STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 29, Complainant, vs. CITY OF SPOKANE, Respondent.	CASE 9648-U-92-2177 DECISION 4746 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster, Mrak and Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of the complainant.

James C. Sloane, City Attorney, by Pat Dalton, Assistant City Attorney, appeared on behalf of the respondent.

On February 21, 1992, International Association of Fire Fighters, Local 29 (complainant or union) filed a complaint charging unfair labor practices against the City of Spokane (respondent or employer). The complaint alleged that the respondent committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4) arising from collective bargaining negotiations recently concluded by the parties. A hearing was conducted on August 11, 1992, in Spokane, Washington. The parties submitted post-hearing briefs.

BACKGROUND

The City of Spokane has collective bargaining relationships with a number of employee organizations including International Association of Fire Fighters, Local 29. The union represents a bargaining unit of uniformed personnel holding the ranks of fire fighter, operator, lieutenant, and captain. At the time of hearing, the

Spokane Fire Department operated three 24 hour fire suppression platoons. The record indicates that 67 fire fighters are on duty at any given time.

In addition to fire suppression, responsibilities of the fire department included emergency medical services, fire prevention, dispatch, maintenance, training, research and development, and administrative divisions. At all times pertinent to this unfair labor practice complaint, Bobby Williams served as fire chief.

The fire suppression personnel are primarily responsible for the immediate delivery of emergency fire, emergency medical and rescue services. It is clear that the issue of staffing levels has been a constant source of concern to the parties. Throughout the 1980's, the number of suppression personnel steadily declined, and the parties frequently discussed staffing as it related to fire suppression activities. In order to appreciate the scope of the concerns raised by the parties, a bit of history is necessary.

In 1989, the employer approved a bond issue of approximately 15 million dollars to upgrade firefighting facilities. In conversations with union officials, the bond issue's impact on staffing levels was addressed. Chief Williams testified that he intended that "the same amount of people would be on duty". Believing that Williams was talking about retaining the same number of fire suppression personnel, the union supported the bond issue, and it was passed by the local electorate.

Shortly after the bond issue passed, Williams reassigned three fire fighters from suppression duties to a "bond project team". The team was to oversee the facilities improvements resulting from the bond issue. With the reassignment, shift strength dropped by one fire fighter on each shift. When union officials asked Williams about the reduction in the suppression work force, in light of his statements concerning staffing levels, Williams responded that he

never guaranteed that suppression staff would remain the same. Rather, Williams stated that the total number of fire fighting personnel on duty would not change.

In May, 1990, the parties again disagreed over staffing levels. The union learned that Williams intended to create two new civilian positions in the department. The union was concerned that the fire suppression staff would be cut to accommodate the new positions. Union president Dave West spoke to Williams about the situation. West testified that he came away from the meeting with the understanding that fire suppression staffing levels would not be adversely affected by the creation of the new positions.

In a letter to the union on May 25, 1990, Williams stated that the creation of the new civilian positions was not intended to impact fire suppression staffing levels. On the same day, Williams announced a new "delivery configuration" to be used for providing fire suppression services. Several fire engine and ladder companies were to be replaced with pumper/ ladder companies (also known as "quints"). In addition, paramedics would serve on the new companies, rather than independently as before. Williams also proposed keeping unstaffed equipment available at certain stations in the event additional fire fighting apparatus was needed. The new configuration would eliminate 25 promotion slots. A number of driver positions would also be eliminated. Williams recognized the employer's duty to bargain with the union about the safety effects of the proposed realignment.

While the employer argued that the new service delivery system would not result in a reduction of fire suppression positions, the union opposed the new configuration (hereinafter referred to as Configuration 1). The union found out that other jurisdictions used the "pumper/ladder" staffing model as a means to reduce fire suppression staff. Because of concerns about the potential loss of staffing levels, and the loss of promotable positions, the union

asked to bargain with the employer before Williams could submit Configuration 1 to the city council for approval.

On June 13, 1990, the union sent a letter to Williams informing him that it would not oppose the creation of the new positions. However, the union reiterated its concerns about staffing levels in the June 13 letter.

