STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 27, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 10901-U-94-2536 DECISION 4687-B - PECB
CITY OF SEATTLE, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 27, Respondent.	CASE 10913-U-94-2538 DECISION 4688-B - PECB DECISION OF COMMISSION

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

Mark A. Sidran, City Attorney, by Janet K. May, Mary Kay Doherty, and Cathy Parker, Assistant City Attorneys, appeared on behalf of the employer.

This case comes before the Commission on a petition for review filed by the International Association of Fire Fighters, Local 27, seeking to overturn a decision issued by Examiner Walter M. Stuteville.[1] Both parties filed briefs, and the International Association of Fire Fighters, AFL-CIO, was permitted to file an amicus curiae brief in support of IAFF Local 27's position.

[1] City of Seattle, Decisions 4687-A and 4688-A (PECB, 1996).

BACKGROUND

Details of the factual background and procedural history of this case are fully set forth in the Examiner's decision, and are not repeated here. Briefly summarized: This controversy arises out of negotiations between the parties on a "reopener" within their collective bargaining agreement covering the period from August 8, 1992 to August 31, 1994. The union proposed that supplemental pension benefits be provided for bargaining unit members who are covered by the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF) Plan II, established by Chapter 41.26 RCW. The employer resisted bargaining on that subject, and the union sought interest arbitration under RCW 41.56.450. Each of the parties filed unfair labor practice charges against the other, and they both moved for summary judgment. Examiner Stuteville concluded that the Legislature preempted the authority of the employer to act on pension benefits for fire fighters, so that the union's proposals for supplemental pension benefits were not mandatory subjects of collective bargaining, and that the union violated RCW 41.56.150(4) by bargaining to impasse and seeking interest arbitration on its pension proposal.

POSITIONS OF THE PARTIES

The union argues that Chapter 41.56 RCW authorizes the employer to negotiate and provide supplemental benefits to LEOFF Plan II members, and that the collective bargaining statute should prevail in any conflict. It contends that Chapter 41.26 RCW and the city charter do not preclude the employer from negotiating supplemental pension benefits. Arguing the Legislature would have expressly excluded supplements to LEOFF II from collective bargaining if it wanted to do so, the union claims pensions are mandatory subjects of bargaining, and that it has not waived its right to bargain the supplementary benefits it proposed. The union urges the Commission

to reverse the Examiner's decision, to grant the union's motion for summary judgment in Case 10901-U-94-2536, and to order the employer to submit the supplemental pension issue to interest arbitration. It asks the Commission to dismiss the employer's unfair labor practice complaint in case 10913-U-94-2538.[2]

The employer contends that the Legislature, through Chapter 41.26 RCW, has preempted the authority of cities to provide supplemental pension benefits to fire fighters. It contends that the City of Seattle may exercise only such power as is delegated to it by the Legislature and that RCW 35.22.220, which grants specific powers to first class cities, does not address pension benefits for city employees. The employer asserts that fire fighters are excluded from coverage of the several statutes which do provide retirement benefits for city employees. The employer argues that the union committed unfair labor practices by insisting to impasse and seeking interest arbitration on its proposals for supplemental pension and disability benefits.

DISCUSSION

The Duty to Bargain

The duty to bargain under the Public Employees' Collective Bargaining Act is defined in RCW 41.56.030(4) as follows:

> "Collective bargaining" means ... 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**,

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[2] The amicus brief also urges the Commission to consider the primacy of public sector bargaining with respect to uniformed personnel, as exemplified by Chapter 41.56 RCW, and rule in favor of the union.

> which may be peculiar to an appropriate bargaining unit ...
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> [Emphasis by **bold** supplied.]

That definition is patterned after the National Labor Relations Act (NLRA). The Supreme Court of the State of Washington has ruled that decisions construing the NLRA are persuasive in interpreting state laws which are similar to or based on the federal law. Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1981).

The Commission has followed National Labor Relations Board (NLRB) and federal court precedents which distinguish between "mandatory", "permissive" and "illegal" subjects of bargaining. Federal Way School District, Decision 232-A (EDUC, 1977), citing NLRB v. Wooster Division of Borg Warner, 356 U.S. 342 (1958).[3]

Mandatory subjects of bargaining are matters affecting the wages, hours, and working conditions of bargaining unit employees;[4]

Permissive subjects of bargaining are matters considered remote from "terms and conditions of employment", or those which are regarded as prerogatives of employers or of unions;[5]

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[3] See, also, City of Pasco, Decision 4694-A and 4695-A (PECB, 1994); and City of Centralia, Decision 5282-A (PECB, 1996).

[4] A party is entitled to condition agreement upon resolution of mandatory subjects, and to pursue such subjects to impasse. In the private sector, pensions are generally found to fall within "wages" or "conditions of employment", and are mandatory subjects of bargaining. Inland Steel Co., 77 NLRB 1 (1948), enforced, 170 F.2d 247 (CA 7, 1948), cert. denied, 336 U.S. 960 (1949). See, also, Stone Boat Yard, 264 NLRB 981 (1982), enforced, 715 F.2d 441 (CA9, 1983), cert. denied, 446 U.S. 937 (1984); and Associated Milk Producers, 300 NLRB 561 (1990).

[5] A party is entitled to advance permissive subjects up to the point where an impasse is reached, but may not seek interest arbitration on such matters. Klauder v. Deputy Sheriff's Guild, 107 Wn.2d 338 (1986).

Illegal subjects of bargaining are matters which neither the employer nor the union have the authority to negotiate, because their implementation of an agreement on the subject matter would contravene applicable statutes or court decisions.[6]

The duty to bargain only exists as to matters over which the employer may lawfully exercise discretion. Zylstra v. Piva, 85 Wn.2d 743 (1975). Any agreement reached between the parties must contain provisions which the employer is authorized to enact, and cannot contain matters which neither the employer nor the union have the authority to negotiate.

Preemption by LEOFF

The Examiner concluded that the LEOFF statute occupies the field of fire fighter pensions, so that this employer cannot legally bargain over the union's proposal. For the reasons indicated below, we affirm the Examiner's ruling.

The Commission's role in statutory interpretation was clearly enunciated in City of Yakima, Decision 3503-A (1991):

> The question before us is one of statutory interpretation, and we approach it with the applicable rules of statutory construction in mind. Principal among those is the mandate that this Commission must endeavor to ascertain and give effect to the intent of the Legislature. See, e.g., Ravsten v. Labor & Industries, 108 Wn.2d 143, 150 (1987); Service Employees, Local 6 v. Superintendent of Public Instruction, 104 Wn.2d 344, 348 (1985).

[6] Illegal subjects may not be proposed or bargained at any time. See, King County Fire District, Decision 4538-A (PECB, 1994). See, also, City of Richland, Decision 2486-A (PECB, 1986).

The task of the Commission is to determine if collective bargaining on a supplemental pension system for fire fighters would conflict with the state constitution or state legislation.[7]

Purpose of the LEOFF System -

Preemption occurs when the Legislature states its intention, either expressly or by necessary implication, to preempt a field. Brown v. Yakima, 116 Wn.2d 556 (1991). See, also, City of Tacoma v. Luvene, 118 Wn.2d 826 (1992). If the Legislature is silent as to its intent to occupy a given field, resort must be had to the purposes of the legislative enactment and to the facts and circumstances upon which the enactment was intended to operate. Lenci v. Seattle, 63 Wn.2d 664 (1964); Petstel, Inc. v. County of King, 77 Wn.2d 144 (1969).

The LEOFF system was originally enacted in 1969, and was implemented in 1970. The purpose of the LEOFF system, and the class of employees designated by law as "members" of that system, were explained in that statute:

> 41.26.020 Purpose of chapter. The purpose of this chapter is to provide for an actual reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.
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> ...

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[7] City ordinances must conform to, and not violate, general statutes. "If there is a doubt as to whether the power is granted, it must be denied." Port of Seattle v. State Utilities and Transportation Commission, 92 Wn.2d 789, 794-95 (1979). See, also, Hite v. PUD 2, 112 Wn.2d 456 (1989); Employco Personnel Serv. v. Seattle, 117 Wn.2d 606 (1991); and Wilson v. Seattle, 122 Wn.2d 814 (1993).

> 41.26.040 System created--Membership--Funds. The Washington law enforcement officers' and fire fighters' retirement system is hereby created for fire fighters and law enforcement officers.
>
> (1) Notwithstanding RCW 41.26.030(8), **all fire fighters** and law enforcement officers **employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter** with respect to all periods of service as such, **to the exclusion of any pension system existing under any prior act.**
>
> (2) **Any employee serving as a** law enforcement officer or **fire fighter on March 1, 1970**, who is then making retirement contributions **under any prior act shall have his membership transferred to the system established by this chapter** as of this date. ...

[Emphasis by **bold** supplied.]

Employees were thus transferred to LEOFF, without regard to whether they had a preference to remain in their previous pension plan. Thus, LEOFF preempted all retirement systems existing at that time.

Interpretation of LEOFF by Washington State Courts - Early interpretation of LEOFF by the Supreme Court supports a conclusion that the Legislature occupied the field. Mulholland v. Tacoma, 83 Wn.2d 782 (1974), described the factual situation which surrounded the creation of the LEOFF system, as follows:[8]

> The LEFF act **brought all full-time fire fighters and law enforcement officers into a single statewide system to replace the multitude of prior separate retirement systems**. Plaintiff and all other persons employed full time as law enforcement officers or fire fighters on

[8] What is now known universally as the "LEOFF system" was termed the "LEFF system" in this early decision.

> or after March 1, 1970, became members of the LEFF system. RCW 41.26.040(1). As of that date, plaintiff's **membership in the first class cities retirement system was mandatorily transferred to the LEFF system, RCW 41.26.040-(2)**, and contributions as such to the date of his retirement from the Tacoma police department on February 15, 1971.
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> ...
> In obvious recognition of [a cited] holding, the legislature preserved all the benefits provided by retirement acts existing prior to LEFF. Specifically, RCW 41.26.040(2) provides:
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>> [A law enforcement officer's or fire-fighter's] benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For the purpose of such computation, the employee's creditability of service and *eligibility for service* or disability *retirement* and survivor and all other benefits ***shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred.***
>
> ...
> Examination of the legislative history confirms our interpretation.
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> Representative Kuehnle stated on a point of inquiry as follows:
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>> **This new law transfers present members of police and firemen pension systems into the new system without any choice on their part.** I wish you would clarify for me how their rights under the existing systems will be protected.
>
> *House Journal* 1477 (1969).
>
> Representative Richardson responded:

> It is the intent of the legislature that presently employed police officers and fire-fighters, now covered under chapter 41.20 and chapter 41.18 RCW who are to have their membership transferred mandatorily from those existing acts to ... [LEFF], will have all rights and all benefits preserved completely as now provided by those prior acts.

House Journal 1477 (1969).

[*Italics* in original; emphasis by **bold** supplied.]

We recognize that the Mulholland decision only addressed the replacement of "prior" retirement systems, but we read the Supreme Court's language as evidencing an understanding that all fire fighters within the State of Washington were to be treated the same. The Supreme Court referred to the LEOFF statute in absolute and pre-emptive terms (e.g., "**brought all ... into a single statewide system**"; "**membership ... was mandatorily transferred**"; "**transfers present members ... into the new system without any choice on their part**").

The Court of Appeals has also referred to LEOFF as an "exclusive" retirement act for the employees it covers:

> It can be inferred that the Legislature intended to allow city employees paying into CERS to transfer their membership into LEOFF since 3 years earlier it had made the latter the **exclusive** retirement act ...".

