of clear contract language waiving the union's bargaining rights, the duty to bargain specified in both the statute and Article XI of the contract must prevail on the issues remaining in dispute, unless the bargaining history demonstrates that the parties intended that the provisions of Article IV have

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[33] Moreover, we observe, without deciding, that the ordinance itself is subject to an interpretation inconsistent with the claimed right of the employer to alter established vacation scheduling procedures. Subparagraph D states that "an employee will be allowed to take his leave when he desires it if it is possible to schedule it at that time", and thus places a significant restriction on the employer's scheduling rights. Apart from being a change that would have to be accomplished through the bargaining process under Article XI of the contract, a blanket restriction on scheduling of vacations could be found to conflict with a contractual incorporation of subparagraph D.

more specific application than is indicated by the general words used in that provision. As with other "waiver" claims, the burden of proof lies with the party asserting existence of a waiver.

The Selection and Rescheduling of Vacations -
It is clear from Chief Beeson's testimony that the disputed directives altered established practices. Beeson's testimony was vague, and frequently just responsive to leading questions. His testimony revealed no bargaining history, nor any statements by the union, to indicate that the union had notice that the agreed-upon revisions to Article IV were intended to allow unilateral changes in the procedures for selecting or rescheduling vacations. Under these circumstances, the disputed changes constituted an unfair labor practice.

Reduction of the Number of Employees on Leave -
In regard to the reduction in the number of employees allowed to be on leave, Beeson's testimony suffered from the same deficiencies as his testimony regarding vacation selection and rescheduling. It was vague, and consisted of general statements that he told the union that the employer needed greater flexibility. Such generalizations are not sufficient to later establish a waiver. There was no testimony that specifics of this subject were discussed with the union, or that the union agreed to surrender employee rights by accepting the changes in Article IV. As pointed out by the Examiner, an agreement to give up rights must be consciously delivered. There was no such agreement here, and the change constituted an unfair labor practice.

Assignment of Acting Company Officers -
Chief Beeson testified, without contradiction, that during negotiations for the 1988-89 agreement the employer stated it wanted a fire fighter to be able to fill a company officer's position (lieutenant or captain) for up to three shifts. For longer than three shifts, Beeson acknowledged that the employer

agreed to follow the previous practice of moving only a lieutenant to a captain's position.

When the new agreement was finalized, Appendix "B", which had formerly regulated "Acting Assignment Pay Per Shift",[34] was removed from the contract and the applicable contract language was amended, as follows:

> ARTICLE XVII ((~~XVIII~~)) - SPECIAL PAYS
>
> 17.1 ((~~18.1~~)) The City will pay acting assignment pay of at least 5% above the normal base pay or the pay rate of the D-Step of the next higher pay grade, whichever is greater, ((~~of~~)) for an individual for such period of continuous service, provided the individual serves a minimum of ten (10) hours in such higher classification, having been so assigned by the Fire Chief or his designated agent and provided further that the individual exercises the responsibility, including operation and administrative duties as they apply.

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[34] APPENDIX "B" to the 1986-87 contract had provided:

Rank	Acting As	Effective Dates
Firefighter	Lieutenant	[Omitted are four
D-Step Lt.	Capt.	columns setting
E-Step Lt.	Capt.	forth pay rates
D-Step Capt.	B.C.	under headings of
E-Step Capt.	B.C.	1/1/86, 7/1/86, 1/1/87 and 7/1/87]

> Acting Assignment pay is the greater of either a 5% pay increase or the pay rate of the D-Step of the acting pay grade reduced to the monetary difference per shift. Formula used is as follows:
>
> To determine 5% shift - current pay x .05 [divided by] 9.42 shifts/mo.
> Example: Firefighter acting as Lt. $2325.41 x .05 / 9.42 = $12.34
>
> Higher Pay Rate
> D-Step Lt. Salary x 12 / 113
> Example: $2435.82 x 12 / 113 = $258.67
> E-Step FF Salary x 12 / 113 = $246.95
> 11.72

Standing alone, the deletion of "Appendix B" is consistent with Beeson's testimony. When viewed in conjunction with the change of Section 17.1, however, support exists for the union's contention that no change in prior practice was intended.

Wayne Wantland, a member of the union's negotiating team, testified that the union thought the changes made in the contract regarding acting assignments were merely housekeeping measures; not changes intended to allow the assignment of "acting" positions more than one grade above an employee's existing position. The fact that the language added to Section 17.1 of the contract mentions "D-Step of the **next higher pay grade** ..."[35] could well have led the union to believe that the past practice would continue.

The language of the 1988-89 contract does not clearly support the employer on this point. The "three shift" limitation described by Chief Beeson is conspicuous by its absence. We do not find it plausible that the parties would have changed the contract language to reflect one of two agreed changes (i.e., the "housekeeping" described by Wantland) without also reflecting a "three shift" limitation that was substantially at odds with past practice.

