STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 469, Complainant, vs. CITY OF YAKIMA, Respondent.	CASE 7800-U-89-1657 DECISION 3503 - PECB
YAKIMA POLICE PATROLMANS ASSOCIATION, Complainant, vs. CITY OF YAKIMA, Respondent.	CASE 7915-U-89-1707 DECISION 3504 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster, Mrak & Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of International Association of Fire Fighters, Local 469.

Aitchison, Snyder & Hoag, by Christopher K. Vick, Attorney at Law, appeared on behalf of Yakima Police Patrolmans Association.

Menke & Jackson, by Rocky L. Jackson, appeared on behalf of the employer.

On February 3, 1989, International Association of Fire Fighters, Local 469, (IAFF), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Yakima (employer) had violated RCW 41.56.140. (Case 7800-U-89-1657).

On April 19, 1989, the Yakima Police Patrolmans Association (YPPA) filed a separate complaint charging unfair labor practices with the Commission, also alleging that the City of Yakima had violated RCW 41.56.140. (Case 7915-U-89-1707).

Both complaints alleged that the employer committed refusal to bargain violations of the "unilateral change" variety, by its implementation of amended civil service rules concerning discipline and concerning promotions to positions within the respective bargaining units. The cases were consolidated for hearing and assigned to Examiner Mark S. Downing. A hearing was held in Yakima, Washington, on March 14, 1990. All parties presented oral arguments at the close of the hearing.

BACKGROUND

The City of Yakima is located in the central portion of the state of Washington, and is the county seat of Yakima County. The council/manager form of municipal government is in use in Yakima, with Richard A. Zais, Jr. serving as city manager. The City of Yakima has created the Yakima Police and Fire Civil Service Commission (Civil Service Commission), and that body has adopted rules and regulations governing certain, but not all, personnel matters for the Yakima Fire Department and the Yakima Police Department. Some of those civil service rules are common to both departments, while others are specific rules applicable to the departments separately.

The IAFF is the exclusive bargaining representative for a bargaining unit of approximately 80 Yakima Fire Department employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7). The IAFF and the employer were signatories to a collective bargaining agreement covering the period January 1, 1988 through December 31, 1989.

The YPPA is the exclusive bargaining representative for Yakima Police Department employees in a similarly-sized bargaining unit of law enforcement "uniformed personnel". The YPPA and the employer were parties to a collective bargaining agreement encompassing the period of January 1, 1987 through December 31, 1988.

On January 18, 1989, the Civil Service Commission adopted changes in its general rules that are the subject of this consolidated proceeding, as follows:[1]

1. Addition of general qualifications (i.e., possess a high school diploma or its equivalent, be in good health, etc.) for promotional opportunities;

2. Change from "rule of one" to "rule of three" for selection of promotional candidates; and

3. Change from mandatory to permissive establishment of employee list for provisional or temporary appointments.

On the same date, the specific rules for fire department employees were changed by the Civil Service Commission, as follows:

1. Addition of language permitting the employer to require a psychological examination for promotion to the bargaining unit position of "lieutenant";

2. Lowering of experience requirements for eligibility to take promotional examinations; and

3. Deletion of statement that unsatisfactory performance evaluation report shall be cause for dismissal.

On the same date, the Civil Service Commission made changes in its specific rules for police department employees, as follows:

---

[1] The YPPA alleged that a general rule was changed to remove an employee's right to appeal written reprimands to the Civil Service Commission. While such a change was proposed, it was not among the rules changes actually adopted on January 18, 1989.

1. Addition of language permitting employer to require a physical and psychological examination for promotions;

2. Elimination of requirement that, wherever practicable, promotions be filled from the next lower grade;

3. Additions of performance test, assessment center, physical agility, and evaluation of experience and training to promotional examinations;

4. Deletion of specific weights given to various portions of promotional examination;

5. Deletion of requirement that promotional examinations be practical in character, and test the applicant's general intelligence, accuracy and qualifications;

6. Deletion of averaging method for consideration of employee's performance evaluation reports in promotional situations; and

7. Lowering of experience requirements for eligibility to take sergeant examination.

A general rule defining appealable disciplinary actions was changed to exclude "reductions in rank", but "demotions" remained subject to appeal and "reductions in pay" were added as an appealable action. Taking those provisions together in context, it appears that any "reduction in rank" situation remained covered by the civil service rules.

PRE-HEARING MOTIONS AND RULINGS

A substantial portion of the documentary evidence in this proceeding was submitted by the parties in connection with various pre-hearing motions.[2]

---

[2] The parties stipulated the admission of eight exhibits in evidence. All except Exhibit 8 had been attached to various pre-hearing motions filed by the employer, and Exhibit 8 had been referred to in a pre-hearing motion.

On February 22, 1989, less than three weeks after the IAFF filed its original complaint, the employer filed a motion to dismiss, asserting that the complaint failed to state a cause of action. The employer's motion was one sentence in length, and did not contain any legal arguments or citations of authority, however.

The IAFF complaint was reviewed by the Executive Director for the purpose of making a preliminary ruling pursuant to WAC 391-45-110. Such preliminary rulings are based on the assumption that all of the facts alleged in the complaint are true and provable. In his preliminary ruling letter issued on March 17, 1989, Executive Director Marvin L. Schurke concluded that the complaint stated a cause of action. The complaint then remained pending until a staff member was available to be assigned for further processing.

On May 4, 1989, the employer filed a motion to have the IAFF complaint made more definite and certain. That motion alleged that the complaint was so indefinite that the employer was unable to prepare an answer to the allegations.

On May 12, 1989, the Executive Director sent a letter to the parties in the YPPA matter, inquiring as to whether the "unilateral change" allegations in that case should be "deferred" under Commission policy and precedent, pending the outcome of grievance arbitration proceedings under the parties' collective bargaining agreement. The employer's response to that inquiry indicated that it would assert procedural defenses to arbitration.[3]

---

[3] See, Stevens County, Decision 2602 (PECB, 1987). The Commission's "deferral" of an unfair labor practice case does not constitute either a lack of jurisdiction or a surrender of jurisdiction. Rather it implements the legislative preference of RCW 41.58.020(4) where "unilateral change" conduct at issue in an unfair labor practice is arguably protected or prohibited by an existing collective bargaining agreement and the parties have agreed upon arbitration machinery to resolve contractual questions.

On June 8, 1989, the IAFF complaint was assigned to Examiner William A. Lang of the Commission staff.

By letter dated June 13, 1989, Executive Director Schurke informed the parties to the YPPA matter that, in light of the employer's indication that it would assert procedural defenses to arbitration, deferral would not be ordered.[4] The same letter contained the Executive Director's preliminary ruling on the YPPA complaint, wherein it was concluded that the complaint stated a cause of action. The YPPA complaint remained pending until a staff member was available to be assigned for further processing.

Examiner Lang issued a Notice of Hearing in the IAFF matter on June 13, 1989, scheduling a hearing for July 18, 1989. The employer was therein notified that it was to file its answer to the complaint by July 7, 1989.

The employer requested a continuance of the hearing and, on June 26, 1989, Examiner Lang issued an amended Notice of Hearing, establishing September 15, 1989 as the new deadline for the filing of the employer's answer and September 21, 1989 as the new hearing date. Two months then transpired before additional motions were submitted in either matter.

On August 25, 1989, the employer filed a motion in the IAFF matter, seeking dismissal of the complaint or, in the alternative, a stay of the proceedings. That motion was based on its having filed a declaratory judgment action in the Superior Court for Yakima County on August 22, 1989, naming both the IAFF and the Public Employment Relations Commission as respondents. A copy of the declaratory

---

[4] There is no point to delay statutory unfair labor practice proceedings in a "unilateral change" case where resolution of an underlying contractual question through a contractual procedure will be resisted or avoided. Hence, the Commission does not "defer" in the face of procedural defenses to arbitration.

judgment complaint was attached to the motion. The employer therein admitted that its civil service commission had changed rules and regulations on January 18, 1989, but it sought a ruling that RCW 41.56.100 excused the employer from bargaining with the IAFF concerning implementation of any amended civil service rules. The employer further alleged that, by virtue of the IAFF's failure to seek judicial review of the civil service commission's actions, the union had waived any right it might have had to require the employer to bargain concerning the adoption of the amended civil service rules. The declaratory judgment complaint raised factual claims concerning a waiver by the IAFF of its collective bargaining rights, both through its conduct and through language contained in the parties' collective bargaining agreement.[5] In addition to declaratory relief, the employer sought an order from the court prohibiting or staying the Commission from hearing the IAFF's unfair labor practice complaint.

On August 31, 1989, the employer and the IAFF filed a joint request to postpone the September 21, 1989 hearing until the last week of November or the first week of December, 1989.

On August 31, 1989, the employer filed a motion in regards to the YPPA matter, seeking dismissal of the complaint or, alternatively, a stay of those proceedings. That motion was identical to the motion filed in the IAFF matter six days previously, and was based

---

[5] Specifically, the employer made factual allegations that a committee which included union members had been discussing revision of the civil service rules since January of 1988, and that the union had not requested bargaining before signing the 1988-89 collective bargaining agreement on September 22, 1988. The employer also alleged that the agreement contained a "zipper" clause by which all parties waived the right to demand bargaining on any subject or matter not specifically referred to or covered in the agreement. The employer also claimed that the grievance procedure of the labor agreement specifically exempted the rules and regulations of the civil service commission from challenge under the agreement.

on the employer's filing of a declaratory judgment complaint in the Superior Court for Yakima County on August 24, 1989.[6]

On September 5, 1989, Examiner Lang issued an amended hearing notice in the IAFF matter, establishing December 5, 1989 as the new hearing date, with the employer's answer due by November 24, 1989.

Administrative processing of these matters was then held in abeyance for several months, while the attention of the parties was focused on the employer's declaratory judgment actions against the IAFF, the YPPA and the Commission. When those matters came on for hearing in the Superior Court for Yakima County, the court declined to assert jurisdiction in the matters. Growing out of the judicial proceedings, however, was a proposal to have the IAFF and YPPA cases consolidated for further proceedings before the Public Employment Relations Commission.

On November 14, 1989, the Executive Director notified the parties that these two unfair labor practice cases would be consolidated, and that Examiner Mark S. Downing of the Commission staff had been assigned to conduct further proceedings in both matters.

On November 15, 1989, the employer filed its answer and a motion for summary judgment in the IAFF matter. The answer admitted that the civil service commission had amended its rules on January 18, 1989. The employer denied that the adoption and implementation of those rules was a mandatory subject of bargaining, however. The employer asserted that it had no duty to bargain collectively on the matters complained of, that those matters had been delegated to the civil service commission, and that the Public Employment Relations Commission has no jurisdiction over the complaint. The employer also renewed its argument that, because the IAFF had not

---

[6] Unlike the motion made in the IAFF matter, no copy of the declaratory judgment complaint was attached to the employer's motion.

sought judicial review of the actions of the civil service commission, the union was bound by the amended civil service rules. The employer maintained that all issues were legal issues subject to final disposition by summary judgment.[7] The employer's motion was supported by a detailed memorandum of points and authorities. Also attached were: Two affidavits from the Hon. Sid Morrison concerning the legislative history of Chapter 41.56 RCW during Mr. Morrison's tenure as a member of the Washington State House of Representatives, from 1967 to 1973, and while he was a member of the Washington State Senate in 1975;[8] copies of City of Yakima Ordinances 1.46 and 1.54, by which the employer established the Yakima Police & Fire Civil Service Commission for its Fire Department and Police Department employees, respectively;[9] and several additional documents.[10]

---

[7] WAC 391-08-230 provides for a summary judgment:

> [I]f the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law.

[8] Morrison is a member of the United States Congress, serving the district which includes Yakima. His affidavit dated August 18, 1989, had originally been filed in support of the employer's declaratory judgment complaint. A second affidavit, apparently prepared for the proceedings before the Commission, was dated October 14, 1989.

