STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 77, Complainant,	)	CASE 20776-U-06-5289
	)	DECISION 9938 - PECB
	)	CASE 20894-U-07-5328
vs.	)	DECISION 9939 - PECB
CITY OF SEATTLE, Respondent.	)	CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Robblee Brennan & Detwiler, by *Kristina Detwiler*, Attorney at Law, for the union.

City Attorney Thomas A. Carr, by *Paul A. Olsen*, Assistant City Attorney, for the employer.

On November 27, 2006, the International Brotherhood of Electrical Workers, Local 77 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the City of Seattle (employer) as respondent. The union was certified by the Commission on July 5, 2006, as the exclusive bargaining representative of construction and maintenance equipment operators and senior equipment operators in the employer's Public Utilities, Parks, and Transportation departments. A preliminary ruling was issued finding that the complaint stated causes of action for employer interference with employee rights and refusal to bargain, by breach of its good faith bargaining obligations in failing to respond to a bargaining demand concerning the termination of Doug Knorr, and by its unilateral change in employee work schedules without providing an opportunity for bargaining.

On January 30, 2007, the union filed an additional complaint charging unfair labor practices naming the employer as respondent. A preliminary ruling was issued finding that the complaint stated causes of action for employer interference with employee rights, discrimination in reprisal for protected union activities, by breach of its good faith bargaining obligations in failing to maintain the dynamic status quo of granting annual cost-of-living wage increases after the union was certified as exclusive bargaining representative. The complaints were consolidated for hearing before Examiner Karyl Elinski. The parties determined that there were no material facts in dispute and filed stipulated facts in lieu of a hearing. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer unilaterally change the dynamic status quo when it failed to pay a general wage increase to employees in a newly-formed bargaining unit?

2. Did the employer discriminate and/or interfere with the union's rights when it failed to pay a general wage increase to employees in a newly-formed bargaining unit?

3. Did the employer unilaterally change the status quo when it placed Joe Primacio in a five-day, eight-hour shift position?

4. Did the employer refuse to bargain its decision, and the effects of its decision, to terminate Doug Knorr?

During the pendency of its representation petition and after the union was certified as the exclusive bargaining representative, the employer was prohibited from unilaterally changing the terms and conditions of employment without first providing notice to the union and an opportunity to bargain. The Examiner dismisses the union's complaint with regard to the 2006 general wage increase, as the increase was not part of the dynamic status quo, and the employer did not have a duty to pay the increase. The Examiner

rules that the employer committed an unfair labor practice when it created a five-day, eight-hour shift position for one bargaining unit employee in contravention of the unit's existing practice of four-day, ten-hour shift schedules. The Examiner further rules that the employer committed an unfair labor practice by failing to bargain its decision, and the effects of its decision, to terminate Doug Knorr.

APPLICABLE LEGAL STANDARDS

A. The Parties' Collective Bargaining Obligations

The parties bargain collectively pursuant to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Their duty to bargain is defined in RCW 41.56.030(4), as follows:

> '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 . . . .

A public employer's duty to bargain is enforced through RCW 41.56.140(4) and unfair labor practice proceedings under RCW 41.56.160 and Chapter 391-45 WAC. The complainant alleging an unfair labor practice has the burden of proof. WAC 391-45-270(1)(a).

1. The General Status Quo

Once a union is certified as the exclusive bargaining representative of an appropriate bargaining unit, the parties' collective bargaining obligations require the employer and union to maintain the status quo regarding all mandatory subjects of bargaining. This is referred to as the "general status quo" obligation.

Employers are prohibited from unilaterally changing mandatory subjects of bargaining, except where such changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. Where a new bargaining unit is concerned, the relevant status quo is determined as of the date the union filed its petition for investigation of a question concerning representation. *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991); *City of Tacoma*, Decision 4539-A (PECB, 1994). A complainant alleging a unilateral change must establish the relevant status quo. *METRO (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990).