Fann v. Smith, 62 Wn.App. 239 (Division I, 1991) [emphasis by **bold** supplied.]

Moreover, the court indicated it would be likely to reject the possibility of additional benefits when it remarked that the affected employees in that case had "conceded they are not seeking, nor are they entitled to, a double recovery".

Public Policy Inherent in LEOFF -

In enacting LEOFF, the Legislature clearly did not contemplate multitudinous pension systems for fire fighters in various cities. The approach urged by the union here would, however, inevitably lead to the same situation that existed prior to LEOFF, so that the very problems which LEOFF was designed to resolve would likely surface again. We find support for this conclusion in City of Mason City v. Public Employment Relations Board, 316 N.W.2d 851 (Iowa, 1982), where the Iowa Supreme Court found a proposed medicare supplement that pertained to "retirement systems" was specifically excluded from collective bargaining. That Court outlined several policy reasons for excluding pensions from the scope of collective bargaining:

> First, the exclusion is intended to "help government employers hold down the spiraling cost of pension benefits". ... Second, it is felt that significant matters of governmental policy, which pensions would seem to be from sheer cost alone, should remain outside the scope of collective negotiations so that citizen participation will not be precluded. ... Third, **to allow individual ... employee organizations to bargain over proposals such as the one in this case would mean that [employees] in various cities would have wholly disparate benefits upon retirement based upon the skill and success of their bargaining representatives. ... this would defeat the intent of the legislature to have an all-inclusive, uniform plan in dealing with retirement benefits for public employees,** ...

[Emphasis by **bold** supplied.]

If each city in Washington were to bargain supplemental pension benefits with the various unions representing their "uniformed personnel", the predictable result would be differing benefits in different cities. Within the City of Seattle alone, separate collective bargaining and separate interest arbitration proceedings

could occur for at least four bargaining units of employees covered by the LEOFF system.[9] Disparate retirement systems based upon the "skill and success" of the bargaining representatives would defeat the legislative intent to have a uniform and all-inclusive pension for fire fighters throughout the State of Washington. These facts and circumstances persuade us that the Legislature intended LEOFF to operate to the exclusion of any other pension system.

The LEOFF Plan II Amendments -

Chapter 41.26 RCW was significantly revised in 1977, based on a perception that LEOFF had become too expensive. The LEOFF Plan II which took effect at that time clearly constituted a deliberate cutback of benefits. Nothing is cited or found which suggests a legislative intent for employees to recoup the difference through collective bargaining.

The 1993 Amendments to LEOFF -

The LEOFF Act was most recently amended in 1993, to provide several enhancements for fire fighters. In adopting those amendments, the the legislative purpose was stated as follows:

> The Legislature recognizes the demanding, physical nature of law enforcement and fire fighting, and the resulting need to allow law

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[9] Notice is taken of Commission docket records concerning the City of Seattle, which indicate: (1) The Commission has processed cases involving a bargaining unit of non-supervisory law enforcement officers since at least Case 953-M-77-331, a mediation case initiated on June 17, 1977. (2) The Commission has processed cases involving a bargaining unit of non-supervisory fire fighters since Case 968-M-77-336, a mediation case initiated on June 27, 1977. (3) The Commission certified the Seattle Police Management Association as exclusive bargaining representative of supervisory law enforcement officers in City of Seattle, Decision 689-B (PECB, 1981). (4) The Commission certified the Seattle Fire Chiefs Association as exclusive bargaining representative of supervisory fire fighters in City of Seattle, Decision 1797, 1797-A (PECB, 1985).

> enforcement officers and fire fighters to make transitions into other careers when these employees feel they can no longer pursue law enforcement or fire fighting. **The legislature also recognizes the challenge and cost of maintaining the viability of a retired employee's benefit over longer periods of retirement as longevity increases**, and that this problem is compounded for employees who leave a career before they retire from the work force.
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> Therefore, **the purpose of this act is to**: (1) **Provide full retirement benefits to** law enforcement officers and **fire fighters at an appropriate age** that reflects the unique and physically demanding nature of their work; (2) provide a fair and reasonable value from the retirement system for those who leave the law enforcement or fire fighting profession before retirement; (3) increase flexibility for law enforcement officers and fire fighters to make transitions into other public or private sector employment; (4) increase employee options for addressing retirement needs, personal financial planning, and career transitions; and (5) continue the legislature's established policy of having employees pay a fifty percent share of the contributions toward their retirement benefits and any enhancements.

[Emphasis by **bold** supplied.]

The Legislature's use of absolute and preemptive terms (e.g., "recognizes the challenge and cost of maintaining the viability of **a** retired employee's **benefit** ...", "provide **full** retirement benefits", and "continue the legislature's **established policy of having employees pay a fifty percent share** ..."), indicates an ongoing legislative intent to occupy the field.

The union urges the Commission to reconsider the Examiner's use of the legislative debate on the 1993 amendments to the LEOFF system as persuasive authority for his conclusions. That debate included:

Substitute House Bill No. 1294 was read the second time.

...

POINT OF INQUIRY

Representative Summers yielded to a question by Representative Locke.

Representative Locke: In the Appropriations Committee you were the sponsor and drafter of the Substitute House Bill.

Section 10 of Substitute House Bill No. 1294 contains a direction to an interest arbitrator that the arbitrator should not require employers of police officers and fire fighters to pay any of the increased employee retirement contributions that result from benefits contained in the bill.

Is it the intent of this section to change current policy regarding retirement issues and collective bargaining?

Representative Summers: No. The intent of this section is not to change current policy, but rather **to maintain our current policy that retirement issues of any kind are not subject to collective bargaining**, and therefore should not be considered in interest arbitration. **The retirement contributions that the employees currently make are not subject to bargaining**, and therefore **should not be considered in interest arbitration.** The retirement contributions that employees currently make are not subject of bargaining, and neither should any increased contributions due to improved benefits.

[Emphasis by underline in original; emphasis by **bold** supplied.]

