City of Vancouver, Decision 11276 (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 452, Complainant, vs. CITY OF VANCOUVER, Respondent.	CASE 23733-U-11-6052 DECISION 11276 – PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Snyder & Hoag, by *David Snyder,* Attorney at Law, for the union.

City Attorney Ted H. Gathe, by *Debra Quinn*, Assistant City Attorney, for the employer.

On January 13, 2011, the International Association of Fire Fighters, Local 452 (union), filed an unfair labor practice complaint against the City of Vancouver (employer). In its complaint, the union alleges that the employer unlawfully refused to bargain in violation of RCW 41.56.140(4), and if so, derivatively interfered in violation of RCW 41.56.140(1), by its unilateral change to shift trades, discipline, leave, and "compensation such as work out of class pay," through implementing Administrative Guideline AG 300.23, without providing an opportunity for bargaining. A preliminary ruling was issued on January 20, 2011. The employer filed an answer to the complaint on February 11, 2011. Examiner Karyl Elinski held a hearing on July 13, 2011. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer have a duty to bargain its decision to change its shift trade policy? If so, did the employer comply with its duty to bargain?

2. Did the employer carry its burden of proving the affirmative defense of legal necessity in regard to its change in the shift trade policy without bargaining?

3. Did the employer carry its burden of proving the affirmative defense of waiver by inaction in regard to its duty to provide the union an opportunity to bargain?

The employer's change to its shift trade policy was a mandatory subject of bargaining. The employer was obligated to bargain with the union and failed to do so. The employer did not meet its burden of proving the affirmative defenses of either legal necessity or waiver by inaction.

ISSUE 1: Did the employer have a duty to bargain its decision to change its shift trade policy? If so, did the employer comply with its duty to bargain?

APPLICABLE LEGAL STANDARDS

A public employer has the duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). The potential subjects for bargaining are traditionally divided into categories referred to as "mandatory," "permissive," and "illegal" subjects. *City of Pasco*, Decision 9181-A (PECB, 2007).

"'[P]ersonnel matters, including wages, hours, and working conditions' of bargaining unit members are characterized as mandatory subjects of bargaining." *Skagit County*, Decision 8886-A (PECB, 2007).

Permissive subjects of bargaining are union and management prerogatives, over which the parties may negotiate, but each party is free to bargain or not to bargain. A party commits an unfair labor practice violation when it bargains a permissive subject of bargaining to impasse. *Community Transit*, Decision 10647-A (PECB, 2011).

Illegal subjects of bargaining are matters about which the parties cannot agree because of statutory or constitutional prohibitions. *City of Seattle*, Decision 4687-B (PECB, 1997), *aff'd*, 93 Wn. App. 235 (1998), review denied, 127 Wn.2d 1035 (1999). The parties to a collective bargaining relationship must refrain from bargaining which could result in an unlawful outcome. *Snohomish County*, Decision 8733-C (PECB, 2006).

Employer's Bargaining Obligation Regarding Mandatory Subjects

As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006).[1] An employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations.

Balancing Test to Determine Mandatory and Permissive Subjects

In determining whether a particular matter is a mandatory subject of bargaining, the Commission initially determines whether it directly impacts the wages, hours or working conditions of bargaining unit employees. When a subject does not directly affect wages, hours or working conditions, the Commission uses a balancing test, analyzing the employees' interest in their terms and conditions of employment, against the employer's managerial prerogative. *Port of Seattle*, Decision 7271-B (PECB, 2003). Where a subject both relates to conditions of employment and managerial prerogative, the Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining. The focus of such an inquiry is to determine which characteristic predominates. *State - Office of Financial Management*, Decision 8761-A (PSRA, 2005); *International Ass'n of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 113 Wn.2d 197, 203 (1989)(*City of Richland*).

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[1] The fire fighters in the present case are eligible for interest arbitration. RCW 41.56.430 through .490. For employees eligible for interest arbitration, an employer may not unilaterally implement its desired change after bargaining to a lawful impasse, but rather must seek interest arbitration. *Snohomish County*, Decision 9770-A (PECB, 2008). The interest arbitration requirements are also applicable to situations where an employer desires to make a mid-term change to terms and conditions of employment for such a bargaining unit. *See City of Yakima*, Decision 9062-A (PECB, 2008).

