STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2597, Complainant, vs. SNOHOMISH COUNTY, Respondent.	)	CASE NOS. 4341-U-82-694 4342-U-82-695 4412-U-83-708 4567-U-83-748 4600-U-83-760 4613-U-83-762 DECISION NO. 1868 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cogdill, Deno & Millikan, by W. Mitchell Cogdill, Attorney at Law, appeared on behalf of complainant.

Seth Dawson, Prosecuting Attorney, by Edward E. Level, Deputy Prosecuting Attorney, appeared on behalf of respondent.

On November 22, 1982, International Association of Firefighters, Local 2597 (complainant or union) filed a complaint charging unfair labor practices against Snohomish County (respondent or employer) alleging that respondent coerced bargaining unit employees by raising the issue of subcontracting at an advanced stage of negotiations. On November 24, 1982, the union filed a second unfair labor practice complaint charging that the employer refused to negotiate wages and work shifts. A third complaint was filed on January 3, 1983, wherein complainant alleged that respondent unilaterally changed hours of work during the course of collective bargaining. On March 29, 1983, the union filed an unfair labor practice complaint charging that the employer unilaterally changed medical and dental benefits, and on April 22, 1983, the union filed yet another complaint dealing with subcontracting as a subject of bargaining. On April 28, 1983, complainant filed a sixth unfair labor practice complaint, alleging that respondent refused to negotiate and unilaterally changed wages by refusing to grant "step" increases to two bargaining unit employees. The unfair labor practice complainants were consolidated, and a hearing was conducted on August 10 and 11, 1983. The parties submitted post-hearing briefs.

BACKGROUND

Among several facilities provided for the benefit of county residents, Snohomish County operates Snohomish County Airport (Paine Field). Primarily

used by small private aircraft, the airport is considered to be an "enterprise agency", i.e., a county department that does not depend on respondent's general fund for its operations. The airport earns revenue by providing safety and maintenance facilities to a number of private companies, including the Boeing Company, which maintains a large assembly plant nearby and regularly uses the airport's main runway. In exchange, a fee is assessed for each takeoff and landing.

Paine Field's daily operation is supervised by an airport manager. The manager reports to the county executive and to the Snohomish County Council. Apart from the county council, an appointed airport commission exists to formulate long-range policy goals. The commission acts in an advisory capacity to the county executive and county council.

The Paine Field Fire Department, located on the airport grounds, provides firefighting and rescue services for the general airport vicinity. Under the airport manager's supervision, the department's staff consists of five firefighters and a chief.

The International Association of Firefighters was certified in 1977 to represent the firefighters for purposes of collective bargaining. The record does not indicate what bargaining activity occurred between 1977 and 1980. The parties entered into an initial collective bargaining agreement for the period from January 1, 1980 through December 31, 1981. The contract was extended for calendar year 1982.

Negotiations for a new collective bargaining agreement began on July 12, 1982. Complainant was represented by firefighters Gary Anderson and Jeffrey Craig. Respondent was represented by James H. Curran of Cabot Dow and Associates, Joseph Cheesman, county employee relations specialist, and Don Bakken, airport manager. At the initial meeting, the union presented a comprehensive proposal for a new contract which included increases in wages and medical benefits. Respondent did not make a counterproposal.

On July 13, 1982, the Snohomish County Council passed Resolution No. 82-122. Taking note of the county's weak financial condition, the resolution set forth goals to control employee wage and benefit costs. In pertinent part, the resolution provided:

> 1. The County directs that union representatives be briefed as to the "State of the County's" finances in light of the 1980, 1981, 1982 settlements and projected revenues.
>
> 2. The County's policy for 1983 and 1984 to be communicated to all bargaining representatives is to avoid, wherever possible, further sacrifices in levels of service which have previously been necessary in order

> to increase wages and benefits. The County is seeking to secure labor agreement provisions with bargaining representatives that accomplish this end result. In keeping with this policy, the county will ask all employees to accept no pay increase over the next two year proposed contract period. With this scenario, the County will be able to continue a viable level of service to the public without a dramatic cutback in the number of employees.
>
> 3. The County desires to review the alignment of salaries and benefits and to pursue alternatives to the existing multi-step compensation plans for the purpose of eliminating identified inequities in the classification and promotion of employees, to the extent of the County's ability to pay salaries and benefits.
>
> 4. The County seeks to complete labor agreements by the end of September to be effective January 1, 1983, through December 31, 1984. (emphasis supplied)

