STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PASCO, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1433, Respondent.	)	CASE 8521-U-90-1841 DECISION 3582-A - PECB DECISION OF COMMISSION

Greg A. Rubstello, City Attorney, appeared on behalf of the employer.

Critchlow, Williams & Schuster, by Alex Skalbania, Attorney at Law, appeared on behalf of the union.

This case comes before the Commission on a petition for review filed by International Association of Fire Fighters, Local 1433. The union seeks to overturn an order of dismissal issued by Executive Director Marvin L. Schurke at the "preliminary ruling" stage of this unfair labor practice case.

THE ALLEGATIONS AND PROCEDURAL BACKGROUND

The complaint charging unfair labor practices was filed in the above-entitled matter on March 30, 1990. In essence, the employer alleges that the union has committed a "refusal to bargain" unfair labor practice by insisting to impasse upon continuation of contract language affording the union certain employer-paid leave for unlimited "union business" purposes. The disputed language is:

> Any employee elected or appointed to a Union position which occasionally requires his absence, may, upon request of the Union,

> receive leave of absence for such activity. It is agreed that any employee exercising this leave of absence will be permitted to arrange for qualified replacements at no costs to the City; except that up to ninety-six (96) hours per year for the total Union Membership for conduct of Union business will be allowed by the City without requiring such replacement, without loss of pay. An employee requesting a leave of absence under this Article shall furnish the Fire Chief with written notice from the Union President why the employees absence is required to attend the Union function. [emphasis supplied by complainant.]

The employer cited "union meetings and conventions at the local, state and international level" as impermissible uses of employer-paid leave time. Among the remedies requested, the employer asserted that the "union leave" issue should be removed from the list of issues certified for interest arbitration.[1]

The employer filed a motion for summary judgment on May 8, 1990. A supporting affidavit indicated that the employer communicated its "non-mandatory" assertion to the union during the course of collective bargaining between the parties.

The union filed a written response on June 22, 1990. A supporting affidavit acknowledged the union's support for the disputed contract language, and acknowledged its use of the employer-paid leave time for attendance at various state-wide union meetings. Citing the history of the disputed language and the decision of the Supreme Court in State v. Northshore School District, 99 Wn.2d 232 (1983), the union nevertheless asserted that the issue was properly before the interest arbitration panel.

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[1] The docket records of the Commission disclose that contract negotiations between the parties were mediated in Case 8241-M-89-3215, and a list of issues was certified for interest arbitration pursuant to RCW 41.56.450, et seq. on January 9, 1990 in Case 8351-I-90-189.

The employer filed a reply memorandum on June 29, 1990. It cited the "domination" prohibition of RCW 41.56.140(2) as the basis for its arguments. It also cited the Commission's rejection of an unrestricted union leave provision in Enumclaw School District, Decision 222 (EDUC, 1977), together with the affirmation of that decision by the Superior Court for King County.[2]

The union filed its own motion for summary judgment on July 5, 1990, asserting that there is no material issue of fact and that the complaint should be dismissed.

On August 29, 1990, the parties and the neutral chairman of the interest arbitration panel were notified by the Executive Director that the authority to proceed to interest arbitration on the "union business" issue had been withdrawn, pending the outcome of this unfair labor practice proceeding.

On September 12, 1990, the employer objected to the removal of the "union business" issue from the interest arbitration proceedings.[3]

In a decision issued pursuant to WAC 391-45-110 and WAC 391-08-230 on September 27, 1990, the Executive Director found that IAFF Local 1433 had committed an unfair labor practice by bargaining to impasse and insisting on interest arbitration with respect to a proposal that was not a mandatory subject of collective bargaining under Chapter 41.56 RCW.

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[2] The November 21, 1977 decision of the court is reported in the WPERR at page CD-34.

[3] The employer did not explain the complete reversal from its remedy request in the original complaint. The employer subsequently filed a lawsuit in Superior Court, seeking a ruling that the Executive Director of the Public Employment Relations Commission is without statutory authority or jurisdiction to withdraw issues certified for interest arbitration under RCW 41.56.450. No ruling has been issued on that lawsuit.