The bargaining obligation is applicable to the employer's decision to change a mandatory subject of bargaining and the effects of that decision, but will only be applicable to the effects of a managerial decision on a permissive subject of bargaining. *Skagit County*, Decision 6348 (PECB, 1998); *City of Kelso*, Decision 2120 (PECB, 1985) (both the decision to contract out bargaining unit work and its effects on the employees are mandatory subjects of bargaining); *City of Kelso*, Decision 2633 (PECB, 1988) (decision to merge operation with another employer is an entrepreneurial decision, and only the effects that the decision has upon wages, hours, and working conditions are bargainable). For example, while an employer has no duty to bargain concerning a decision to reduce its budget, the "effects" of such decisions could be mandatory subjects of bargaining. *See Spokane Education Association v. Barnes*, 83 Wn.2d 366, 374 (1974); *City of Pasco*, Decision 9181-A (PECB, 2008).

Bargaining From the Status Quo and Presenting Decision as a *Fait Accompli*

Good faith bargaining must begin from the status quo. *Snohomish County*, Decision 9834-B (PECB, 2008), *citing Shelton School District*, 579-B (EDUC, 1984). The Commission in the *Shelton School District* case found that pre-existing terms and conditions are the starting point for any negotiations between the parties.

Furthermore, it is an unfair labor practice for the employer to present a change to a mandatory subject of bargaining as an irrevocable decision, or *fait accompli*. In determining whether an employer has presented a decision to change a mandatory subject as a *fait accompli*, the focus is on whether an opportunity for meaningful bargaining existed under the circumstances as a whole. *City of Edmonds*, Decision 8798-A (PECB, 2005), *quoting Washington Public Power Supply System*, Decision 6058-A (PECB, 1998).

Commission Examines the Totality of Circumstances

Finally, in determining whether an unfair labor practice has occurred, the Commission will analyze the totality of the circumstances. *City of Mercer Island*, Decision 1457 (PECB, 1982); *Walla Walla County*, Decision 2932-A (PECB, 1988). The evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid reaching an agreement. *City of Clarkston*, Decision 3246 (PECB, 1989).

ANALYSIS

Prior to January 1, 2011, the employer and union were subject to a shift trade policy, set forth in the employer's Administrative Guideline (AG) 300.1. The shift trade policy was succinctly and deftly summarized as follows in the employer's brief:

> [F]irefighters pick their yearly vacation days at the beginning of each year. Throughout the year, in the event a need arises for them to take an unscheduled day off, they may trade shifts with another firefighter. When a trade occurs, the firefighter scheduled to work (TRNW – trade not working), coordinates with another firefighter to work the scheduled shift (TRW – trade working). In exchange, it is customary that the parties voluntarily agreed that the TRNW will later work a scheduled shift for the TRW, although this is not mandatory. Because the terms of the trade exchange are only between the two employees, the City has not been involved in the process other than to ensure like positions are traded with like positions and minimum staffing requirements are maintained, i.e. a captain trades with a captain, and a firefighter trades with a firefighter.

An employee wishing to find a co-worker to substitute for his or her scheduled shift directly asks another employee to fill in. If the other employee agrees to fill in as the TRW, the TRNW informs the employer. The employer neither sanctions nor approves the trade, other than to determine whether the trade was for a like position, and to ensure that minimum staffing was maintained.

At the time of the scheduled shift, the TRW was responsible for covering the shift, but was ineligible for overtime. If the TRW failed to show up for work on the scheduled shift trade date, the TRW was liable for any leave or discipline for failing to fulfill the duties associated with the shift. For example, if a TRW called in sick, his or her sick leave would be charged; if a TRW failed to appear for work without explanation or legitimate excuse, he or she was potentially liable for discipline. In addition, if a TRW worked a shift and earned additional compensation such as by working out of class, the TRW received the increased compensation.

