

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE	)	
FIGHTERS, LOCAL 1810,	)	
	)	CASE 9946-U-92-2273
Complainant,	)	
	)	DECISION 4538 - PECB
vs.	)	
	)	
KING COUNTY FIRE DISTRICT 11,	)	
	)	PRELIMINARY RULING AND
Respondent.	)	PARTIAL DISMISSAL
	)	
	)	

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The complaint charging unfair labor practices was filed in the above-captioned matter on August 4, 1992. The case involves "unilateral change" allegations concerning a set of personnel rules adopted by the employer. Previous correspondence regarding the matter includes: (1) A "deferral" inquiry directed to the parties on September 8, 1992, together with responses filed by both parties; and (2) a preliminary ruling letter dated April 26, 1993, together with responses from both parties. The matter is again before the Executive Director under WAC 391-45-110.<sup>1</sup>

Propriety of "Deferral"

The Public Employment Relations Commission has repeatedly indicated a preference for having contract interpretations made by arbitra-

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

tors under contractual grievance arbitration procedures, and has "deferred" the processing of unfair labor practice charges in appropriate circumstances, in order to permit contractual processes to operate.<sup>2</sup> An absolute requirement for "deferral" is, however, that the employer indicate its willingness to forego assertion of procedural defenses to arbitration.

In this case, the employer has twice hedged its position on the "procedural defenses" question which is crucial to any "deferral" inquiry. The latest came in a letter submitted after the filing of the amended complaint, where counsel for the employer indicated that it would provide a final position "as soon as we have had a chance to review the statement of facts". More than five additional months have passed since receipt of that letter, and nothing further has been received from the employer. Thus, the propriety of "deferral" will not be considered further in this case.

#### Preliminary Ruling

The amended statement of facts filed by the union on May 17, 1993 details the union's objections to various items within the set of personnel rules adopted by the employer. The following sets forth the preliminary rulings on those allegations:

1. Section 2000. A "breadth of coverage" question is raised by the union. Even if the employer is able to establish its previously-announced defense that the policy manual is subordinate to the collective bargaining agreement in the event of a conflict, an unfair labor practice violation could be found on the basis of giving an appearance of coverage of bargaining unit employees.

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<sup>2</sup> See, City of Yakima, Decision 3564-A (PECB, 1991).

2. Section 2000 / 2063. The union raises a concern that the policy manual will come to be regarded in the future as "past practices". The allegation is so vague, that I am unable to conclude that an independent unfair labor practice violation could be found.
3. Section 2102P. The union is concerned about a missing link in an internal cross-reference to Section 2600P in the policy manual. This is not related directly to any employee wages, hours or working conditions, and the Commission is not in a position to become editor or grammarian for the parties. I am unable to conclude that an unfair labor practice violation could be found on this item.
4. Section 2411. The union raises a concern that the minimum qualifications for "fire fighter" have been changed. While pre-hire minimum qualifications would normally be outside of the scope of mandatory collective bargaining, it appears that a violation could be found if application of the new requirement to existing employees adversely affected their tenure of employment or other working conditions.
5. Sections 2416 / 2416P. The union raises concerns about new requirements and disciplinary actions relating to physical examinations. While pre-hire minimum qualifications would normally be outside of the scope of mandatory collective bargaining, it appears that a violation could be found if application of the new requirement to existing employees adversely affected their discipline, tenure of employment or other working conditions.
6. Section 2430. The union indicates concern that the job description for "fire fighter" does not match current practice. It appears that an unfair labor practice violation

could be found on the basis of the appearance of coverage of bargaining unit employees.

7. Section 2440. The union raises concern that a policy on being considered a "representative of the department" is vague. The employer may have a right to control the use of its name and/or identifying symbols, but the union would seem to have a legitimate interest in ascertaining the liability of its employees for discipline. It thus appears that an unfair labor practice violation could be found.
8. Section 2400P. The union indicates concern about a policy manual provision which permits searches of employee lockers at any time. It appears that a violation could be found as affecting employee discipline and tenure of employment.
9. Section 2444. This policy was identified in the original complaint as a drug policy which was withdrawn by the employer after it was challenged by the union. The union's current allegation that there have been no further negotiations on the matter presupposes that there is an occasion for bargaining. If the employer desires to revive the matter at some time in the future, it would likely have a duty to bargain concerning it. If the employer has abandoned the contemplated change, however, it would have no present obligation to bargain the dead issue. Thus, the allegation fails to state a cause of action at this time.
10. Section 2447. An "Option 3" in this policy is alleged to be a change from existing practice on free time during duty shifts. It appears that an unfair labor practice violation could be found on this item.
11. Section 2450. The performance evaluation for the "fire fighter" classification is alleged to be out of synch with

existing practice, due to the challenged change of the job description in Section 2430 (item 6, above). It appears that an unfair labor practice violation could be found.

12. Section 2604 / 2604P. A table of disciplinary offenses is alleged to be changed from current practice. It appears that an unfair labor practice violation could be found.
13. Section 2605P. An employee assistance program and related disciplinary provisions are alleged to be changed from current practice. It appears that an unfair labor practice violation could be found.
14. Section 2740P. Attendance requirements for certain identified drills are alleged to be contrary to existing practice. It appears that an unfair labor practice violation could be found.
15. Section 2744. This allegation points out a conflict between a policy manual provision which omits watches from required employee equipment, and required job usage of a watch to take vital signs on aid calls. The union would have a legitimate interest in ascertaining the liability of its employees for discipline. It thus appears that an unfair labor practice violation could be found.

NOW, THEREFORE, it is

ORDERED

1. The allegations of the amended complaint identified as items 2, 3, 4 (to the extent that it involves pre-hire minimum qualifications), 5 (to the extent that it involves pre-hire minimum qualifications) and 9, fail to state a cause of action and are DISMISSED.

2. The complaint will be assigned in due course to an Examiner for further proceedings under Chapter 391-45 WAC with regard to the allegations of the amended complaint identified as items 1, 4 (as regards existing employees), 5 (as regards existing employees), 6, 7, 8, 10, 11, 12, 13, 14, and 15, which state a cause of action under RCW 41.56.140.

Issued at Olympia, Washington, on the 5th day of November, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be  
appealed by filing a petition  
for review with the Commission  
pursuant to WAC 391-45-350.