[9] Those ordinances were admitted in evidence at the hearing in these matters, as Exhibit 1.

[10] Those additional documents were admitted in evidence at the hearing as follows:

Exhibit 3: The general and specific civil service rules adopted on January 18, 1989;

Exhibit 4: Chapter 108, Laws of 1967, Extraordinary Session (Engrossed House Bill 483);

Exhibit 5: Senate Bill 360, Regular Session, 1965;

Exhibit 6: Governor Daniel J. Evans' veto letter of March 23, 1965, regarding Senate Bill No. 360; and

Exhibit 7: House Journal, April 30, 1975, regarding Senate Bill 2408.

On November 20, 1989, the employer filed a similar motion for summary judgment and memorandum of points and authorities in the YPPA matter.

On November 29, 1989, the undersigned Examiner, having reviewed the case files and pending motions in both matters, wrote a letter to all concerned parties. The hearing previously scheduled in the IAFF matter for December 5, 1989 was continued, as adequate notice could not be provided to the YPPA.[11] Both the IAFF and the YPPA were directed to file responses to the employer's Motions for Summary Judgment.

On December 1, 1989, the employer filed an "admission" in the IAFF case and filed its answer to the YPPA complaint. The "admission" stated that the Yakima Police & Fire Civil Service Commission had no authority concerning wages and wage-related matters, and therefore, with reference to City of Bellevue, Decision 839 (PECB, 1980),[12] was not similar in scope, structure and authority to the State Personnel Board. The employer's answer in the YPPA matter was identical to the answer previously filed on the IAFF complaint, except for the addition of an admission that the Yakima Police & Fire Civil Service Commission lacked authority over wages and wage-

---

[11] WAC 391-45-170 entitles a complaint to have the respondent's answer in an unfair labor practice case at least ten days before the hearing. No answer had been filed up to that point in the YPPA matter.

[12] The Bellevue decision had noted:

> RCW 41.08 and RCW 41.06 are separate enactments of the legislature and are markedly different from one another. While similarities exist, limitation of the scope of the Bellevue civil service to a narrow class of the city's employees and the absence of delegated authority concerning wages and wage-related matters compels the conclusion that the Bellevue Civil Service Board is not "similar in scope, structure and authority" to the State Personnel Board.

related matters. A copy of the civil service commission's January 18, 1989 rules, with the changes shown in legislative style, was also attached to the employer's answer.[13]

By letter dated December 13, 1989, the employer withdrew the motion to make more definite and certain that it had filed early on in the IAFF matter, noting that it had already filed its answer.

On December 22, 1989, the IAFF and the YPPA filed responses to the employer's summary judgment motions. The IAFF agreed that its complaint was appropriate for resolution through summary judgment procedures, noting that the employer had abandoned any claim that the IAFF had waived its collective bargaining rights, so that the sole issue was whether RCW 41.56.100 exempts a public employer from collective bargaining on matters delegated to a local civil service commission that is not similar in scope, structure and authority to the State Personnel Board. The IAFF argued that a decade-long string of Commission precedent supported its contention that the employer was obligated to bargain before implementing the amended civil service rules.[14] The YPPA also agreed that its complaint was ripe for resolution through summary judgment procedures, but it listed two issues to be resolved: (1) The scope of RCW 41.56.100; and (2) whether the union's failure to seek judicial review of the civil service rule changes resulted in a waiver of its right to process an unfair labor practice complaint. In regards to the scope of RCW 41.56.100, the YPPA argued that the statute's legislative history indicated that the "similar in scope" proviso applied equally to civil service commissions and personnel boards. The YPPA noted that, in light of the numerous Commission decisions

---

[13] This document was admitted as Exhibit 2 at the hearing held in this matter.

[14] Given such precedent, the IAFF also argued that the employer's arguments were "frivolous" and "nonsensical", and that the Examiner should grant the union's request for costs and attorney fees.

on the issue, the statute had never been amended to accomplish the employer's urged construction, and it took issue with the employer's application of rules of statutory construction. In regards to the union's failure to seek judicial review of the actions of the civil service commission, the YPPA pointed out that its challenge to the amended civil service rules had been filed within the six-month statute of limitations for unfair labor practices contained in RCW 41.56.160.

Also on December 22, 1989, the YPPA filed a motion to strike the Morrison affidavits. The YPPA asserted that affidavits from individual legislators could not be used to establish the intent of a legislative body.

Also on December 22, 1989, the YPPA filed a letter concerning the employer's "admission" that its civil service commission lacks authority over wages and wage-related matters. Specifically, the YPPA questioned whether the employer was maintaining that its civil service commission was similar to the State Personnel Board with respect to matters other than wages and wage-related matters. If so, the YPPA urged that summary judgment procedures would not be in order, as a material issue of fact would be in dispute.

The undersigned Examiner wrote to the parties on January 4, 1990. The employer was instructed to clarify its position regarding its "similarity" defense. Both the IAFF and the employer were ordered to respond to the YPPA's motion to strike the Morrison affidavits.

Responses were received from the employer and the IAFF on January 18, 1990. The IAFF supported the YPPA's motion to strike the Morrison affidavits, arguing that Morrison's personal understanding of any legislative intent was not probative of the Legislature's intent in enacting Chapter 41.56 RCW. The employer argued that, while striking any portions of the affidavits concerning "intent" might be proper under court rules of evidence, the Commission was

not bound by such rules. In any event, the employer maintained that Morrison's statements concerning the history of proposed and adopted legislation was admissible.

In regards to the "similarity" issue, the employer urged the Examiner to rule initially on whether a local civil service commission must be similar in scope to the State Personnel Board in order to qualify for the RCW 41.56.100 exemption. The employer reasoned that a ruling in the employer's favor would exempt it from collectively bargaining any matter delegated to the Yakima Police & Fire Civil Service Commission, and that only a ruling against it on the "similarity" issue would leave a question of fact as to whether its civil service commission was similar to the State Personnel Board.

On January 25, 1990, the undersigned Examiner granted the YPPA's motion to strike the Morrison affidavits. That ruling was made in accordance with strict "cannot be shown" language used in the holding of the Supreme Court on this issue in Woodson v. State, 95 Wn.2d 257 (1980):

> Legislative intent in passing a statute cannot be shown by depositions and affidavits of individual state legislators . . .

The parties were reminded that any historical events contained in the Morrison affidavits could be established through the use of official legislative records, such as the House Journal, the Senate Journal, legislative reports, or transcripts of committee hearings.

In the same January 25, 1990 letter, the undersigned Examiner responded to the arguments on the "similarity" issue by ordering an evidentiary hearing on the scope, structure and authority of the Yakima Police & Fire Civil Service Commission. That ruling was made in the context that, apart from the WAC 391-08-230 provision for summary disposition of an entire case, the Commission's rules

do not encourage a motion practice or provide for separate rulings on legal issues prior to obtaining an evidentiary record on which to base the findings of fact required of an administrative agency by RCW 34.05.461(4).

An amended notice of hearing was issued on February 5, 1990, establishing March 14, 1990 as the hearing date.

On February 21, 1990, the IAFF filed an amended complaint, alleging that it had advanced certain proposals during the course of negotiations for a new labor agreement, and that the employer had refused to bargain those matters asserting that it was immune from any collective bargaining obligations concerning:

1. A requirement that any rule, regulation, procedure or policy affecting wages, hours or working conditions be negotiated with the union (or awarded by an interest arbitration panel) before implementation;
2. Imposition of discipline only for just cause;
3. Promotional standards addressing examination procedures, experience requirements and selection criteria; and
4. Expansion of the contractual grievance procedure to include disputes involving conditions of employment, as well as disputes involving the interpretation of the labor agreement.

On February 23, 1990, the Executive Director issued a preliminary ruling, informing the parties that the amended complaint stated a cause of action. The employer was directed to answer the amended complaint by March 2, 1990. The parties were reminded that the hearing would be held on March 14, 1990, as previously scheduled.

On February 27, 1990, counsel for the employer informed the Commission, by telephone, that the employer would not be able to meet the March 2, 1990 deadline for its answer.

On March 1, 1990, the employer filed a document with the Commission, objecting to the amended complaint and asserting that jurisdiction over the matters covered in the amended complaint was vested in the Superior Court for Yakima County, rather than with the Public Employment Relations Commission. The employer noted that it had filed a complaint for declaratory judgment[15] in the court on February 15, 1990, arising out of the same facts and circumstances involved in the amended complaint charging unfair labor practices.

During telephone conversations between the Examiner and counsel for the parties held on March 1, 1990, the IAFF waived its entitlement, under WAC 391-45-170, to have an answer to its amended complaint at least ten days prior to the hearing. The Examiner thereupon extended the deadline for the employer's answer to March 9, 1990.

On March 6, 1990, the undersigned Examiner issued a letter overruling the employer's objections concerning consideration of the amended complaint. That ruling was based on a conclusion that the Commission had first obtained jurisdiction in the matter by the filing of the original IAFF complaint on February 3, 1989. Since both the original and amended complaints involved the same issues, (i.e., the employer's refusal to bargain concerning the subjects of promotions within the bargaining unit and discipline of bargaining unit employees), it was concluded that the matter was already before the Commission when the employer filed its most recent complaint in Superior Court. The same letter also confirmed the Examiner's March 1, 1990 telephonic ruling extending the deadline for the filing of the employer's answer.

The employer's answer to the IAFF's amended complaint was filed on March 9, 1990. In addition to its argument concerning proper

---

[15] This document was admitted as Exhibit 8 at the hearing held in this matter.

jurisdiction lying with the Superior Court, the employer argued that it had no duty to bargain the complained-of subject areas, as they had been delegated to the civil service commission.

The hearing held before the Examiner on March 14, 1990 dealt with the factual issue as to whether the Yakima Police & Fire Civil Service Commission is similar in scope, structure and authority to the State Personnel Board in areas other than wages and wage-related matters.

The IAFF brought motions before the Superior Court for Yakima County, asking the court to strike the Morrison affidavits filed with it, and asking the court to dismiss the declaratory judgment action filed by the employer on February 15, 1990. On April 10, 1990, the court granted the motion to strike the Morrison affidavits, but denied the motion for dismissal. Relying on Mutual of Enumclaw v. Human Rights Commission, 39 Wn.App. 213 (1984), the court ruled that it, rather than the Commission, has jurisdiction of the matters covered in the IAFF's amended complaint charging unfair labor practices. As a result of that holding, the undersigned Examiner has declined to make further rulings on the IAFF's amended complaint.

DISCUSSION

This case concerns the rights of employees in the areas of discipline and promotions to positions within the bargaining units represented by the respective unions. Both areas directly affect the wages, tenure and other "working conditions" of employees in the respective bargaining units, so as to normally be considered mandatory subjects of collective bargaining. RCW 41.56.030(4); City of Bellevue, Decision 839 (PECB, 1980); and City of Wenatchee, Decision 2216 (PECB, 1985). Compare: City of Yakima, Decision 2387-B (PECB, 1986).

Commission Jurisdiction Over Actions of the Civil Service Commission

The employer claims that it has delegated control over the disputed subject areas to its civil service commission, a "quasi-judicial organ of municipal government", and that the Public Employment Relations Commission has no jurisdiction over that body.

The application of Chapter 41.56 RCW to a public entity is defined in RCW 41.56.030(1), as follows:

> "Public Employer" means any officer, board, commission, council or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56-.020, or any subdivision of such public body. (emphasis supplied)

In City of Bellevue, Decision 3156-A (PECB, 1990), the Commission ruled that the Bellevue Civil Service Commission acts "on behalf of" the City of Bellevue, so that the exercise of its rule-making functions became an act of the City of Bellevue. The Yakima Police & Fire Civil Service Commission and the Bellevue Civil Service Commission were both created under the statutory framework of Chapters 41.08 and 41.12 RCW. There is nothing in this record that would distinguish the structure of the Yakima body from that of the Bellevue body.