Beginning in or about February 2010, the City's internal auditor, Christine Smith, conducted an audit of the fire department. One of Smith's areas of focus was the shift trade policy. The auditor determined that the shift trade policy violated provisions of the Fair Labor Standards Act,

29 U.S.C. 201 *et seq.* (FLSA). Smith based her determinations on audit reports from two other jurisdictions, not from FLSA policy statement or legal decisions interpreting FLSA. Although Smith issued a final report of her audit findings on or about August 26, 2010, the City decided to implement Smith's recommendations as to the shift trade policy in or about July 2010. As a result of the report, Chief Bivens directed Deputy Chief Molina to draft a new Administrative Guideline to reflect the audit finding and bring the shift trade policy into compliance with FLSA.

On or about September 22, 2011, the employer provided the union a revised shift trade policy. The revised policy, eventually set forth in AG 300.23, changed the existing shift trade policy in a number of significant ways:

- Out of class pay accrued by a TRW would be paid to the TNRW.
- If the TRW did not report to work, the TNRW's leave balance would be charged for the TRW's failure to work.
- If the TRW failed to report for work, the TNRW would be subject to discipline, up to an including termination.
- If the TNRW worked a shift to pay back the TRW, the TNRW was prohibited from using compensatory time off to cover the TRW's shift.

The bargaining unit employees relied on the former policy for many years. Testimony at the hearing indicated that employees availed themselves on many occasions of the shift trade policy as it existed prior to the employer's change. The former policy permitted employees flexibility for unexpected or late-scheduled events, which would have been nearly impossible for the bargaining unit employees, who bid for shifts up to a year in advance.

Looking at the employer's interests, the employer was concerned that the former policy violated FLSA, trades were not between like positions, and that the trades caused increased overtime to maintain minimum staffing levels. The union had legitimate interests in bargaining any changes to the shift trades policy with the employer. The employer adopted changes to the policy directly impacting wages (for example, out of class pay), hours (the shift trade policy inherently deals

with hours) and working conditions (for example, the shift in responsibility for a TRW who fails to appear for work from the TRW to the TNRW). The record in this case demonstrated a significant change to the shift trade policy, which directly impacted the employees' access to shift trades by making the TRNW responsible for the actions and/or inactions of the TRW on the trade date.

Applying the balancing test, the union's interests in maintaining their working conditions outweighed the employer's interest in complying with its largely unsubstantiated interpretation of FLSA and its interest in minimizing the overtime costs incurred by its long-standing policy. The union's predominating interests militate in favor of finding that the shift trade policy was a mandatory subject of bargaining. The employer was obligated to bargain any changes prior to unilaterally changing it.

The Examiner finds the record demonstrated that the employer presented the new shift trade policy as a *fait accompli*. The employer refused to engage in any bargaining regarding its decision to change the policy. The union was not consulted prior to the employer's decision to adopt the new policy, and the employer repeatedly asserted that it would not bargain its decision. Instead, the employer insisted that its decision was a non-mandatory subject of bargaining. It based its determination on two non-binding audit reports from outside jurisdictions. The employer failed to provide the union with any legal authority, court decisions, or interpretations/policy statements from the United States Department of Labor, to support its assertion that FLSA mandated its change in policy.

When the union demanded to bargain the decision to change the shift trade policy, the employer responded that it was not obligated to bargain the decision, only the effects of the decision. The employer met with the union on two occasions, on November 8, 2010, and December 20, 2010, to discuss effects bargaining only. When the union challenged the employer's legal necessity defense to the change, the employer responded that it would reconsider its position only if the union could provide legal authority contrary to the employer's position.

The union demonstrated that a change to the shift trade policy was a mandatory subject of bargaining that triggered its right to be provided notice and an opportunity to request bargaining. Despite the union's request on two occasions, the employer refused to bargain its decision to change the shift trade policy, making additional requests futile.

Conclusion

The changes to the shift trade policy impacted several mandatory subjects of bargaining. The employer was therefore obligated to bargain both the decision and the effects of the changes to the shift trade policy. The employer's failure to bargain the decision to change the shift trade policy violates RCW 41.56.140(4) and constitutes an unfair labor practice.

ISSUE 2: Did the employer carry its burden of proving the affirmative defense of legal necessity in regard to its duty to bargain?

APPLICABLE LEGAL STANDARDS

Although this record supports a finding that the employer presented its decision to change a mandatory subject of bargaining as a *fait accompli*, and therefore committed an unfair labor practice, the employer may still be relieved of its bargaining obligation through any affirmative defenses it asserted. The employer claims that it was not obligated to bargain the decision to change shift trade policy due to legal necessity, and that the union waived its bargaining rights through inaction. The employer has the burden of proof as to any affirmative defense. WAC 391-45-270(1)(b).