WAC 391-25-140(2) provides:

> Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

This rule applies from the date a representation petition is filed up to the point that either the representation petition is dismissed or a union is certified as the exclusive bargaining representative. After a certification is issued by the Commission, the obligation to maintain the status quo continues uninterrupted, by means of the parties' collective bargaining obligations, as discussed above.

2. Dynamic Status Quo

In addition to the "general status quo" obligation there is also a "dynamic status quo" obligation. Both terms embody the idea that unilateral action to change a term of the employer-employee relationship regarding wages, hours, and working conditions is prohibited. The "dynamic status quo" rule recognizes occasional

circumstances when the status quo may not be static. *City of Anacortes*, Decision 9009-A (PECB, 2007). The requirement to maintain the dynamic status quo ensures that questions concerning representation and/or bargaining obligations do not block the occurrence of routine, non-discretionary changes to employees' working conditions. *Clark County*, Decision 5373 (PECB, 1995), *aff'd*, Decision 5373-A (PECB, 1996); *King County Library System*, Decision 9039 (PECB, 2005). A dynamic status quo may exist where actions are taken to follow through with changes that were set in motion prior to the filing of the representation petition. *King County*, Decision 6063-A (PECB, 1998).

Changes of working conditions announced prior to the filing of the representation petition "are part of the 'dynamic status quo,' along with previously scheduled wage and benefits increases . . . ." *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). Dynamic status quo includes both currently existing terms and conditions of employment as well as previously scheduled changes. Insofar as general wage increases are concerned, once the status quo obligation commences, employees must look to negotiations between their union and employer for such wage increases, not to any further unilateral action by the employer. *Snohomish County Fire District 3*, Decision 4336-A (PECB, 1994); *Val Vue Sewer District*, Decision 8963 (PECB, 2005); *King County Library System*, Decision 9039.

B. Mandatory Subjects of Bargaining

The employer's duty to maintain the status quo once a union has been certified as the exclusive bargaining representative, extends to all mandatory subjects of bargaining. It is well-settled that wages are a mandatory subject of bargaining. *Federal Way School District*, Decision 232-A (EDUC, 1977). Shift scheduling is also a mandatory subject of bargaining. *City of Yakima*, Decision 767-A

(PECB, 1980). Discipline and discharge are mandatory subjects of bargaining. *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, 117 Wn.2d 655 (1991); *Asotin County*, Decision 9549-A (PECB, 2007).

C. Discrimination and Interference

In *Clark County*, Decision 9127-A (PECB, 2007), the Commission set forth its standards for deciding a discrimination claim:

> A discrimination violation occurs when an employer takes action which is substantially motivated as a reprisal against the exercise of rights protected by Chapter 41.56 RCW. *See Educational Service District 114*, Decision 4361-A (PECB, 1994), where the Commission embraced the standard established by the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).
>
> The Prima Facie Case
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> When a union or employee claims discrimination, establishing a prima facie case of discrimination is the first part of a three-part test. *Brinnon School District*, Decision 7210-A (PECB, 2001) *citing Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46; *Allison v. Seattle Housing Authority*, 118 Wn.2d 79. A complainant accomplishes this by showing that: (1) the employee has participated in protected activity or communicated to the employer an intent to do so; (2) the employee has been discriminatorily deprived of some ascertainable right, benefit, or status; and (3) there is a causal connection between those events, *i.e.*, that the employer's motivation for the discrimination was the employee's exercise of, or intent to exercise, statutory rights. *Brinnon School Distict*, Decision 7210-A (PECB, 2001) *citing Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46; *Allison v. Seattle Housing Authority*, 118 Wn.2d 79. The prima facie case may ordinarily be shown by circumstantial evidence, because employers are not apt to announce discrimination as their motive. If a prima facie case is established, a rebuttable presumption of discrimination is created. *Educational Service District 114*, Decision 4631-A.
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> Where a complainant establishes a prima facie case of discrimination, the employer need only articulate non-discriminatory reasons for its actions. It does not have