The employer's own "organ of municipal government" terminology confirms the fundamentally local source and scope of authority of that body. Although it is created pursuant to a state statute, the Yakima Police & Fire Civil Service Commission acts "on behalf of" the City of Yakima in its rule-making functions. Insofar as the actions of the employer, taken as a whole, involve mandatory subjects of collective bargaining under Chapter 41.56 RCW, those actions are subject to the jurisdiction of the Public Employment Relations Commission.

Collateral Estoppel

The employer would have these unfair labor practice complaints dismissed, because the IAFF and YPPA did not seek judicial review of the action by the civil service commission to amend its rules.

The IAFF and YPPA have not questioned the manner in which the rules changes were adopted by the civil service commission. Issues of that nature would be properly taken before the courts, and would not be subject to review before the Public Employment Relations Commission in any case.

The union complaints in these cases are directed against the unilateral implementation of changes of wages, hours or working conditions, without opportunity for collective bargaining (and, impliedly, pursuit of impasse resolution procedures under RCW 41.56.430 et seq. in these units of "uniformed personnel") called for by Chapter 41.56 RCW. The Public Employment Relations Commission has jurisdiction to hear and determine breaches of the bargaining obligations imposed by the Public Employees' Collective Bargaining Act. RCW 41.56.160.

RCW 41.56.160 provides a remedy for unfair labor practice violations only with respect to events occurring during the six-month period immediately preceding the filing of a complaint with the Commission. City of Seattle, Decision 3066 (PECB, 1988). The civil service commission amended its rules on January 18, 1989. The IAFF and YPPA complaints were filed on February 3 and April 19, 1989, respectively, both well within the six-month period provided by the statute. The complaints in this matter were timely filed pursuant to RCW 41.56.160, and the issues raised in those complaints are properly before the Public Employment Relations Commission under Chapter 41.56 RCW.

The Civil Service Proviso

As of January 18, 1989, when the action disputed in this case took place, RCW 41.56.100 stated:[16]

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission.

(emphasis supplied)

Chapter 41.06 RCW is titled the "State Civil Service Law", and it creates both the State Personnel Board and the Department of Personnel to administer that law.

The employer argues here that it has no obligation to bargain collectively on the complained-of subject areas, because they have been delegated to its civil service commission. The unions, on the other hand, both contend that the Yakima Police & Fire Civil

---

[16] RCW 41.56.100 was originally adopted as Chapter 108, Laws of 1967 (ex.sess.), Section 10. It was amended prior to January 18, 1989 only by substitution of a reference to the Public Employment Relations Commission as the administrative agency in place of the Department of Labor and Industries. It was amended later in 1989 in a manner not relevant to this proceeding.

Service Commission and its actions do not come within the "civil service proviso" of RCW 41.56.100.

Early Historical Considerations -

First created in the United States as a means of protecting public employees from the favoritism prevalent in earlier spoils systems, "civil service" systems were based on the principle of applying a "merit" approach to the matters of appointment and tenure of public servants.[17] In 1883, the United States Civil Service Act[18] established a personnel system for federal government employees based on open competitive examinations and other merit principles, and banned the removal of such employees from their jobs due to political or religious affiliations. The first state civil service law was enacted in New York, also in 1883.

In 1896, the City of Seattle created the first civil service system in the state of Washington.[19] The Seattle Civil Service Commission was empowered to "classify all the offices and places of employment in the city . . . "

It is known that the City of Spokane had a board in operation by 1899 which, at a minimum, reviewed the discharges of police officers.[20]

---

17 Daniel P. Sullivan, Public Employee Labor Law, The W.H. Anderson Company, 1969, page 14.

18 Also known as the Pendleton Act.

19 The Charter of the City of Seattle, Article XVI, adopted March 3, 1896.

20 See Bringgold v. Spokane, 27 Wash 202 (1902), where the court held that the police board, pursuant to city charter, had the power of removal, but did not have the power to suspend a police officer.

By 1910, the City of Spokane had established a civil service commission with jurisdiction over all positions in the city government, except seasonal workers and appointive officers.[21]

Any trend towards the widespread creation of "civil service" systems ran into an apparent impediment in 1930, when the Attorney General of the State of Washington issued an opinion stating that only cities operating under a charter had the authority to create a civil service system.[22] Only first class cities may frame their own charters, according to the state constitution.[23] The Attorney General's opinion indicated that Seattle, Tacoma,[24] Spokane, Bellingham and Everett[25] were then the only cities with "civil service" protections in place.

The first civil service law of state-wide application in Washington was passed by the Legislature in 1935. Chapter 41.08 RCW required every city, town or municipality having a full paid fire department to create a civil service commission, and empowered those civil service commissions in the following personnel matters:

> (1) To make suitable rules and regulations not inconsistent with the provisions of this act. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promo-

---

21 The Charter of the City of Spokane, Article VI, adopted December 28, 1910.

22 Wash. AGO, February 5, 1930.

23 The term was then defined in Article XI, Section 10 of the Constitution of the State of Washington as cities having a population of 20,000 or more inhabitants. The minimum population was changed to 10,000 by Amendment 40 to the Constitution, approved on November 3, 1964.

24 Mowre v. Civil Service Commission, 178 Wash 325 (1934).

25 Larson v. Civil Service Commission, 175 Wash 687 (1934).

> tions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this act, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. . . .
>
> . . .
>
> (8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.
>
> (9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year;

RCW 41.08.040 (emphasis supplied)

Chapter 41.08 RCW also provided that employees holding positions governed by civil service rules could only be discharged, suspended, or demoted for specified reasons. After successful completion of a probationary period, employees are protected by a "for cause" standard in disciplinary actions. On the other hand, Chapter 41.08 RCW made it clear that all positions subject to the jurisdiction of the civil service commission must be authorized by the city council or city officer(s) vested by law with the power to employ individuals, and that such city council or officer(s) retain exclusive authority to set the salary and compensation for the employees.

Concurrent with the emergence of civil service systems for fire fighters in Washington, public employees were also joining labor organizations to seek protection of their employment rights.[26] In 1935, legislation was passed authorizing first class cities in Washington:

> [T]o deal with and to enter into contracts ... with its employees employed in the construction, maintenance and/or operation [of certain types of public utilities owned and operated by the city] through the accredited representatives of such employees or of any labor organization or organizations representing and authorized to act for such employees, concerning wages, hours and conditions of labor in such employment.

RCW 35.22.350; Chapter 37, Laws of 1935.

That was certainly one of the earliest pieces of public sector collective bargaining legislation in the nation.[27] It is worthy of note that the National Labor Relations Act was passed by Congress in the same year, to provide collective bargaining rights to certain employees in the private sector.

In 1937, the Legislature enacted Chapter 41.12 RCW, providing "civil service" for city police departments employing more than two employees. The rights and procedures established were essentially identical to those provided in Chapter 41.08 RCW.

---

[26] The Research Council's Handbook, Washington State Research Council, Fourth Edition, 1976, page 609.

[27] A 1959 enactment by the Wisconsin legislature and Executive Order 10988 issued by President Kennedy in 1962 are described in terms of "a new wave" and "major impetus" to public sector unionism in "The Evolving Process - Collective Negotiations in Public Employment" Association of Labor Relations Agencies / Labor Relations Press, 1985, Chapter 1 by Walter J. Gershenfeld, page 1.

As of 1944, the Attorney General of Washington opined that school districts and public utility districts had the authority to enter into collective bargaining agreements with unions representing their employees.[28]

The first judicial examination of collective bargaining rights of public employees that is cited or found came in Christie v. Port of Olympia, 27 Wn.2d 534 (1947). The Supreme Court held in that case that the public employer had the power to enter into collective bargaining agreements with its employees.[29]

In 1949, the Legislature gave the Washington Toll Bridge Authority the power to negotiate and enter into labor agreements with state ferry system employees or their representatives.[30]

Returning to the "civil service" arena, the City of Tacoma took action in 1952 to change the designation of its civil service body from a "civil service commission" to a "civil service board."[31]

In 1958, the Supreme Court ruled that strikes by public employees were enjoinable under the common law,[32] but that holding inherently

---

[28] As referenced in AGO 57-58-229, November 20, 1958.

[29] The National Labor Relations Act was amended in that same year by the Labor-Management Relations Act (the Taft-Hartley Act), but public employees remained exempt from the federal law.

[30] Chapter 148, Laws of 1949, now codified as Chapter 47.64 RCW. The statute created the (original) Marine Employees Commission. So far as can be found, that was the first statute in the nation to establish an administrative agency process specifically for the resolution of labor-management disputes in the public sector.

[31] The Charter of the City of Tacoma, Section 6.11, adopted November 4, 1952; effective June 1, 1953.

[32] Port of Seattle v. International Longshoremen's & Warehousemen's Union, 52 Wn.2d 317 (1958).

re-affirmed the right of public employees to organize and bargain. During the same year, the Attorney General opined that, though they were under no legal duty or compulsion to do so, Washington counties had the power to enter into collective bargaining agreements with their employees.[33]

An initiative was passed by the voters of Washington in 1958, creating "civil service" protections for employees of county sheriff departments.[34] Codified as Chapter 41.14 RCW, that law is generally similar to Chapters 41.08 and 41.12 RCW.

In 1959, the Wisconsin legislature enacted the statute that is commonly credited as being the pioneer piece of public sector collective bargaining legislation in the nation. At that time, Section 111.70 WIS. STATS. was little more than a statement of rights, with no procedures for administrative implementation.

The State Civil Service Law -

On November 8, 1960, the voters of Washington approved Initiative Measure No. 207, the "State Civil Service Law".[35] Codified as Chapter 41.06 RCW, that law created the State Personnel Board to regulate personnel matters for state employees. The independence of the board is assured by having the three members appointed by the Governor subject to confirmation by the Senate, and further subject to limitations in RCW 41.56.110 on their previous and concurrent political activities. The State Civil Service Law also established the Department of Personnel as a separate state agency to carry out the day-to-day administration of the rules adopted by the State Personnel Board. The department is headed by a director, whose independence is assured by provisions in RCW 41.06.130

---

[33] AGO 57-58-228, November 19, 1958.

[34] Initiative Measure No. 23, approved on November 4, 1958.

[35] (Chapter 1, Session Laws, 1961).

calling for appointment by the Governor from a list of three names submitted by the board,[36] and limiting the removal of the director.

As enacted in 1960, the State Civil Service Law empowered the State Personnel Board to adopt rules on a wide variety of subjects:

> [1] the dismissal, suspension, or demotion of an employee, and appeals therefrom;
> [2] certification of names for vacancies, including departmental promotions . . .;
> [3] examinations for all positions in the competitive and noncompetitive service;
> [4] appointments;
> [5] probationary periods . . . and rejections therein;
> [6] transfers;
> [7] sick leaves and vacations;
> [8] hours of work;
> [9] layoffs . . . and subsequent reemployment . . .;
> [10] agreements between agencies and employee organizations providing for grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an agency;
> [11] adoption and revision of a comprehensive classification plan for all positions in the classified service . . .;
> [12] allocation and re-allocation of positions within the classification plan;
> [13] adoption and revision of a state salary schedule . . . subject to approval by the State Budget Director in accordance with provisions of Chapter 328, Laws of 1959;
> [14] training programs . . .;
> [15] regular increment increases within the series of steps for each pay grade . . .;
> [16] providing for veteran's preference . . .;
>
> Chapter 1, Section 15 (Session Laws, 1961), now codified as RCW 41.06.150.

---

[36] The board's list of three recommended names is taken from those candidates with the highest standing on a competitive examination conducted by a committee appointed by the board solely for that purpose.

