STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PASCO POLICE OFFICERS' ASSOCIATION, Complainant, vs. CITY OF PASCO, Respondent.	CASE 9043-U-91-2001 9044-U-91-2002 DECISIONS 4197 - PECB AND 4198 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Aitchison, Hoag, Vick and Tarantino, by Victor I. Smedstad, Attorney at Law, appeared on behalf of the complainant.

Greg Rubstello, City Attorney, appeared on behalf of the respondent.

On February 25, 1991, the Pasco Police Officers' Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Pasco had engaged in two counts of violations of RCW 41.56.140. The Executive Director divided the complaint into two separate cases,[1] and made inquiry as to the propriety of "deferral" of either case to arbitration under Commission policy. The employer indicated that it would assert procedural defenses, and a preliminary ruling issued thereafter under WAC 391-45-110 found the complaints to state a cause of action. J. Martin Smith of the Commission staff was assigned as Examiner, and hearing was held on both cases

[1] Case 9043-U-91-2001 was assigned to allegations concerning a unilateral change of practice concerning "pre-employment" agreements for reimbursement of training costs. Case 9044-U-91-2002 was assigned to allegations concerning unilateral changes involving a "review board" procedure for investigating police officers involved in auto accidents or firearms-discharge cases.

February 25, 1992, at Pasco, Washington. Both parties filed post-hearing briefs to complete the record in these proceedings.

BACKGROUND

Pasco, Washington, is the oldest of three municipalities which, along with Kennewick and Richland, comprise the "Tri-Cities". Situated north of the Columbia River, it is the county seat of Franklin County. The Pasco Police Department employs 55 law enforcement officers who are based at the city hall complex in the central business district. Don Francis has been the chief of police at Pasco since 1983.

Since 1976, the Pasco Police Officers' Association, an independent union, has been the exclusive bargaining representative of non-supervisory law enforcement officers of the City of Pasco. The bargaining unit employees are "uniformed personnel" within the meaning of RCW 41.56.030(7). During the period relevant to this case, the organization was represented by members of the law firm of Aitchison, Hoag, et al.

The employer and union were parties to collective bargaining agreements covering the years 1987-88, 1989-90 and 1991-1992.

The Training Reimbursement Dispute

Like other employers, the City of Pasco incurs certain expenses for state-required initial training of law enforcement officers at the outset of their employment. As of 1988, the employer estimated those costs to be $5,915.00.

Dan Reierson was a police officer at the Pasco Police Department from August of 1988 through September of 1990. On August 18, 1988, soon after his employment began with the City of Pasco, Officer

Reierson was presented with a document titled "Binding Contract for Reimbursement of Hiring and Training Expenses". That contract read, in pertinent part:

> WHEREAS, the applicant identified below acknowledges that the City of Pasco will incur substantial expenses in the process of training the undersigned to be a commissioned police officer, and
>
> WHEREAS, it is acknowledged by the undersigned that these expenditures are expected to be recaptured through services by the applicant with the City police force after completion of said training and that the City will suffer substantial detriment if the undersigned should take employment elsewhere during a period of time for **two years following completion of all required training.**
>
> NOW, THEREFORE, it is hereby agreed as follows:
>
> ...
>
> 1. Reimbursement Obligation. I, Dan Reierson, hereafter the "Applicant," in consideration of the agreement by the City of Pasco Police Department ... to provide me with formal police training through the Basic Police Academy, do hereby agree that in the event my employment with the Department ceases due to any cause other than "termination" as defined below, within 24 months from commencement of full-time service as a police officer **subsequent to completion of the period of academy training**, I will reimburse the City for all expenses incurred in connection with my hiring and training. ...

Other provisions of the contract indicated that the reimbursement would be calculated on a pro-rata basis,[2] so that an officer working 12 months for the employer would only owe half of the $5,915 training costs, or $2,958. An officer leaving the department within 24 months had an additional 24 months in which to make the reimbursement payment.

---

[2] One-twelfth of the total reimbursement obligation was to be forgiven for each nine weeks of continuous full-time employment subsequent to completion of the training.

Reierson signed the "Binding Contract for Reimbursement of Hiring and Training Expenses", and he completed the basic law enforcement training course referred to in that document. Reierson testified that he did not agree with the contract when he signed it, but that he did not object beyond the department level owing to a reluctance to "make waves" while he was a probationary employee.

The record indicates that Reierson's graduation from the basic police academy occurred on December 23, 1988. Slightly over 21 months later, on October 2, 1990, Officer Reierson submitted a letter of resignation to the employer, as follows:

> This is my letter of resignation from the Pasco Police Department. I will resign at the end of my shift on October 19, 1990. I would like to thank this department for the experience and training that I have received.