> the burden of proof to establish those matters. *Port of Tacoma*, Decision 4626-A (PECB, 1995). The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed action was in retaliation for the employee's exercise of statutory rights. That may be done by showing that the reasons given by the employer were pretextual, or by showing that union animus was nevertheless a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

The Commission in *Community College District 13 (Lower Columbia)*, Decision 9171-A (PSRA, 2007) recently stated its standards for assessing interference claims as follows:

> Chapter 41.56 RCW prohibits employer interference with, or discrimination against, the exercise of collective bargaining rights. RCW 41.56.040 provides in part:
>
> > [N]o public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.
>
> RCW 41.56.140(1) enforces those statutory rights by establishing that an employer who interferes with, restrains, or coerces public employees in the exercise of their collective bargaining rights commits an unfair labor practice.
>
> The burden of proving unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complaining party. An interference violation exists when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The employee is not required to show an intention or motivation to interfere on the part of the employer to demonstrate an interference with collective bargaining rights. *See City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee was actually coerced

or that the employer had a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

APPLICATION OF THE STANDARDS

ISSUE 1: Did the employer unilaterally change the dynamic status quo when it failed to pay a general wage increase to employees in a newly-formed bargaining unit?

On July 5, 2006, the Commission certified the union as the exclusive bargaining representative of a unit of construction and maintenance equipment operators ("CMEOs") employed by several City departments. The union asserts that the employer committed an unfair labor practice by failing to honor the dynamic status quo in granting an automatic cost-of-living adjustment in December 2006. On August 17, 2005, Seattle Mayor Greg Nickels signed Ordinance No. 121887, which established December cost-of-living pay increases for unrepresented employees for three consecutive years: 2004, 2005, and 2006. On its face, the ordinance applies only to unrepresented employees.

Pursuant to the ordinance, the employer provided a cost-of-living wage increase to its unrepresented employees on December 29, 2004. At that time, CMEOs were represented by International Union of Operating Engineers, Local 302, and did not receive the wage increase under the ordinance. Instead, their pay increase was dictated by the collective bargaining agreement between the employer and Local 302. The employer's unrepresented employees also received a cost-of-living wage increase on December 28, 2005, pursuant to the ordinance. Because the CMEOs were not represented by any union at this time, they were covered by the ordinance and received the wage increase.

Although the ordinance was adopted long before the union became the exclusive bargaining representative for employees of this unit, the

terms of the ordinance did not become part of the dynamic status quo for represented employees. The CMEOs now represented by the union received increases under the ordinance only when they were in an unrepresented status. The employees had no reasonable expectation that they would receive the increase pursuant to the ordinance after they became represented. They did not receive an increase pursuant to the ordinance in 2004 when they were represented by another union. They did receive the increase in 2005 when they were unrepresented. As soon as the union filed its representation petition, the employer's obligation to the CMEOs under the ordinance ceased.

The union argues that granting a benefit to employees based on their unrepresented status constitutes an unfair labor practice. Its argument fails to withstand scrutiny. The employer has wide discretion to set wages for unrepresented employees. It is common for an employer to set unrepresented employees' wages by ordinance or resolution. *King County (Public Safety Employees Local 519, SEIU)*, Decision 4236 (PECB, 1992). The ordinance here does not, by its terms, apply to employees participating in the collective bargaining process. It is inappropriate to apply the ordinance in the context of represented employees.

The ordinance sets wages for unrepresented employees, but does not alleviate the employer's obligation to bargain wages in the collective bargaining context. The employer cannot be forced to grant increases to all employees, regardless of union status, merely because it wishes to grant increases to unrepresented employees. To require the employer to do so would thwart meaningful bargaining on the topic of wages. The employer has not refused to bargain with the union over wage increases.[1]

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[1] In fact, the employer attempted to enter into an agreement allowing retroactive pay increases to bargaining unit members pursuant to *Christie v. Port of Olympia*, 27 Wn.2d 534 (1947).