The State Personnel Board was also authorized to hear appeals from employees who have been reduced, dismissed, suspended or demoted after completion of their probationary period.

Pursuant to Chapter 41.06 RCW, the State Personnel Board has adopted extensive rules and regulations in Title 356 WAC, establishing conditions of employment for state employees in numerous areas, including insurance, holidays, compensatory time, shift premiums, standby compensation, flexible time schedules, callbacks, worker's compensation, jury duty, leave without pay, performance evaluation, educational leave and tuition reimbursement. Under rules adopted by it, the State Personnel Board also serves as the arbitrator of employee "grievance" disputes, as well as the arbitrator of "interests" disputes between an exclusive bargaining representative and a department.[37]

The Growth of Public Sector Collective Bargaining -

The decade of the 1960's is generally viewed as the period of emergence of public employee collective bargaining in the United States. The previously mentioned Wisconsin statute was enlarged in 1962 to authorize the resolution of disputes by an administrative agency. Section 111.70 WIS. STATS. Like some others of its time, that Wisconsin statute was a "meet and confer" law which lacked provision for enforcement of the duty to bargain through "refusal to bargain" unfair labor practice provisions comparable to Sections 8(a)5, 8(b)3 and 8(d) of the National Labor Relations Act. Many other states adopted legislation in this area during the 1960's, including Minnesota, Michigan, New York, and Washington. The Washington Legislature dealt with a number of measures during the 1960's that were directed towards the authorization and administration of collective bargaining by public employees in Washington.

---

[37] See, Green River Community College v. Higher Education Personnel Board, 95 Wn.2d 108 (1980).

In 1963, public utility districts and their employees were granted statutory authority to engage in collective bargaining on the same basis as their counterparts in the private sector.[38]

In 1965, the Professional Negotiations Act, Chapter 28A.72 RCW, was enacted to authorize certificated employees of school districts to "meet, confer and negotiate" with their employers through organizations elected by a majority of the employees. Salaries and various conditions of employment were made subjects for negotiation under that legislation. If an impasse was reached in negotiations, either party could request that the Superintendent of Public Instruction appoint a committee of educators and board members to advise and assist the parties. The written recommendations of an impasse committee were to be submitted within 15 days after the request was made, but were only advisory in nature. No "unfair labor practice" provisions or procedures were included in the statute, so that it was clearly of the "meet and confer" type described above.

The 1965 Legislature considered and passed Senate Bill 360, dealing with collective bargaining rights for state employees, local government employees and the classified employees of school districts. That legislation authorized employees to join unions, and to bargain collectively with their employer regarding wages, hours and conditions of employment. The following amendment was offered during consideration of that measure:

> NEW SECTION. Sec. 9. No employee who is a member of an employee organization representing any employee affected by this act shall be entitled to any of the benefits or rights under RCW chapters 41.08, 41.12 or 41.14, as now existing or hereafter amended.

House Journal, page 836, March 9, 1965.

---

[38] RCW 54.04.170 and .180. Chapter 28, Laws of 1963.

That amendment would have made the existing civil service protections for city police department employees, city fire department employees and county sheriff's department employees inapplicable to employees represented by unions that engaged in collective bargaining pursuant to Senate Bill 360. After debate, the amendment was not adopted. Thus, in what appears to have been the first occasion to deal with the interface between "civil service" and collective bargaining rights, the two subject areas were left to co-exist side-by-side.

Senate Bill 360 was vetoed in its entirety by Governor Daniel J. Evans. In his veto message of March 23, 1965, Governor Evans listed his concerns regarding the effect of collective bargaining rights on both the state and local government merit systems as follows:

> This bill purports to grant to employees of the state and certain political subdivisions the right to bargain collectively with their employers through labor organizations. I am satisfied that this statute is not necessary to confer this right upon public employees, and that, as written, the bill would contravene the merit systems now established at many levels of government.
>
> Collective bargaining is not new to state or local government. At least nine collective bargaining agreements are in operation between organizations of public employees and state agencies; and more than thirty such collective bargaining agreements have been entered into with local units of government.
>
> . . .
> I have noted from my examination of the laws of other states that invariably the authorization to bargain collectively has been made subject to the paramount principle of civil service. For example, the California law provides:
>
> > "Nothing contained herein shall be deemed to supersede the provisions

> of existing ... law ... which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. ... "
>
> Also, the federal government has exempted its employees from labor legislation to avoid any conflict with the federal civil service system.
>
> No state or federal law which I have examined conflicts so directly with the civil service system as Senate Bill No. 360.
>
> Under state merit system rules, collective bargaining agreements are subject to certain limitations. For example, these agreements may not contravene any merit system rule or Central Budget Agency regulation promulgated under statutory authority. And the attorney general has similarly ruled that under existing law collective bargaining agreements at the local level may not conflict with any charter or ordinance (which would include a merit system provision). Merit system laws and rules often provide methods for resolving disputes through personnel boards or civil service commissions. Without the limitations contained in the laws of other states, Senate Bill 360 would undermine these procedures and ultimately the entire civil service system.
>
> . . .
> For the foregoing reasons I have vetoed Senate Bill 360; but I have not done away with the right of public employees to collectively bargain. This right still exists, but without Senate Bill 360 the people will be assured that collective bargaining agreements will continue to be subject to merit systems wherever they exist, . . .

Senate Journal, pages 1127-28, March 31, 1965.

The clear thrust of Governor Evans' veto message was that <u>any</u> collective bargaining law should be subservient to the existing civil service systems present at the state and local government levels. The Senate failed to override Governor Evans' veto.

In 1967, port districts and their employees were given specific statutory authority to engage in collective bargaining relationships.[39]

The Enactment of Chapter 41.56 RCW -

The topic of collective bargaining rights for local government employees generally was revisited in 1967, when House Bill 483 was introduced as a "by executive request" measure. That bill was designed to provide collective bargaining rights to employees of cities, counties and political subdivisions of the state, including the classified employees of school districts. State employees were not included in the original bill. Of particular interest to this proceeding, HB 483 contained the following:

> NEW SECTION. Section 1. The intent and purpose of this act is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.
>
> . . .
>
> NEW SECTION. Sec. 3. As used in this act:
>
> . . .
>
> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this act. . . .

---

[39] Chapter 53.18 RCW, enacted as Chapter 101, Laws of 1967.

HB 483 also contained the language which became RCW 41.56.100, including the "civil service proviso" at issue in this proceeding. It did not contain any provisions for the hearing, determination or remedy of unfair labor practices. As originally proposed, the Department of Labor and Industries was authorized to promulgate rules and regulations to implement all provisions of the bill.

HB 483 was amended to clarify and expand the powers of the State Personnel Board under the State Civil Service Law, including:[40]

> Sec. 13. Section 15, chapter 1, Laws of 1961 and RCW 41.06.150 are each amended to read as follows:
>
> The [State Personnel] board shall adopt and promulgate rules and regulations . . . regarding the basis for and the procedures to be followed for, ... determination of appropriate bargaining units within any agency ...; certification and decertification of exclusive bargaining representatives; agreements between agencies and ((~~employee organizations~~)) certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters ((~~, including wages, hours and working conditions, which may be peculiar to an agency~~)) over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion; written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization: PROVIDED, That nothing contained herein shall permit or grant to any employee the right to strike or refuse to perform his official duties; . . .

These additional powers of the State Personnel Board did much to clarify the right, albeit limited, of state employees to engage in

---

[40] The amendments are set forth in "legislative style".

collective bargaining. As so amended, HB 483 was passed by both houses of the legislature.

On April 28, 1967, Governor Evans sent a letter to the House, containing a partial veto of HB 483. Governor Evans used the veto power to clarify that the Department of Labor and Industries was to have rulemaking authority only for the local government employees:

> Two years ago, I vetoed a bill dealing with collective bargaining for public employees [SB 360], primarily because of its total inadequacy in delineating the responsibilities of the Personnel Board and other agencies of State government. I again believe it would be unfortunate to allow the ambiguity created by the Senate amendment to remain. I have therefore vetoed in Section 9 the words, "of Sections 1 through 13" to maintain the legislative intent that the Personnel Board retain responsibility for collective bargaining by State employees and that the Department of Labor and Industries retain authority for dealing with collective bargaining by other public employees.

House Journal, page 2246, April 29, 1967.

No attempt was made to override the partial veto. HB 483 became the "Public Employees' Collective Bargaining Act", Chapter 41.56 RCW, effective on July 1, 1967.

The Original Functions of RCW 41.56.100 -

As originally adopted, RCW 41.56.100 appears to have dealt with a multitude of subjects within the overall context of a collective bargaining statute, apart from the "civil service proviso". In light of the history set forth above, the opening clause of the section[41] appears to have merely confirmed advice which the Attorney General had been dispensing for more than 20 years:

---

[41] That language reads: "A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative . . ."

Public employers can bargain. In the absence of administrative procedures and remedies within the statute for "refusal to bargain" and other unfair labor practices, the second clause of the section[42] took things a step further than the Attorney General and the Port of Seattle v. Longshoremen court had gone, and provided the statutory basis for judicial intervention to enforce a bargaining obligation.[43] The last sentence[44] appears to have contained the only reference in the statute to "mediation", and was the only provision for the resolution of bargaining impasses.

Apart from the exhibits already mentioned, the parties did very little to establish the Legislative history of RCW 41.56.100. Legislative reports from 1967 do not contain discussion as to the specific intent of the Legislature in exempting public employers from collective bargaining obligations for matters that have been delegated to civil service commissions or personnel boards.

Early Efforts to Amend RCW 41.56.100 -

Collective bargaining for public employees continued to be an issue before the Washington Legislature after the enactment of Chapter 41.56 RCW. Collective bargaining rights were extended to the "classified" employees of state universities, colleges and

---

[42] That language reads: ". . . and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative . . ."

[43] While it was ultimately unsuccessful on the merits, Spokane Education Association v. Barnes, 83 Wn.2d 366 (1974) is an example of such litigation brought under Chapter 28A.72 RCW in the absence of unfair labor practice procedures regulating "refusal to bargain".

[44] The language read:

> Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the state mediation service of the department of labor and industries.

community colleges in 1969, as part of the State Higher Education Personnel Law.[45] "Unfair labor practice" provisions were added to Chapter 41.56 RCW in 1969. The same legislation provided for unfair labor practices for state employees (by references in Chapters 28B.16 and 41.06 RCW to Chapter 41.56 RCW), and for the creation of a committee to study the operation of Chapter 41.56 RCW.[46]

Two attempts were made in the 1969 Legislature to change the "civil service proviso". The first of those, Engrossed Senate Bill 239, was supported by some labor organizations.[47] It would have deleted the civil service proviso from RCW 41.56.100 in the following manner:

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative ((~~: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been~~

---

[45] Chapter 28B.16 RCW. This is administered by the Higher Education Personnel Board.

[46] Chapter 215, Laws of 1969 (1st ex. sess.). The provisions concerning the Public Employees Collective Bargaining Committee, RCW 41.56.400 through 41.56.420, have since been repealed.

[47] Washington State Labor Council spokesman Sam Kinville testified in support of SB 239 at a meeting of the Public Employees Collective Bargaining Committee held on September 5, 1969. (Washington State Archives, Labor and Industries Legislative Council files, 1969-70.) The "dues checkoff" subject matter included in SB 239 was a separate subject of concern to unions at that time. For a discussion of the development of "dues checkoff" and "union security" under Chapter 41.56 RCW, see City of Seattle, Decision 3169, 3169-A (PECB, 1990).

~~delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative~~)). Upon the written authorization of any public employee, and after certification or recognition, the public employer shall deduct from the pay of such public employee the assessments, initiation fee and the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative. If the public employer and the exclusive bargaining representative are unable to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the state mediation service of the department of labor and industries.

