STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 453,	)	
Complainant,	)	CASE 17413-U-03-4513
vs.	)	DECISION 8802 - PECB
CITY OF WENATCHEE,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Alex J. Skalbania, Emmal Skalbania & Vinnedge, for the union.

Bruce L. Schroeder, Summit Law Group, for the employer.

On April 11, 2003, the International Association of Fire Fighters, Local 453 (union), filed an unfair labor practice complaint with the Public Employment Relations Commission. The union's complaint, filed under Chapter 391-45 WAC, named the City of Wenatchee (employer) as respondent. The Commission issued a preliminary ruling on December 26, 2003. The employer filed its answer on January 16, 2004.

The Wenatchee Fire Department historically maintained a minimum shift staffing level of seven union members at the rank of battalion chief or below. In late 2002, the fire department changed the minimum staffing level to six employees in order to reduce overtime costs. The union believed this change affected the safety of its members. The union also believed that the city, in a meeting between employer representatives and the union executive board, pressured the union members to give up some of their rights to sick leave and vacation leave under the collective bargaining agreement.

Examiner Karl Nagel held a hearing on June 22, 2004. The parties filed post-hearing briefs.

ISSUES

1. Did the employer interfere with employee rights by threatening to reduce minimum shift staffing if the union would not make concessions on its members' contractual rights?

2. Did the employer refuse to engage in collective bargaining by unilaterally changing a mandatory subject of bargaining or did the union waive by contract its right to bargain that change?

Based on the evidence and arguments submitted by the parties, I rule the employer did not interfere with the rights of its employees under RCW 41.56.140(1), but the employer did refuse to bargain under RCW 41.56.140(4).

ANALYSIS

Issue 1: Employer Interference

Legal Standards -
RCW 41.56.040 provides that "no public employer . . . shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees . . . in the free exercise of any other right under this chapter."

RCW 41.56.140(1) provides that an employer commits an unfair labor practice if the employer interferes with, restrains, or coerces employees in the exercise of their rights under that chapter.

Applicable Facts -

The employer had always been concerned with overtime costs, but the fire chief would usually ask the mayor for a budget amendment to cover the unbudgeted overtime. By fall of 2002, the fire chief projected an overtime budget shortfall of $225,000. When he asked the mayor to seek a budget amendment from the city council, the mayor refused, citing the weak financial condition of the city as a whole. On November 4, 2002, the employer called a meeting with the union's executive board to discuss unbudgeted overtime costs for 2002 and how to reduce the demand for overtime in 2003.

At the November 4, 2002, meeting, Chief Tibbs, Mayor Dennis Johnson and Human Resource Director Sandra Smeller represented the employer. Several members of the executive board, including David Baker, represented the union. The attendees discussed several ways to reduce overtime expenditures. Among the topics discussed were:

- having the employees take Kelly days[1] into account when scheduling vacation leave;
- using sick leave for just the period of a doctor's appointments instead of taking an entire shift off;
- scheduling elective medical or dental procedures in advance with the employer;
- reducing staffing below the previous seven employee minimum, and how that reduction might be accomplished.

The employer viewed the meeting as cooperatively discussing options for responding to the 2002 overtime crisis and for planning future

---

[1] Kelly days are additional days off provided to adjust an employee's working hours to a 48-hour work week within the 21-day work period under the Fair Labor Standards Act. In 2002, the employees were scheduled on a four-platoon system with debit days, but were changing under the 2003 collective bargaining agreement to a three-platoon system with Kelly days.

overtime expenditures in 2003. The union viewed the meeting as an effort by the city to get its employees to not exercise all of their contractual rights and to abide by shift manning changes that negatively impacted safety.

The parties did not reach any agreement, but as a result of that meeting, the Mayor requested the council provide an additional $35,000 budget amendment for 2002 overtime.

