STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2024, Complainant, vs. KING COUNTY FIRE PROTECTION DISTRICT NO. 39, Respondent.	CASE NO. 5610-U-84-1021 DECISION NO. 2160-A - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed December 2, 1984. A preliminary ruling was issued on February 28, 1985 (Decision 2160 - PECB), wherein it was noted that the complaint failed to allege sufficient facts to support a conclusion that an unfair labor practice may have been committed. On March 11, 1985, the complainant submitted an amended complaint, as follows:

1. The Employer has voluntarily recognized the Complainant as the sole and exclusive bargaining agent for the following unit of employees ("Unit"): all non-fire combat dispatchers, fire fighters, lieutenants, captains, and coordinating captains employed by the Employer. This voluntary recognition has been memorialized in a series of collective bargaining agreements, the most recent of which is effective by its terms from January 1, 1983 through December 31, 1984.

2. On November 28, 1984, the Federal Way Fire Protection District No. 39 ("the District"), announced that it was going to hire new fire fighters from a limited pool of candidates, namely, individuals with two or more years of experience with the District or six months as part time employees with the District. This change limited the pool of applicants to approximately 20 individuals.

3. Prior to this time, the pool of applicants for new positions with the District had never been limited. The number of applicants in the most recent pool immediately preceding the District's November 28 action was approximately 400 individuals.

4. The District took the action described above without notice to Complainant and without affording it an opportunity to bargain concerning the change in its hiring procedures. This unilateral change adversely impacts the working conditions of Unit employees. A limitation on the pool of candidates from 400 to 20 will adversely affect the quality of new hires. Any

> lessening in the quality of new hires creates a greater safety hazard to Unit employees, who must work alongside new hires and rely upon the skilled performance of their jobs in often dangerous fire-fighting situations.

The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is presumed that all the facts alleged in the complaint are true and provable. The question at hand is whether the complaint states a claim for which relief can be granted through the unfair labor practice provisions of Chapter 41.56 RCW.

Whereas the original complaint was, on its face, subject to interpretation that the union represented an inappropriate bargaining unit, the amended complaint indicates the employer's historical concurrence in that bargaining unit. This is deemed to be sufficient for the purposes of this preliminary ruling, leaving open the question of whether the employer would (or should be permitted to) challenge the propriety of the bargaining unit at some later stage of the proceedings.

The main thrust of the complaint and amended complaint is that the employer has unilaterally changed its pre-hire minimum qualifications. The union expresses concern of a "lessening in the quality of new hires" and of an adverse effect on existing employees, but the facts alleged indicate that the employer has in fact eliminated inexperienced applicants by limiting recruitment to persons with actual experience. Although it is alleged that the new requirement narrowed the pool of eligible candidates from 400 to 20, there is no allegation that there was anybody within the 380 (or any similarly composed group) whose ineligibility would "lessen" the quality of applicants. No cases are cited or found where the National Labor Relations Board or the Public Employment Relations Commission have specifically addressed the bargainability of minimum qualifications imposed by an employer on applicants for employment. Analagous situations involving residency requirements[1/] in other public employment jurisdictions can be applied. In Detroit Police Officers Ass'n v. Detroit, 391 Mich. 44 (1974), the Michigan Supreme Court noted that recruiting requirements focus on the time that when an applicant is hired initially, such as age, mental competency, and physical requirements. In Boston School Committee, Case No. NUP-2053 (Mass. LRB, 1977), the Massachusetts Labor Relations Commission applied a balancing test in determining whether residency was a mandatory subject of bargaining. MLRC examined whether the requirement had a "predominant effect ... upon the employment relationship" or whether the requirement had only a "side effect upon the employees." In City of Auburn,

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1/ RCW 41.08.075 prohibits residency requirements for firefighters in Washington.

9 PERB Para 3085 (N.Y. PERC, 1976) and City of Buffalo, 9 PERB Para 3015 (N.Y. PERB, 1976), the New York PERB found residency requirements for prospective employees to be a non-bargainable management prerogative.

The complaint fails to allege sufficient facts to conclude that the employer's new minimum qualifications vitally affect existing employees. Under the cases cited in the preliminary ruling and those cited above, the pre-employment minimum qualifications appear to be non-bargainable management prerogatives. The reduction of the pool to experienced, qualified applicants does not have enough "predominant effect" on current employees' employment relationship to elevate the decision to a mandatory subject of bargaining. It would, at best, have a "side effect" upon current employees. The complaint thus fails to state a cause of action.

ORDER

The complaint is dismissed as failing to state a cause of action for which relief can be granted through the unfair labor practice provisions of Chapter 41.56 RCW.

DATED at Olympia, Washington, this 10th day of April, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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