Complainant became aware of the resolution on July 23, 1982. Negotiations on economic issues continued, but respondent maintained a bargaining position that the resolution precluded consideration of a wage increase, and it proposed a wage "freeze" for 1983 and 1984. While little progress was made on economic issues, the parties reached tentative agreement on a number of non-economic matters, including retention of the management rights/non-discrimination clause found in the original contract. That management's rights clause provided:

> The County has the exclusive right to manage its affairs, to direct and control its operations, and independently to make, carry out and execute all plans and decisions deemed necessary in it (sic) judgement for its welfare, advancement, or best interests. Such management prerogative shall include all matters not specifically limited by the agreement herein.

Negotiations continued through July, 1982. On August 10, 1982, respondent brought Tom Carlson, county budget director, to a negotiation session where he made a presentation on the county's economic condition. After Carlson's departure, the parties resumed negotiations and complainant raised the issue of a wage increase. In response, Curran stated that the employer would consider subcontracting fire services if the union "asked for too much".

On August 30, 1982, Curran responded to a similar wage proposal by stating that respondent would find an alternative method to deliver firefighting services if the cost of a new collective bargaining agreement was too high. Anderson and Craig testified that Curran also said that "anything that will cost the county, we will not look at." Curran testified that his statements were misconstrued, and that he told the firefighters that the employer was attempting to keep labor costs at a reasonable level.

On September 7, 1982, the parties conducted further negotiations. Complainant again advanced wage proposals, and respondent maintained that the July 13, 1982 resolution precluded any salary increase. Respondent also stated its belief that airport management would determine work shifts. The employer did not propose changes in the established shift schedule, however.

On September 8, 1982, Curran's associate, Cabot Dow, sent a letter to county Personnel Director Robert Hilsman entitled "Elimination of Paine Field Fire Department". Apparently at respondent's request, Dow had reviewed the collective bargaining agreement, status of negotiations and relevant Public Employment Relations Commission decisions and stated his opinion that the contract would not prevent subcontracting. Dow went on to caution respondent that the employer would have to give adequate notice to complainant and negotiate about the impact subcontracting would have on bargaining unit employees.

On September 29, 1982, the parties discussed the work shift issue again. In the course of negotiations, Bakken told complainant that management would set shifts at the Paine Field Fire Department. Complainant responded by stating that changes in the existing work shift should be negotiated.

The record does not indicate whether the parties met in the month of October. At a negotiation meeting held on November 4, 1982, respondent raised the issue of subcontracting. Curran testified that earlier negotiations indicated that complainant did not share respondent's view on management's rights. Curran asked the union's negotiators if they understood that the tentatively agreed management's rights clause would allow respondent to subcontract. Complainant took a short caucus to consider the matter, and when it returned to the bargaining table, respondent presented the following language as a "clarification" to the management's rights clause:

> The County retains the right to obtain services provided by the Airport Fire Department at the Snohomish County Airport through coverage by other governmental agencies and the right to sub-contract the Airport operations in whole or in part. (Proposed revision and clarification by County on 11/04/82).

After respondent proposed the modification, complainant refused to negotiate further on the management rights issue. Complainant maintained that respondent's language would amount to an effective waiver of its right to negotiate subcontracting. The union did propose that it would negotiate about subcontracting if the employer actually intended to implement such a change in the employment relationship.

On December 1, 1982, Airport Manager Bakken issued a memorandum to Fire Chief Ron Pooler, notifying him of a change in work shifts. Bakken made the modification in reliance on the contract's management's rights clause and on

a memorandum of understanding signed by the parties in 1980. Under terms of the memorandum, respondent could change work shifts if adequate manpower was unavailable. Bakken was aware that one firefighter was to go on an extended disability leave, and was concerned that a shift change was necessary. Complainant acknowledged that a firefighter would be absent, but presented evidence that manpower shortages had occurred before and that the work shift had not been altered. The modification would require department operation from 8:00 AM to 12:00 midnight with firefighters working two eight-hour shifts. The fire station would be closed from 12:01 AM to 8:00 AM. The new schedule would replace the existing shift structure of two 12-hour shifts providing continuous fire protection for the airport. The new shift would also eliminate security patrols routinely conducted by bargaining unit employees between the hours of midnight and 8:00 AM.