The union filed a petition for review on October 16, 1990, citing a number of objections and requesting a 60-day period to file briefs and arguments. The Commission has not received anything further from the union in support of its petition for review.

DISCUSSION

Finding of Fact 3

The petition for review filed by the union objected to paragraph 3 of the Executive Director's findings of fact, which states:

> During the course of collective bargaining concerning a successor contract, the union has insisted upon inclusion of contract language specifying:
>
> > up to ninety-six (96) hours per year for the total Union Membership for conduct of Union business will be allowed by the City without requiring such replacement, without loss of pay.
>
> The proposed contract language puts no limitation whatever on the usage of the employer-paid leave.

The Commission is uncertain as to the precise nature of the union's objection.

The language used by the Executive Director comes directly from the record, which is uncontroverted on this point. The union's proposal does not limit the usage of employer-paid leave time. Further, the union had pursued the issue in mediation and had insisted on the inclusion of its proposed language in the contract. The issue was among those which had been certified for interest arbitration in Case 8351-I-90-189.

Conclusion of Law 2

The petition for review objected to paragraph 2 of the Executive Director's conclusions of law, which states:

> The "union leave" proposal described in paragraph 3 of the foregoing findings of fact and pursued to interest arbitration as described in paragraph 5 of the foregoing findings of fact is so unrestricted and vague as to be subject to interpretation and application in a manner that would cause the City of Pasco to violate RCW 41.56.140(2), and so is not a mandatory subject of collective bargaining under RCW 41.56.030(4).

The conclusion that this union leave proposal is not a mandatory subject of bargaining is pivotal to the disposition of this case.

The Executive Director reviewed the legislative history and rationale behind "unlawful assistance/domination" unfair labor practice provisions such as RCW 41.56.140(2). The Commission finds that discussion to be sound, and finds no reason to reverse. This particular union leave proposal is not a mandatory subject of collective bargaining.[4]

The union's claim that its proposed language is a mandatory subject of bargaining is based largely on the fact that employer-paid leave has been used in the past for union business, and on the fact that other municipalities pay for the same type of leave. Both observations are irrelevant. WAC 391-45-550 provides that a history of bargaining "does not and cannot ... confer the status of a

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[4] As indicated in Enumclaw, supra, a union leave provision is unlawful if it is so broad as to potentially cause the employer to pay for "organizing the employees of some other [employer]". More precise determination of the parameters of a lawful union leave provision best awaits a case-by-case analysis, since the provision before us is so clearly unrestricted.

mandatory subject on a nonmandatory subject". Furthermore, the objection in law to an employer paying for unrestricted union leave time is in the potential for abuse, and does not depend on establishing actual past abuse.

Conclusion of Law 3

The petition for review objected to paragraph 3 of the Executive Director's conclusions of law, which states:

> By its insistence to impasse upon the "union leave" proposal described in paragraph 3 of the foregoing findings of fact, and by its attempt to obtain interest arbitration on that proposal, International Association of Fire Fighters, Local 1433, has failed and refused to bargain collectively in good faith and has committed unfair labor practices in violation of RCW 41.56.150(4).

This conclusion follows from the above determination: A party commits a "refusal to bargain" by insisting to impasse on a proposal that is not a mandatory subject of collective bargaining. In a bargaining unit of "uniformed personnel" for which interest arbitration is provided under RCW 41.56.450 to resolve impasses, a party is not permitted to insist to interest arbitration on a non-mandatory subject of collective bargaining. The admitted facts are that the union did bargain the issue to impasse, and that the union did attempt to enter it as an issue in interest arbitration. By definition, the union committed a violation of RCW 41.56.150(4).

NOW, THEREFORE, it is

ORDERED

1. The findings of fact, conclusions of law and order issued by the Executive Director in the above-entitled matter are

AFFIRMED and adopted as the findings of fact, conclusions of law and order of the Public Employment Relations Commission.

2. International Association of Fire Fighters, Local 1433, its officers and agents, shall:

A. 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 the order issued by the Executive Director in this matter, and at the same time provide the above-named complainant with a signed copy of the notice required by that order.

B. 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 the order issued by the Executive Director in this matter, and at the same time provide the Executive Director with a signed copy of the notice required by that order.

Issued at Olympia, Washington, the 16th day of July, 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