ISSUE 2: Did the employer discriminate and/or interfere with the union's rights when it failed to pay a general wage increase to employees in a newly-formed bargaining unit?

For the reasons stated above, the union failed to meet its burden of proving that the employer discriminated against or interfered with the union. The ordinance in question does not preclude the union from bargaining for wage increases. It merely sets wage increases for its unrepresented employees. In addition, the ordinance was passed before this union filed its petition for representation. It is impossible to conclude, based on the stipulated evidence, that the employer passed its ordinance in retaliation for, or was in any way motivated by, union activity.

ISSUE 3: Did the employer unilaterally change the status quo when it placed Joe Primacio in a five-day, eight-hour shift position?

At the time the union was certified as exclusive bargaining representative for the unit, all CMEOs were assigned to a four-day per week, ten-hour per day shift (four/ten shift). The employer created a new CMEO position in July 2006. Without prior bargaining or notice to the union, the employer posted the new position for shift bidding as a five-day per week eight-hour per day shift (five/eight shift). After bidding in accordance with established bidding procedures, Joe Primacio was awarded the new CMEO position with the five/eight shift on or about July 24, 2006. Primacio continued to work the traditional four/ten shift until November 2006, when the employer assigned him to the five/eight shift. The union did not object to the creation of the five/eight shift position until shortly before filing its unfair labor practice complaint in November 2006.

An employer's duty to bargain includes a duty to give notice to the union, and provide an opportunity for bargaining, prior to changing

a mandatory subject of bargaining. As noted above, shift scheduling is a mandatory subject of bargaining. It has long been established that an employer commits an unfair labor practice if it fails to give timely, adequate notice of a change affecting a mandatory subject of bargaining and a reasonable opportunity to bargain that subject. *Lake Washington Technical College*, Decision 4721-A (PECB, 1995); *Yakima County*, Decision 6594-C (PECB, 1999). Notice to an individual bargaining unit employee does not satisfy this requirement. *Royal School District*, Decision 1419-A (PECB, 1982).

The employer failed to notify the union of the new shift position at any time prior to posting it. The employer suggests that the union failed to assert its rights in a timely fashion, and thus waived its right to bargain. Once the new shift position was posted and bid upon, however, it was a *fait accompli*. The union was not obligated to request bargaining prior to filing its unfair labor practice complaint. *Clover Park School District*, Decision 3266 (PECB, 1989). The employer committed an unfair labor practice when it unilaterally created a new shift position without notice or bargaining.

ISSUE 4: Did the employer refuse to bargain its decision, and the effects of its decision, to terminate Doug Knorr?

Doug Knorr was employed by the employer as a CMEO. He was a bargaining unit member until October 20, 2006, when the employer terminated his employment pursuant to the Seattle Municipal Code and the City Personnel Rules (civil service rules). The employer did not provide notice to the union of its decision to terminate Knorr. The employer refused two written requests, dated November 6, 2006, and November 3, 2006, from the union to bargain over the decision and effects of Knorr's termination. In denying the union's demand to bargain, the employer noted that because a new

collective bargaining agreement had not yet been negotiated, Knorr's recourse was "the same remedy that was available to him prior to the certification of Local 77" (*i.e.*, the civil service rules). The employer stated that it had accorded Knorr his *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) and due process rights.[2] The employer asserted that it maintained the status quo by referring Knorr to the civil service commission.

It is undisputed that the disciplinary action taken against Knorr was consistent with the employer's discipline practices as they existed prior to the certification of this bargaining unit. There is no allegation that the employer made unilateral changes in its disciplinary practices or that its exercise of discretion was motivated by anti-union animus.

The only issues in dispute concerning Knorr's termination are whether the employer was obliged to notify the union and give it an opportunity to bargain the termination and its effects. Termination of employment is a mandatory subject of bargaining. The Commission will closely scrutinize unilateral changes in status quo that result in an employee's termination due to its substantial impact on employees. *Asotin County*, Decision 9549-A.