On December 3, 1982, complainant sent a letter to Bakken requesting negotiations on the shift change. The employer did not respond. The shift change was implemented on December 6, 1982. The union filed a grievance on the matter shortly thereafter.

Apparently, there exists in the county's administrative structure an entity known as the Snohomish County Commission on Administration and Personnel. On December 8, 1982, the personnel commission recommended to the airport commission that a study should be undertaken to determine whether the Paine Field Fire Department should be abolished. The airport commission held a public hearing on the issue on December 17, 1982. The record does not indicate the personnel commission's final determination.

Negotiations continued, but the parties were unable to reach agreement. The assistance of a mediator was requested, and mediated talks began on December 21, 1982. The parties could not resolve their differences by the end of the year and the agreement expired. The parties did not sign an extension to the contract.

On January 14, 1983, respondent notified all county employees of a change in medical and dental insurance premiums. The employer announced that it would pay for all premium increases for non-represented employees, but would only pay for one month's increase for employees represented by employee organizations. Respondent reasoned that negotiations with a number of unions were still in progress, and the status quo would have to be maintained. Complainant filed a grievance on the matter shortly after the change was announced. The dispute progressed through the grievance procedure to be reviewed by the county council. The issue was not resolved, but respondent refused to submit to arbitration contending that the obligation to arbitrate terminated with the contract. Bargaining unit employees paid the increase in medical premiums from their regular wages.

At an unspecified time during the course of mediation, respondent modified its economic proposal. Instead of seeking a wage freeze for two years, the employer offered a five percent increase of wages and benefits in 1984. Complainant did not accept the proposal and mediation continued.

Two bargaining unit employees, Ronald Tangen and William Rueter expected to receive "step" increases in March, 1983, under terms of the expired contract and the county's civil service rules. Respondent did not grant the increases, maintaining that it had to maintain status quo as of the date of contract expiration. Complaintant filed a grievance, but, as in the case of the medical premium issue, respondent refused to submit the matter to arbitration. On May 5, 1983, Employee Relations Specialist Joseph Cheesman sent complainant a letter detailing respondent's position:

> In the absence of a collective bargaining agreement, the county is willing to discuss issues that your group may bring to our attention, up to the point of considering arbitration. It is the county's position that the right to take a grievance issue to arbitration died with the expiration of the contract on December 31, 1982. The county does not have an obligation to submit issues to arbitration except when it has agreed to arbitration in the body of a labor agreement that is in force. Currently, the union does not have a labor agreement in force.

Cheesman went on to detail an arbitrator selection process that would be agreeable to respondent in a new contract.

The parties were unable to resolve outstanding issues in mediation. On May 16, 1983, the remaining matters were submitted to interest arbitration under the provisions of RCW 41.56.440 et seq. As of the date of hearing, the interest arbitration proceedings were not completed.

On June 3, 1983, respondent entered an agreement with the Snohomish County Sheriff to provide security patrols at Paine Field from 12:01 AM to 8:00 AM. Respondent maintained that sheriff deputies were needed because they had the power to arrest. The patrols began on June 7, 1983.

On July 21, 1983 Bakken issued a memorandum returning work shifts at the Paine Field Fire Department to the 12-hour schedule. The revision was to take effect August 15, 1983. The record indicates that sheriff patrols were to continue after the shift change was made.

POSITIONS OF THE PARTIES

Complainant contends that respondent engaged in a course of bad faith bargaining. In particular, complainant argues that respondent refused to

bargain about wages, unilaterally changed work shifts and medical and dental benefits, and unilaterally modified wage rates by refusing to grant "step" increases to two bargaining unit employees. Complainant also contends that respondent threatened to eliminate the bargaining unit through subcontracting and "skimmed" bargaining unit work by transferring security patrols to county sheriffs.

Respondent denies that it committed unfair labor practices. With respect to allegations concerning subcontracting, respondent maintains that its negotiator was stating fact and not making threats. Respondent maintains that subcontracting was raised as an issue in collective bargaining to clarify a management's rights clause, and contends that complainant waived its right to bring the issue to hearing because it never responded to the employer's position in bargaining. Respondent argues that the decision to use sheriff deputies on security patrols was necessary as a safety matter and did not reduce complainant's wages or benefits. Respondent contends that it had the right to change work shifts, and further contends that it did not refuse to negotiate on the issue of wages. Respondent argues that it was legally required to deny "step" increases and to deny increases in medical premiums because negotiations were not completed. Finally, respondent challenges the Public Employment Relations Commission's jurisdiction over the work shift, medical premium and step increase issues since complainant filed grievances on those matters.

DISCUSSION

Jurisdictional Defenses

Respondent maintains that a number of the unfair labor practice complaints brought in this matter are outside the Commission's jurisdiction because they either involve interpretation of the collective bargaining agreement or they have already been processed as contract grievances.

A waiver of bargaining rights can be implied if a union agrees to language in a collective bargaining agreement which reserves certain prerogatives to the employer. See: City of Yakima, Decision No. 4 (PECB, 1976). A waiver is an affirmative defense, and the employer has the burden of demonstrating that a waiver has occurred. See: Lakewood School District, Decision No. 755-A (PECB, 1980). The burden of proof of waiver is difficult to meet if the employer relies on a general management rights clause, as stated in City of Hoquiam, Decision No. 745 (PECB, 1979):

> Whenever a management rights clause is the subject of an asserted waiver of bargaining rights, that clause is scrutinized to ascertain whether it affords specific justification for the unilateral act.

See also: City of Seattle, Decision No. 1667-A (PECB, 1984). The Public Employment Relations Commission lacks "violation of contract" unfair labor practice jurisdiction. See: City of Walla Walla, Decision No. 104 (PECB, 1976); City of Kennewick, Decision No. 344 (PECB, 1977). When presented with a waiver defense involving a contractual provision, the examiner interprets the provisions of, but does not remedy violation of, the terms of the collective bargaining agreement.

Examination of the management rights clause and memorandum of understanding leads to the conclusion that a waiver did not take place. The management rights clause gave respondent general authority to conduct its affairs, but did not grant specific authority to modify the work shift. A collective bargaining agreement cannot cover every possibility, but there is a strong presumption that matters concerning wages, hours or terms and conditions of employment cannot be modified without at least the offer to negotiate such changes. Respondent's reliance on the memorandum of understanding does not strengthen its waiver argument. The memorandum established the 12-hour shift on a trial basis and allowed the employer to revert to the "existing" work shift if manpower levels dropped. At the time the memorandum was signed, the Paine Field Fire Department operated three shifts of eight hours each, thus providing 24-hour coverage. Given the passage of time and the fact that prior manpower reductions did not prompt the employer to modify work schedules, the memorandum has questionable effect as a waiver. Complainant could anticipate a normal work shift of 12 hours, and respondent did not demonstrate a need to make immediate changes in the existing shift schedule. The modified shift schedule had significant impact on bargaining unit employees. Respondent should have offered complainant an opportunity to negotiate before the schedule was modified.

The Commission has consistently held that deferral to grievance arbitration is appropriate where the disputed issues are, in fact, susceptible to resolution under the operation of the grievance machinery agreed to by the parties and there is no reason to believe the issues could not or would not be resolved in a manner compatible with the Act if the grievance machinery was used. See: City of Seattle, Decision No. 1667 (PECB, 1983), citing Collyer Insulated Wire, 192 NLRB 837 (1971).

However, deferral is not automatic and must be examined in light of the facts presented in a particular case. It is undisputed that complainant submitted

several issues currently before the examiner to grievance procedures. Respondent processed the issues but refused to submit to arbitration arguing that the collective bargaining agreement had expired. In such a case, deferral would not resolve any of the outstanding issues in these unfair labor practice cases, and would frustrate the purpose and policy of Chapter 41.56 RCW. Accordingly, the respondent's deferral argument is found to be without merit.

Subcontracting

The record clearly shows that respondent discussed the possibility of abolishing the Paine Field Fire Department at several points during collective bargaining. The question that is raised is whether the employer's references to subcontracting amount to an unfair labor practice. RCW 41.56.140(1) prohibits an employer from interfering with, restraining or coercing public employees in the exercise of rights guaranteed in Chapter 41.56 RCW. In this case, respondent made its comments to union bargaining representatives. Such a finding is not a distinction without a difference. As bargaining representatives, the negotiating team is expected to receive, analyze and act upon information presented at the bargaining table. The record credibly shows that respondent was suffering through difficult economic times. This information was presented to complainant at several negotiation sessions. Respondent could not withhold such information from complainant. To the contrary, the Commission has held that an employer must inform its employees of adverse effects of actions taken at the bargaining table. See Royal School District No. 160, Decision No. 1419-A (PECB, 1982).

In this case, respondent uniformly maintained that difficult economic conditions restricted its ability to grant pay increases. Confronted with a union wage demand, the employer predicted that it might have to consider a different way to deliver firefighting services. Although the parties were in the midst of a difficult round of negotiations, respondent's statement, taken alone, is not construed as a threat. The employer responded in a reasonable manner by notifying the union that subcontracting was a possibility.

A different situation is presented by respondent's "clarification" of a management rights clause. While the parties engaged in a protracted set of negotiations, it appears that they reached tentative agreement on a management rights clause at a relatively early date. At an advanced stage in the process, respondent proposed a change in the management rights clause to specifically permit the employer to subcontract. Such a change cannot be classified as a "clarification." Rather, it is a significant escalation of bargaining demands. As stated in Island County, Decision No. 857 (PECB, 1980):

> Any practice of increasing demands during bargaining or adding new demands assuredly hinders achievement of complete agreement, and one must be suspect of the good faith of a party which moves the target during bargaining or as the moment of agreement approaches.

To be sure, agreement was not near when respondent raised the subcontracting issue. However, respondent's action virtually precluded reaching an agreement. By raising the subcontracting issue at an advanced stage of negotiations, respondent failed to bargain in good faith. See: Sunnyside Irrigation District, Decision No. 314 (PECB, 1977).

Respondent maintains that complainant waived its right to challenge the introduction of subcontracting because it did not respond to the employer's position. The record indicates that complainant did refuse further negotiations about the management rights clause, but proposed that the issue of subcontracting be negotiated if and when changes were actually anticipated. The employer was demanding a complete waiver of the union's bargaining rights on subcontracting. The union was under no obligation to yield up such a waiver, and offered a position which both recognized the subcontracting possibility and preserved its bargaining rights. Such a position cannot be characterized as a failure to respond, nor does it serve as a defense to the unfair labor practice committed by respondent.

Skimming Bargaining Unit Work

The employer, having already modified the shift schedule, replaced bargaining unit employes with sheriff deputies on security patrol. The employer maintains that it had a legitimate business reason to make the change in personnel. However, the record clearly indicates that respondent made the unilateral change without offering negotiations. Respondent is not excused because bargaining unit employees did not suffer immediate losses in wages or benefits. The loss of a significant part of the unit's work has consequences which may be felt far into the future. Loss of such work must be preceded by an opportunity to negotiate its impact on the bargaining unit as a whole. See: South Kitsap School District, Decision No. 472 (PECB, 1978).

Refusal to Negotiate Wages

Complainant maintains that respondent consistently refused to negotiate wage increases and thereby violated RCW 41.56.140(4). Just as negotiations began, the Snohomish County Council did, in fact, pass a resolution

concerning wage increases for employees represented by unions. The resolution does not amount to a firm position in the wage issue. Rather than stating that the employer would not grant increases, the resolution was couched in terms of "seeking" a wage freeze or "asking" union representatives for assistance in keeping labor costs down. It appears that the resolution was, in fact, a bargaining position from which point respondent would begin negotiations. During collective bargaining, respondent modified its position to provide a five percent wage and benefit increase in 1984. This set of circumstances differs significantly from the facts presented in Whitman County, Decision No. 250 (PECB, 1977) where an employer took a final position on wages and benefits and published its position in a newspaper. That "take it or leave it" offer violated RCW 41.56.140(4).