On July 11, 1990, Williams sent a memorandum to the city council, recommending the adoption of Configuration 1. At the time that Williams submitted the recommendation, the union and employer had not resolved their differences concerning the new service configuration, and the union sent a letter to the council on July 23, 1990, protesting the adoption of Configuration 1. The city council asked the fire administration and the union to resolve their differences before the council took final action on any new service configuration plan. Accordingly, the parties met to discuss the situation. Simultaneously, the parties commenced negotiations for a successor collective bargaining agreement.

After considerable effort, the parties reached agreement on a mutually acceptable staffing configuration (hereinafter referred to as Configuration 2). Implementation of Configuration 2 would reduce the number of battalion chiefs, captains, paramedic chiefs and medics, and the number of lieutenants and fire fighters would increase. In addition, paramedic certification pay would be increased under Configuration 2. Configuration 2 also called for a reduction in the number of "pumper/ladder" companies, and completely eliminated the proposed cross-training. Of note to these proceedings, implementation of Configuration 2 would not cause a reduction in the department's fire suppression personnel.

Negotiations for a successor collective bargaining agreement continued. As part of the negotiations, the parties agreed to implement a "four platoon" system in 1993. The four platoon system

effectively reduced the fire fighters' work week from 52 hours to 47 hours, and preserved some of the promotional slots that would have been lost under either reconfiguration plan. Discussions for such a platoon system were based on the premise that there would be a staffing level of 69 suppression personnel.

As the parties were near the end of negotiations, union officers prepared a document for distribution among union members. The document was intended to explain the contents of the proposed bargaining agreement, and to persuade the membership to accept the new contract. The document, entitled "The Proposed Contract", detailed the compensation increases to be expected over the three year length of the contract, explained the impact on promotions caused by implementing Configuration 2, and set forth the structure of the "fourth platoon" concept. In addition, the document contained a section titled "Bobby's Side of the Bargain", referring to Chief Bobby Williams and his interpretation of the new contract as it related to staffing. The union did not ask Williams about his position on the staffing level before the document was prepared. As it concerns the instant unfair labor practice complaint, the document stated:

> 1. [Chief Williams] will go no further than "Configuration 2" during the term of this contract;
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> 2. No one will lose rank or pay, and the cu rrent number of Lieutenant and FEO positions will stay the same.
>
> 3. [Chief Williams] and City Administration will oppose cutting suppression any lower than current levels.

On December 19, 1990, union negotiators showed Williams a copy of the document and asked him to review it. After reviewing it, Williams signed the section titled "Bobby's Side of the Deal". The chief testified that he signed the document after explaining that

he personally opposed cuts in the fire suppression staff, but that budget concerns were not under his control. Williams further testified that he would recommend the most effective cuts if required to do so by the city council or city manager as part of the budget process.

The union believed that the proposed agreement and new configuration called for a staffing level of 69 fire suppression personnel. Based on this belief, the union membership ratified the proposed collective bargaining agreement. The record indicates that union officials did not mention any specific discussions with Williams before he signed the document, nor were there any questions from the membership at the ratification meeting concerning "Bobby's Side of the Deal". The city council also ratified the agreement and accepted Configuration 2 as a service delivery plan.

Shortly after the new agreement was ratified, questions arose as to the impact that Configuration 2 would have on the current staffing levels. On February 4, 1991, Williams issued a memorandum explaining the department's view of the situation. In the memorandum, Williams specifically referred to a staffing level of "69 per shift (same level as today)".

The situation remained calm until mid-1991, when the fire department began preparations for its 1992 operating budget. City Manager Roger Crum informed department heads, including Chief Williams, that revenue projections were poor, and that across-the-board budget cuts of three percent should be prepared. Crum did not tell the department heads what specific programs or services to reduce or eliminate. Rather, the departments heads were given some latitude to make the necessary budget cuts in light of the three percent directive.

In a series of memoranda to Finance Director Peter Fortin, Williams set forth his ideas for reducing the fire department's budget. In

each memorandum, Williams proposed cutting fire suppression services first. Williams acknowledged that a reduction in the fire suppression workforce would adversely impact the recently-implemented Configuration 2. The budget cuts would result in vacant positions going unfilled, and a steep increase in overtime obligations.