Discussion -

Did the employees exercise their rights? Employees are entitled to utilize the contractual rights afforded them by a collective bargaining agreement and the assertion of contractual rights is protected activity. *Valley General Hospital*, Decision 1195 (PECB, 1981), *aff'd*, Decision 1195-A (PECB, 1981). The collective bargaining agreement here gives employees the right to sick leave and vacation leave and specifies that two employees are allowed to be scheduled off on each shift. At the November 4, 2002, meeting the parties discussed the union members foregoing some of their contractual rights to schedule annual leave and full shift use of sick leave in order to reduce the amount of overtime that needed to be paid out to cover shifts. At that meeting, the union members present stated they would not waive those provisions. That assertion was the protected exercise of rights.

Did the employer interfere with the exercise of those rights? In order to show interference, a complainant must show that "a typical employee in the same circumstances would reasonably perceive the respondent's actions as encouraging or discouraging his or her union activities." *Washington State Department of Corrections*, Decision 7872-A (PSRA, 2003). To establish an interference violation, a complainant need only establish that the other party engaged in conduct which employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with

their union activity. *City of Seattle*, Decision 3066 (PECB, 1989), *aff'd*, Decision 3066-A (PECB, 1989). *See also City of Pasco*, Decision 3804-A (PECB, 1992), and the cases cited in that decision. Commission case law does not require that the employer act with intent or motivation to interfere. Nor does Commission case law require proof that the employees concerned were actually interfered with or coerced. Anti-union animus is not necessary for an interference charge to prevail. *Clallam County v. Public Employment Relations Commission*, 43 Wn. App. 589 (1986).

The union here alleged that the employer threatened to reduce the minimum staffing if the union did not make concessions. I find that the testimony and evidence did not support the union's assertion. The union made no showing that a threat was ever made. Former union president David Baker testified regarding what he recalled happening at the meeting: "The City implied that we needed to take actions to stay within our limits of the overtime budget. There was some discussion on how we could do it the following year."

That discussion, according to Baker, included: how vacation was selected; how sick leave was taken; whether Kelly days would be impacted by vacation selection; checking with department officials about scheduling elective medical and dental appointments and reducing staffing levels.

These discussions do not show the employer threatened or coerced union members. Even the letter that Baker sent the next day to memorialize the November 4, 2002, meeting contains no recitation of a threat. The record does not support a finding that a typical employee would reasonably infer that the employer's discussion of the reduction in staffing issue was a threat in the context of interference with the exercise of protected rights.

A difference exists between employer statements made to rank-and-file employees and those made to union officers. *Grant County Public Hospital District 1*, Decision 8378 (PECB, 2004) (citing *Premier Rubber Co.*, 272 NLRB 466 (1984)). The November 4, 2002, meeting took place with the chief, the mayor, the human resource director and the union executive board. Employer and union representatives should be allowed to have frank discussions of operational problems, including the possible need to consider measures to reduce unfunded overtime costs. One party may ask another to waive a contractual right. The other party may simply say no.

Since December of 2002, representatives of the employer and the union have been meeting on a quarterly basis to review the overtime situation, the use of sick days and other issues surrounding scheduling. The union argued that the November 4, 2002, meeting and the on-going quarterly meetings were somehow coercive and unlawful interference with protected rights. The record contains no evidence of coercive or improper conduct at those meetings. The union did not object to attending the meetings and, in writing, thanked the employer for the opportunity to discuss budgetary matters.

Conclusion -
Based on the record before me, I find no interference with protected rights and thus no violation of RCW 41.56.140(1).

Issue 2: Refusal to Bargain

Legal Standards -
RCW 41.56.030(4)defines "Collective bargaining" as "the mutual obligations . . . to confer and negotiate in good faith, and to execute a written agreement with respect to . . . collective negotiations on personnel matters, including wages, hours and

working conditions . . ." An employer commits an unfair labor practice when it "refuse[s] to engage in collective bargaining." RCW 41.56.140(4).

Under Commission precedent, the existence of a duty to bargain is a question of law and fact for the Commission. WAC 391-45-550. *See also City of Centralia*, Decision 5282-A (PECB, 1996); *City of Spokane*, Decision 4746 (PECB, 1994); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

A written and signed contract is the primary tangible product of the collective bargaining process. The duty to bargain, however, continues during the term of a collective bargaining agreement as to any and all mandatory subjects of bargaining that are not covered by the specific terms of the collective bargaining agreement. *City of Seattle*, Decision 1667-A (PECB,1984).