The Commission has explained the necessity defense as:

> Necessity, either business or legal, is an affirmative defense which the respondent bears the burden of establishing. A respondent claiming a defense of legal necessity to a unilateral change must prove that: (1) a legal necessity existed; (2) the respondent provided adequate notice of the proposed change; and (3) bargaining over the effects of the change did, in fact, occur or the complainant waived bargaining over the effects of the change.

Skagit County, Decision 8886-A (PECB, 2007) (citations omitted).

The employer relies on *City of Pasco*, Decision 9181-A (PECB, 2008) for the proposition that the Commission is not the appropriate forum to determine the legality of a policy under FLSA. In that case, the Commission determined that it cannot make determinations as to whether a policy is legal or illegal under the FLSA. The Commission can, however, provide its best interpretation of cases construing the FLSA when those cases affect collective bargaining. The Commission reviewed two U.S. Court of Appeals decisions and determined that they did not support the employer's conclusion that FLSA mandate the employer's unilateral change in a mandatory subject of bargaining.

RCW 41.56.905 provides "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." In *Rose v. Erickson*, 106 Wn.2d 420, 424 (1986), the Washington State Supreme Court found the meaning of RCW 41.56.905 is clear and held that Chapter 41.56 RCW prevails in a conflict with another statute. However, if apparent conflicts in the statutes can be reconciled and effect given to each without distortion of the language used, the statutes will be harmonized. *Peninsula School District v. Public School Employees*, 130 Wn.2d 401, 408 (1996).

ANALYSIS

In the present case, Smith, a non-lawyer, determined that the employer's shift trade policy violated FLSA. Her opinion was based on the findings of two auditors, whose credentials were unknown, from other jurisdictions: Tampa, Florida Fire and Rescue, and Kansas City, Missouri. She found that the employer's (City of Vancouver's) practices were contradictory to some of the requirements of FLSA regarding shift trades. She also stated that she consulted with the City's attorneys regarding her interpretation, but she did not receive any case citations or other legal documents supporting her conclusions. Among other things, Smith found that City policy AG 300.1 erroneously held the TRW responsible for the shift (*e.g.*, If the TRW failed to appear for work on a day he or she agreed to substitute for the TRNW, the TRW's leave bank would be docked). She asserted that FLSA requires that all rights, responsibilities, and credit go to the scheduled employee in the event the scheduled employee trades his or her shift with another

employee. 29 CFR 553.31(a) provides that when "one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift." In other words, pursuant to her interpretation of 29 CRF 553.31(a), the TRNW should be responsible for all of the actions taken by the TRW. If the TRW failed to show up as a substitute for the TRNW without following the proper call-in procedures, the TRNW could be disciplined for the TRW's violation, up to and including termination.

In the present case, there are no court cases interpreting the FLSA provisions relied upon by the employer to support the change to its policy. The employer did not provide a legal reason for its assertion that FLSA required the change in policy. Instead, it relied solely on the input of its internal auditor, two non-binding audit reports from out-of-state jurisdictions and input of unknown quality from the city attorney's office. The employer was unable to prove any legal necessity requiring its change in policy. The employer never provided the union with legal citations, case law, or Department of Labor policies, letters or interpretation supporting Smith's interpretation. The employer was not diligent in making and applying its legal conclusions.

During the course of the hearing in the present case, the employer presented a written motion to dismiss this matter on the grounds that the Commission lacks subject matter jurisdiction to interpret FLSA. The Examiner denied the motion. Consistent with the Commission's decision in *City of Pasco,* the Examiner does not find it necessary to interpret FLSA in making a determination on the merits of the present case. Rather, the Examiner finds that mere assertions of findings in audit reports from other jurisdictions do not arise to the level of proving legal necessity for making the changes to the shift trade policy sought herein. Absent any showing of a legal interpretation of FLSA that is binding on the employer, the employer failed to prove the affirmative defense of legal necessity.