The union urges the Commission to find those comments inconsistent with the Legislature's actions with respect to LEOFF Plan II, and that comments more than 15 years later are not evidence of the legislative intent when the LEOFF Plan II was enacted in 1977. We view the legislative discussion as one piece of probative evidence, not as a binding pronouncement. The amendment being discussed in 1993 was so closely related to the law already in existence that we find substantial reason to view the legislative exchange as a

statement of the Legislature's **understanding of the policy in existence** in 1993.

The Collective Bargaining Law

Chapter 41.56 RCW -

The union relies on RCW 41.56.905 to argue that the provisions of Chapter 41.56 RCW must prevail in the case of a conflict between statutes. The cited provision reads as follows:

> **RCW 41.56.905 UNIFORMED PERSONNEL--PROVISIONS ADDITIONAL-LIBERAL CONSTRUCTION.** 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**. [1983 c 287 §5; 1973 c 131 §10.]

[Emphasis by **bold** supplied. See, also, Spokane v. Spokane Police Guild, 87 Wn.2d 457 (1976).]

The union urges that an otherwise mandatory subject cannot be preempted from a public employer's collective bargaining obligations, except by an express exception to the provisions of Chapter 41.56 RCW.

RCW 41.56.100 specifically confers authority on public employers to engage in collective bargaining, but the employer aptly points out that Chapter 41.56 RCW is not an enabling statute for public employers to exercise other types of authority. Any bargaining must be done within the bounds of substantive authority granted elsewhere. This is recognized in the definition of collective bargaining at RCW 41.56.030(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**, ...

[Emphasis by **bold** supplied.]

Nothing in Chapter 41.56 RCW expressly authorizes bargaining on pensions, so we would need to interpret the term "wages" in RCW 41.56.030(4) as not only authorizing collective bargaining on pensions as an alternative form of wages, but also as empowering employers to establish and fund supplemental pension systems.

To resolve conflicts between statutes, administrative agencies and courts must attempt to give effect to the Legislature's intent in enacting each of them, as expressed in the statutes. See, Draper Machine Works, Inc. v. The Department of Natural Resources, 117 Wn.2d 306 (1991), and cases cited therein. When we attempt to do just that in this case, we are confronted with the Legislature's intent that LEOFF preempt fire fighter pensions, and remove such matters from the realm of local control.[10] Rather than presenting a conflict of laws, the Legislature's action to entirely occupy the

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[10] Where one statute deals with a subject in general terms, and another deals with part of the same subject in a more detailed way, the special act prevails unless it appears that the Legislature intended to make the general act controlling. See, Higbee v. Shorewood Osteopathic Hospital, 105 Wn.2d 33 (1985), and cases cited therein. While Chapter 41.56 RCW generally makes "wages" a mandatory subject of bargaining, it does not specifically mention pensions. On the other hand, Chapter 41.26 RCW specifically addresses pensions for fire fighters, and creates a comprehensive and uniform pension system for the entire class of employees.

field leaves no room for mandatory collective bargaining at the local level. This is factually different from the situation in City of Richland, Decision 2486-A (1986), where legislation did not entirely occupy the field that was of concern in collective bargaining.

The union's reliance on City of Yakima v. International Association of Fire Fighters, 117 Wn.2d 655 (1991) is misplaced. The issues in that case concerned a perceived conflict between collective bargaining and local civil service systems governing hiring, promotions, discipline and discharge. RCW 41.56.100 specifically states that public employers are not required to bargain:

> ... 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.

That case was ultimately resolved on its facts, however. The Yakima Court found the civil service system which had been created was not similar in scope, structure and authority to the state civil service system, so the exemption set forth in RCW 41.56.100 was not operative.[11] There was no question that the City of Yakima had statutory authority to create a civil service system. The case before us requires analysis of the entirely different statutory scheme involving pensions for public employees.

Chapter 41.56 RCW Limits Interest Arbitration -
The Legislature attached some importance to the enactment, in 1973, of a comprehensive statutory scheme for resolution of bargaining impasses involving fire fighters. RCW 41.56.430 through RCW

[11] In giving a narrow reading to the exclusion, the Supreme Court was guided by the legislative directive that Chapter 41.56 RCW is remedial in nature and is to be liberally construed.

41.56.490. While providing for interest arbitration, however, Chapter 41.56 RCW also contains language which limits the authority of arbitrators to the functions and powers which the Legislature has given to cities:

> 41.56.465 Uniformed personnel--Interest arbitration panel--Determinations--Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
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> (a) The constitutional and **statutory authority of the employer**; ...

[Emphasis by **bold** supplied]

That limitation reinforces a conclusion that there are some matters over which employers have no authority.

Recent amendments prohibiting interest arbitration on supplemental disability issues demonstrate an ongoing legislative intent to treat pension-related issues differently than other issues which might be regarded as "normal" in the collective bargaining process. The latest legislative direction is found in 1993 ch. 273 and 1993 ch. 398, both effective July 1, 1995, as follows:

> 41.56.465 UNIFORMED PERSONNEL--INTEREST ARBITRATION PANEL--DETERMINATIONS--FACTORS TO BE CONSIDERED. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
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> ...
>
> (c)
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> ...
>
> (ii) For [fire fighters], comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with

> the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;
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> ...
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> (2) Subsection (1)(c) of the section **may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW**.

[Emphasis by **bold** supplied]

Looking at the big picture, the Legislature's specific exclusion from interest arbitration of disability benefits which would precede retirement under LEOFF certainly contradicts any inference that the Legislature authorized (or even contemplated) bargaining and interest arbitration on pension benefits parallel to LEOFF.