A distinction must be drawn between refusing to negotiate and "hard bargaining." The resolution itself was framed as a bargaining position, not as a forclosure of bargaining. In this case, respondent was willing to negotiate on the mandatory subjects of bargaining (wages, hours and terms and conditions of employment) but held a consistent position that it could not grant a wage increase. Can such a position be considered a refusal to bargain? The employer is ultimately responsible for its budget and is in the best position to know its financial condition. See: Federal Way School District No. 210, Decision No. 232-A (EDUC, 1977). If the budget indicates that wage increases are not possible, the employer can, in good faith, continue negotiations maintaining a "no increase" posture. Respondent cannot be forced to grant a concession or to agree to a specific proposal. See RCW 41.56.030(4); H. K. Porter Co., 397 U.S. 99 (1970). Respondent had the county's budget director explain the situation to complainant and continued to negotiate, even though it maintained it could not grant a wage increase. The examiner does not find the evidence sufficient to establish that there has been an unfair labor practice.

Step Increases

Apart from the issue of a general wage increase, complainant alleges that respondent improperly withheld step increases from two bargaining unit employees. The employer refused to grant the increases claiming that a modification in the wage structure would amount to a unilateral change violative of RCW 41.56.140(4). Complainant asks the examiner to rely upon the employer's civil service rules in determining whether an unfair labor practice was committed. Civil service matters are governed by a totally separate body of law which is not under the Commission's jurisdiction. It is inappropriate to consider civil service in this setting. If complainant feels that civil service rules have been violated, it should use appeal mechanisms provided in the civil service procedure.

While the wage increase issue was discussed in some detail, it appears that the parties confined their negotiations to a general raise to be applied on base salaries. The employer had a salary schedule in effect, under which employees were entitled to step increases based on length of service. Examination of the record indicates that the step increase system was not raised by either party during negotiations. If the step increase issue was not raised in negotiations, respondent should not have withheld payment. Complainant had no opportunity to negotiate on the subject, and respondent's failure to pay the step increases actually constituted a unilateral change of the type the employer says it avoided. Apart from its bargaining obligation, respondent is required to maintain the status quo during the pendency of interest arbitration. RCW 41.56.470 provides:

> During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment without the consent of the other but a party may so consent without prejudice to his rights or position under this 1973 amendatory act. [1973 c 131 sec 6.]

Payment of step increases was the status quo, and that respondent improperly withheld the increases from the two affected firefighters.

Medical Premiums

Under terms of the expired collective bargaining agreement, the employer provided medical and dental coverage for the firefighters and agreed to maintain full payment of premiums for the life of the contract. The record indicates that the medical premium issue was a subject of bargaining in 1983, and respondent made at least one proposal to increase wages and medical insurance payments by five percent in 1984. While negotiations were still under way, the employer learned of an increase in insurance premiums. The respondent, without negotiations, unilaterally increased employee benefits by paying the increased premium for the first month it was in effect. The respondent then made an additional unilateral change, without negotiations, when it reverted to the level of premium payments which had existed under the expired contract. Refusal to assume any additional cost in the absence of a new contract would not have constituted an unfair labor practice. The employer had consistently maintained that medical and dental insurance premiums were to be considered as part of the total compensation. Having no obligation to do so (and potentially in violation of both RCW 41.56.030(4) and RCW 41.56.470), the employer in fact increased the insurance benefits paid on behalf of bargaining unit employees. Having done so, the employer was not in a position to recoup the benefits of its largess without bargaining to impasse with the union and going through the procedures provided by statute. City of Seattle, Decision No. 651 (PECB, 1979).

Remedy

To correct the unfair labor practices found to have been committed, the employer shall be ordered to cease and desist from making unilateral changes in work shifts, medical benefits and step increases, and shall be further ordered to rescind its subcontracting proposal. The employer shall further be ordered to cease and desist from "skimming" bargaining unit work without offering complainant an opportunity to negotiate.

Affirmatively, respondent shall be ordered to offer complainant an opportunity to negotiate about shift changes, insurance benefits and step increases. In the interim, the employer shall maintain the status quo ante which existed at the time the unfair labor practices were committed. Specifically, step increases shall be paid from their effective date forward, insurance benefits shall be paid at the increased rate implemented by the employer and the Paine Field Fire Department shall operate on a 12-hour shift cycle, maintaining 24-hour coverage. Respondent shall also return bargaining unit work to complainant.