Violation of the duty to bargain can arise from a unilateral change that affects only a small number of employees, but the change must be one which represents a departure from established practice. *King County*, Decision 4258-A (PECB, 1994) and *King County*, Decision 4893-A (PECB, 1995). In *Asotin County*, Decision 9549-A, the Commission determined that an employer failed to maintain the status quo where it failed to apply a "just cause" discipline

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[2] In *Loudermill*, the United States Supreme Court held that public employees are entitled to both a notice of the charges against them and a public hearing before a public employer can fire or punish them for misconduct.

standard. Although the civil service rules in this case establish a "just cause" standard, notably absent from the civil service rules is the right to have union representation at any stage of the disciplinary proceeding. Moreover, there is no evidence that termination pursuant to the civil service rules had ever been relied upon with this unit in the past. The union did not have any input in to the "just cause" standard as it was applied here: no right to determine the employer's past interpretation of the standard vis-a-vis the members of this bargaining unit. Thus, termination of Knorr without bargaining effectively rendered the union impotent in its relationship with the employer in disciplinary matters. There is no way to determine, under the civil service rules, whether the appropriate status quo was applied. The matter has been further compounded by the employer's refusal to bargain the effects of its decision to terminate Knorr. The employer committed an unfair labor practice by failing to bargain its decision, and the effects of its decision, to terminate Knorr.

FINDINGS OF FACT

The parties stipulated to the following findings of fact:

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1). Seattle Public Utilities (SPU) is a department of the City of Seattle.

2. International Brotherhood of Electrical Workers, Local 77, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain full-time and regular part-time employees of the City of Seattle.

3. On March 29 and April 28, 2006, International Brotherhood of Electrical Workers, Local 77 ("Local 77") filed petitions for

representation with the Public Employment Relations Commission. Through these petitions, Local 77 sought to represent a unit of construction and maintenance equipment operators ("CMEOs") employed by several City departments.

4. On July 5, 2006, Local 77 was certified as the exclusive bargaining representative for the CMEOs.

5. The CMEOs were formerly represented by the International Union of Operating Engineers, Local 302. The CMEOs decertified from Operating Engineers Local 302 in April 2005.

6. The City of Seattle maintains a civil service system that applies to its unrepresented employees. Pursuant to the civil service system, no covered employee may be terminated except for cause.

7. An employee may challenge his or her termination through the appeals process outlined in SMC 4.04.260.

8. Pursuant to the Rules of Practice and Procedure of the Civil Service Commission, a terminated employee may obtain a hearing that includes an opportunity to present evidence and testimony, cross-examine witnesses, and make arguments to a Presiding Officer. The Presiding Officer's recommended decision is subject to review by the Civil Service Commission.

9. Members of the Civil Service Commission are appointed as follows: City employees elect one member, the mayor appoints one member, and the city council appoints one member. Appointed commission members typically are not employees of the City.

10. Doug Knorr was employed by SPU as a CMEO. Knorr was terminated by SPU on October 20, 2006.

11. Knorr was terminated pursuant to the Seattle Municipal Code and the City Personnel Rules.

12. SPU did not give Local 77 notice or an opportunity to bargain the decision to terminate Knorr before it was implemented on October 20, 2006.

13. In a November 6, 2006, letter to Labor Negotiator Joan Matheson, Local 77 demanded to bargain the decision and effects of Knorr's termination.

14. In a November 8, 2006, letter from Labor Negotiator Mary K. Doherty, the City refused to bargain with Local 77 regarding Knorr's termination.

15. Local 77 sent a second request to the Labor Relations Division, demanding to bargain the decision and effects of the termination on November 13, 2006.

16. In a November 17, 2006, letter from Ms. Matheson, the City refused to bargain with Local 77 regarding Knorr's termination.