Preemption by Statutory Scheme

We find further support for the Examiner's "preemption" conclusion in several statutes other than the LEOFF Act and Chapter 41.56 RCW. Statutes are to be construed as a whole, and "related statutes should be considered in relation to each other and whenever possible harmonized". State v. Walter, 66 Wn.App. 862 (1992); State v. Williams, 62 Wn.App. 366 (1991), review denied, 117 Wn.2d 1027 (1991); Newschwander v. Teachers' Retirement System, 94 Wn.2d 701 (1980).[12] Statutes must be read together to determine legisla-

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[12] In Deputy Sheriff's Guild v. Comm'rs, 92 Wn.2d 844 (1979), where it was concluded that Chapter 41.14 RCW preempted the coverage by county personnel systems of deputy sheriffs' selection, promotion and termination, the Supreme Court found its conclusion bolstered by a comparison of Chapter 41.14 RCW with other statutes.

tive purpose to achieve a "harmonious total statutory scheme ... which maintains the integrity of the respective statutes." Employco Personnel Serv., supra. As to the issue before us, we note that each of the several statutes that enable cities and towns to provide retirement benefits to their employees expressly states that fire fighters are not to be beneficiaries of such systems.

Chapter 41.28 RCW -

This chapter captioned "Retirement of Personnel in Certain First Class Cities" includes:

> 41.28.030 Employees within or excluded from the system.
>
> ...
>
> (2) **The following shall be specifically exempted from the provisions of this chapter:**
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> ...
>
> (b) **Members of the fire departments who are entitled to the benefits from the firemen's relief and pension fund as established by state law.**

Fire fighters are thus precluded from participating in a retirement system under RCW 41.28.030.[13]

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[13] The union cites Ayers v. Tacoma, 6 Wn.2d 545 (1940), where the Supreme Court found Chapter 41.28 RCW did not preempt the pension field, and that charter cities retained power to establish pension systems by ordinance. Ayers is distinguishable, however:

The Legislature had made certain that prior pension systems not be disturbed by Chapter 41.28 RCW. In contrast, the Legislature clearly disturbed prior systems when it enacted the LEOFF system.

The Chapter 41.28 RCW pension system was not mandatory. In contrast, LEOFF was clearly made mandatory for police officers and fire fighters.

The Ayers case was decided 27 years before Chapter 41.56 RCW was enacted. The Commission must consider the statutory scheme as it exists today.

RCW 41.04.130 -

This chapter contains "General Provisions" for Title 41 RCW, which includes statutes on "Public Employment, Civil Service, and Pensions". RCW 41.04.130 reads as follows:

> 41.04.130 EXTENSION OF PROVISIONS OF RETIREMENT AND PENSION SYSTEMS BY THE CITIES OF FIRST CLASS TO NONINCLUDED PERSONNEL. Any city of the first class may, by ordinance, extend, upon conditions deemed proper, the provisions of retirement and pension systems for superannuated and disabled officers and employees to officers and employees with five years of continuous service and acting in capacities in which they would otherwise not be entitled to participation in such systems: PROVIDED, That **the following shall be specifically exempted from the provisions of this section.**
>
> ...
>
> (2) **Members of the fire department who are entitled to the benefits of the firemen's relief and pension fund as established by state law.**

[Emphasis by **bold** supplied.]

Fire fighters are thus precluded from participating in a city retirement system under Chapter 41.04 RCW.

RCW 41.40.023(4) -

The "Public employees' retirement system" (PERS) exempts employees who are members of any retirement plan which is:

> ... operated wholly or in part by an agency of the state or political subdivision thereof, or **who** are by reason of their current employment **contributing to or otherwise establishing the right to receive benefits from any such retirement plan**: ...

RCW 41.40.023(4) [emphasis by **bold** supplied.]

Since the LEOFF system is operated by a state agency, fire fighters covered by LEOFF are exempt from retirement benefits under Chapter 41.40 RCW.

RCW 41.18.210 -
This chapter appears to have been an update, enacted in 1955, of Chapter 41.16 RCW. The earlier statute, which was enacted in 1947, authorized city pension systems for fire fighters. As amended, Chapter 41.18 contains two provisions which interface with LEOFF:

> 41.18.190 Transfer of membership authorized. **Any fireman** as defined in RCW 41.18-.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, **may transfer his membership from any other pension fund, except the Washington law enforcement officers' and fire fighters' retirement system**, to the pension fund provided in chapter 41.18 RCW; ...
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> ...
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> 41.18.210 Transfer of credit from city employees' retirement system to firemen's pension system. **Any former employee** of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire department of such city, **may transfer his former membership credit from the city employees' retirement system to the fireman's pension system** created by chapters 41.16 and 41.18 RCW ... **No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.**

[Emphasis by **bold** supplied.]

Thus, the Legislature clearly precluded any fire fighters participating in LEOFF from transferring membership to the pension system provided by Chapter 41.18 RCW.

Title 35 RCW -

Municipal corporations are limited to those powers expressly granted or delegated to them by the Legislature, and to powers necessarily or fairly implied in or incident to the powers expressly granted.[14] Article XI, Section 11 of the Washington State Constitution provides:

> Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The plenary police power in regulatory matters accorded municipalities ceases, however, when the state enacts a general law upon the particular subject unless there is room for concurrent jurisdiction. Whether there is room for concurrent jurisdiction in a given instance necessarily depends upon the legislative intent derived from analysis of the statute involved. Lenci v. Seattle, 63 Wn.2d 664 (1964); Petstel, Inc. v. County of King, 77 Wn.2d 144 (1969). Even as to matters of local concern, the actions of cities and counties that have adopted charters (pursuant to Article 11, Sections 4 and 10 of the Constitution or under the Optional Municipal Code, Title 35A RCW), cannot contravene any constitutional provision or legislative enactment. See, Chemical Bank V. WPPSS, supra; Lenci v. Seattle, 63 Wn.2d 664 (1964).

The City of Seattle has adopted a charter. Article XXII, Sec. 13 of the current City of Seattle Charter reads as follows:

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[14] Massie v. Brown, 84 Wn.2d 490 (1974); King County Water Dist., 87 Wn.2d 536 (1976); Chemical Bank v. WPPSS, 99 Wn.2d 772 (1983), aff., 102 Wn.2d 874 (1984); Employco Personnel Serv., supra.