The chief's recommendations were accepted, but the city's financial forecast did not improve. By December 1991, City Manager Crum directed Williams to cut an additional one percent from the department's budget. In response, Williams proposed elimination of one of the fire squads, a direct reduction of fire suppression service. The union objected to Williams' proposed removal of the fire squad, and proposed that several non-suppression positions could be eliminated instead. Williams did not agree with the union's suggestion, and submitted the proposed budget reduction with the elimination of one fire squad. City Manager Crum supported Williams' recommendation, and the city council adopted the new budget for the department on December 31, 1991.

The union filed the instant unfair labor practice complaint on February 21, 1992, alleging that the City of Spokane committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4) by repudiating a commitment to maintain certain staffing levels throughout the term of the agreement.

POSITIONS OF THE PARTIES

The complainant argues that the respondent did not bargain in good faith and interfered with bargaining unit members' collective bargaining rights when Fire Chief Bobby Williams and the Spokane city council repudiated Williams' promise to oppose cuts in the fire suppression workforce. It characterizes the document titled "Bobby's Side of the Deal" as a "side agreement" that was a

necessary part of the collective bargaining agreement because it expressed the respondent's understanding on the staffing issue, and contends that the collective bargaining agreement was ratified on the basis of Williams' representation that he would work to maintain a certain level of staffing in fire suppression. The complainant rejects the respondent's assertion that Williams did not have authority to bind the city council by making any commitments on the staffing issue because Williams had apparent authority to represent the employer, and because his commitments on the staffing issue did not run contrary to any city council budget directive. The complainant further argues that staffing is a mandatory subject of collective bargaining in this case. The complainant contends that staffing directly impacts workload and safety concerns, and that the respondent's actions adversely affected bargaining unit members in these respects. In the event that it is determined that staffing is not a mandatory subject of bargaining, the complainant maintains that a violation should still be found because the respondent repudiated basic collective bargaining principles by its change of position on the staffing issue. The complainant maintains that the respondent's offer to bargain the effects of the modifications in staffing levels does not excuse it of its bargaining obligation.[1]

The respondent contends that it did not commit any unfair labor practice by the events described in the instant matter. It argues that the complainant made a unilateral mistake of fact in its interpretation of Chief Williams' pledge to oppose cuts in suppression staff. The respondent maintains that Chief Williams is

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[1] As a remedy, the complainant ask the Examiner to order extraordinary relief. Apart from requesting that the respondent be ordered to cease and desist from its illegal activities and restore the status quo ante existing in staffing levels at the time that the repudiation took place, the complainant asks that the respondent be ordered to pay attorneys' fees for the complainant's presentation of its case.

opposed to such cuts, but had to make difficult budgetary decisions based upon the directions of the city council. In addition, the respondent argues that staffing is not a mandatory subject of collective bargaining. The respondent contends that the Spokane City Council had legitimate authority to direct the budget cuts, and that Chief Williams acted in good faith when he proposed the specific cuts discussed in the instant unfair labor practice. The respondent asks that the complaint charging unfair labor practices be dismissed.

DISCUSSION

This unfair labor practice complaint presents a number of issues for determination. It first must be determined whether the issue of staffing is a mandatory subject of collective bargaining. Next, the fire chief's representations on the staffing issue must be analyzed to determine whether the employer improperly induced the union into ratifying an agreement based on promises that the employer did not intend to keep. Finally, it must be determined whether the fire chief had authority to bind the employer by his statements concerning staffing levels.

Staffing Levels as a Mandatory Subject of Bargaining

It is elementary that parties to the collective bargaining process must bargain in good faith over the mandatory subjects of bargaining of wages, hours, and working conditions.[2] To determine whether a particular subject is mandatory, the Commission must apply a balancing test. As the Washington State Supreme Court stated in

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[2] In Local 1052, the Court remanded the case to the Commission for further proceedings. The Commission was directed to follow the balancing tests set forth above in determining whether the specific staffing issue was a mandatory subject of bargaining.

International Association of Fire Fighters, Local 1052 v. PERC, 113 Wn.2d 197 (1989):

> On one side of the balance is the relationship the subject bears to "wages, hours and working conditions". On the other side is the extent to which the subject lies "at the core of entrepreneurial control" or is a management prerogative.

In Local 1052, the Court explained that staffing levels have been litigated in a number of cases, and that the traditional view gave employers wide discretion in such matters. The Court reasoned:

> The law is clear that general staffing levels are fundamental prerogatives of management. Considering the negotiability of a union proposal setting minimum police shift staffing, for example, a PERC hearing examiner observed:
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> > Whether a community will have a large police force, a small one, or none at all, is a very basic managerial decision which ultimately must be determined by the voting public through it elected representatives.
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> Yakima v. Yakima Police Patrolman's Ass'n, Pub. Empl. Relations Comm'n Dec. 1130-PECB (1981) (examiner's opinion)... Massachusetts Labor Relations Commission employed similar reasoning in a case involving a fire department shift staffing proposal. In re Danvers, Labor Relations Comm'n Cases MUP-2292, MUP-2299 (Mass. 1977). Requiring bargaining over the proposal, the commission noted, would interfere with:
>
> > the flexibility of elected officials to determine the amount of fire services to be delivered within the Town ... Agreement on minimum manning per shift in essence would lock the Town into a certain level of firefighting service for the duration of the collective bargaining agreement. Accordingly, it repre-

> sents an intrusion into that type of governmental decision which should be reserved for the sole discretion of the elected representatives of all the citizens of the Town, rather than one which must be subjected to the bargaining process with the representatives of the employees hired to deliver the service.

Danvers, at 25.

To be considered as a mandatory subject of bargaining, the staffing issue must be connected to safety and workload issues:

> When staffing levels have a demonstratedly direct relationship to employee workload and safety, however, we believe that, under appropriate circumstances, requiring an employer to bargain over them will achieve the balance of public, employer and union interests that best furthers the purposes of the public employment collective bargaining laws.

Local 1052, at 201.

In effect, the Court directs that a second "balancing test" be used to determine whether the particular staffing issue falls within the employer's prerogative or whether it affects existing wages, hours or conditions of employment. The Court stated:

> Every case presents unique circumstances in which the relative strengths of the public employer's need for managerial control on the one hand and the employees' concern with working conditions on the other, will vary.

Local 1052, at 207.[3]

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[3] In Local 1052, the Court remanded the case to the Commission for further proceedings. The Commission was directed to follow the balancing tests set forth above in determining whether the specific staffing issue was a mandatory subject of bargaining.

In this case, the complainant raised concerns about the proposed fire suppression staffing level in several instances. The record indicates that these concerns were raised in the context of the employer's decision to allocate certain fire fighters to administrative duties (related to the bond election), the employer's decision to staff administrative positions at specific levels that the union did not agree with, and the employer's decision to make adjustments in the fire suppression staff by instituting the disputed "configurations".

Throughout the hearing and in its closing brief, the complainant portrayed itself as concerned about the ultimate safety of bargaining unit members who would be put at risk by the employer's staffing determinations. The record reflects that the complainant did not stress such safety concerns with the employer, and in fact raised its concerns because it did not believe that the employer was properly utilizing its fire fighting staff. This is not a distinction without a difference. The complainant cannot be allowed to challenge the employer's entrepreneurial decisions concerning staffing and then use those arguments to somehow support a contention that employee safety has been compromised by the employer's staffing decisions. If the complainant was concerned about safety, those concerns must have been communicated to the employer.

The complainant's reliance on Local 1052, supra, does not enhance its arguments here. Following the Court's direction to balance the competing interests involved in staffing issues, it is clear that the facts presented support the employer's position that it was allocating scarce resources, and that the complainant's actual concern dealt with the wisdom of the employer's decision.

The complainant's arguments concerning safety are compelling, but they are not supported by the record. The record simply does not show that the complainant consistently and regularly questioned the

employer's staffing decisions on the basis of safety. Without such evidence, the balance shifts in favor of the employer, and the complainant has not proven that the staffing issues raised in this complaint are mandatory subjects of collective bargaining.

Having determined that the subject of staffing is not a mandatory subject of bargaining does not end the inquiry into the unfair labor practice allegations. The respondent's bargaining conduct must also be analyzed.[4]

The Alleged Repudiation of "Bobby's Side of the Deal"

To prove its case, the complainant relies, in part, upon traditional principles of contract to argue that the respondent violated its duty to bargain in good faith. In essence, the complainant maintains that the respondent fraudulently induced the union to ratify the proposed collective bargaining agreement.