17. Some CMEOs work out of the North Transfer Station in the Fremont/Wallingford area and the South Transfer Station near the First Avenue South Bridge. For the past several years, SPU has employed six CMEOs to staff the transfer stations.

18. The transfer station CMEOs have historically worked a four-day, ten-hour shift ("four/ten").

19. The four/ten schedules resulted in some difficulties in obtaining coverage for CMEOs who might be absent for illness, vacation, light-duty assignments, or other reasons.

20. Through the City's budget process, SPU's Solid Waste Operations Division received approval in July 2006 for an additional CMEO position to serve the transfer stations.

21. SPU determined that the best way to meet its workload needs was to use the new position as a floater between the transfer stations. That is, the new position would work at both transfer stations each day, with the exact hours at each station determined by business needs. SPU decided that the floater position would be a five-day a week, eight-hour shift ("five/eight").

22. SPU's long-established practice was to allow CMEOs at the two transfer stations to select their shifts according to seniority. SPU offered "shift picks" when vacancies occurred due to CMEO resignations, retirements, workplace injuries, or similar events.

23. On or about July 24, 2006, the CMEOs picked shifts. The CMEOs were given a choice between the six existing four/ten shifts and the new five/eight floater shift. This was the first time that a five/eight shift had been included as an available shift. Joe Primacio selected the five/eight shift.

24. The seventh CMEO position was filled on a permanent basis on August 15, 2006, when SPU hired Josh Nelson.

25. Between August 1 and early November 2006, there was flexibility in the CMEO shifts due to lengthy absences. Primacio was

thus frequently able to fill a more senior CMEOs shift, working four ten-hour days without weekends.

26. In mid-November 2006, all seven transfer station CMEOs were available to work. SPU therefore returned Mr. Primacio to the five/eight shift he had chosen in July 2006.

27. SPU did not give notice or an opportunity to bargain to Local 77 about the newly created floater position, the five/eight schedule, or the historical shift-pick process.

28. SPU followed its past practice in July 2006, by allowing the employees in the CMEO title to select among shifts by seniority.

29. Local 77 demanded to bargain through a November 15, 2006, letter to Joan Matheson, a labor negotiator in the City's Personnel Department.

30. The City did not immediately respond to the November 15, 2006, letter.

31. Local 77 filed its Complaint regarding SPU's unilateral change to employee working hours on November 27, 2006.

32. On August 17, 2005, Seattle Mayor Greg Nickles signed Ordinance No.121887, which established December pay increases for non-represented employees for three consecutive years: 2004, 2005, and 2006.

33. Pursuant to the Ordinance, the City provided a cost-of-living wage increase to its non-represented employees on December 29, 2004. At this time, the CMEOs were represented by Local 302,

and as such, the CMEOs did not receive the wage increase under the Ordinance. Instead, their pay increase was dictated by the collective bargaining agreement with Local 302.

34. The City's non-represented employees also received a cost-of-living wage increase on December 28, 2005, pursuant to Ordinance 121887. Because the CMEOs were not represented by any union at this time, they were covered by the Ordinance and therefore received the wage increase.

35. PERC certified Local 77 as the CMEOs' representative on July 5, 2006.

36. On November 17, 2006, Ms. Matheson and Local 77 representatives attended the first bargaining session regarding the new collective bargaining agreement. Ms. Matheson presented Local 77 with a Christie Agreement ready for signature. Local 77 representatives did not sign the agreement at the session, instead taking a copy of the agreement with them.

37. On December 27, 2006, non-represented City employees received a cost-of-living wage increase pursuant to Ordinance 121887. At this time, the CMEOs were represented by Local 77 and as such, they did not receive the wage increase.

38. Local 77 did not request bargaining over the application of Ordinance 121887 to the employees it represents.

39. If the CMEOs had not chosen to be represented by a labor organization, they would have received the December 27, 2006 cost-of-living wage increase.

40. On January 25, 2007, Local 77 brought a revised draft of a Christie Agreement and presented to Ms. Matheson. Ms. Matheson took the agreement from the meeting for review.