> RETIREMENT, DISABILITY, PENSION AND DEATH BENEFIT SYSTEM: **The Legislative Authority may, by ordinance, establish a retirement and pension system** for superannuated officers and employees of the City and of the Seattle Public Library, and may likewise so provide for a system of death benefits and for a disability pension system to cover permanent, partial or temporary disability incurred by such officers and employees, and any such disability pension system so established shall thereupon, to the extent of any conflict, supersede the provision for compensation during disability provided for in this chapter. ... **City officers or employees who are members of other employees' pension systems pursuant to state law shall not at the same time be eligible to membership hereunder.**

[Emphasis by **bold** supplied.]

Bargaining on supplemental pensions for fire fighters would be legal only if: (1) Article XXII, Section 13 of the city's charter is found to be illegal; and (2) bargaining on that subject matter did not contravene the State Constitution or any statute.

The union cites Spokane v. Spokane Police Guild, 87 Wn.2d 457 (1976) and Everett v. Fire Fighters, 87 Wn.2d 572 (1976) as authority for the proposition that Chapter 41.56 RCW reigns supreme over contrary city charter provisions. It claims that provisions of the city charter must be construed to avoid conflict with bargaining obligations under Chapter 41.56 RCW, and cites Seattle V. Auto Sheet Metal Workers, 27 Wn.App. 669 (1980), overturned on other grounds Pasco v. PERC, 119 Wn.2d 504 (1992). Since we have determined that LEOFF occupies the field, and that Chapter 41.56 RCW contains no specifically conflicting language, we construe the city's charter in line with the statutory scheme.

Nothing in Title 35 RCW expressly authorizes cities to provide pensions for fire fighters beyond those provided by general law:

The law applicable to first class cities, Chapter 35.22 RCW, does not expressly authorize cities to bargain collectively on pension systems for fire fighters. RCW 35.22.220 grants first class charter cities specific powers, but does not address pension and retirement benefits.

The Optional Municipal Code, which is applicable to cities which adopt Chapter 35A.11 RCW as governing authority, expressly prohibits those cities from establishing pensions or retirement benefits different from those provided by general law for fire fighters. Pointedly, RCW 35A.11.020 states:

> 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities. **The legislative body of each code city shall have power to** organize and regulate its internal affairs within the provisions of this title and its charter, if any; ... **fix the compensation** and working conditions **of ... employees and establish and maintain** civil service ... systems, **retirement and pension systems** not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That **nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact** any provisions establishing or respecting a merit system or system of civil service for firemen or policemen ..., or enact **any provision establishing or respecting a pension or retirement system for firemen or policemen which provides different pensions or retirement benefits than are provided by general law for such classes.** ...

[Emphasis by **bold** supplied]

Thus, fire fighters in cities which have adopted the Optional Municipal Code are specifically precluded from participating in a retirement system separate from that provided by a general statute such as LEOFF.

Precedent from Other States

Decisions from other states indicate that pensions have been excluded from the scope of mandatory bargaining as illegal or against public policy, when the issue is contravened by statutory language:

Des Moines Police Bargaining Association v. PERB, 423 N.W.2d 885 (Iowa App. 1988), citing City of Mason City v. PERB, supra, [proposal to provide insurance for retirees was illegal subject of bargaining because of specific statutory language];

Streetsboro Education Association, 626 N.E.2d 110 (Ohio, 1994) [state teacher's retirement system requirement prevailed over a provision of collective bargaining agreement because of a statutory provision which "unequivocally evinced a willingness to take a subject or part of a subject out of the realm of collective bargaining"];

De Kalb v. IAFF Local 1236, 538 N.E.2d 867 (Ill.App. 1989) [clause in collective bargaining agreement providing supplemental disability pension benefits for fire fighters was void due to public policy reflected in state statute providing for uniform pension benefits];

AFSCME v. Sundquist, 338 N.W.2d 560 (Minn. 1983)[illegal to agree to pension provisions where a statute expressly excluded pension considerations from the definition of terms and conditions of employment];

State v. State Supervisory Employees Association, 78 N.J. 54 (1978) [public employers and employee representatives may neither negotiate nor agree upon any proposal which would affect employee pensions, which are preempted by state statute].

Pension benefits have been found to be mandatory subjects of bargaining in some cases from other states, but that only appears to have occurred where the labor relations agency and/or court has found pension benefits are not preempted by general laws on those

subjects.[15] In view of our conclusion that the Washington State Legislature has made its intention clear that the LEOFF system is the exclusive pension system for fire fighters in Washington, those precedents are inapposite to the case before us.

We agree with the Examiner's conclusions that the Legislature intended to occupy the field of retirement and pension benefits for law enforcement officers and fire fighters, by incorporating all such personnel (including those who had theretofore been covered by pre-existing county or municipal fire fighter pension systems) into the single, state-wide and uniform LEOFF system. In so doing, the Legislature pre-empted the ability of the City of Seattle to bargain supplements or changes to that system. Without the enabling authority, such a system or systems as proposed by the union would thus be ultra vires and void. Chemical Bank v. WPPSS, supra, and Noel v. Cole, 98 Wn.2d 375, 378 (1982). Therefore, retirement and pension benefits proposed by the union during the negotiations in this case were not mandatory subjects of collective bargaining under Chapter 41.56 RCW.