In support of this position, the complainant points to a number of decisions issued by the National Labor Relations Board (NLRB or the Board). Of particular interest to this case, the complainant quotes extensively from the NLRB's decision in C & S Industries, 158 NLRB 454 (1966). In that case, the NLRB determined that an employer had breached a recently ratified collective bargaining agreement and refused to bargain in good faith when it unilaterally instituted a wage incentive program. As noted in the complainant's closing brief, the employer in C & S Industries offered to bargain with the union after the incentive program was initiated, but the union refused because the issue was not even raised at the recently concluded negotiations for a complete collective bargaining

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[4] Since the complainant has not proven that staffing is a mandatory subject of bargaining in the context of the facts presented in this case, the complainant's arguments concerning an alleged "unilateral changes" in working conditions are not considered by the Examiner, and will not be addressed in the text of this decision.

agreement. The NLRB reasoned that the complaint did not turn on a question of contract interpretation susceptible to resolution through contractual grievance procedures. Rather, the Board reasoned that it had authority under Section 10(a) of the National Labor Relations Act to resolve the dispute as an unfair labor practice:

> Section 10(a) of the Act, which confers on the Board power to prevent unfair labor practices provides that "[t]his power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise..." The Board is not precluded from resolving an unfair labor practice issue calling for appropriate remedial relief under the Act, simply because as an incident thereto it may be necessary to construe the scope of a contract which an arbitrator may also be empowered to construe.

Smith Cabinet Manufacturing Company, 147 NLRB 1506 (1964).

A similar holding arose from the Board's decision in Oak Cliff-Golman Baking Co., 207 NLRB 1063 (1973). In that case, the Board found that the employer committed unfair labor practices within the meaning of Section 8(a)(5) when it reduced bargaining unit members' wages because of unanticipated financial difficulties. This reduction took place after a collective bargaining agreement had been executed by the employer and union. The Board's analysis clearly illustrates that it actively asserts "violation of contract" unfair labor practice jurisdiction:

> [I]t seems obvious that a clear repudiation of the contract's wage provision is not just a mere breach of the contract, but amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship. We believe the jurisdiction granted us under the Act clearly encompasses not only the authority but the obligation to protect the statutory process of collective bargaining against conduct so

> centrally disruptive to one of its principal functions -- the establishment and maintenance of a viable agreement on wages.

The NLRB's assertion of jurisdiction differs markedly from the Public Employment Relations Commission's view of jurisdiction over such disputes. In City of Seattle, Decision 3294-A (PECB, 1991), the Commission summarized its position on the matter:

> The Commission does not assert jurisdiction to determine or remedy "violation of contract" allegations through the unfair labor practice provisions of Chapter 41.56 RCW,[5] but it does have occasion and authority to consider, interpret, and even apply provisions of collective bargaining agreements in unfair labor practice cases:
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> (1) In the absence of viable grievance arbitration machinery, the Commission and its Examiners will make the necessary contract interpretation to determine the validity of "waiver by contract" defenses. City of Yakima, Decision 3564 (PECB, 1990).
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> (2) The Commission and its Examiners must also interpret and apply contract provisions in evaluating "breach of duty of fair representation" allegations involving union discrimination. City of Redmond (Redmond Employees Association), Decision 886 (PECB, 1980); Elma School District (Elma Teachers' Organization), Decision 1349 (EDUC, 1982).

The instant case does not fall within either category set forth by the Commission in the City of Seattle reasoning. The alleged "side agreement" signed by Chief Williams (Bobby's Side of the Deal) is neither an attempted waiver of bargaining rights nor does it deal with duty of fair representation. The complainant's contention

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[5] City of Walla Walla, Decision 104 (PECB, 1976). RCW 41.56.122 authorizes, and RCW 41.58.020 (4) endorses, use of final and binding arbitration to resolve disputes concerning interpretation or application of collective bargaining agreements.

that the Commission should assert jurisdiction to decide this issue as a contract interpretation matter is contrary to a long-established body of precedent. At best, the "side agreement" appears to be parol evidence that could be used in a contract interpretation dispute before an arbitrator, but it is not specifically enforceable through these unfair labor practice proceedings.