The parties to these proceedings bargain collectively under the provisions of RCW 41.56.440 and RCW 41.56.450 as well as the usual definition of collective bargaining. In the event the parties fail to reach agreement in bargaining conducted pursuant to this Order, they shall proceed to mediation, and, if necessary, to interest arbitration to finally resolve outstanding issues. City of Seattle, Decision No. 1667-A (PECB, 1984).

FINDINGS OF FACT

1. Snohomish County is a political subdivision of the State of Washington and is a "public employer" within the meaning of RCW 41.56.030(1). The county operates Snohomish County Airport (Paine Field) as an airfield for private aircraft. The Boeing Aircraft Company also uses the airport's facilities on a regular basis.

2. International Association of Firefighters, Local 2597 represents non-supervisory firefighting personnel at the Paine Field Fire Department, and is a "bargaining representative" within the meaning of RCW 41.56.030(3). The county and the union have a bargaining history dating to 1977. The parties' first collective bargaining was effective from January 1, 1980 through December 31, 1981. The agreement was later extended through 1982.

3. The parties entered negotiations for a successor collective bargaining agreement on July 12, 1982. On July 13, 1982, the Snohomish County

Council adopted a resolution calling for a "wage freeze" for county employees for 1983 and 1984. The resolution directed county negotiators to maintain a "no increase" posture at the bargaining table.

4. By July 23, 1982, the parties had reached tentative agreement on several issues, including management rights. Identical to the clause found in the original collective bargaining agreement, the provision stated:

> The County has the exclusive right to manage its affairs, to direct and control its operations, and independently to make, carry out and execute all plans and decisions deemed necessary in it (sic) judgement for its welfare, advancement, or best interests. Such management prerogative shall include all matters not specifically limited by the agreement herein.

5. On August 10, 1982, the employer presented a detailed explanation of its financial difficulty to the union. After the presentation, negotiations resumed. In response to a union wage proposal, the employer's bargaining spokesman, James H. Curran stated that subcontracting was a possibility if the union "asked for too much". On August 30, 1982, Curran responded to a union wage proposal by stating that an expensive settlement could force the employer to find an alternative way to deliver firefighting services. At the same meeting, Curran reiterated the employer's position to keep labor costs down.

6. On September 7, 1982, the employer informed the union that it would determine what work shifts would be. The employer reiterated this position at a negotiation session on September 29, 1982. The union responded by stating that such changes should be negotiated.

7. On November 4, 1982, the employer proposed a "clarification" to the previously agreed management rights clause. The "clarification" specified:

> The County retains the right to obtain servces provided by the Airport Fire department at the Snohomish County Airport through coverage by other governmental agencies and the right to sub-contract the Airport operations in whole or in part. (Proposed revision and claification by County on 11/04/82).

After the employer made the above-quoted proposal, the union refused to negotiate further on management rights but proposed that subcontracting should be negotiated when such a change was to be made.

8. On December 1, 1982, Airport Manager Don Bakken issued a memorandum notifying the Paine Field Fire Department that work shifts would be

changed. Instead of two 12-hour shifts providing 24-hour coverage, the department would operate on two 8-hour shifts to cover the hours from 8:00 AM to 12:00 midnight. The department would be closed from 12:01 AM to 8:00 AM. Bakken relied on the contract's management rights clause and a 1980 memorandum of understanding in making the change. The memorandum allowed the employer to change the work shift in the event of personnel shortages. However, prior shortages had occurred without shift modifications. The union learned of the change on December 3, 1982 and requested negotiations. The change was made on December 6, 1982, without prior negotiations.

9. The parties entered mediation on December 21, 1982. The parties were unable to reach agreement by the end of the year and the contract expired without any extension agreement. At an unspecified time in mediation, the employer modified its wage proposal to provide a five percent increase for wages and benefits in 1984.

10. On January 14, 1983, the employer informed its employees represented by unions that it would pay increases in medical insurance premiums for one month only. The employer thereafter reduced its payments for employee medical insurance premiums without bargaining to agreement on the matter or submitting the proposed reduction to interest arbitration.

11. In March, 1983, two bargaining unit employees, Ronald Tagen and William Rueter, were expecting to receive "step increases". The employer refused to grant them, claiming that such an increase would be an improper unilateral change in wages. The issue of step increases was not made a separate matter for bargaining. The union filed a grievance on this issue as well.