The second attempt to amend the civil service proviso was contained in Senate Bill 436, which proposed:

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative. PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission of said public employer, or to any personnel board which is similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the state mediation service of the department of labor and industries.

It is inferred that SB 436 was supported by employers, or at least that it would not have been supported by unions.[48] Both SB 239 and SB 436 failed to pass in the 1969 legislature.

The Public Employees Collective Bargaining Committee created by RCW 41.56.400 et seq. considered 1969 SB 239 and 1969 SB 436 at meetings held in September and October of 1969, but neither of those approaches to the "civil service proviso" was recommended by the committee in its First Biennial Report Submitted to the 42nd Session of the Washington State Legislature.[49]

Collective bargaining rights were extended to academic faculty employees of the state's community college system in 1971.[50] That legislation was similar to the Professional Negotiations Act then in effect for K-12 teachers, and so offers no guidance on the "civil service proviso" at issue here.

Early Administrative Precedent -

The civil service proviso was interpreted by the Department of Labor and Industries in 1972, when three labor organizations filed unfair labor practice charges against the Snohomish Health District.[51] The employer had been notified in 1969 that it would lose federal funding unless it adopted an acceptable merit system

---

[48] Among its other provisions, SB 436 would have defined and excluded "supervisors" from the coverage of the statute, limited certification to unions willing to disavow the use of strikes, imposed penalties against employees for participating in a strike, and imposed penalties against unions for strikes.

[49] The "Second Revised Edition" was transmitted to Governor Evans and the Legislature under cover of a letter dated January 11, 1977.

[50] Chapter 28B.52 RCW.

[51] The unions were Professional and Technical Engineers, Local 17, Washington State Nurses Association, and Washington State Council of County and City Employees.

by a certain date. The employer adopted a resolution on June 15, 1971,[52] giving the State Personnel Board responsibility for a substantial portion of the employer's personnel functions,[53] including wages, hours and a number of personnel matters relating to conditions of employment that had previously been covered under collective bargaining agreements with the three complainants. The unions alleged that the employer had violated RCW 41.56.140(1) and (4), by its delegation of personnel functions to the State Personnel Board. Acting as "authorized agent" of the Department of Labor and Industries under Chapter 296-132 WAC, a state labor mediator dismissed the complaint, ruling that the employer's actions fell within the exclusion provided by RCW 41.56.100. The unions appealed that decision to the Director of the Department of Labor and Industries. The director's August 1, 1972 decision[54] summarized the unions' position as:

> The primary thrust of the position taken by the appellant is that the proviso in RCW 41.56.100, when construed in keeping with the plain meaning of the language chosen by the legislature, is inconsistent, repugnant and not in harmony with the spirit and intent of the enacting clause and other sections of the act, and for this reason should be construed

---

[52] This was in anticipation of an extended deadline of July 1, 1971, to have an acceptable merit system.

[53] The State Personnel Board accepted this delegation under the following provisions of RCW 41.06.080(2):

> Notwithstanding the provisions of this chapter, the department of personnel may make its services available on request, on a reimbursable basis, to:
>
> ...
>
> (2) Any county, city, town, or other municipal subdivision of the state;
>
> ...

[54] Unpublished decisions of the Director of Labor and Industries are in the files of the Public Employment Relations Commission, having been transferred along with other records pursuant to RCW 41.58.801.

> so as to require the respondent public employers to engage in collective bargaining with the appellants. It is asserted that the proviso in RCW 41.56.100, as construed by the mediators, "effectively emasculates the rights guaranteed (the health district employees) by the heart of the statute."

Snohomish Health District, et al, Case No. 0-1006, August 1, 1972, pages 7-8.

The director affirmed the labor mediator's interpretation of the civil service proviso, stating:

> Appellant seeks to have this office construe the proviso in RCW 41.56.100 in a manner completely contrary to the plain meaning of the language chosen by the Legislature and in such a way as would render the proviso meaningless and invalid. This office declines to construe the proviso of RCW 41.56.100 in the manner sought by appellants. . . . The proviso does no more than create a separate classification of public employees for the purpose of collective bargaining under the circumstances set forth in the proviso to RCW 41.56.100 and the classification places such public employees in substantially the same situation relative to collective bargaining as is the circumstance of state employees subject to the jurisdiction of the State Personnel Board. There can be no question of the authority of the legislature to provide for statutory classifications which have some reasonable basis and are not offensive to the equal protection clause or the privileges and immunities clauses of the constitutions of this State and the United States. [citations omitted]

Snohomish Health District, supra, pages 8-9.

The director thus concluded that reasonable and justifiable grounds existed for the statutory classifications in RCW 41.56.100, and dismissed the unfair labor practice charges.

Later Legislative Activity -

Major legislation affecting public sector labor law was enacted by the 1975 Legislature. The Educational Employment Relations Act, Chapter 41.59 RCW, was enacted to expand the collective bargaining rights of certificated employees of school districts.[55] The Public Employment Relations Commission was created to take over the labor dispute resolution activities of four different agencies under five public sector collective bargaining statutes and the state's private sector statute concerning labor disputes.[56]

When Substitute Senate Bill 2408 was considered by the House Labor Committee, an amendment was proposed to change RCW 41.56.100 in the following manner:

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative ((~~: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining repre-~~

---

[55] Chapter 41.59 RCW replaced Chapter 28A.72 RCW, the Professional Negotiations Act of 1965.

[56] Previous to this point in time, Chapters 41.56, 49.08 and 53.18 RCW were administered by the Department of Labor and Industries, Chapter 47.64 RCW was administered by the Marine Employees Commission, Chapter 28B.52 RCW was administered by the State Board for Community College Education, and Chapter 28A.72 RCW (the predecessor to Chapter 41.59 RCW) was administered by the Superintendent of Public Instruction. As of March 28, 1983, responsibility for the administration of Chapter 47.64 RCW was re-transferred to a new Marine Employees' Commission.

~~sentative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the state mediation service of the department of labor and industries~~)).

The amendment failed, however, and SSB 2408 passed with the civil service proviso intact.[57]

In 1977, legislation was introduced to change RCW 41.56.100. As it passed the House, Engrossed House Bill 10 specified:

> A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative ((~~: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW~~)). When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative and any resolution, rule, policy, or regulation of the employer or its agents and/or any civil service commission or personnel boards similar in scope, structure and authority to the board created by chapter 41.06 RCW, the terms of the collective bargaining agreement shall prevail. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission for mediation.

---

[57] RCW 41.56.100 was, of course, amended at that time to refer to the Public Employment Relations Commission, instead of the Department of Labor and Industries.

Opponents of that change proposed an amendment which, like the amendment defeated in 1965, would have excluded employees covered by a collective bargaining agreement from all civil service rights. That amendment also failed.[58] 1977 HB 10 failed to pass in the Legislature, however.

Judicial Interpretation of RCW 41.56.100 -

The first judicial examination of the civil service proviso that is cited or found came in City of Seattle v. Auto Sheet Metal Workers, WPERR, CD-72 (King County Superior Court, January 10, 1979).[59] The court reviewed changes in the City of Seattle personnel system that were initiated on November 8, 1977, when the city's voters passed a charter amendment establishing a revised city personnel system to be administered by a personnel director.[60] The city filed a suit for declaratory judgment in the Superior Court for King County, seeking a ruling as to the application of RCW 41.56.100 to its new personnel system. In ruling on that suit, the court reviewed the history of Chapter 41.56 RCW and interpreted the civil service proviso as requiring an independent board or commission:

> The legislature, in the Public Employees Collective Bargaining Act, excused a city from mandatory collective bargaining as to any matter which was delegated to a similar independent board or commission, similar in scope, structure and authority to the state board. The legislature did not excuse the city from

---

58 Journal of the House, April 5, 1977, Page 817.

59 The court's oral decision of this date was reduced to written Findings of Fact and Conclusions of Law, issued on April 5, 1979. WPERR, CD-74.

60 The employer's existing "civil service commission" was converted to a body to hear appeals involving administration of the personnel system, and a separate Public Safety Civil Service Commission was created to meet the requirements of Chapters 41.08 and 41.12 RCW for police and fire department employees. Seattle Municipal Code, Chapter 4.08.

> the requirement of collective bargaining as to matters delegated to a personnel director appointed by the mayor and confirmed by the council. Such a person is not an independent board or commission . . .
>
> Can the city civil service commission qualify? My ruling is that it is not similar in scope, structure and authority to the state personnel board and cannot qualify. The city civil service commission is set up by the charter primarily to hear appeals. . . .
>
> Most of the functions, the powers and the duties that are given to the state personnel board are delegated in the city system to the personnel director. The city commission does not have the scope, structure and authority of the state personnel board.
>
> The city has set up a system, under the charter amendment which keeps the ultimate authority in the city, itself, through its personnel director rather than delegating matters to a board similar in scope, structure and authority to the state board.

City of Seattle v. Auto Workers, supra, page 72.

The court further explained:

> The city contends that the civil service system is similar to the state system. Whether or not that be so is immaterial. The legislature did not mandate a substantially similar system. They could have if they had wanted to. They did not say an ordinance "which substantially accomplishes the purposes of the act,"[61] which they have done in the fighters instance, and could have done if they had wanted to.

---

[61] The court was apparently referring to RCW 41.08.010, which makes the state law on civil service for fire department employees inapplicable to employers which have made local arrangements which "substantially accomplish" the purpose of the state law. Similar language is found in RCW 41.12.010.

> Statute says that to relieve the city of the mandatory obligation of collective bargaining, the items must be delegated to a board or commission that is similar in scope, structure and authority. There is no such board or commission authorized by the charter or the ordinance. Even if we were to ask the question: Is the city system similar to the state system?, the answer would have to be no. The system is not similar enough to accomplish the purpose of that exemption in the statute.
>
> The reason it's not similar, basically, is that an independent board is not similar to city control. That difference is so basic that the system, itself, cannot be said to be similar. The city is, after all, the employer. The state system sets up a system where the control is in an independent agency, independent of the employing agency. When we are construing a collective bargaining statute, that difference is a very basic difference.

City of Seattle v. Auto Workers, supra, page 73.

In summary, the court rejected the claim that the employer's personnel system fell within the civil service proviso, and concluded that neither matters delegated to the Seattle Civil Service Commission nor matters delegated to the personnel director were exempt under RCW 41.56.100 from collective bargaining obligations.[62]

Commission Interpretation of RCW 41.56.100 -

The "civil service proviso" was first invoked before the Public Employment Relations Commission in City of Bellevue, Decision 839 (PECB, 1980). The case concerned a change of off-duty employment policies to be enforced by discipline or discharge of employees. The employer defended, in part, that it was excluded from any

---

[62] The trial court's ruling regarding the City of Seattle's personnel system was upheld on other grounds. City of Seattle v. Auto Sheet Metal Workers, 27 Wn.App. 699 (Division I, 1980), review denied, 95 Wn.2d 1010 (1981).

bargaining obligation by delegation of the subject matter to a civil service board under RCW 41.56.100. The complainant[63] alleged that the employer had a bargaining obligation, and that it had adopted the changes without providing an opportunity for bargaining. In rejecting the employer's position, the Examiner stated:

> The "civil service proviso" to RCW 41.56.100 is widely mis-read. RCW 41.56.100 does not require deferral to any and all civil service bodies. In order to qualify under the proviso to RCW 41.56.100, the particular civil service body must be similar in scope, structure and authority to the State Personnel Board created by RCW 41.06. City of Seattle v. Auto Machinists, et al., WPERR CD-70 (King County Superior Court, 1979).
>
> The proviso to RCW 41.56.100 creates a permissive exception to the general rule of mandatory collective bargaining. The city's assertion of "delegation to civil service" in this case constitutes an affirmative defense on which the city had the burden of proof. However, the City did no more than to place a copy of the Bellevue civil service ordinance in evidence. RCW 41.08 and RCW 41.06 are separate enactments of the legislature and are markedly different from one another. While similarities exist, limitation of the scope of the Bellevue civil service to a narrow class of the city's employees and the absence of delegated authority concerning wages and wage-related matters compels the conclusion that the Bellevue Civil Service Board is not similar in "scope, structure and authority" to the State Personnel Board. If the legislature had intended that bodies created pursuant to RCW 41.08 qualify under the proviso to RCW 41.56-.100, it could easily have so provided. The exemption from mandatory bargaining does not apply in this case.