Having concluded that the "side agreement" is not specifically enforceable does not end the inquiry into this issue, however. The fire chief's representations were made in the context of just-concluded collective bargaining negotiations.

The Fire Chief's Representations as Part of the Collective Bargaining Process

As a starting point in this issue, the employer argues that the fire chief's representations cannot be binding on the city because the fire chief did not have authority to make such statements to the union. This argument is not persuasive. A supervisor's statements can bind the employer if it appears that he or she is speaking in an official capacity, and that the subject matter of the speech is within his or her field of expertise. See: King County Health District, Decision 1458 (PECB, 1982). If employees could reasonably perceive that the supervisor spoke on behalf of the employer, apparent authority has been established. See: City of Tacoma, Decision 1342 (PECB, 1982).

In Grant County, Decision 1638 (PECB, 1983), an unfair labor practice complaint was filed when the county sheriff personally promised several employees who were above the existing pay schedule that they would receive the same increase as other bargaining unit members. The county council was not aware of this promise, nor did it authorize the sheriff to make such a commitment. The unfair labor practice complaint was dismissed in an Examiner's decision. The Examiner reasoned that the union should have known that the

sheriff could not have made such a commitment without council approval, and that the sheriff could not bind the county with his oral promise.

This case is clearly distinguishable from the Grant County result. In this case, the fire chief made a personal promise to oppose cuts in fire suppression staffing. By making the representations about staffing levels, the fire chief undoubtedly had an effect on the ratification process. From the tenor of the representations, it could be implied that the fire chief would vigorously oppose any cuts in fire suppression staffing levels. The complainant presented credible evidence that the union ratified the proposed contract on the basis of Williams' representations about staffing levels. The fire chief's remarkable change of position is suspect in light of the recently ratified collective bargaining agreement. When Chief Williams made the representations, the contract had not yet been ratified. The evidence presented suggests that the chief did not fully disclose his real intent concerning proposed reductions in fire suppression staffing levels, and, at best, his commitment to "oppose cuts in suppression" were ambiguous. The record clearly shows that the fire chief's statements affected the ratification, and the employer must be held accountable for the ensuing change of position on the staffing issue.

As a remedy, the employer shall be ordered to cease and desist from its improper activity, and shall be ordered to post appropriate notices. In addition, the employer shall be ordered to pay attorneys' fees for the complainant's costs in presenting its case. It would be impractical and destructive to restore the status quo in existence at the time of the improper inducement. However, the employer must recognize that statements made in conjunction with the ratification of a collective bargaining agreement have effect on the bargaining process, and the employer must fulfill its duty of bargaining in good faith in that regard. The Examiner believes

that the imposition of attorneys' fees will help prevent this type of problem from arising in the future.

FINDINGS OF FACT

1. The City of Spokane is a "public employer" within the meaning of RCW 41.56.030(1), and has collective bargaining relationships with a number of employee organizations.

2. International Association of Fire Fighters, Local 29, a "bargaining representative" within the meaning of RCW 41.56 030(3), has a collective bargaining relationship with the City of Spokane for a bargaining unit of non-supervisory fire fighting personnel.

3. At all times pertinent to these proceedings, Bobby Williams served as fire chief for the City of Spokane.

4. The employer and the union have had an ongoing dispute concerning staffing levels in the department's fire suppression service.

5. In 1989, the employer approved a bond issue to upgrade fire fighting facilities. Chief Williams stated that the bond issue would keep "the same number of people" on duty. The union believed that Williams was talking about the fire suppression staff, and supported the bond issue.

6. Shortly after the bond issue passed, Williams reassigned three fire fighters from suppression to a "bond project team" in the department's administrative service. The union questioned this decision in light of Williams' earlier statements. Williams replied that he meant that there would be no reduc-

tion in the total number of fire fighters, not limiting himself to fire suppression only.

7. In 1990, Williams created two new civilian positions to work in the department's administrative division. Union officials who met with Williams believed that the new positions would not affect the fire suppression staffing level, and did not oppose the creation of these positions.

8. On May 25, 1990, Williams announced the creation of a new fire service delivery configuration. The practical effect of the new configuration was the elimination of 25 promotional vacancies. The union opposed the new configuration on the basis of the loss of promotional opportunities, and the removal of fire suppression positions.