Waiver Arguments

Waiver by Contract -

We agree with the Examiner's conclusion that the union waived its right to bargain about contract provisions that conflict with the employer's charter. Article 24.1 of the parties' collective bargaining agreement contains the following language:

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[15] See, City of Easton, 11 NPER PA-20098 (Pennsylvania, 1989); City of Pittsburgh, 11 NPER PA-20115 (Pennsylvania, 1989); City of Pittsburgh, 15 NPER PA-24047 (Pennsylvania, 1993); California State University, 15 NPER CA-23127 (California, 1992); Village of Fairport v. Newman, 457 N.Y.S.2d 145 (1982); Detroit Police Officers Ass'n v. City of Detroit, 538 N.W.2d 37 (Mich.App. 1995); Barrington v. IBPO Local 351, 621 A.2d 716 (R.I. 1993).

> **It is understood that the parties hereto** and the employees of the City **are governed by** the provisions of applicable Federal Law, and **the City Charter**. When any provisions thereof are in conflict with the provisions of this agreement, **the provisions of said** Federal Law, State Law, or **City charter are paramount and shall prevail.**

[Emphasis by **bold** supplied.]

The bargaining at issue in this case occurred in the context of a reopener, while Article 24.1 remained in effect.

A party that waives a statutory right in a contract will be bound by that waiver for the life of the contract. By agreeing to Article 24.1, the union made provisions in conflict with the city's charter at least "permissive" subjects for the life of that contract.[16] Thus, the union committed an unfair labor practice by insisting to impasse on a proposal that would, in effect, require the city to violate its charter.

<u>Waiver by Conduct</u> -

The union opened negotiations pursuant to paragraph 29.3(a) of the parties' contract, which stated:

> <u>29.3</u> Upon thirty (30) days advanced written notification, either the City or the union may require the other party to meet for the purpose of negotiating those amendments to this Agreement which relate solely to the following issues:
>
> (a) Supplemental pension benefits, per Article 24 [<u>sic</u>, 23] of this Agreement, may be opened on or before May 1, 1993, and

[16] We address this issue because it was argued by both parties. Regardless of the outcome of this "waiver" issue, however, the employer would not be obligated to bargain supplementary pensions that are permissive or illegal subjects of bargaining under the statute.

> may be arbitrated at the Union's discretion after impasse has been reached. ...

Article 23 states as follows:

> 23.1 Pensions for employees and contributions to pension funds will be governed by the Washington State Statute in existence at the time.

The union argues that the city expressly waived any objections to interest arbitration when it agreed to the reopener provision of 29.3. The union contends that the parties submitted interpretation of the meaning of the reopener provision to arbitration and the arbitrator concluded that the subordination clause would not preclude the union from proposing supplemental benefits.

The Examiner properly declined to "defer" to the arbitrator's decision in this case, upon a conclusion that it was not consistent with Washington law and Commission policy. An arbitrator does not have the power to interpret state statutes, and the Commission does not defer to arbitrators' rulings on statutory matters relating to waiver by contract defenses in cases other than "unilateral change" unfair labor practice cases. City of Yakima, Decision 3564-A (PECB, 1991). The Examiner found that the union's supplemental pension proposal could never be effected, since the city charter and the subordinations of agreement clause would have nullified its implementation even if the employer had bargained and the parties had reached an agreement.[17] The employer followed established Commission precedent in this case, by filing an unfair labor

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[17] The subordination clause of the parties' collective bargaining agreement specifically subordinates that agreement to the city charter. As also referenced above, the city charter specifies that employees covered by other pension systems, such as the LEOFF II system, are not eligible to participate in a City of Seattle pension, death benefit, or disability benefit system.

practice complaint with the Commission. See, Spokane Fire District 1, Decision 3447-A (PECB, 1990). It was entitled to a ruling on whether the union's proposal was a mandatory subject of collective bargaining under the statute **before** facing the risks and expense inherent in a statutory interest arbitration proceeding.

The Disability Benefit Proposal

RCW 41.04.500 through RCW 41.04.550 provides a system for county, municipal, and political subdivision employers of fire fighters to provide an additional benefit in the form of a disability leave supplement to such employees who qualify for payments under workers' compensation. Such benefit is beyond the allowable workers' compensation for those temporarily disabled. RCW 41.04.550 reads as follows:

> RCW 41.04.550 Disability leave supplement for law enforcement officers and fire fighters--Not subject to interest arbitration. Disability leave supplement payments for employees covered by this act **shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905.**

[Emphasis by **bold** supplied]

The union's proposal concerning disability leave supplements was as follows:

> After 365 days of DISABILITY, if the employee is unable to return to full duty the employee shall be retired. The Duty Disability Retirement benefit shall be 60% of BASE SALARY of the position held when disabled, excluding acting assignment. A disabled employee may be required to work in an appropriate limited duty assignment. Limited duty assignments shall not interfere with appropriate rehabilitation treatments or therapy.

> While on limited duty, an employee shall be paid 100 percent of BASE SALARY and continue receiving all benefits of the Employee's regular assignment. An employee and the City may mutually agree to a limited duty position or another position with the City, and so long as the employee occupies such position the Disability Retirement benefit will be deferred.
>
> DUTY DISABILITY BENEFITS under this Agreement shall cease when the employee is returned to full duty. Employees who have reached SERVICE RETIREMENT age may apply for Service Retirement regardless of time on DISABILITY.
>
> The CITY shall bear the entire cost of workers' compensation benefits, and no part of employee contributions shall be used for such cost.

The union argues that the Examiner mistakenly reached his conclusion by construing the union's proposal to be directed at temporary disability. The union contends, however, that its proposal is not for disability leave supplement payments subject to the provisions of RCW 41.04.550. Therefore, it argues it is entitled to insist to impasse on its proposal, and that the city is obligated to submit to interest arbitration.

RCW 41.04.535 allows employers of fire fighters and such employees to enter into agreements which provide benefits greater than those prescribed by RCW 41.04.500 through 41.04.530. Thus, there is specific authority for negotiations between the parties on disability leave supplements, in contrast to pension supplements. Equally specific, however, is the exclusion of disability leave supplements from interest arbitration in the event of an impasse in bargaining.

RCW 41.04.500 reads as follows:

> County, municipal, and political subdivision employers of ... full-time, paid fire fighters

> shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability.