41. Between the January 25, 2007, negotiation session and the February 1, 2007, session, Ms. Matheson revised the draft Christie Agreement. She presented it to Local 77 on February 1. The parties signed the Christie Agreement on that date.

CONCLUSIONS OF LAW

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

2. By not granting the 2006 wage increase as described in Finding of Fact 37, the City of Seattle did not refuse to bargain or violate RCW 41.56.140(4) or (1).

3. By not granting the 2006 wage increase as described in Finding of Fact 37, the City of Seattle did not discriminate against or interfere with employee rights in violation of RCW 41.56.10(1) or (4).

4. By creating a new five-day, eight-hour CMEO shift position and assigning Joe Primacio to the position as described in Findings of Fact 21 and 23, the City of Seattle failed to give notice to the International Brotherhood of Electrical Workers, Local 77 and provide an opportunity for bargaining in violation of RCW 41.56.140(4) and (1).

4. By failing to bargain its decision, and the effects of its decision, to terminate Doug Knorr as described in Findings of Fact 10, and 12 through 16, the City of Seattle refused to bargain in violation of RCW 41.56.140(4) and (1).

ORDER

Case 20894-U-07-5328

The complaint charging unfair labor practices filed in Case 20894-U-07-5328 is DISMISSED.

Case 20776-U-06-5289

The City of Seattle, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices in Case 20776-U-06-5289:

1. CEASE AND DESIST from:

   a. Creating new shift positions and assigning employees to those positions without prior notification to the International Brotherhood of Electrical Workers, Local 77, and providing an opportunity for bargaining.

   b. Failing to bargain a decision, and the effects of the decision, to terminate an employee in the bargaining unit represented by the International Brotherhood of Electrical Workers, Local 77.

   c. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

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

   a. Restore the *status quo ante* by reinstating the shift positions which existed for the employees in the bargain-

ing unit prior to the unilateral change in shift scheduling found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with International Brotherhood of Electrical Workers, Local 77, before creating new shift positions and assigning employees to those positions.

c. Offer Doug Knorr immediate and full reinstatement to his former position or a substantially equivalent position, and make him whole by payment of back pay and benefits in the amounts he would have earned or received from the date of the unlawful termination to the effective date of the unconditional offer of reinstatement made pursuant to this order. Back pay shall be computed in conformity with WAC 391-45-410.

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

e. Read the notice attached to this order into the record at a regular public meeting of the City Council of the City of Seattle, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

f. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

g. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 21st day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, Examiner

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

Cases 20776-U-06-5289 and 20894-U-07-5328

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to notify the International Brotherhood of Electrical Workers (IBEW), Local 77, and provide an opportunity for bargaining with the union concerning the creation of a new five-day per week, eight-hour CMEO position and the assignment of Joe Primacio to the position.

WE UNLAWFULLY failed to bargain our decision, and the effects of our decision, to terminate Doug Knorr.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

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

a. Restore the *status quo ante* by reinstating the shift schedules which existed for the employees in the IBEW bargaining unit prior to the unilateral change in shift schedules found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with IBEW Local 77, before instituting a new shift schedule.

c. Offer Doug Knorr immediate and full reinstatement to his former position or a substantially equivalent position, and make him whole by payment of back pay and benefits in the amounts he would have earned or received from the date of the unlawful discharge to the effective date of the unconditional offer of reinstatement made pursuant to this order. Back pay shall be computed in conformity with WAC 391-45-410.

d. Post copies of the notice attached to this order in conspicuous places on our premises where notices to all IBEW bargaining unit members are usually posted. These notices shall be duly signed by our authorized representative, and shall remain posted for 60 consecutive days from the date of initial posting. We will take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

e. Read the notice attached to this order into the record at a regular public meeting of the City Council, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read.

f. Notify IBEW, Local 77, 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 IBEW, Local 77 with a signed copy of the notice attached to this order.

g. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ City of Seattle

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.