City of Bellevue, supra, pages 7-8.

---

[63] International Association of Fire Fighters, Local 1604.

The Examiner found a violation and ordered a remedy against the employer. The employer did not petition for review of the Examiner's decision by the Commission.

The next examination of RCW 41.56.100 by the Commission occurred in City of Walla Walla (International Association of Fire Fighters, Local 404), Decision 1999 (PECB, 1984). The employer in that case filed an unfair labor practice complaint against the union, for its pursuit of, and attempt to obtain interest arbitration of, a proposal on layoff procedure. The employer alleged that the proposal conflicted with city civil service policies adopted pursuant to Chapter 41.08 RCW, and was therefore excluded from the scope of mandatory collective bargaining by RCW 41.56.100. In his preliminary ruling, the Executive Director held that a mere allegation that a civil service body operates under the provisions of Chapter 41.08 RCW is not sufficient to invoke the civil service proviso of RCW 41.56.100. The employer was given time to amend its complaint to show that its civil service procedure qualified for consideration under the Bellevue ruling, which required that the subject matter be delegated to a board "similar in scope" to the State Personnel Board. The employer failed to submit an amendment, and the complaint was dismissed. Decision 1999-A (PECB, 1984). The employer did not petition for review of the Executive Director's decision by the Commission.

In City of Wenatchee, Decision 2216 (PECB, 1985), the union[64] alleged that the employer circumvented the exclusive bargaining representative and engaged in direct dealings with three bargaining unit members, due to the fire chief having met with them concerning his proposal to cancel a civil service commission promotional examination. The employer argued that it was exempted from any collective bargaining obligations by RCW 41.56.100, as its civil service commission was "similar in scope" to Chapter 41.06 RCW.

---

[64] International Association of Fire Fighters, Local 1890.

The Examiner held that the promotional procedure for positions within the bargaining unit was a mandatory subject of bargaining, and then turned to the employer's "similarity" defense, as follows:

> Aside from the introduction of the civil service commission rules and regulations, the record in the instant case contains no evidence of comparability or distinction between the Wenatchee Civil Service rules and regulations and the scope, structure and authority of the (State Personnel) board created by Chapter 41.06 RCW. In comparing the respondent's civil service commission organization, structure and authority under the provisions of RCW 41.08 with the state personnel system created by RCW 41.06, there are some similar provisions. However, the overall structure, scope and authority of the state system significantly exceeds that of the Wenatchee civil service system. The respondent's civil service commission rules and regulations do not meet the standard necessary to exempt the respondent from its collective bargaining obligations under RCW 41.56.100.

City of Wenatchee, supra, page 10.

The employer did not pursue review of the Examiner's decision by the Commission.

The interface between collective bargaining rights and civil service rules was next at issue in City of Bellevue (International Association of Fire Fighters, Local 1604), Decision 2788 (PECB, 1987). The employer's unfair labor practice complaint in that case alleged that the union was seeking interest arbitration on a proposal concerning a permissive subject of bargaining. The union proposal would have limited a contractual incorporation of civil service rules, by reference, to those "presently set forth" in the civil service commission's rules and regulations. The employer argued that such language would limit the authority of the civil service commission to promulgate and enforce civil service rules. In his preliminary ruling, the Executive Director referred to City

of Bellevue, Decision 839 (PECB, 1980), and noted that there was no claim that the Bellevue Civil Service Commission was "similar" to the State Personnel Board. The Executive Director concluded that the union's proposal merely preserved its statutory bargaining rights concerning future changes in wages, hours or working conditions, and that no cause of action existed against the union's assertion of that proposal.

The interface between collective bargaining and civil service was back before the Commission again in a third dispute between these identical parties in City of Bellevue, Decision 3156 (PECB, 1989). The union alleged there that the employer had unilaterally adopted new civil service rules regarding hiring, discipline, layoff, recall, promotion, transfer and appeal. The employer argued that the civil service commission was not a public employer under the provisions of RCW 41.56.030(1), and therefore was not required to bargain its rules. The employer argued that the civil service commission does not act on behalf of the city,[65] but adopts its rules as an independent entity. The Examiner reviewed the legislative history of RCW 41.56.100 and stated:

> 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

---

[65] Under RCW 41.56.030(1), collective bargaining obligations are extended to:

> [A]ny officer, board, commission, council or other person or body acting on behalf of any public body . . . [emphasis supplied]

> 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.

City of Bellevue, supra, page 6.

The Examiner noted that the civil service commission was created by ordinance of the city, that it was funded entirely by the city, that the commission's five members were appointed by the city manager, that the secretary-chief examiner of the civil service commission was also the city's assistant director of personnel and performed her commission duties as part of her duties as a city employee, that the city attorney acted as legal counsel for the commission, that the secretary-chief examiner reviewed and drafted changes in the civil service rules, and that the city attorney assisted in the preparation of the disputed changes. The Examiner concluded that the Civil Service Commission was acting on behalf of the city in its adoption of the revised rules, stating:

> It is clear that the Bellevue Civil Service Commission is a creature of the city government, and is subject to legislative supervision and recall by the City of Bellevue.

City of Bellevue, supra, pages 7-8.

The employer petitioned for review by the Commission. Having first concluded that the Bellevue Civil Service Commission acts on behalf of the City of Bellevue, the Commission responded to an employer argument that Chapter 41.08 RCW authorized the Bellevue Civil Service Commission to adopt rules. The Commission acknowledged that authority, but pointed out that the affected employees had also chosen to organize for the purposes of collective bargaining under Chapter 41.56 RCW:

> If there is a conflict between the provisions of Chapter 41.08 RCW and the provisions of

Chapter 41.56 RCW, the latter must prevail. RCW 41.56.950 provides:

> The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

That statute was interpreted in Rose v. Erickson, 106 Wn.2d 420 (1986), where the Supreme Court held that a deputy sheriff was not limited to a "civil service" remedy in a discipline case, and that he was entitled to pursue the grievance and arbitration procedures of a collective bargaining agreement applicable to his employment. The civil service statute involved there, RCW 41.14.080, was found to be inconsistent with Chapter 41.56 RCW and, relying upon the clear legislative directive of RCW 41.56.905, the Court held that the collective bargaining law prevailed. The employee thus retained the alternative avenue of redress through collective bargaining, even though it conflicted with one of the most fundamental provisions of the civil service law.

City of Bellevue, supra, pages 8-9.

In response to the employer's argument that it had no control over when the Bellevue Civil Service Commission implements its rules, the Commission stated as follows:

> Our ruling simply prevents an employer from implementing such [civil service] rules concerning mandatory bargaining subjects for union-represented employees until it satisfies its bargaining obligation under the Public Employees' Collective Bargaining Act. The employer has shown no good reason why it should be able to do indirectly what it cannot lawfully do directly -- i.e., make changes of work rules or working conditions without any

> opportunity for bargaining. The fact that the instrumentality changing the conditions of employment -- the Civil Service Commission -- is not totally controlled by the city does not allow the City of Bellevue to evade its bargaining obligation.

City of Bellevue, supra, pages 10-11.

The Commission thus affirmed the Examiner's decision. City of Bellevue, Decision 3156-A (PECB, 1990).

The civil service proviso was also examined in City of Olympia, Decision 3194 (PECB, 1989), where a union[66] took issue with new physical fitness standards adopted by the employer's civil service commission. The employer raised a "civil service" defense, but neglected to even place a copy of the civil service ordinance into evidence. The defense was rejected and a violation was found. The employer did not seek review of that decision by the Commission.

In City of Pasco (Pasco Police Officers' Association), Decision 3368 (PECB, 1989), the employer filed an unfair labor practice complaint alleging that the union was seeking interest arbitration of proposals that deleted an exclusion of "civil service" matters from the grievance procedure, and permitted a contractual remedy as an alternative to proceedings before a civil service body. In dismissing the complaint for failure to state a cause of action, the Executive Director noted that Rose v. Erickson, supra, involved just such a situation and that such a proposal could be negotiated under Chapter 41.56 RCW. The employer petitioned for Commission review of the Executive Director's dismissal, and the case is currently pending before the Commission.

Application of the "Rule of Last Antecedent" -
The employer argues that RCW 41.56.100 should be interpreted as exempting public employers from collective bargaining obligations

---

[66] The Olympia Police Guild.

for matters the employer has delegated to any body denominated as a civil service commission, whether or not that body is "similar in scope, structure and authority" to the State Personnel Board. The employer particularly urges that such an interpretation is required by the "rule of last antecedent".[67]

In opposition to this position, the YPPA set forth its argument as follows:

> The last antecedent is the last word, phrase or clause that can be made an antecedent without impairing the meaning of the sentence (emphasis added). In re Kurtzman's Estate, supra at 264. [emphasis in original]

In the YPPA's view, the controlling phrase or clause is "civil service commission or personnel board", and that whole clause is thus modified by the "similar in scope, structure and authority" language of the civil service proviso.

It is inferred that the "civil service proviso" was drafted by or on behalf of the Evans administration, in contemplation of the submission of the bill as "executive request" legislation. The veto message of Governor Evans in 1965 is subject to an interpretation that would be helpful to the employer's cause here. On the other hand, it must be noted that two years had passed since the veto message, that the "civil service proviso" was being drafted in

---

[67] This "rule" is defined in Black's Law Dictionary, 4th Ed. Rev. (1974) as follows:

> A canon of statutory construction that relative or qualifying words or phrases are to be applied to the words or phrases immediately preceding, and as not extending to or including other words, phrases, or clauses more remote, unless such extension or inclusion is clearly required by the intent and meaning of the context, or disclosed by an examination of the entire Act.

1967 in the context of a bill applicable only to local government, and that the language actually put forth in 1967 HB 483 was nowhere near as strident as the veto message on 1965 SB 360.

The history concerning 1969 SB 239 and 1969 SB 436 weighs heavily in the interpretation of the "civil service proviso". The proponents of SB 239 must have understood that there were some circumstances under which the civil service proviso could operate, and they tried to get rid of it altogether. At a minimum, the proponents of SB 436 must have been uncomfortable with the potential application of the "similarity" language of RCW 41.56.100 to civil service commissions. Indeed, the key provision of the SB 436 amendment to the "civil service proviso" was the attempt to inject a comma after the reference to civil service commissions. With such an addition, it would have been clear that "civil service commission" and "personnel board" were two separate things. The "similarity" limitation would have applied only to a body denominated as a "personnel board", and an employer would have been exempt from collective bargaining obligations for matters delegated to any body called a "civil service commission".

The interpretation of the civil service proviso that is urged by the employer here is exactly the same "insert a comma" that would have been accomplished by SB 436 in 1969. The undersigned Examiner concludes that the advancement and ultimate failure of SB 436 undermines the employer's argument, and lends credence to the union's argument in this matter that the "similar in scope, structure and authority" language of RCW 41.56.100 should apply equally to civil service commissions and personnel boards.

The unions involved here inherently admit that the civil service proviso is alive and applicable to bodies similar in scope, structure and authority to the State Personnel Board. SB 239 in 1969, the amendment to SSB 2408 that was defeated in the House in 1975, and HB 10 in 1977 would all have deleted the civil service

proviso in its entirety. Unions may well have desired to get rid of any exemption of matters from collective bargaining, but that is a different issue than the dispute currently before the Examiner. The failure of those attempts neither helps the employer nor undermine the union arguments here that the "similarity" language of RCW 41.56.100 applies equally to civil service commissions and personnel boards.

