



STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE OFFICE
North 1322 Post
Spokane, Washington 99201

January 20, 1976

Mr. John H. Rayback, Attorney-at-Law
Post Office Box 12316
Seattle, Washington 98111

DECISION NO. 4-PECB

64-
RE: CASE NO. SK-1801
CITY OF YAKIMA
UNFAIR PRACTICE CHARGES

Dear Mr. Rayback:

So far as the Public Employment Relations Commission is concerned, this matter was initiated on November 14, 1975, upon receipt by this office of a Charge Against Employer, filed by you in behalf of the Yakima Police Patrolmen's Association, against the City of Yakima. The Charge alleges as follows:

The employer has changed the shift hours of the Police Department, and has refused to bargain over such change. The prior hours of the shifts were: 7:00 A.M. to 3:00 P.M.; 3:00 P.M. to 11:00 P.M., and 11:00 P.M. to 7:00 A.M. The new shift hours, correspondingly are: 4:00 A.M. to 12:00 noon; noon to 8:00 P.M., and 8:00 P.M. to 4:00 A.M. The Yakima Police Patrolmen's Association previously requested of the City a delay in implementation of the changed hours until after bargaining had taken place, and the City refused same.

In accordance with WAC 296-132-311, the Commission did conduct a thorough investigation of the above charge. The following Yakima City officials were contacted on November 24, 1975, regarding the Unfair Practice Charge: Mr. Craig McMicken, City Manager; Mr. Chuck Rains, Director of Management and Budget; Mr. Jack LaRue, Chief of Police; and Mr. Fred Andrews, City Attorney. Additionally, Mr. Bill Wilson, President of the Yakima Police Patrolmen's Association, and Mr. Raymond Farabee, Executive Board Member, were interviewed on that date.

On Sept. 18, 1975, John H. Rayback, Attorney-at-Law representing the Yakima Police Patrolmen's Association, wrote a letter to Craig McMicken, Yakima City Manager, requesting that the City delay the Oct. 1, 1975, scheduled change in shift hours and that the City enter into negotiations concerning the change. As a result of the request for delay, the City did agree

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to postpone the October 1, 1975 dates for one week in order that the Association would have an opportunity to discuss the change with its members. The City's position was that it was acting in accordance with the Management's Rights Clause in the collective bargaining agreement and would institute the announced change on October 16, 1975.

On October 8, 1975, the Yakima Police Patrolmen's Association sought to obtain a Temporary Restraining Order and Order to Show Cause in Yakima County Superior Court. The hearing on the cause was held on October 14, 1975 before Judge Walter A. Stauffacher, who denied the temporary restraining order saying, "But, I will deny the temporary restraining order and the matter will simply go ahead to trial if you desire to do so. But, there's just absolutely no question in this Court's mind that the contract bargaining agreement itself is totally clear and unambiguous and it is spelled out with great clarity that this is an item which is not negotiable in establishing schedules of work, and it is for that reason that I will deny the temporary restraining order" (page 5, lines 5 through 11, transcript of oral Decision, Cause 59034) Judge Stauffacher further stated, "I felt quite frankly, gentlemen, and I recognize that there was a possibility of some testimony here this afternoon, but I looked at this and I simply feel it is purely and simply a matter of legal interpretation as far as the contract is concerned and it is clear, totally clear, unambiguous and simply the Patrolmen's Association has no right to ask for a negotiation on this matter." (Page 5, lines 24 through 30 - transcript of Oral Decision).

The Public Employees Collective Bargaining Act enumerates four specific acts which constitute an Unfair Labor Practice by a public employer: (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; (2) to control, dominate or interfere with a bargaining representative; (3) to discriminate against a public employee who has filed an unfair labor practice charge; (4) to refuse to engage in collective bargaining (RCW 41.56.140) The Unfair Practice Charge alleges "The Yakima Police Patrolmen's Association previously request of the City a delay in implementation of the changed hours until after bargaining had taken place and the City refused.

It is appropriate at this point to examine the Collective Bargaining Agreement currently in effect between the City of Yakima and Yakima Police Patrolmen's Association. Article 6 - Collective Bargaining, Section 1, reads in part, "All matters pertaining to wages, hours and working conditions, except as otherwise provided in this agreement, shall be established through the negotiation procedure (emphasis supplied). Article 10 - Management Rights, reads in part: "The Association recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities, powers and authority. Affairs of the City concerning which such prerogative is reserved include, but are not limited to the following matters:

- (1) * * *
- (2) * * *
- (3) * * *

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(4) The right to determine reasonable schedules of work and to establish the methods and processes by which work is to be performed." The last paragraph of Article 10 states: "Any employee within the bargaining unit who may feel himself aggrieved by the exercise of any of the management rights specified hereinabove, or any other claimed management prerogative, shall seek his remedy by the grievance procedure provided by Article 7 of this agreement." Article 27 - Advance Notice of Shift Change: An officer will normally be given adequate advance notice of any change in his regular hours of work, except where an emergency exists. Posting shall constitute adequate notice. * * * *. Finally, Article 28, Improved Performance and Efficiency. The parties recognize the desirability of improving performance and increasing efficiency of the Yakima Police Department in order to provide maximum services at reduced costs. It is therefore agreed that the Association will actively cooperate and participate in studies and efforts to discover and employ new methods and practices which result in improved performance and increased efficiency in the Yakima Police Department.

As stated above, the collective bargaining agreement does contain provisions which allow the City to determine reasonable schedules of work unilaterally. This was in fact done on a previous occasion (the 1972 shift change from the 4-10 plan to the 5-day, 8-hour shift.)

For the reasons set forth herein and in accordance with WAC 296-132-311, the Commission has no alternative except to dismiss the Unfair Labor Practice Charge as being without merit.

Very truly yours, .

PUBLIC EMPLOYMENT RELATIONS COMMISSION


George G. Miller

Associate Chief Labor Mediator

GGM:nb

cc: Mr. Craig McMicken
Dr. Philip K. Kienast