RCW 51.32.090 provides time loss payments under the workers' compensation statute:

> (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060(1) and (2) shall apply, so long as the total disability continues.

The union argues that LEOFF II fire fighters currently receive disability leave benefits pursuant to RCW 41.26.130 and 41.04.500. The union contends that RCW 51.32.090 and RCW 41.04.515 provide the disability supplement "up to a maximum of six months from the date of the injury or illness." By contrast, the union characterizes its proposal as a supplemental **retirement** allowance that becomes effective only if, after 365 days, the employee is unable to return to full duty.

A close reading of the union's proposal does not, however, support its argument. While the proposal begins, "After 365 days of DISABILITY, if the employee is unable to return to full duty the employee shall be retired," and outlines a "Duty Disability Retirement benefit", the proposal also provides for limited duty assignments for disabled employees, as well as "Duty Disability Benefits" when the employee is returned to "full duty". The proposal also includes a provision that the employer "shall bear the entire cost of workers' compensation benefits, and no part of employee contributions shall be used for such cost". Reading the union's proposal to consist of temporary duty disability benefits covered by RCW 41.04.500 through RCW 41.04.550, we arrive at the conclusion that the proposal is not subject to interest arbitration under RCW 41.04.550.

On the other hand, if we characterize the disability proposal to be one providing supplementary retirement benefits, as it appears the union desires, we conclude that the matter is a non-mandatory subject of bargaining. The Legislature's intent in enacting LEOFF, and the entire statutory scheme relating to city pension systems supports a conclusion that LEOFF preempted the employer's authority to provide any kind of supplemental retirement system, including one providing disability benefits.

Thus, whether the union has attempted to obtain interest arbitration on: (1) a subject clearly excluded from that process by RCW 41.04.550, or (2) a non-mandatory subject of bargaining, the union committed an unfair labor practice.

NOW, THEREFORE, it is

ORDERED

1. The Findings of Fact and Conclusions of Law issued in these matters by Examiner Walter M. Stuteville are affirmed and adopted as the Findings of Fact and Conclusions of Law of the Commission.

2. [Case 10901-U-94-2436] The complaint charging unfair labor practices filed by the International Association of Fire Fighters, Local 27, is DISMISSED.

3. [Case 10913-U-94-2438] International Association of Fire Fighters, Local 27, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

   a. CEASE AND DESIST from:

      (1) Insisting to impasse and seeking to obtain interest arbitration concerning pension benefits supplemen-

tal to the Washington Law Enforcement Officers and Fire Fighters Retirement System Act, Chapter 41.26 RCW.

(2) Seeking to obtain interest arbitration concerning disability benefits, contrary to RCW 41.04.550.

b. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

(1) Withdraw all proposals advanced in collective bargaining with the City of Seattle on the subject of supplemental pension benefits.

(2) Withdraw all proposals advanced in interest arbitration on the subject of supplemental disability benefits.

(3) 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.

(4) Notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

(5) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with 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 18th day of March, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

JOSEPH W. DUFFY, Commissioner

DISSENTING OPINION

SUPPLEMENTAL PENSION PROPOSAL

Pensions are a mandatory subject of collective bargaining unless specifically prohibited. I do not find in any of the referenced statutes, ordinances, rules or regulations, a definition of a supplemental pension system. For something to be specifically prohibited, it must first be defined. If there is no definition, there can be no prohibition, certainly no specific prohibition.

The majority appears to take the position that there is a general inferred prohibition. The rebuttal to that argument has previously been made by the Supreme Court. The Court has held on several occasions that Chapter 41.56 RCW is intended to mean what it literally says. Namely, if a provision of the Public Employees' Collective Bargaining Act is in conflict with other statutes, ordinances, rules or regulations, that Act shall control and in addition the provisions of the Act shall be liberally construed. RCW 41.56.905.

SUPPLEMENTAL DISABILITY BENEFIT PROPOSAL

RCW 41.04.500 authorizes and mandates a disability leave supplemental plan for the employees in question. RCW 41.04.515 specifically limits such plan to a period of six months. RCW 41.04.550 specifically states that payments shall not be subject to interest arbitration. RCW 41.04.535 specifically allows covered employers and employees to enter into agreements which provide greater benefits than those granted in RCW 41.04.500 through 41.04.530.

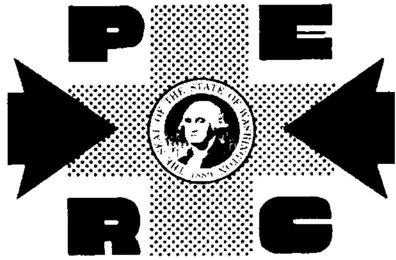
Why did the Legislature prohibit changes in payments but allow greater benefits?

In my view, payments are what is paid into the plan, both by the employer and or the employee. The cost of the plan. Benefits are what is received by the employee. The costs, payments, of the prescribed plan cannot be changed by interest arbitration, nor are they by the proposal in question. Greater benefits, however, may be provided for by mutual agreement, which they are but only after 365 days. In my judgment the employees' proposal squarely fits the language of RCW 41.04.535.

For the above reasons, I respectfully dissent from the majority. I conclude that both proposals are mandatory subjects of collective bargaining. I would order both parties to resume the collective bargaining process as provided for in the Public Employees' Collective Bargaining Act.

SAM KINVILLE, Commissioner

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 EMPLOYEES:

WE WILL NOT insist to impasse and seek to obtain interest arbitration concerning pension benefits supplemental to the Washington Law Enforcement Officers and Fire Fighters Retirement System Act, Chapter 41.26 RCW.

WE WILL NOT seek to obtain interest arbitration concerning disability benefits, contrary to RCW 41.04.550.

WE WILL withdraw all proposals advanced in collective bargaining with the City of Seattle on the subject of supplemental pension benefits.

DATED: ____________________

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 27

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.