12. Filed, the employer processed grievances on various issues through the step requiring review by the county council but refused to submit to grievance arbitration.

13. On May 16, 1983, the outstanding issues existing in bargaining were submitted to interest arbitration under provisions of RCW 41.56.440.

14. On June 3, 1983, the employer entered an agreement with the Snohomish County Sheriff to provide security patrols at Paine Field from 12:01 AM to 8:00 AM. The patrols had been performed by bargaining unit members prior to the December, 1982 shift change. The patrols started on June 6, 1983. The employer did not offer the union an opportunity to negotiate about the patrol work.

15. On July 21, 1983, Bakken issued a memorandum restoring the 12-hour shifts to the Paine Field Fire Department. The change was to be made on August 15, 1983, but sheriff deputies were to continue security patrols.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The management rights clause set forth in Finding of Fact No. 4 above, does not constitute a waiver of bargaining rights conferred by RCW 41.56.030(4) with respect to the subject of work shift modification.

3. The memorandum of understanding signed by the parties in 1980 dies not constitute a waiver of bargaining rights conferred by RCW 41.56.030(4) on the subject of work shift modification.

4. The employer modified work schedules without offering an opportunity to negotiate, in violation of RCW 41.56.140.

5. The employer's statements concernng subcontracting did not constitute violations of RCW 41.56.140(1) or (4).

6. The employer's insistence on adding a subcontracting issue, at the time and in the manner presented, demonstrated that the employer was not bargaining in good faith, and violated RCW 41.56.140(4).

7. The employer improperly removed bargaining unit work, without offering an opportunity to negotiate, in violation of RCW 41.56.140(1) and (4), by transferring security patrols to sheriff deputies.

8. The employer improperly modified wages by refusing to grant step increases to Ronald Taugen and William Rueter, thus violating RCW 41.56.140(1) and (4).

9. The employer improperly modified employee insurance benefits by not continuing to pay for increases in medical premiums after having granted such increases, in violation of RCW 41.56.140(1) and (4).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act,

it is ordered that Snohomish County, its officers and agents shall immediately:

1. Cease and desist from:

   (a) Unilaterally modifying work shifts, medical benefits or step increases without having first given International Association of Firefighters, Local 2597 notice of the proposed change and an opportunity to negotiate the changes.

   (b) Unilaterally removing bargaining unit work without having first given International Association of Firefighters, Local 2597 notice of the proposed change and an opportunity to negotiate the changes.

   (c) Raising the issue of subcontracting during the pendency of the current round of collective bargaining.

   (d) Refusing to bargain in good faith concerning work shifts, medical benefits, step increases and removal of bargaining unit work.

2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:

   (a) Pay Ronald Taugen and William Rueter an amount equivalent to the step increases due those employees from March 3, 1983 until the date of compliance with this Order.

   (b) Pay all employees represented by International Association of Firefighters, Local 2597 for medical benefits at the increased rate implemented on January 14, 1983, until the date of compliance with this order.

   (c) Upon request, bargain collectively in good faith with International Association of Firefighters, Local 2597 concerning medical benefits, step increases, work shifts and the elimination of bargaining unit work.

   (d) In the event that resoltuion is not achieved through negotiations, submit the dispute for mediation and, if necessary, to interest arbitration for determination.

   (e) 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 A". Such notice shall, after being duly signed by an authorized representative of the County of Snohomish, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Snohomish County to ensure that said notices are not removed, altered, defaced, or covered by other material.

(e) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding.

DATED at Olympia, Washington this 6th day of March, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Kenneth J. Latsch

KENNETH J. LATSCH, Examiner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX "A"

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT make unilateral changes of wages, hours, or conditions of employment of non-supervisory firefighting personnel without giving notice to and bargaining collectively with International Association of Firefighters, Local 2597.

WE WILL negotiate in good faith with International Association of Firefighters, Local 2597 concerning the change of work shifts, medical benefits, the payment of step increases, and the effects of transferring bargaining unit work.

DATED: _____

SNOHOMISH COUNTY

BY: _____
AUTHORIZED REPRESENTATIVE

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.