Viewed as a whole, we do not find the record sufficient to meet the employer's burden of demonstrating that the bargaining history constitutes a waiver of the union's bargaining rights on this subject. It is entirely possible that the parties had differing views of the meaning and intent of the changes made, so that "like ships passing in the night" they had no meeting of the minds on this change of past practice. The employer has failed to establish that the union knew or reasonably should have known what was intended by the employer when the changes were accepted. Accordingly, we agree with the Examiner that the disputed change of

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[35] Emphasis by **bold** supplied.

practice concerning acting assignments was an unfair labor practice.

AMENDED FINDINGS OF FACT

1. The City of Yakima is a "public employer" within the meaning of RCW 41.56.030(1). At all times pertinent hereto, Gerald A. Beeson was fire chief of the Yakima Fire Department.

2. International Association of Fire Fighters, Local 469, a "bargaining representative" within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of non-supervisory fire fighter employees of the City of Yakima. At all times pertinent hereto, Wendlin Geffre was the president of the local union. The employees involved are "uniformed personnel" covered by the interest arbitration procedures of RCW 41.56.430 et seq.

3. During the time pertinent hereto, the union and employer were parties to a collective bargaining agreement signed on September 22, 1988 and effective for the period from January 1, 1988 through December 31, 1989. That contract did not contain clear and unmistakable waivers of the union's right to bargain concerning changes of wages, hours and working conditions not specified in the contract.

4. On December 1, 1988, March 10, 1989 and November 1, 1989, Fire Chief Beeson issued amendments to Fire Department Directive 3.001, specifying department operational procedures concerning "assignments and time off". Those amended directives restated, without material change, the existing policy concerning change of vacation to sick leave. Those amended directives did make material changes in the procedures for employees to select and change vacation periods, and made a material change

in the use of accumulated vacation rights by reducing the number of employees permitted to be on leave at any one time.

5. On January 24, 1989, Fire Chief Beeson issued amendments to Fire Department Directive 3.010, specifying department operational procedures concerning "Kelly Days". That amended directive restated, without material change, the existing policy concerning scheduling of the 16-hour Kelly Day within the 24-hour shift.

6. On March 2, 1989, Fire Chief Beeson issued amendments to Fire Department Directive 3.009, specifying department operational procedures concerning "acting assignments". That amended directive made material changes in the procedures for assignment of employees to work in higher-paying classifications within the bargaining unit. Such changes were not within the rights of the employer under the terms discussed by the parties in negotiations for their 1988-89 collective bargaining agreement.

AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By changing procedures for vacation selection and limiting the number of employees permitted to be on vacation, as described in paragraph 4 of the foregoing amended findings of fact, without giving notice to and, upon request, bargaining with International Association of Fire Fighters, Local 469, the City of Yakima has committed, and is committing, an unfair labor practice under RCW 41.56.140(4).

3. The amended directives issued concerning conversion of vacation to sick leave and concerning administration of Kelly Days, as described in paragraphs 4 and 5 of the foregoing amended findings of fact, made no material change in the wages, hours or working conditions of bargaining unit employees, and did not give rise to a duty to bargain under RCW 41.56.030(4), so that the City of Yakima has not committed any unfair labor practice by failing to give notice to, or to bargain collectively with, International Association of Fire Fighters, Local 469.

4. By changing practices concerning acting assignments, as described in paragraph 6 of the foregoing amended findings of fact, made a change of employee wages, hours and working conditions that was not permitted by the parties' collective bargaining agreement and bargaining history, so that the City of Yakima has committed an unfair labor practice under RCW 41.56.140(4), by failing to give notice to, or to bargain collectively with, International Association of Fire Fighters, Local 469.

AMENDED ORDER

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

1. CEASE AND DESIST from:

   a. Failing and refusing to bargain in good faith with International Association of Fire Fighters, Local 469, as the exclusive bargaining representative of its employees in the appropriate bargaining unit described herein, with respect to all wages, hours and working conditions, and specifically with respect to vacation scheduling, the

number of employees permitted to be on leave on any day, and "acting" assignments.

b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Reinstate the vacation scheduling and acting assignment policies which were in effect prior to October 13, 1988.

b. Give notice to and, upon request, bargain collectively in good faith with the International Association of Fire Fighters, Local 469, prior to implementing any change of wages, hours or working conditions of employees in the bargaining unit; and, in the event that resolution of any dispute is not achieved through negotiations, submit the dispute for mediation and, if necessary, for interest arbitration for determination as required by RCW 41.56-.430, et seq.

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. Notify the above-named complainant, in writing, within 30 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.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 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, the 17th day of October, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Janet L. Gaunt

JANET L. GAUNT, Chairperson

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Dustin C. McCreary

DUSTIN C. McCREARY, Commissioner

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 refuse to bargain collectively with International Association of Fire Fighters, Local 469, regarding changes in vacation scheduling, the number of employees who may be scheduled off duty on any one day, and acting assignments for employees represented by Local 469.

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.

WE WILL give notice to and, upon request, bargain collectively in good faith with, International Association of Fire Fighters, Local 469, prior to making unilateral changes of wages, hours or working conditions of employees represented by Local 469.

DATED: _____

CITY OF YAKIMA

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.