As urged by the unions, the long line of Commission precedent interpreting RCW 41.56.100 supports the conclusion that a public employer is exempted from collective bargaining obligations under that statute only when a civil service commission to which it delegates matters is similar in scope, structure and authority to the State Personnel Board.

The Commission and the undersigned Examiner are not alone in reading the "civil service commission or personnel board" language of RCW 41.56.100 as a unit. In rejecting the City of Seattle's arguments on delegation to its personnel director in Auto Sheet Metal Workers, supra, the Superior Court took the "civil service commission or personnel board" as a unit, stating:

> The statute does say "to a civil service commission or personnel board," so the personnel director cannot qualify under that statute.

City of Seattle v. Auto Workers, supra, page 72.

Allowing that the employer here disagrees with the interpretation of the Commission, it does nothing to explain away the quoted usage by the court in the only previous judicial comment on the subject.

Finally, it must be observed that the employer's argument, taken literally, would yield an anomalous result. Long before the adoption of Chapter 41.56 RCW, Tacoma had designated its civil service body as a "civil service board", rather than as either a

"civil service commission" or a "personnel board". The undersigned Examiner finds no credibility in a conclusion that would free Yakima from collective bargaining obligations in this case under the "civil service commission" language of RCW 41.56.100, but would deny the same freedom to Tacoma unless it went through the exercise of making a one-word amendment of its city charter.

The Examiner concludes that the employer's interpretation of RCW 41.56.100 is incorrect, and that the "similar in scope, structure and authority" test must be applied to its civil service system.

Application of the "Similarity" Test

In the alternative, if the Examiner finds that the Yakima Police & Fire Civil Service Commission must be "similar in scope, structure and authority" to the State Personnel Board, the employer argues that its civil service body meets that "similarity" test in areas other than wages and wage-related matters.[68]

The unions argue that the Yakima Police & Fire Civil Service Commission is not similar in scope, structure and authority to the State Personnel Board, but is, in fact, distinctly dissimilar from the state board. The unions point out that the Yakima body only has jurisdiction over a select group of fire and police employees, as opposed to the jurisdiction of the State Personnel Board over a broad range of state employees. The unions allege that the City of Yakima retains authority over significant powers that are delegated to the State Personnel Board. Further, the unions point out that, while the Yakima body hears appeals from violations of its own

---

[68] As noted above, the employer acknowledged in a pre-hearing motion that its civil service body lacks authority over wages and wage-related matters.

rules, violations of State Personnel Board rules are now heard by a distinct and separate state agency.[69]

Similar in Scope? -

The "scope" of a civil service commission or personnel board, as the term is used in RCW 41.56.100, is understood to relate to that body's jurisdiction or power to take various actions. The State Personnel Board has jurisdiction over a wide range of state employees, with exclusions limited to employees of the Legislature, employees of the judicial branch, state-wide elected officials, chief executive officers of agencies and confidential agency employees.

The Yakima Police & Fire Civil Service Commission was created in 1935 pursuant to Chapter 41.08 RCW. Its jurisdiction was initially expressed in city ordinances as follows:

> 1.46.010 Fire department - Civil service.
>
> A. Civil Service Adopted - Rules and Regulations.
>
> The system commonly known as civil service is adopted for the fire department of the city of Yakima, and all employment, advancement and demotion therein and discharge therefrom shall be under the control of and governed by the civil service commission provided for by this chapter, which commission shall adopt and promulgate civil service rules and regulations which substantially accomplish the purpose of RCW Chapter 41.08. . . .

---

[69] The structure of the state civil service system was changed in 1981, by the creation of the Personnel Appeals Board and transfer of all "appeals" functions to that new agency. The three members of the Personnel Appeals Board are appointed by the Governor, subject to confirmation by the Senate. See: Substitute House Bill 302; Chapter 311, Laws of 1981.

The jurisdiction of the Yakima body was expanded in 1937, to include police department employees pursuant to Chapter 41.12 RCW. City of Yakima Ordinances, Chapter 1.54, contains civil service language for the city's police department employees that is identical to the excerpt from Chapter 1.46 set forth above. The Yakima body does not have jurisdiction over all city employees, or even a broad range of city employees, and thus is not "similar in scope" to the State Personnel Board.

Similar in Structure? -

The "structure" of a civil service commission or personnel board, as the term is used in RCW 41.56.100, is understood to relate to the manner in which that body is organized, including the manner in which its members and agents are appointed and removed. The three members of the State Personnel Board are appointed by the Governor, subject to confirmation by the Senate:

> Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one (1) year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

RCW 41.06.110.

The secretary of the State Personnel Board is the Director of Personnel. That officer is appointed by the Governor from a list of three highly experienced persons submitted by the Board following a competitive examination conducted by special committee created solely for that purpose, and can be removed only for cause, with the approval of a majority of the State Personnel Board.[70] As noted above, these features of the State Civil Service Law assure

---

[70] RCW 41.06.130.

substantial independence for both the State Personnel Board and its chief officer.

The Yakima Police & Fire Civil Service Commission also consists of three members, but the comparisons end there. Chapter 1.46 of the Yakima ordinances, relating to the fire department, does not appear to specify the manner in which appointments to the civil service body will be made, and RCW 41.08.030 prohibits a process of "confirmation" for members of such a civil service body. Chapter 1.54 of the Yakima ordinances, relating to the police department, does call for appointments to be made by the city manager, subject to the approval of a majority of the city council, in apparent conflict with RCW 41.12.030. Nothing requires that civil service commission appointees have a "clearly demonstrated . . . interest and belief in the merit principle". Nothing precludes the appointment of persons who hold other employment with the city. While no more than two members of the civil service commission may be members of the same political party at the time of their appointment, nothing prevents them from engaging in partisan political activities either before or during their term of appointment. Members of the city civil service body can be removed for "incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause . . ."[71] The secretary/ chief examiner of the Yakima body is appointed as the result of a competitive examination, but there is no requirement for a special committee to be organized for that purpose, and eligibility to take that examination may be limited to current city employees. The secretary/chief examiner is subject to discipline or discharge under the same list of reasons applicable to fire and police employees, including an "insubordination" item that appears to be

---

[71] RCW 41.08.030 and 41.12.030. (emphasis supplied).

broad enough to include orders issued by City of Yakima officials.[72] The structure of the Yakima body does not assure the independence of the body or reliance on merit principles in the same manner as the statutes relating to the State Personnel Board, so it is concluded that the Yakima body is not "similar in structure" to the State Personnel Board.

Similar in Authority? -

The "authority" of a civil service commission or personnel board, as the term is used in RCW 41.56.100, is understood to relate to the breadth of subject matters covered or regulated by that body. The State Personnel Board is authorized to promulgate rules and regulations regarding the full range of personnel matters. Those include wages, insurance and other wage-related benefits, shift premiums, call-back compensation, standby compensation, workers' compensation, classification of employees, hours of work, compensatory time, training and performance evaluation.[73] The authority of the State Personnel Board to "allow an appointing authority to suspend" a covered employee is limited by certain cumulative annual maximums.[74]

The Yakima Police & Fire Civil Service Commission has authority limited to the areas of examinations, appointments, promotions, transfers, reinstatements (including employees laid off), demo-

---

[72] The record in this proceeding does not contain information about the identity or other duties of the secretary/chief examiner in Yakima. In City of Bellevue, Decision 3156-A (PECB, 1990), the comparable position was held by an individual who was also an assistant personnel officer for the city. This demonstrates the lack of independence that is possible under Chapters 41.08 and 41.12 RCW.

[73] The State Personnel Board's adoption of a state salary schedule is subject to approval by the Director of Financial Management, in accordance with the provisions of Chapter 43.88 RCW.

[74] RCW 41.06.170(1).

tions, suspensions, discharges, probationary periods, leaves of absence without pay, and outside employment. Nothing in Chapters 41.08 or 41.12 RCW limits the number of suspensions that can be imposed on a particular employee in any period. From the silence of Chapters 41.08 and 41.12 RCW, and from the silence of the Yakima civil service rules, it must be presumed that the City of Yakima has not actually delegated authority to its civil service body in other personnel subjects such as shift premiums, call-back compensation, standby compensation, workers' compensation, classification of employees, hours of work, compensatory time, training and performance evaluation. It is thus concluded that the Yakima body is not "similar in authority" to the State Personnel Board.

Conclusions -

In Roza Irrigation District v. State, 80 Wn.2d 633 (1972), the Supreme Court characterized Chapter 41.56 RCW as being "remedial in nature", and "entitled to a liberal construction to effect its purpose". The conjunctive use of "scope, structure and authority" in the statute strongly suggests that all three requirements must be met in a particular situation in order to make the civil service proviso operative. It follows that the employer's admission that its civil service body lacks authority over wages and wage-related matters is fatal to any application of the civil service proviso here. Even if the limited "authority" of the Yakima Police & Fire Civil Service Commission were to be ignored, it is clear that the Yakima body is not similar in either "scope" or "structure" to the State Personnel Board. RCW 41.56.100 does not use "substantially" or any other modifier to weaken "similar".

Should an employer subject to Chapter 41.56 RCW choose to delegate its personnel functions to the State Personnel Board, as in the Snohomish Health District case decided by the Department of Labor and Industries, or to a civil service body that is truly "similar in scope, structure and authority" to the State Personnel Board,

then the civil service proviso of RCW 41.56.100 will operate and the "remedial" collective bargaining process will be supplanted. On the record made here, however, the civil service proviso of RCW 41.56.100 is not applicable to any matters delegated to the Yakima Police & Fire Civil Service Commission.

Waiver Issues

Waivers must be knowingly made, and an issue of fact is presented whenever a "waiver" of bargaining rights is claimed. The employer has not contended before the undersigned Examiner that either of the unions has waived its collective bargaining rights. Insofar as the employer advanced "waiver" arguments in related proceedings or at an earlier stage of these proceedings, it has apparently abandoned those arguments before the undersigned Examiner.

Conclusions

The IAFF and the YPPA persuasively argue that the employer has committed refusal to bargain violations in each of these cases through its implementation of amended civil service rules on discipline and promotions to positions within the bargaining unit.

REMEDIES

The IAFF and the YPPA both request that the employer be ordered to cease and desist from giving effect to the amended civil service rules. In regards to affirmative actions, the unions have requested that the employer be ordered to give notice and, upon request, bargain collectively with the respective unions if it wishes to make changes in the areas of discipline and promotions to positions within the bargaining unit. The unions also request that the employer be ordered to post notices to its employees, informing them of these violations. These are customary remedies for

"unilateral change" refusal to bargain violations, and they will be ordered as remedies in these matters.

Remedies Concerning Promotions

The unions' request to restore the status quo ante poses some more difficult problems, particularly in relation to employees who were promoted to the bargaining unit position of "sergeant" in the Police Department during or about February, 1989. Those employees were allowed to qualify for the promotional examination under the civil service rules as amended on January 18, 1989.

One of the more significant changes in the civil service rules was a reduction of the experience requirements for promotion, which necessarily had the effect of watering down the value of long service for more senior employees.[75] Seniority preferences are a mandatory subject of collective bargaining, and a reduced experience requirement gave rise to a duty on the part of the employer to give notice and bargain prior to making any change. The promotees who qualified under the previous civil service rules suffered no prejudice due to the change, and can continue in their promotional positions, but the record reflects that three of the five employees promoted to sergeant in February, 1989, would not have qualified under the previous civil service rules. As to the latter group, a strict status quo ante remedy would call for the employer to return them to the rank of police officer, and to re-fill those promotional jobs with employees selected according to the civil service rules in effect prior to January 18, 1989. Such an order could have secondary effects on those who had been beneficiaries of the unlawful rules change, such as disqualifying them from promotional eligibility earned on the basis of time they have spent in the "sergeant" position since their unlawful promotion.

---

[75] The minimum experience requirement for promotion to the rank of police sergeant was reduced from 5-1/2 years to 3-1/2 years as a Yakima police officer.

The YPPA has requested several remedies to address this situation. The YPPA suggests that all of the employees promoted to sergeant in February, 1989, be allowed to retain their sergeant pay status without the actual rank and responsibilities of that position. The YPPA would see this status continuing until the employees are actually promoted to sergeant or the employer negotiated a change in working conditions with the union. The union also requests that these five employees be allowed to maintain their eligibility and placement for other promotional registers. It is clear that three employees who were promoted to sergeant in February, 1989, are innocent victims of the employer's disregard of its collective bargaining obligations. On the other hand, employers have the right to set the size of their workforce,[76] and the City of Yakima cannot be made to create additional promotional positions to remedy the effects of a "refusal to bargain" violation.

The employer will be required to vacate the three promotions given to employees who would not have qualified under the former civil service rules, and refill those positions with employees who would have qualified under the former civil service rules. Those promoted pursuant to this order will be entitled to back pay, retroactive to the February, 1989 effective date of the unlawful promotions. This will place those employees in the same position they would have enjoyed, had the employer not implemented the amended civil service rules.

The employer will also be required to retain the three employees who were unlawfully promoted in February of 1989 at the pay rate they have enjoyed as sergeants, until such time as they may properly achieve promotion to that rank or they fail or refuse to apply for such promotion. They will lose their insignia of rank and their status and authority as sergeants, but should not be made

---

[76] City of Yakima, Decision 1130 (PECB, 1981), also cited in Pierce County, Decision 1710 (PECB, 1983).

to suffer an adverse economic effect attributable directly to the union's successful assertion of its statutory bargaining rights.

The YPPA points out that an employee's date of appointment to a position affects their seniority for layoff purposes and step progression. It seems wholly appropriate, therefore, that the employees appointed to the three positions vacated and refilled under this order shall be treated for all "seniority" purposes as if they were promoted in February, 1989.

The record does not contain any reference to promotions within the IAFF bargaining unit, but the same principles would apply to any promotions in that unit since January 18, 1989.

Extraordinary Remedies

In the unions' view, the employer's arguments are so frivolous as to invoke the extraordinary remedy of requiring the respondent to pay the complainants' costs and attorney fees. Attorney fees have been awarded in selected cases. See, Lewis County v. PERC, 31 Wn.App. 853 (1982). Looking back at the previous cases decided by the Commission and its staff, these cases appear to be the first in which an employer has mounted a serious question about the legislative history and proper interpretation of the civil service proviso. Imposition of an extraordinary remedy is not warranted.

FINDINGS OF FACT

1. The City of Yakima is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).

2. International Association of Fire Fighters, Local 469 (IAFF), a bargaining representative within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative for an

appropriate bargaining unit of "uniformed" fire fighting employees of the employer.

3. Yakima Police Patrolmans Association (YPPA), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for an appropriate bargaining unit of "uniformed" law enforcement employees of the employer.

4. In 1935, the City of Yakima created a civil service commission, now known as the Yakima Police & Fire Civil Service Commission, to adopt rules and regulations pursuant to Chapter 41.08 RCW concerning certain, but not all, personnel matters for the Yakima Fire Department. In 1937, the City of Yakima expanded the jurisdiction of the Yakima Police & Fire Civil Service Commission, to adopt rules and regulations pursuant to Chapter 41.12 RCW concerning certain, but not all, personnel matters for the Yakima Police Department.

5. The scope of jurisdiction of the Yakima Police & Fire Civil Service Commission is limited to employees of the fire and police departments of the employer, and does not extend to cover other employees of the City of Yakima.

6. The three members of the Yakima Police & Fire Civil Service Commission are appointed by the city manager. Pursuant to the city ordinance relating to the police department, such appointments are subject to the approval of the city council. There are no particular qualifications required for appointment to the Yakima Police & Fire Civil Service Commission. There are no restrictions on the prior or concurrent political activity of members of the Yakima Police & Fire Civil Service Commission. Nothing precludes appointment of an employee of the City of Yakima as a member of the Yakima Police & Fire Civil Service Commission.

7. The secretary / chief examiner of the Yakima Police & Fire Civil Service Commission is appointed directly by the Yakima Police & Fire Civil Service Commission. There are no particular qualifications required for appointment to the position of secretary / chief examiner of the Yakima Police & Fire Civil Service Commission. Nothing precludes appointment of an employee of the City of Yakima as the secretary / chief examiner of the Yakima Police & Fire Civil Service Commission. The secretary / chief examiner is subject to discipline or discharge on the same basis as employees of the fire and police departments.

8. The Yakima Police & Fire Civil Service Commission has, and has exercised, authority to adopt rules and regulations concerning examinations, appointments, promotions, transfers, reinstatements (including employees laid off), demotions, suspensions, discharges, probationary periods, leaves of absence without pay, and outside employment. The City of Yakima has acknowledged during the course of these proceedings that the Yakima Police & Fire Civil Service Commission lacks authority concerning wages and wage-related benefits. Nothing in the record in this proceeding establishes that the Yakima Police & Fire Civil Service Commission has, or has exercised, any authority in regards to limiting the number of suspensions that can be imposed on a particular employee in any period, or in regards to shift premiums, call-back compensation, standby compensation, workers' compensation, classification of employees, hours of work, compensatory time, training and performance evaluation.

9. On January 18, 1989, the Yakima Police & Fire Civil Service Commission adopted changes to its rules and regulations concerning: (1) The discipline of employees within the bargaining units referred to in paragraphs 2 and 3 of these findings of fact; and (2) the promotion of employees to

positions within the bargaining units referred to in paragraphs 2 and 3 of these findings of fact. Those changes were made without notice to or collective bargaining with the exclusive bargaining representatives identified in paragraphs 2 and 3 of these findings of fact.

10. The City of Yakima unilaterally implemented and acted upon the changes of rules adopted by its civil service commission on January 18, 1989, without notice to or collective bargaining with the exclusive bargaining representatives identified in paragraphs 2 and 3 of these findings of fact. Such actions at least include the filling of certain vacancies under the revised civil service rules during or about February of 1989.

11. The employer has not established that there was a collective bargaining agreement in effect between it and International Association of Fire Fighters as of January 18, 1989, that contained a waiver of the union's bargaining rights on the subject of changes of civil service rules.

11. As of January 18, 1989, there was no collective bargaining agreement in effect between the City of Yakima and the Yakima Police Patrolmans Association.

CONCLUSIONS OF LAW

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

2. The Police & Fire Civil Service Commission created, maintained and operated by the City of Yakima acts on behalf of the City of Yakima, within the meaning of RCW 41.56.030(1).

3. The Police & Fire Civil Service Commission created, maintained and operated by the City of Yakima is not similar in scope, structure and authority to the State Personnel Board created by Chapter 41.06 RCW, so that personnel matters delegated to the Yakima Police & Fire Civil Service Commission are not exempted from the scope of mandatory collective bargaining by RCW 41.56.100.

4. Discipline of bargaining unit employees and promotions to positions within a bargaining unit are conditions of employment which are mandatory subjects of collective bargaining pursuant to RCW 41.56.030(4).

5. By unilaterally implementing amended civil service rules concerning discipline of fire fighters and promotions to positions within the bargaining unit represented by International Association of Fire Fighters, Local 469, without having given notice to that organization and, upon request, bargaining collectively with that organization as the exclusive bargaining representatives of its employees, the City of Yakima has committed and is committing unfair labor practices in violation of RCW 41.56.140(4) and (1).

6. By unilaterally implementing amended civil service rules concerning discipline of law enforcement officers and promotions to positions within the bargaining unit represented by the Yakima Police Patrolmans Association, without having given notice to that organization and, upon request, bargaining collectively with that organization as the exclusive bargaining representatives of its employees, the City of Yakima has committed and is committing unfair labor practices in violation of RCW 41.56.140(4) and (1).

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. Giving effect to the amendments adopted on January 18, 1989, to rules of the Yakima Police & Fire Civil Service Commission concerning discipline of employees represented by International Association of Fire Fighters, Local 469 and/or the Yakima Police Patrolmans Association, or concerning promotions to positions within the bargaining units represented by those organizations.

   b. Refusing to bargain collectively in good faith with International Association of Fire Fighters, Local 469, concerning changes of rights and procedures affecting the discipline of employees represented by that organization, or concerning changes of rights and procedures affecting the promotion of employees to positions within the bargaining unit represented by that organization.

   c. Refusing to bargain collectively in good faith with the Yakima Police Patrolmans Association concerning changes of rights and procedures affecting the discipline of employees represented by that organization, or concerning changes of rights and procedures affecting the promotion of employees to positions within the bargaining unit represented by that organization.

   d. In any other manner interfering with, restraining or coercing its employees in their 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. Give notice to and, upon request, bargain collectively in good faith with International Association of Fire Fighters, Local 469, prior to implementing any change of wages, hours or working conditions of employees in the bargaining unit of "uniformed" fire fighting personnel represented by that organization.

b. Give notice to and, upon request, bargain collectively in good faith with the Yakima Police Patrolmans Association prior to implementing any change of wages, hours or working conditions of employees in the bargaining unit of "uniformed" law enforcement personnel represented by that organization.

c. Vacate any positions within the affected bargaining units that have been filled since January 18, 1989, by promotion of persons who would not have qualified for such promotion under the civil service rules in effect prior to January 18, 1989. The employees removed from said positions shall continue to receive the rate of pay for the higher position, until such time as the earlier of:

(1) The termination of their employment; or

(2) Their promotion to a position for which the rate of pay is equal to or greater than the rate of pay for the position from which they are removed pursuant to this Order; or

(3) The failure of the employee to apply for or accept a lawful offer of a position for which the rate of pay is equal to or greater than the rate of pay for

the position from which they are removed pursuant to this Order.

d. Re-fill the positions affected by the immediately preceding paragraph c. from the list of employees who applied for such promotion and would have then qualified for such promotion under the civil service rules in effect prior to January 18, 1989, and make each such employee whole for their loss of pay and benefits, by payment of back pay from the date on which the position was unlawfully filled to the effective date of the promotion made pursuant to this Order. Such back pay shall be computed as provided in WAC 391-45-410.

e. 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.

f. Notify each of the above-named complainants, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide each of the above-named complainants with a signed copy of the notice required by the preceding paragraph.

g. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time

provide the Executive Director with a signed copy of the notice required by this order.

Dated at Olympia, Washington on the 14th day of June, 1990.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

MARK S. DOWNING
Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

Appendix

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL cease giving effect to the changes of civil service rules adopted by the Yakima Police & Fire Civil Service Commission on January 18, 1989, to the extent that they affect mandatory subjects of collective bargaining.

WE WILL vacate certain promotions made since January 18, 1989, where the employee promoted would not have qualified under the civil service rules in effect prior to that date, but will continue to pay the employees so removed at the rate of pay of the higher rank.

WE WILL re-fill those vacated positions with employees who applied for and qualified for such promotions under the civil service rules in effect prior to January 18, 1989, and will make such employees whole for their loss of pay and benefits.

WE WILL give notice to and, upon request, bargain collectively in good faith with International Association of Fire Fighters, Local 469, and the Yakima Police Patrolmans Association prior to making any change affecting the wages, hours and working conditions of employees represented by those organizations.

WE WILL NOT refuse to bargain collectively with the International Association of Fire Fighters, Local 469, and the Yakima Police Patrolmans Association regarding discipline and promotions to positions within the bargaining units represented by those organizations.

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

DATED: _____

CITY OF 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.