In addition, despite several requests from the union, the employer failed to seek legal advice regarding its decision, and failed to provide the union with any basis for the employer's conclusion that the law mandated changes to the employer's policy. In fact, the employer failed to provide anything other than the two auditor's reports upon which it relied. The employer's mere assertion that the policy was illegal does not make it so.

Conclusion

The employer failed to carry its burden of proving that it was legally mandated to make changes to the shift trades policy. Instead, it relied on its assertion that the former policy violated the statute, and not on any legally binding precedent requiring that the long-standing shift trades policy be revised. Thus, its assertion of legal defense fails.

ISSUE 3: Did the employer carry its burden of proving the affirmative defense of waiver by inaction in regards to its duty to provide the union an opportunity to bargain?

APPLICABLE LEGAL STANDARDS

The employer also raises the affirmative defense of waiver by inaction. The respondent has the burden of demonstrating that the complainant waived its right to bargain. *Lakewood School District*, Decision 755-A (PECB, 1980); WAC 391-45-270(1)(b). The Commission explained waiver by inaction in *City of Anacortes*, Decision 9004-A (PECB, 2007)(footnote omitted):

> Prior to any changes to mandatory subjects of bargaining, employers must give unions advanced notice of the potential change, so as to provide unions time to request bargaining, and upon such requests, bargain in good faith to resolution or lawful impasse prior to implementing the change. However, once notice of a change has been given, it is the union's responsibility to make a timely request to bargain the issue. A "waiver by inaction" defense is appropriate where notice is given of a proposed change to a mandatory subject of bargaining and the party receiving the notice does not timely request bargaining. Basic to finding a "waiver by inaction" as stated in *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998) is:
>
> > [A] finding that the employer gave adequate notice to the union. Notice must be given sufficiently in advance of the actual implementation of a change to allow a reasonable opportunity for bargaining between the parties. If the employer's action has already occurred when the union is given notice, the notice would not be considered timely and the union will be excused from the need to demand bargaining on a *fait accompli*.

The employer bears a heavy burden to prove waiver by inaction. The employer must prove that the union's conduct is such that the only reasonable interference is that the union has abandoned

its rights to negotiate. *Clover Park Technical College*, Decision 8534-A (PECB, 2004). The opportunity offered to bargain also must be meaningful. *Skagit County*, Decision 6348 (PECB, 1998), *aff'd*, *Skagit County*, Decision 6348-A (PECB, 1998). A willingness to bargain the effects of a management decision is insufficient as a defense for a failure to bargain the decision itself. *Skagit County*, Decision 6348-A.

ANALYSIS

Even assuming the union did not demand to bargain the employer's decision to alter the shift trade policy, the employer did not prove the union abandoned its right to bargain about that decision or the effects of that decision. The union requested bargaining on two occasions. The employer met with the union on two occasions, and discussed some of the effects of its change to the shift trade policy. The employer offered to bargain only the effects of its change to the policy. No meaningful bargaining was possible because the employer repeatedly asserted that it was legally required to change the policy, and that the topic was not a mandatory subject of bargaining. The employer refused to bargain its decision.

Conclusion

Even before the employer communicated its intent to change the shift trade policy the union, the employer's belief of the legal necessity to change the policy denied the union any meaningful opportunity to bargain the employer's decision. The employer refused to bargain its decision. The employer's decision to change its shift change policy was a *fait accompli* as to the employer's decision, and the employer's affirmative defense of waiver by inaction fails.

CONCLUSION

The employer committed an unfair labor practice because it took the position that its change to AG 300.23 was mandated by law, eliminating the need for it to bargain with the union over its changes. It refused to bargain with the union regarding the change in the policy. It failed to meet its burden of proving that the change was legally mandated. The change in policy was a mandatory subject of bargaining. The employer was required to bargain the subject of the change to the policy, not merely the effects of the change, and therefore committed an unfair labor practice.

FINDINGS OF FACT

1. The City of Vancouver (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The International Association of Fire Fighters, Local 452 (the union) is a bargaining representative within the meaning of RCW 41.56.030(3).

3. The union represents a bargaining unit of fire fighters employed by the employer.

4. Beginning in February 2010 and continuing until August 2010, the employer's internal auditor, Christine Smith, conducted an audit of the fire department's shift trade policy.