An employer commits an unfair labor practice if it implements a unilateral change of an existing term or condition of employment of its union-represented employees, without having exhausted its obligations under the collective bargaining statute. *Lake Washington Technical College,* Decision 4721-A (PECB, 1995); *Grays Harbor County,* Decision 8043-A (PECB, 2004).

Thus, if one of the parties to a collective bargaining relationship wants to change a mandatory subject of bargaining during the term of a collective bargaining agreement, the party must give notice to the other party sufficiently in advance to allow time for bargaining prior to the change. If the party receiving notice makes a timely request for bargaining, the moving party must bargain in good faith concerning the proposed change. *City of Pasco*, Decision 4197 (PECB, 1992).

This is a bargaining unit of "uniformed personnel" where the parties submitted unresolved issues to interest arbitration.

Neither party is entitled to unilaterally change a mandatory subject of bargaining. *City of Seattle*, Decision 1667-A. Instead, the mediation and interest arbitration procedures established in RCW 41.56.440 through .490 apply.

Applicable Facts -

The employer's fire department has three shifts, normally composed of ten employees assigned to each shift. One battalion chief, two captains, two engineers and five fire fighters are normally assigned to a shift. The union represents the employees at the rank of battalion chief and below. In other words, the union represents all ten employees on each shift. Although ten employee are assigned to each shift, usually less than ten work any particular shift. This occurs because Kelly days are taken to balance the employees' hours under the overtime thresholds.

Through an operating instruction in 1997, the employer established a minimum staffing level for each shift at seven employees and a minimum staffing at the company level of three. The employer followed this minimum staffing level until November 2002. At the minimum staffing level of seven employees, the typical assignment and location of the work on a shift was:

- the battalion chief at station 1.[2]
- a captain, an engineer and a fire fighter on the engine company from station 1.
- a captain, an engineer and a fire fighter on the ladder company from station 2.

The minimum staffing just described resulted in at least three employees on an fire truck. Before November of 2002, when a

---

[2] The transcript and the exhibits refer to the two fire stations as stations 1 and 2 and stations 41 and 42. For the purposes of this order, I will be refer to them as stations 1 and 2.

particular shift would have fallen below minimum staffing, the employer would pay another employee overtime to work the shift.

On November 13, 2002, Chief Tibbs issued a memo stating that the minimum staffing level dropped from seven to six employees effective immediately. Between November 4 and early December 2002, the employer operated at the minimum shift staffing of six employees on three known occasions. After that time, up to the date of the hearing, the employer has not reduced shift staffing below seven.

On the reduced shifts, the employer ran the engine company at station 1 with three employees and the ladder company at station 2 with two employees. The battalion chief moved from station 1 to station 2 and he responded on calls in tandem with the ladder company in his own vehicle. In addition, the chief or one of the two assistant chiefs would respond to structure fires.

After the employer reduced the minimum to six employees on shift, the union sent a letter to the employer. The letter stated the union opposed having its members give up contractual rights to schedule vacation and sick leave and any unilateral change in the past practice of seven employees as the minimum staffing level.

During the November 4 meeting, the union expressed safety concerns about the reduction in minimum shift staffing. In the later letter, the union stated that the reduction created "situations that would endanger the life and safety of the citizens we protect and the fire fighters sworn to do just that."

The union's safety concerns involved the assignment of only two employees to the ladder company. Under the normal minimum shift staffing level of seven, the employer assigned three employees to each apparatus with one battalion chief responding separately. Under the staffing level of six, the employer assigned only two employees to the ladder apparatus.

State regulations require a "two-in, two-out" procedure when fighting a structure fire inside a building. "Two-in, two-out" requires a team of two fire fighters inside, operating on a buddy system for their own safety, during interior fire fighting efforts. It also requires two fire fighters to stay outside the building, one operating the water pumps and the other monitoring the situation and watching for potential danger to the team inside.