9. Williams submitted the new staffing configuration to the Spokane City Council on July 11, 1990, before addressing the union's concerns. The union protested this action, and the city council directed the chief and the union to resolve the issue before final action was taken.

10. The parties reached agreement on a new staffing configuration (hereinafter "Configuration 2"), which reduced the number of certain supervisory positions, but would not reduce the number of fire suppression employees.

11. At the same time, the parties entered negotiations for a successor collective bargaining agreement.

12. As the parties neared completion of bargaining, union officials prepared a document to be used to explain the proposed contract to union members in the ratification process. Part of the document was titled "Bobby's Side of the Bargain", referring to Chief Williams' interpretation of the new

contract as it related to staffing levels. In pertinent part, the document stated:

> 1. [Chief Williams] will go no further than "Configuration 2" during the term of this contract;
>
> 2. No one will lose rank or pay, and the current number of Lieutenant and FEO positions will stay the same.
>
> 3. [Chief Williams] and City Administr ation will oppose cutting suppressi on any lower than current levels.

13. Union officials showed Williams a copy of the document, and he signed the section titled "Bobby's Side of the Bargain".

14. The successor collective bargaining agreement was ratified by the union and the employer. The union relied upon Williams' representations concerning staffing levels when it ratified the new agreement.

15. In mid-1991, Spokane City Manager Roger Crum directed all city departments, including the fire department, to prepare budget reductions of three percent. Each department was given latitude to decide how the cuts would be made.

16. Williams proposed that fire department budget cuts be accomplished by reducing fire suppression services first, even though this approach would require additional overtime obligations and would leave certain positions unfilled.

17. A further one percent budget cut was ordered, and Williams responded by further cutting the fire suppression service.

18. The union protested Williams' actions regarding the reduction of fire suppression staff, and on February 21, 1992, filed the

instant unfair labor practice complaint, alleging that the employer committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4).

CONCLUSIONS OF LAW

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

2. The Commission does not have jurisdiction to remedy contract violations as unfair labor practices, and in the context of this case, does not have jurisdiction to interpret terms of the collective bargaining agreement between the parties.

3. By events described in the above findings of fact, the issue of staffing was not a mandatory subject of bargaining, and the City of Spokane did not commit unfair labor practices by modifying the fire suppression staffing levels.

4. By events described in items 12 and 13 of the foregoing findings of fact, Chief Bobby Williams made statements in the context of his apparent authority as fire chief that are binding on the City of Spokane.

5. By events described in items 12, 13, 16 and 17 of the foregoing findings of fact, Williams committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (4) by making promises to induce the union to ratify a collective bargaining agreement and then repudiating those promises when actual budget cuts were required.

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that the City of Spokane, its

officers and agents shall immediately take the following steps to remedy their unfair labor practices:

1. Cease and desist from:

   a. Refusing to bargain in good faith by making personal promises to implement a collective bargaining agreement in a specific manner, and then changing the promises made.

   b. In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights under Chapter 41.56 RCW.

2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes of Chapter 41.56 RCW:

   a. Reimburse the complainant for its attorney fees and costs for the preparation and presentation of the instant unfair labor practice complaint.

   b. Post, in conspicuous places on the employer's premises where notices to employees are customarily posted, copies of the notice attached hereto. Such notice shall, after being duly signed by an authorized representative of the City of Spokane, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the union to ensure that said notices are not removed, altered, defaced, or covered by other material.

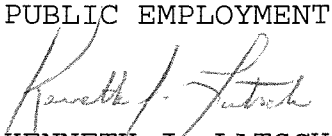
   c. Notify the complainant, in writing, within twenty (20) days following the date of the Order, as to what steps have been taken to comply herewith, and at the same time

provide the complainant with a signed copy of the notice required by this Order.

d. 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 this Order.

Issued at Olympia, Washington, the 23rd day of June, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner

This Order may be appealed by filing a Petition for Review with the Commission pursuant to 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 NOT refuse to bargain in good faith by making promises about the meaning of particular contractual proposals and then reneging on the promises made.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their collective bargaining rights.

WE WILL pay attorneys' fees to International Association of Fire Fighters, Local 29 for its costs in presenting this unfair labor practice case.

DATED _____

CITY OF SPOKANE

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, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.