STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 469,	)	CASE NO. 6073-U-85-1137
Complainant,	)	DECISION 2387-B - PECB
vs.	)	
CITY OF YAKIMA,	)	DECISION OF COMMISSION
Respondent.	)	

Durning, Webster & Lonnquist, by Judith A. Lonnquist, Attorney at Law, appeared on behalf of the complainant.

Syrdal, Danelo, Klein, Myre & Woods, by Otto G. Klein, III, Attorney at Law, appeared on behalf of the respondent.

On October 29, 1985, International Association of Fire Fighters, Local 469, filed a complaint alleging that the City of Yakima had committed unfair labor practices by unilaterally altering the criteria (as related to years of service in the bargaining unit) for selection of the fire chief. The Executive Director dismissed the complaint as failing to state a cause of action in a preliminary ruling dated January 30, 1986. City of Yakima, Decision 2387 (PECB, 1986).

The City of Yakima filed a "Memorandum in Opposition to Petition for Review" on February 28, 1986. The Commission found no record of a petition for review, however, and so informed the parties. The complainant subsequently moved for leave to file a petition for review. The Commission granted the Motion to File Petition for Review, after noting that the respondent stated a desire to proceed with the substantive issues. City of Yakima, Decision 2387-A (PECB, July 2, 1986).

BACKGROUND

The issue in dispute is whether the City of Yakima is required to bargain over a change in minimum bargaining unit service requirements for eligibility to apply for the position of fire chief. Specifically, on June 19 and July 17, 1985, the city reduced the minimum service requirements (applicable to battalion chiefs and captains) from four years to two years. It is not disputed that the city may evaluate applicants from outside the fire department as well as bargaining unit applicants for the position of fire chief.

The complainant maintains that the minimum service requirement is a condition of employment and an earned right, and, as such, must be bargained. It contends that a lowering of the service requirement will result in a loss of a long-established right of more senior bargaining unit personnel (i.e., those with service of four years or longer) to consideration. Complainant argues that, by keeping the minimum service at four years, the union is not dictating who shall be selected nor limiting selection to bargaining unit members.

DISCUSSION

The complainant's unfair labor practice charge was filed under the authority of RCW 41.56.140:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for 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.

The complainant cites City of Wenatchee, Decision 2216 (PECB, 1985) as support for its position that the subject of promotions is a mandatory subject of bargaining. This is an overly broad reading of Wenatchee. The main issue in that case was whether the fire chief committed an unfair labor practice by discussing alteration of promotional procedures directly with bargaining unit members, therefore bypassing the collective bargaining agent. The promotional procedures were indeed determined to be a mandatory subject of bargaining, but the procedures at issue in Wenatchee addressed only promotions to positions within the bargaining unit. This case is different in that the main issue is whether the city is required to bargain over requirements for promotion to fire chief, a position that is both outside of the bargaining unit and the highest management position in the department. In other words, the issue here really concerns the union's right to bargain about a position outside of the bargaining unit.

Given the nature of the position, as well as considerations of policy, the Commission is persuaded that the city was not required to bargain in this case. The executive head of a department, in this case the fire chief, has a special relationship to those managed in the department as well as to the elected and appointed officials of the employer outside of the department. The fire chief has overall responsibility for the efficient and effective operation of the department and has authority over literally every employee in the department. At the same time, the chief must answer to the city council and

the mayor in managing the department within broad guidelines established by those officials. The dual role as top manager and as political appointee helps to persuade the Commission that bargaining is not required on who shall or shall not be considered for the position of fire chief.

The Supreme Court held in Municipality of Metropolitan Seattle v. Department of Labor & Industries, 88 Wn.2d 925, 928 (1977):

> In its definition of supervisor, the National Labor Relations Act manifests a concern with the authority which a supervisor exercises over other employees and the possible conflict of interest with management. The Public Employee's Collective Bargaining Act differs in that the concern which it displays is not with the relationship between the employee and other employees, but with the relationship between employee and the head of the bargaining unit or other official described in the act. It was obviously the legislative judgment that the officials charged with the statutory duty of performing the public service in question should be able to control and to hire and fire at will those employees who are intimately associated with them in carrying those duties. Because of the confidential relationship, it was evidently the thought that the duties of the office could not be performed properly if the official's relations with these employees were restricted by the necessity of collective bargaining. The importance of the confidential relationship is obvious, for in its absence even the designated employees are not denied the right to engage in collective bargaining.

Likewise, the position of fire chief is intimately associated with carrying out statutory duties of the City of Yakima concerning its fire department. The hiring and firing of the

fire chief will not be subjected to the mandatory bargaining process.

Although bargaining is not mandatory, the city could agree to minimum service requirements in the labor agreement. The situation does not appear to exist in this case. If this were to occur, the requirements still would not be a mandatory subject of bargaining. See: WAC 391-45-550.

The Preliminary Ruling of the Executive Director is AFFIRMED.

ISSUED at Olympia, Washington, this 3rd day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Commissioner

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner