

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE MANAGEMENT ASSOCIATION,)	CASE 8937-U-90-1967
Complainant,)	DECISION 4163-B - PECB
vs.)	CASE 10539-U-93-2443
CITY OF SEATTLE,)	DECISION 4988 - PECB
Respondent.)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
)	AND ORDER

Webster, Mrak and Blumberg, by James H. Webster and Lynn D. Weir, Attorneys at Law, appeared on behalf of the union.

Mark H. Sidran, City Attorney, by Marilyn F. Sherron, Assistant City Attorney, appeared on behalf of the employer.

Case 8937-U-90-1967 is before the undersigned Examiner to determine the sufficiency of compliance with previous orders issued in that "skimming of unit work" case.¹ The employer tendered compliance, but the union disputed the sufficiency of that compliance.

Case 10539-U-93-2443 was initiated by a complaint charging unfair labor practices filed by the Seattle Police Management Association

¹ In City of Seattle, Decision 4163 (PECB, 1992), Examiner Mark S. Downing ruled that the employer committed unfair labor practices by transferring work to employees outside the union's bargaining unit. The Examiner ordered restoration of the disputed work to the bargaining unit, and ordered that affected employees be made whole for losses they suffered. The union petitioned for review of the denial of its request for attorney's fees and costs, but the Commission upheld the Examiner's remedial order. City of Seattle, Decision 4163-A (PECB, 1993). The Commission noted that any dispute about the adequacy of the employer's compliance would be properly dealt with in supplemental "compliance" proceedings.

on June 23, 1993. The allegations were that the City of Seattle had engaged in further "skimming" from the bargaining unit represented by the union.

Due to the similarity of factual issues, the compliance dispute and the new unfair labor practice complaint were consolidated for a hearing held on March 16, 1994, before Examiner Katrina I. Boedecker. The parties submitted a stipulated partial record at the hearing, and presented testimony from sworn witnesses. The parties also stipulated to a briefing schedule.

BACKGROUND

The Seattle Police Management Association (SPMA) represents a bargaining unit of approximately 57 supervisory uniformed personnel of the Seattle Police Department holding the ranks of lieutenant, captain or major. The chief of police, assistant chiefs, confidential employees, the major in the Inspectional Services Division (ISD), and civilian personnel are excluded from the unit.²

Reorganization in the Inspectional Services Division

During 1989, the ISD was under the command of Major Michael Brasfield, who was excluded from the SPMA bargaining unit as a confidential employee. At that time, the ISD had two sections:

* The planning section, staffed and managed by civilian personnel.

* The inspection and policy section with an "inspections unit" staffed by one sergeant and one police officer from the SPOG unit, and an "operational policy and procedures unit" staffed by one sergeant and three police officers from the SPOG unit. The

² Seattle Police Department uniformed personnel below the rank of lieutenant are represented by the Seattle Police Officers Guild (SPOG).

section was under the direction of Lieutenant Cynthia Caldwell, who was a member of the SPMA bargaining unit.³ The position held by Caldwell was the only ISD position included in the SPMA bargaining unit. The employer's attempt to eliminate the lieutenant position from the ISD was the subject of City of Seattle, Decision 4163-A (PECB, 1993).⁴

Through the inspection process the department ensures compliance with procedures, reduces inefficiencies, increases productivity, and reduces the potential for liability inherent in outdated police activities. As the commander of the inspections and policy section, Caldwell performed traditional inspection duties designed to audit performance, and provided recommendations for improved operations for the entire department. In 1989, for example, the ISD audited the South Precinct/Community Partnership Pilot Project and performed a follow-up inspection of the North Precinct.

Caldwell managed the development of department-wide operational policy on matters such as use of force, chemical weapons, and the disciplinary process. The lieutenant acted as the department's representative on outside committees where rank, authority, sworn status, or management experience was required, (e.g., a King County Mental Health pre-booking diversion project; a law, justice and safety regional committee; and a computer ticketing committee.

Caldwell also had responsibility for preparation of the annual budget for the Seattle Police Department. At times pertinent hereto, the police chief would solicit budget proposals from each division within the department. During the preparation stages, Caldwell would be in possession of more comprehensive information

³ Caldwell was not an officer or director of the SPMA, and had no authority or responsibility to deal with the employer on behalf of the SPMA.

⁴ The restoration of this lieutenant position is thus the subject of the "compliance" aspect of this decision.

than the division heads, because an individual major might have actually seen only the portion of the budget that involved his or her operation.⁵ The chief would review the general progress of the budget at weekly management meetings.

Sometime prior to 1989, a police management study recommended that the ISD begin a long-term strategic plan for the police department. To implement this recommendation, Brasfield worked with Caldwell on restructuring the division. They planned to create a new third section, which was to be titled "budget preparation and strategic planning" but was commonly referred to as the "budget policy unit". The budget proposal submitted by the mayor in 1989 stated that this new section would assume budget preparation, coordination, and oversight responsibility for the department. It was to be staffed with four new civilian positions.

Knowledge of the Restructuring

At the time relevant to this issue, management meetings were held on Tuesday mornings. Those meetings were attended by 14 to 20 people. There were typically eight SPMA members present: All six of the majors were required to attend; in addition, the lieutenant in Intelligence Division and the lieutenant serving as director of the Communications Division also participated in those meetings. Two of the participants were SPMA board members at that time:

⁵ The City of Seattle operates under budgets which are adopted annually by the city council. In March of each year, every city department is requested to submit its budget proposal to the city's Office of Management and Budget (OMB). Compromises between the mayor's office and city departments are worked out by OMB during the spring. The mayor's budget proposal is presented to the city council in July. The city council then adopts a budget for the subsequent year. The budget is sometimes published before the end of the calendar year, but there have been times when the council has not reached agreement until spring of the targeted budget year.

Major Dale Douglas, who was commander of special operations, and Jerry Adams from the intelligence division.

Items relating to the preparation of the proposed budget were reviewed and discussed at the Tuesday meetings. Brasfield testified that both the creation of the budget policy unit and the transfer of Caldwell's budget duties from her inspections and policy section were discussed at the Tuesday meetings during the summer and autumn of 1989. Brasfield recalled that there was considerable disagreement among the attendees concerning the merits of the proposed new budget policy unit.⁶

The department's 1990 budget, including the new budget policy unit, was adopted by December 1, 1989. Summaries of the department's budget were made available to SPMA members. The budget showed the ISD composed of three co-equal sections: Inspections and policy, headed by Lieutenant Caldwell; tactical planning, headed by a civilian senior planner; and budget policy and strategic planning, headed by a civilian budget analyst supervisor.

Transfer of Budget Duties

In 1989, Marian Merkle was the city's OMB budget analyst assigned to the police department. The SPMA's chief negotiator and day-to-day liaison with the employer was Jerry Taylor, a lieutenant in the department who was the vice president of the SPMA. Merkle was considering applying for the new budget supervisor position in the budget policy unit. She spoke to Taylor in the autumn or winter of 1989 about the working environment in the division and in the police department. At that time, Taylor thought Merkle would be subordinate to Caldwell as a "lead person" for the general task of building the department budget.

⁶ Douglas could not recall the discussions; Adams was not called to testify.

Merkle was hired by the police department in early 1990, for the budget policy unit. As a civilian employee, Merkle was not in the SPMA bargaining unit. Among her duties were certain budget preparation tasks formerly performed by Caldwell. In March 1990, Merkle led the general budget "kick-off" meeting for the department's managers. Always before, this meeting had been led by the ISD lieutenant.

Abrogation of Lieutenant Position

The steps taken in 1990 to prepare the department's 1991 budget followed the normal course of business up to the point of action by the city council. In what was described as an "11th hour deletion", the council abolished the position of the ISD lieutenant, effective January 1, 1991. That action had not been proposed by the department, by the OMB, or by the mayor's office.

The elimination of Caldwell's position was discussed in the Tuesday management staff meetings starting in September of 1990. There was disagreement among those attending those meetings concerning the merits of abolishing the position. Taylor became aware of the possible elimination of Caldwell's position at that time, and spoke with Caldwell. Taylor also spoke with Assistant Chief Grayson, who was the employer's liaison for the SPMA, and with Bill Hauskins, who was the employer's labor relations director. He learned that changes had been made earlier in 1990 which removed the budget oversight duties from Caldwell's work.

In City of Seattle, Decision 4163, 4164 (PECB, 1992), the SPMA successfully argued that the employer engaged in unfair labor practices by transferring duties performed by Lieutenant Caldwell to either the major who held the confidential exclusion from the SPMA bargaining unit or members of SPOG. That decision held that the "skimming" was a mandatory subject of bargaining:

In balancing the interests of employees and the employer with respect to the skimming of bargaining unit work in the ISD, employees' interests in job security and lost work opportunities predominate over employer interests in redistributing ongoing functions following the elimination of a bargaining unit position. The transfer of unit work directly affected wages, hours and working conditions of employees represented by the SPMA, and was a mandatory subject of collective bargaining pursuant to RCW 41.56.030(4).

Subsequent paragraphs of the conclusions of law rejected "waiver" defenses which had been asserted by the employer there:

The employer failed to demonstrate that the union waived its right under RCW 41.56.030(4) to bargain concerning the transfer of unit work to persons outside of the bargaining unit, through a general management rights clause contained in the parties' collective bargaining agreement. ...

By transferring bargaining unit work previously performed by lieutenant positions represented by the Seattle Police Management Association in the ISD and Personnel Divisions, without having given notice to and, upon request, bargained collectively with that organization as the exclusive bargaining representative of its employees, the City of Seattle changed employees' wages, hours and working conditions, and has committed unfair labor practices in violation of RCW 41.56-.140(4) and (1).

Among other things, the remedial order in that case directed the employer to:

Restore the status quo ante, by restoring to the bargaining unit represented by the Seattle Police Management Association all ongoing work that was the bargaining unit work of employees represented by the SPMA in the ISD and Personnel divisions of the Seattle Police

Department prior to the unilateral changes at issue in these proceedings.

Give notice to and, upon request, bargain collectively in good faith with the Seattle Police Management Association, prior to implementing any changes in the wages, hours and working conditions of its employees represented by that union.

The Examiner's decision issued on September 24, 1992 was not appealed by the employer.

The Tender of Compliance

On or about October 15, 1992, the employer assigned certain duties of the former ISD lieutenant to Lt. Ron Mochizuki, a member of the SPMA bargaining unit. Since June 5, 1991, Mochizuki had been designated as the lieutenant in the Training Division, and he continued to have that designation and to perform the full-time duties of that position. The budget preparation duties described above were not restored to the SPMA bargaining unit.

On or about January 1, 1993, the department reorganized the training division. Mochizuki was transferred from the special training section to patrol, but was simultaneously given a temporary assignment "on loan to Inspectional Services". The regular duties of the patrol lieutenant position were assigned to Sergeant Kerry Gwunn, who was in the SPOG bargaining unit.⁷

⁷ The employer and SPOG apparently have an arrangement that sergeants may work "out of class" to cover for a lieutenant who is on vacation or on sick/disability leave. It was testified that the maximum time allowed for this "arrangement" was six months; there is nothing in writing about this arrangement. That period was used because it is the maximum time that a uniformed personnel employee can be on disability leave before other requirements of Law Enforcement Officers and Fire Fighters (LEOFF) Retirement System, Chapter 41.26 RCW, become effective.

By updates dated January 25, 1993, the police manual was amended to show that the Budget Policy Section existed within the ISD. Copies of that manual are issued to every uniformed employee in the Seattle Police Department.

On or about April 7, 1993, Mochizuki was transferred again, this time from "patrol 431 [first watch south] on loan to ISD" to the position of "patrol 442 [second watch east] on loan to ISD". In this instance, the regular duties of the patrol lieutenant position were assigned to Sergeant Robin Clark, who was in the SPOG bargaining unit, while Mochizuki continued to perform ISD duties.

In September of 1993, Mochizuki was transferred back to "patrol 431 [first watch south] on loan to ISD". The regular duties of that patrol lieutenant position have continued to be performed by employees who are not members of the SPMA bargaining unit. By the time of the hearing on the compliance matter, employees from the SPOG bargaining unit had been working "out of class" for 15 months to cover the precinct duties for Mochizuki while he performed the ISD lieutenant duties.

POSITIONS OF THE PARTIES

In the compliance proceedings, the union asserts that the employer has failed to return the duties of the ISD lieutenant to the bargaining unit in four respects: (1) Certain ISD lieutenant duties were reassigned to a lieutenant in the training division without reducing any of that lieutenant's full-time training duties; (2) the training division lieutenant was transferred on paper only, in such a manner that caused regular lieutenant duties to be performed by a sergeant who was not a member of the SPMA bargaining unit; (3) after some months, another paper transfer of the lieutenant caused regular lieutenant duties to be performed by a different sergeant who was not a member of the SPMA bargaining

unit; and (4) certain budget duties were never restored to the SPMA bargaining unit. Alternatively, the union alleged in the more recent unfair labor practice case that the paper-only transfers of Mochizuki, which caused lieutenant duties to be assigned to sergeants, were unilateral changes made without notice or opportunity to bargain.

The employer contends that it did not commit an unfair labor practice, because the SPMA never requested to bargain the out-of-class assignments given to the SPOG sergeants. Additionally, the employer asserts that it was a normal practice to have sergeants working out-of-class for lieutenants. It defends that the ISD lieutenant work remained in the bargaining unit, with non-bargaining unit personnel being called upon to fill temporary vacancies at the SPMA bargaining unit rates of pay. Finally, the employer argues that the SPMA's complaint regarding the removal of the budget duties is untimely and inappropriate.

DISCUSSION

Transfer of ISD Duties to Training Division Lieutenant

A "skimming" of bargaining unit work occurs when an employer transfers work from bargaining unit employees to its own employees outside of the bargaining unit. South Kitsap School District, Decision 473-A (PECB, 1978). It is axiomatic, therefore, that if an employer reorganizes and reassigns duties within the bargaining unit, no skimming has occurred.

Insofar as the SPMA is protesting the assignment of certain ISD duties to Lt. Mochizuki, a "skimming" theory is inapposite. Mochizuki was a lieutenant in the Training Division for more than a year before the ISD duties were assigned to him. Even if, as the union claims, Mochizuki continued to be designated as the lieuten-

ant in the Training Division and continued to perform the duties of that position on a full-time basis, the ISD work shifted from one lieutenant to another lieutenant was no more than a transfer within the bargaining unit and remained SPMA work. By its actions of maintaining some ISD lieutenant duties in the SPMA bargaining unit, the employer is in compliance with the order in City of Seattle, Decision 4163-A, 4164-A (PECB, 1993).

Assigning Lieutenant Duties to Sergeants Working Out-of-Class

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, requires public employers to engage in collective bargaining with the exclusive bargaining representatives of their employees. RCW 41.56.030(4). The preservation of bargaining unit work has repeatedly been found to be a mandatory subject of bargaining. It matters not whether work is skimmed from the bargaining unit by contracting it out,⁸ by transferring it to supervisors,⁹ by transferring it to employees who are members of a different bargaining unit,¹⁰ or even to volunteers.¹¹

On paper, Lt. Mochizuki was shuffled from precinct to precinct, but in fact he never performed the duties of a lieutenant serving as a precinct watch commander during the relevant period. It has been the accepted practice to assign a member of the SPOG bargaining unit to work out-of-class when a member of the SPMA bargaining unit is temporarily on leave, but even if there has been a waiver by the

⁸ See, e.g., City of Vancouver, Decision 808 (PECB, 1980) and Clover Park School District, Decision 2560-B (PECB, 1988).

⁹ See, e.g., Lakewood School District, Decision 755-A (PECB, 1980).

¹⁰ South Kitsap School District, *supra*.

¹¹ See, e.g., Spokane County Fire District 9, Decision 3482-A (PECB, 1991).

SPMA of some bargaining rights on out-of-class assignments, occasional waivers do not constitute a basis for concluding that the union has made an ongoing waiver affecting all out-of-class assignments. Kennewick School District, Decision 3330 (PECB, 1989). No written arrangement for work out-of-class was submitted into evidence. There is no indication that the SPMA agreed, either during bargaining or in response to notice from the employer, that the duties of precinct lieutenants could permanently be assigned to sergeants working out-of-class.

The testimony fixes the maximum length of acting assignments as six months, which corresponds to the maximum time for disability leave for a law enforcement officer covered by "Plan 1" of the LEOFF retirement system. Clearly, temporary assignment is not what happened here. As of the time of the hearing, the duties of a lieutenant serving as a precinct watch commander had been performed for over 15 months by employees who are represented by a different union. There is no evidence that a sergeant working out-of-class is put into the SPMA bargaining unit or pays dues to the SPMA.

The result of the paper-only transfers is that the SPMA bargaining unit lost work opportunities. This bears directly on the working conditions of SPMA bargaining unit members. As was explained in City of Kennewick, Decision 482-A (PECB, 1979), the "net effect of the [skimming] action prejudiced the status and integrity of the bargaining unit".¹² The decision which is the basis for the compliance portion of these proceedings noted that the detriment from "skimming" may only be felt in the future, such as when transfers of bargaining unit work eventually lead to "erosion of unit work, loss of promotional opportunities, and adverse effect on the job security of bargaining unit employees." City of Seattle, Decisions 4163, 4164 (PECB, 1992).

¹² Decision 482-A at page 5. The Examiner's decision in that case was affirmed by the Commission. City of Kennewick, Decision 482-B (PECB, 1980).

The employer's contention that the SPMA should have requested bargaining over the assignment of precinct lieutenant watch commander duties to employees outside of the SPMA bargaining unit is without merit. What occurred took on the appearance of a "shell game", with the employer assigning Mochizuki to a precinct and then "loaning" him back to ISD, thus forcing the precinct to operate with a staff short one lieutenant, without giving SPMA any notice or opportunity to bargain. The record thus supports a finding that these assignments were presented to the SPMA as a fait accompli. A union confronted with such a change is not obligated to bargain from the disadvantaged position of having the unilateral change already in effect. North Franklin School District, Decision 3980 (PECB, 1992), affirmed Decision 3980-A (PECB, 1993). The assignment of sergeants to perform the precinct lieutenant duties of Lt. Mochizuki while he was "on loan" to ISD for over 15 months was an unlawful skimming of work from the SPMA bargaining unit.

Restoration of ISD Lieutenant's Budget Duties

The budget duties formerly performed by Lt. Caldwell within the ISD are also at issue in the "compliance" aspect of these proceedings. The SPMA asserts that the employer violated the Commission's order by failing to restore the former ISD lieutenant's budget duties to the SPMA bargaining unit. It contends that its complaint on this subject was not barred by the statute of limitations, since it was filed within six months after the SPMA leadership learned of the skimming of the duties.

The focus of the Examiner's order in Case 8937-U-90-1967 was on the restoration of "**all ongoing work** that was the bargaining unit work of employees represented by the SPMA in the ISD ... prior to the unilateral changes at issue" [Emphasis by **bold** supplied]. That order must be read in the context of what was at issue during the hearing held in that case in 1991. Two complaints had been consolidated for hearing: Case 8937-U-90-1967 was filed December

7, 1990; Case 9226-U-91-2046 was filed June 24, 1991. The Examiner found that the first complaint was "... filed by the union in anticipation of certain actions being proposed by the employer during deliberations on its 1991 budget." The transfer of budget duties from Lt. Caldwell to a civilian (Merkle) in 1990, was never a part of those complaints, hearing, or record.

The union claims that it did not learn of the transfer of the budget duties until September or October of 1990, and that a protest of an illegal transfer of those duties should be read into the complaint filed on December 7, 1990. While such an inference would make the claim timely,¹³ but the proposed inference cannot be supported by the record.

Even if an employer fails to give specific notice to the exclusive bargaining representative,¹⁴ a labor organization may nevertheless obtain actual knowledge of changes being contemplated by the employer. Renton School District, Decision 706 (EDUC, 1979); City of Yakima, Decision 1124-A (PECB, 1981). Knowledge possessed by bargaining unit members is not automatically imputed to the exclusive bargaining representative,¹⁵ but if a union has actual knowledge of a proposed change concerning a mandatory subject of

¹³ RCW 41.56.160 provides:

The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. ...

¹⁴ There is nothing in the record to show that the employer gave formal notice and an opportunity to the SPMA to bargain the transfer of the lieutenant's budget duties to a civilian outside of the SPMA bargaining unit.

¹⁵ See, Lake Washington School District, Decision 4721 (PECB, 1994); Clover Park School District, Decision 3266 (PECB, 1989); and cases cited therein.

bargaining, the burden shifts to the union to initiate negotiations if it desires to implement its statutory bargaining rights. If an employer has given advance notice of its plans to the union and the union does not demand bargaining, a waiver by inaction will be found. Spokane County, Decision 2377 (PECB, 1986); Newport School District, Decision 2153 (PECB, 1985); Mukilteo School District, Decision 3795-A (PECB, 1992).

The burden of establishing the existence of a waiver rests on the party asserting it. City of Yakima, Decision 3564-A (PECB, 1991). In this case, credible evidence establishes that the creation of the budget policy and strategic planning unit was discussed among the top Police Department management staff during the regularly scheduled Tuesday meetings in the autumn and winter of 1989. In fact, the discussion of that unit was vigorous. Adams and Douglas, who were both SPMA board members at that time, were at those Tuesday meetings. Since the creation of the separate budget unit was a feature of the 1990 budget adopted in December of 1989 and effective January 1, 1990, it is clear that some discussions had to have taken place in 1989. The budget document was available to the SPMA in December of 1989, and the SPMA knew or reasonably should have known by that time about the transfer of Caldwell's budget duties to a civilian. Further, when Merkle "kicked-off" the budget preparation process at a meeting in March of 1990, the SPMA knew, or reasonably should have known, that some of Caldwell's budget duties had actually been transferred to a civilian.

The budget duties were not "ongoing" work in the SPMA bargaining unit during the six months prior to the filing of the complaint in Case 8937-U-90-1967, and need not be restored to the SPMA bargaining unit to comply with City of Seattle, Decision 4163-A. The transfer of the budget duties was not raised as part of the complaint filed in December of 1990. It is inappropriate and untimely to order their restoration now.

The Complaint in Case 10539-U-93-2443

All of the allegations in the SPMA's recently-filed complaint are subsumed in the "compliance" proceedings in the earlier case, or are untimely under RCW 41.56.160.

Remedy

The union is entitled to an order requiring the employer to cease and desist from its practices of making paper-only transfers of a lieutenant with concomitant "loan back" assignments which deny work opportunities to SPMA bargaining unit members, and to restoration of the status quo which existed in the ISD prior to this unlawful unilateral change.

The SPMA has renewed its request that the employer be ordered to reimburse the SPMA for its reasonable attorney fees and costs. The SPMA charges that the employer has evidenced contempt for the Commission's remedial order, and has manipulated assignments so as to skim work from the SPMA bargaining unit. The employer denies that it has displayed repetitive illegal conduct which would warrant an extraordinary remedy. It asserts that its October 13, 1992 memorandum notified the SPMA how it intended to assign the duties previously performed by the ISD lieutenant, and how it intended to fill the corresponding vacancy created. The employer would have the SPMA bring any objections which the SPMA felt it had to the bargaining table, and it contends that it is not appropriate for the SPMA to seek enforcement from the Commission without first requiring the parties to meet and discuss claimed insufficiencies of compliance.

The Commission has occasionally ordered a recalcitrant party to pay the attorney fees for a successful complainant for the compliance phase of proceedings, as in King County, Decision 3781 (PECB, 1990), but those are not the circumstances here. The employer took

steps to comply, and appears willing to accept that, for the future, the union is entitled to notice and an opportunity for bargaining before the employer changes terms or conditions of employment which involve mandatory subjects of bargaining. To the extent that the employer is being faulted here, it is only for the secondary effects of its tendered compliance. At the same time, the union's arguments on the budget duties substantially overreached the original complaint, and were untimely as a separate complaint. An extraordinary remedy is not necessary at this time.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1).
2. The Seattle Police Management Association (SPMA), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit consisting of approximately 57 supervisory uniformed personnel of the Seattle Police Department holding the ranks of lieutenant, captain or major. The chief of police, assistant chiefs, confidential employees, the major in the Inspectional Services Division (ISD), and civilian personnel are excluded from the unit.
3. After a full hearing and submission of legal arguments, it was found in City of Seattle, Decisions 4163 and 4164 (PECB, 1992), inter alia, that on January 1, 1991, the employer unlawfully eliminated the Inspectional Service Division lieutenant position previously in the Seattle Police Management Association bargaining unit. The employer was ordered to "Restore the status quo ante, by restoring to the bargaining unit represented by the Seattle Police Management Association all ongoing work that was the bargaining unit work of employ-

ees represented by the SPMA in the ISD ... prior to the unilateral changes at issue in these proceedings."

4. In a letter dated October 15, 1993, the Inspectional Service Division lieutenant duties were assigned to Training Division Lieutenant Ron Mochizuki. Over the next 15 months, using a series of on-paper-only transfers Mochizuki was assigned to various precincts as the watch commander to perform lieutenant duties and then "loaned back" to perform the lieutenant duties of the Inspectional Service Division. The precinct watch commander duties were thereafter performed by various sergeants who were not in the Seattle Police Management Association bargaining unit. The parties had an agreement that sergeants could work out-of-class for no more than six months.
5. The exclusive bargaining representative had notice and actual knowledge of the transfer of budget duties from a lieutenant to a civilian more than six months prior to the filing of the original complaint. Furthermore, the transfer of budget duties was not argued by the SPMA during its original hearing.

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 on-paper-only assignment of Lt. Ron Mochizuki to perform lieutenant duties at various precincts, while in actual fact the duties were being performed by a sergeant working out of class, caused a loss of work opportunities for the Seattle Police Management Association bargaining unit. These assignments were presented as a fait accompli to the union. By

these actions, the City of Seattle has committed unfair labor practices in violation of RCW 41.56.140(4) and (1).

3. The complaint regarding the transfer of the lieutenant budget duties is outside the statute of limitations contained in RCW 41.56.160 and therefore untimely.
4. The union failed to prove that the employer has had a history of a repetitive pattern of illegal conduct, or that the employer's defenses to the unfair labor practice charges were frivolous or meritless, so as to warrant imposition of an extraordinary remedy under RCW 41.56.160.

ORDER

The City of Seattle, 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 skimming of bargaining unit work for more than six months from lieutenant positions of precinct watch commanders represented by the Seattle Police Management Association.
 - b. Refusing to bargain collectively in good faith with the Seattle Police Management Association concerning the wages, hours and working conditions, including the skimming of bargaining unit work, of its employees represented by the union.
 - c. In any other manner interfering with, restraining or coercing its employees in the exercise of their collec-

tive bargaining rights secured by the laws of the State of Washington.

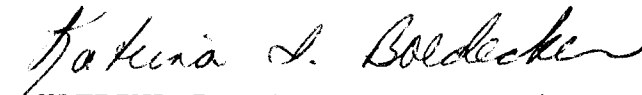
2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. Restore the status quo ante, by restoring to the bargaining unit represented by the Seattle Police Management Association all ongoing work that was the bargaining unit work of employees represented by the SPMA as precinct watch commanders in the Seattle Police Department prior to the unilateral changes at issue in these proceedings.
 - b. Give notice to and, upon request, bargain collectively in good faith with the Seattle Police Management Association, prior to implementing any changes in the wages, hours and working conditions of its employees represented by that union.
 - c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
 - d. Notify the above-named complainant, in writing, within 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 above-named complainant with

a signed copy of the notice required by the preceding paragraph.

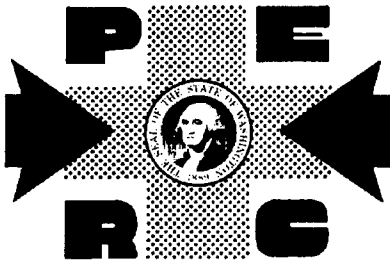
- e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

ISSUED at Olympia, Washington, on the 10th day of March, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 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 restore the status quo ante, by restoring to the bargaining unit represented by the Seattle Police Management Association (SPMA) all ongoing work that was the bargaining unit work of employees represented by the SPMA as precinct watch commanders of the Seattle Police Department prior to the unilateral changes at issue in these proceedings.

WE WILL give notice to and, upon request, bargain collectively in good faith with the Seattle Police Management Association, prior to implementing any changes in the wages, hours and working conditions of its employees represented by that union.

WE WILL NOT refuse to bargain collectively in good faith with the Seattle Police Management Association concerning the wages, hours and working conditions, including the skimming of bargaining unit work, of its employees represented by the union.

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

DATED: _____

CITY OF SEATTLE

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 Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.