5. In or about July 2010, Smith concluded that the shift trade policy violated the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* Smith, and the employer, based their opinion on non-binding reports of two outside jurisdictions: Tampa, Florida Fire and Rescue, and Kansas City, Missouri. As required by WAC 391-45-270(1)(b), the employer failed to carry its burden of proving that legal necessity required it to change the shift trade policy.

6. In or about September 2010, the employer provided a revision to the shift trade policy to the union. The change in the shift trade policy affected wages (for example, out of class pay), hours and working conditions (for example, limiting an employee's flexibility to trade shifts due to the uncertain consequences of doing so, and shifting responsibility from one employee to another for the failure of an employee to appear for work).

7. The union demanded to bargain both the employer's decision to revise the shift trade policy and the effects of that decision. The employer refused to bargain its decision to change the policy.

8. The employer and the union met two times, November 8, 2010, and December 20, 2010, to discuss the employer's new shift trade policy. The employer asserted that the change in policy was a non-mandatory subject of bargaining. At the meetings, the parties

discussed the effects of the employer's change in the shift trade policy. As requested by WAC 391-45-270(1)(6), the employer failed to carry its burden of proving the union waived its right to bargain by inaction.

9. The employer adopted a new shift trade policy effective January 1, 2011.

CONCLUSIONS OF LAW

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

2. As described in Finding of Fact 6, the shift trade policy is a mandatory subject of bargaining under RCW 41.56.030(4) because it affects wages, hours and working conditions. By failing to bargain the decision to change the shift trade policy when requested to do so by the union, as described in Findings of Fact 5 through 9 above, the employer committed an unfair labor practice and interfered with employee rights in violation of RCW 41.56.140(4) and (1).

ORDER

The complaint charging unfair labor practices by the union against the employer is SUSTAINED on the merits.

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

1. CEASE AND DESIST from:

   a. Implementing a change to a mandatory subject of bargaining and presenting the union with a fait accompli in violation of RCW 41.56.140(4).

   b. Failing to bargain the decision to change the shift trade policy when requested to do so by the union, and interfering with employee rights in violation of RCW 41.56.140(4) and (1).

c. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under 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. Restore the *status quo ante* by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in the shift trade policy found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with the International Union of Fire Fighters, Local 452 before implementing any change to the shift trade policy.

c. Pay any and all back pay and/or benefits associated with the employer's adoption of the shift trade policy found unlawful in this order.

d. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

e. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the City of Vancouver City Council and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

f. Notify the 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 complainant with a signed copy of the notice provided by the Compliance Officer.

g. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 26th day of January, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

CASE 23733-U-11-6052
DECISION 11276 - PECB

COLLECTIVE BARGAINING

PERC

STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *CITY OF VANCOUVER* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY implemented a change to a mandatory subject of bargaining and presented the union with a fait accompli in violation of RCW 41.56.140(4).

WE UNLAWFULLY failed to bargain the decision to change the shift trade policy when requested to do so by the union, and interfered with employee rights in violation of RCW 41.56.140(4) and (1).

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL restore the *status quo ante* by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in the shift trade policy found unlawful in this order.

WE WILL give notice to and, upon request, negotiate in good faith with the International Union of Fire Fighters, Local 452 before implementing any change to the shift trade policy.

WE WILL pay any and all back pay and/or benefits associated with the employer's adoption of the shift trade policy found unlawful in this order.

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.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 01/26/2012

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23733-U-11-06052	FILED:	01/13/2011	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	FIREFIGHTERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: CITY OF VANCOUVER
ATTN: ERIC HOLMES
210 E 13TH ST
PO BOX 1995
VANCOUVER, WA 98668-1995
Ph1: 360-487-8602 Ph2: 360-487-8600

REP BY: DEBRA QUINN
CITY OF VANCOUVER
PO BOX 1995
VANCOUVER, WA 98668-1995
Ph1: 360-487-8500

PARTY 2: IAFF LOCAL 452
ATTN: MARK JOHNSTON
2807 NW FRUIT VALLEY RD
VANCOUVER, WA 98660
Ph1: 360-254-3528 Ph2: 360-573-7957

REP BY: DAVID SNYDER
SNYDER & HOAG
PO BOX 12737
PORTLAND, OR 97212
Ph1: 503-222-9290 Ph2: 360-906-8700