The "two-in, two-out" rule comes into effect only when a fire has gone beyond the "incipient" level. An "incipient" fire is one where the oxygen levels have not been significantly reduced and the temperatures are somewhat normal and are not on the rise. Examples would be a chimney fire or a kitchen stove fire.

The procedure provides for "two-in, one-out" when only three fire fighters are on scene and imminent threat to life exists. The fire fighter on the outside would be responsible for pump operations, handle the incident command, watch the scene for safety and be the backup if something goes wrong inside the building.

Having three fire fighters assigned to an apparatus, coupled with a battalion chief responding to a structure fire, would result in the possibility of a "two-in, two-out" situation. Having only two fire fighters assigned to an apparatus with the battalion chief also responding, would result in a "two-in, one-out" situation where the fire fighters could conduct an interior attack only if there was imminent threat to life.

Having one apparatus staffed at two increased the chances that only two or three fire fighters would be present at the initial stages of a fire, thereby potentially affecting the safety of the fire fighters.

In a situation of a structural fire beyond the incipient stage and with the shift manned at six, the battalion chief would be the third person for the ladder company until the second unit would

arrive. Administrative officers (the chief and two assistant chiefs) could respond to the scene in that situation. Surrounding fire districts could also provide assistance to the on-scene fire fighters with the districts' on-duty crews and volunteers.

The Wenatchee Fire Department responded to 42 interior structure fires in 2003, representing approximately 2% of the total call volume. That averaged approximately 3 interior structure fires per month.

The collective bargaining agreement contained a management rights clause that stated in part: "The City has the right, among other actions, . . . to determine the number of personnel to be assigned duty at any time; . . ."

The parties' collective bargaining agreement has never addressed minimum staffing. The union proposed an article on that subject in the negotiations for the 2001-2003 agreement, but interest arbitrator Gary Axon rejected that change. In his July 26, 2002, opinion Axon stated that the management rights clause "expressly gives the city the right 'to determine the number of personnel to be assigned duty at any time'" and opined, "[t]he management rights article expressly reserves to the City the right to determine staffing levels."

Discussion -

The employer made a unilateral change. The employer changed a recognized, long-standing past practice of keeping a shift staffed with a minimum of seven people. The employer decided to do so and determined the manner in which the change was implemented. Whether that unilateral change constituted an unfair labor practice depends in this case on: *first*, whether the subject of the change was a mandatory subject of bargaining; and *second*, whether the union waived the right to bargain that subject.

Whether a staffing proposal is a mandatory or permissive subject of bargaining depends on the nature of the proposal. Staffing levels with a direct relationship to employee workload and safety are mandatory subjects and an employer must bargain. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989). The Washington Supreme Court in *City of Richland*, 113 Wn.2d 197 also distinguished between shift staffing and equipment staffing. That distinction was well-described by the Commission in *Spokane International Airport*, Decision 7889-A (PECB, 2003):

> First, "shift staffing" levels are fundamental prerogatives of management. *[City of Richland]*, 113 Wn.2d at 206. For example, in regards to a case involving a fire department shift staffing proposal, the Court noted that agreement on minimum manning per shift in essence would lock the at-issue town into a certain level of fire fighting service for the duration of collective bargaining and therefore such an agreement would represent an intrusion into that type of governmental decision that should be reserved for the sole discretion of the elected representatives of all the citizens of the town. *[City of Richland]*, 113 Wn.2d at 206-7. Second, compared with shift staffing however, "equipment staffing" is not so importantly reserved to the prerogative of management; bargaining may be mandatory over equipment staffing levels that are related to fire fighter safety. *[City of Richland]*, 113 Wn.2d at 207.

That distinction between shift and equipment staffing is blurred in some situations. Depending on the facts, shift and equipment staffing can be closely related where the number of workers on a shift necessarily affects equipment staffing and worker safety and/or workload. *City of Centralia*, Decision 5282-A (PECB, 1996); *Spokane International Airport*, Decision 7889-A (PECB, 2003).

In this case the employer changed shift staffing, but equipment staffing was inexorably tied to that change. The chief's November 13, 2002, memorandum demonstrated how intertwined the two issues are. The memorandum first announced the dropping of the shift staffing to six and then immediately explained how equipment

staffing would implement the change. The employer's decision to reduce the minimum shift staffing to six affected the number of employees assigned to particular equipment which, in turn, affected fire fighter safety.

The fact situation of *City of Centralia*, Decision 5282-A is instructive because it is similar to the facts here. The city of Centralia reduced its shift staffing on some shifts resulting in only two persons being on the department's first response apparatus. The union argued the city's change impacted employee safety; the city argued neighboring jurisdictions would provide extra staffing in emergencies. The city was not attempting to decrease its service or change the scope of the enterprise; it was simply trying to reduce its labor costs. The same factors and arguments present in *City of Centralia*, Decision 5282-A are present here:

- Two employees on an apparatus - Here, the reduction in minimum shift staffing resulted in the first response apparatus for a portion of the employer's jurisdiction being staffed at two employees. I note that the employer's implementation plan here provided for the battalion chief to respond in a separate vehicle to any station 2 call. The employer clearly attempted to address the safety concerns engendered by the reduction. Yet, as Chief Tibbs acknowledged under cross-examination:

> Q: [by Skalbania] Therefore, it's certainly possible that you're going to have a two-person crew get to a structure fire that's gotten beyond the incipient stage and they're all by themselves, correct?
>
> A: [by Tibbs] Yes.
>
> Q: And it's also possible there could be a life threatening situation going on inside that structure when they get there?
>
> A: That's right, yes.

Having two or three fire fighters on scene, instead of four or more, negatively impacts employee safety. Two fire fighters

on scene cannot safely enter a burning structure even when imminent threat of death exists.[3] When three are on scene, a rescue attempt with one fire fighter remaining outside is possible, but the employer's own policies recognize that employee safety concerns are best addressed by have four personnel on scene before beginning interior operations.

- Neighboring jurisdictions - The fact that neighboring jurisdictions will come to the aid of the employees here does not ameliorate the union's safety concerns. At a minimum level of six, the first unit on the scene may have only two officers.[4]

- Reducing the cost of wages, not decreasing its services - The employer here changed the minimum staffing to reduce overtime spending, not to scale back on its operations. The same was true in *City of Centralia*, Decision 5282-A. Using that distinction, the Commission found the issue to be clearly suitable for collective bargaining:

> [M]anagement must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business, and . . . the decision to shut down part of a business purely for economic reasons is one for the employer to make. . . . [H]owever, . . . an employer's desire to reduce labor costs alone is a matter "peculiarly suitable for resolution within the collective bargaining framework." *First National Maintenance Corporation v. NLRB*, 452 U.S. 666 at 679-680.

---

[3] I concur with the Commission's dictum in *City of Centralia*, Decision 5282-A that fire fighters might well proceed to try and save a person in the structure regardless of what the regulations say.

[4] The parties did not argue here that the agreements made to enable the reduction of staffing were actually the "skimming" of bargaining unit work. In *City of Centralia*, Decision 5282-A, the parties raised that issue and the Commission found the bargaining unit lost the work and that the skimming further supported an unfair labor practice charge.

The employer here argued that this situation did not arise often. First, the employer reduced shifts to six employees only on three known instances since November 2002. Second, less than two percent of the calls handled by the employer involved interior structure fires that would call into practice the "two-in, two-out" rule, thereby limiting the occurrence of the potential safety problems.

I am not comfortable being the judge of what is an "acceptable" level of potential risk. The Commission responded to similar employer arguments in *Spokane International Airport*, Decision 7889-A concerning the absence of a record of airliner crashes at the airport by declining to find that to be a relevant factor in its analysis. If the issue impacts employee safety, the best place for the determination of how to proceed is at the bargaining table.

The subject of staffing here was a mandatory subject of bargaining. The record shows a sufficiently significant impact on employee safety under *City of Richland*, 113 Wn.2d 197 and *City of Centralia*, Decision 5282-A, and under the Commission's "cost of wage" analysis from *First National Maintenance Corporation v. NLRB*, 452 U.S. 666, *cited in City of Centralia*, Decision 5282-A. On balance, the union's safety concerns appear stronger than the employer's interest in reducing its costs of operation.

I must next consider whether the union waived the right to bargain by contract. A party may waive by contract its right to bargain over a mandatory subject of bargaining. If a union waives its bargaining rights by contract language, an employer action in conformity with that contract will not be an unlawful unilateral change. *City of Wenatchee*, Decision 6517-A (PECB, 1999) (citing *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655 (1991)). A waiver of statutory collective bargaining rights must be consciously made, and must be clear and unmistakable. *City of Yakima*, Decision 3564 (PECB, 1990). An employer may raise the affirmative defense of waiver by contract

and the employer has the burden of proof. *Lakewood School District*, Decision 755-A (PECB, 1980).

Here the employer asserted that the language in "Article 7 - Management Clause" recognized the employer's right to make minimum manning decisions. In order to demonstrate context, I have set forth below the entire article, but have italicized the relevant language:

> Any and all rights concerned with the management and operation of the Department are exclusively that of the City unless otherwise provided by the terms of this Agreement. The City has the authority to adopt rules for the operation of the Department and conduct of its employees, provided such rules are not in conflict with the provisions of this Agreement or with applicable law. *The City has the right*, among other actions, to discipline and discharge for good cause, to lay employees off; to assign work and determine duties of employees; to schedule hours of work; *to determine the number of personnel to be assigned duty at any time;* and to perform all other functions not otherwise expressly limited by this Agreement, in accordance with Wenatchee Fire & Rescue Civil Service Rules and Regulations.

The employer claims that the statement "the City has the right to determine the number of personnel to be assigned duty at any time" represents the union's clearly expressed waiver. The union disagrees with that assertion, arguing that this general management rights clause is not the clear specific waiver required by Commission case law.

The Commission has previously examined this clause before. In *City of Wenatchee*, Decision 2194 (PECB, 1985), the Examiner addressed the fire department's unilateral change in the distribution of overtime work. The Examiner found no waiver of the right to bargain that subject. He generally characterized this clause as a general management rights clause. He further noted that the Commission had stated in *City of Seattle*, Decision 1667-A (PECB, 1984) that a management rights clause is strongly presumed to not

affect mandatory subjects "unless such matters were specifically negotiated or embodied in the existing contract."

The Commission also previously rejected a "waiver by contract" defense by this employer related to a portion of this clause contained in the police contract. *City of Wenatchee*, Decision 6517-A (PECB, 1999) addressed the employer's change in the practice of assigning light duty.

Further, the Examiner in *City of Yakima*, Decision 3564 (PECB, 1990) reviewed the Wenatchee clause as it was cited in the case before him. He characterized it as "typical of the general language found in many public sector collective bargaining agreements. . ." He further found that "[s]uch general clauses have been generally determined insufficient to constitute a waiver" (citing *City of Kennewick*, Decision 482-B (PECB, 1980)).

Any waiver of statutory collective bargaining rights must be consciously made and must be clear and unmistakable. The party claiming waiver shoulders the burden of proof. *See Royal School District*, Decision 1419-A (PECB, 1983); *City of Kennewick*, Decision 482-B. The language and relevant evidence must be carefully scrutinized to evaluate its intent and each case must be examined on its individual merits.

Other employers have previously asserted that a management rights clause represents a union waiver. In *City of Sumner*, Decision 1839-A (PECB, 1984), the Commission stated, "It is well settled that broad (and vague) management rights clauses do not cause a union to forfeit its right to negotiate mandatory bargaining subjects . . ."

I do have some sympathy for the employer's position here. The bald statement that "the City has the right to determine the number of personnel to be assigned duty at any time" is fairly clear on its own. When part of a laundry list management rights clause,

however, it becomes less clearly an intelligent and knowing waiver. If an article directly dealing with the subject of shift scheduling or overtime contained that statement, the employer would be in a better place to argue waiver.

I concur with previous examiners that this management rights language does not constitute a waiver of a union's bargaining rights. The interest arbitrator's statement concerning the effect of the clause was not made in the context of an unfair labor practice and is not controlling here.

In addition, I do not find a waiver here due to the shift staffing/equipment staffing issue discussed previously. Even if I were to conclude that the union waived bargaining on "the number of personnel to be assigned duty" the agreement does not waive the union's right to bargain over the safety issues surrounding the resultant equipment staffing.

Conclusion -
The union did not waive by contract its right to bargain. As there was no waiver, the employer's unilateral change of a mandatory subject of bargaining was an unfair labor practice.

Concerning what remedy to impose, I reject any extraordinary remedies. I find the usual remedies of ordering the employer to cease and desist, returning to the status quo ante, directing bargaining and posting to be sufficient for the purposes of the Public Employees Collective Bargaining Act. The union's request for attorneys' fees is denied as the employer conduct was not of an egregious enough nature to warrant that action. The employer's positions here were not frivolous and the arbitrator's reference to the clause erroneously breathed new life into the contention of waiver.

FINDINGS OF FACT

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

2. The International Association of Fire Fighters, Local 453, is a "bargaining representative" within the meaning of RCW 41.56.030(3) and is the exclusive bargaining representative of certain employees of the employer.

3. At a meeting on November 4, 2002, representatives of the employer and the union discussed problems associated with unbudgeted overtime costs for 2002 and how to reduce the demand for overtime in 2003.

4. After that meeting, the employer unilaterally changed its long term practice of having the minimum shift staffing level set at seven, when it reduced that minimum shift staffing to six in order to reduce overtime costs.

5. The employer's decision to reduce the minimum shift staffing to six resulted in the ladder truck from station 2 being manned with only two people.

6. The employer's assignment of only two fire fighters on a truck presents a safety issue when the fire fighters respond to a structural fire.

7. The employer did not collectively bargain the change in minimum shift staffing that directly affected safety.

8. The management rights clause, Article 7 of the collective bargaining agreement, does not represent a waiver by the union of the right to bargain that issue.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The employer did not interfere with employee rights in violation of RCW 41.56.140(1) by its conduct referenced in the foregoing findings of fact.

3. Under the facts of this case, the employer's reducing the minimum shift staffing and the resultant reduction in equipment staffing was a mandatory subject of bargaining under RCW 41.56.100.

4. Under the facts of this case, the union did not waive its right to bargain over the subject of minimum shift staffing under RCW 41.56.100.

5. The employer's conduct referenced in the foregoing findings of fact constitutes unlawful refusal to bargain in violation of RCW 41.56.140(4).

ORDER

1. I hereby DISMISS the union's complaint charging unfair labor practices as to the allegations of employer interference with employee rights in violation of RCW 41.56.140(1).

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

   A. CEASE AND DESIST from:

(1) Refusing to bargain in good faith with the International Association of Fire Fighters, Local 453 regarding a change in the practice of setting minimum shift staffing at seven employees.

(2) In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the state of Washington.

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

(1) Return to a minimum shift staffing level of seven fire department union employees as it existed prior to November 2002.

(2) Bargain in good faith with the International Association of Fire Fighters, Local 453 over any proposed change in the minimum shift staffing level.

(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 employer, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

(4) Read the notice attached to this order into the record at a regular public meeting of the City Council of the City of Wenatchee, and permanently append a copy of the notice to the official minutes

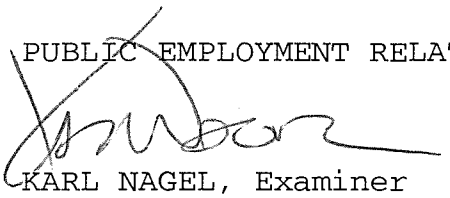
of the meeting where the notice is read as required by this paragraph.

(5) 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 attached to this order.

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

Issued at Olympia, Washington, on this 10th day of December, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KARL NAGEL, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL return to a minimum shift staffing level of seven union fire department employees as it existed prior to November 2002.

WE WILL give notice to and, upon request, bargain collectively in good faith with the International Association of Fire Fighters, Local 453 over any proposed change in the minimum shift staffing level.

WE WILL read this notice at the next public meeting of the Wenatchee City Council and append a copy thereof to the official minutes of the said meeting.

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.

DATED: _____

CITY OF WENATCHEE

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, 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.