The employer responded by giving Reierson a "Letter of Voluntary Resignation" form to fill out. Reierson signed the employer's form on October 3, 1990, indicating that his reason for leaving was to take "a police officer position with the East Wenatchee Police Department".

The employer next prepared a worksheet titled "Hiring and Training Reimbursement Agreement for Danny Reierson", which calculated the costs of hiring and training at $6,191.25. Reierson was credited under the pro-rata provisions, with 88.25% of the total work days available from the completion of his last academy training through the effective date of his resignation, which amounted to $5,463.78. The city thereby determined that Reierson owed $727.47 as reimbursement under the "Binding Contract" quoted above.

Reierson received a copy of the worksheet, but indicated to the employer that he objected to it. Reierson stated that the "contract" was invalid, and unenforceable as against him. In

particular, Reierson objected that he was not informed of the reimbursement policy at the time he was hired.

After a discussion between Reierson and City Manager Gary Crutchfield, Reierson's obligation was halved to $363.74. Crutchfield noted that Reierson had offered no protest when he signed the "Binding Contract" two weeks after commencing his employment with City of Pasco. Nevertheless, the employer prepared and presented to Reierson another worksheet, reducing Reierson's reimbursement liability to $363.74.[3]

On October 22, 1990, Reierson signed a copy of the second of the "worksheet" documents, agreeing to re-pay $363.74. In a cover letter of the same date, Reierson indicated, "I have decided to accept your offer to 'share the burden' and reduce my hiring and training reimbursement obligation by 50 percent." Reierson agreed to pay $15.15 a month for a period of 24 months thereafter.

The union's unfair labor practice complaint was filed on February 25, 1991.

Accident Report Dispute

The Pasco Police Department has promulgated a set of "Departmental Instructions" (D.I.'s) which set forth department rules, policies and procedures. Each policy is numbered, and is dated to show the time it was entered into the book or amended in some way. Topics include the operation of police vehicles, use of vehicle seat belts, the chief's suggestion box, compensatory time, employee parking, roll call briefing, retention of tape recordings,

---

[3] A copy of this worksheet which was filed as an attachment to the complaint contains a handwritten note by Reierson at the bottom, as follows: "I don't feel at this time that the contract is valid. I will wait until the Police Association attorney has a chance to talk with the Pasco City Attorney."

guidelines for identifying "gang" activities, etc. Of particular interest in this case, D.I. 1.9, is entitled "administration of police equipment accidents and safe driver program". The current language of D.I. 1.9 was written in May of 1986:

> I. PURPOSE
> This program is designed to enable the Review Board to better evaluate accidents involving the operation of police vehicles.
>
> II. CLASSIFICATION OF ACCIDENTS
>
> A. The major points of this section of the program are:
> 1. Classification of accidents to determine point values for damage injury, and fault.
> 2. Total point values will determine the classification. ...
>
> B. Classification of Accidents:
>
> Accidents will be assigned a final numerical rating to determine their severity. This will be accomplished by adding point values of the following accident factors:

The D.I. went on to set forth a point-value "schedule" for various kinds of vehicular accidents, with greater point values assigned if the officer was at fault, if there were injuries, or if there was extensive damage as a result of the accident. These statistics went to a review board, which made a recommendation to the chief of police, who then took any discipline action he deemed necessary. If the officer was not "at fault" in the accident, no points were recorded or held against the officer for purposes of discipline. If an officer received 3 or 4 points, he could expect a formal reprimand. If five to eight points were received, the officer could receive a suspension of one to four days. If nine or more points were received, discipline was at the "chief's option".

Tom Walker has been a police officer with the Pasco Police Department since August, 1988. Soon after the commencement of his employment with the department, he was issued a thick, blue ring binder containing the "D.I.'s. In a document dated August 3, 1990, Walker received a 1-point (no action taken) caution by the review board, for a "preventable" accident which resulted in $150 damage to a city fire hydrant.

James Raebel has been a police officer with the Pasco Police Department since at least 1985.[4] On July 29, 1990, Raebel was involved in a vehicular accident in which a fence was destroyed by Raebel's patrol car. The incident was the subject of a review board hearing. Although it acknowledged no persons were endangered, and that no violation of department policy had occurred, the review board recommended a three-point letter of **reprimand** for a "preventable" accident. The board also assigned Raebel to "emergency vehicle operations training" (EVOC). Notwithstanding the recommendation of the review board, Chief Francis **suspended** Raebel for three days, and directed that he be given a traffic citation for negligent driving.[5]

Raebel appealed the disciplinary suspension to the employer's civil service commission. In reducing the disciplinary suspension from three days to two, the civil service commission cited D.I. 1.9 as its basis for finding that a two-day suspension was appropriate. A dissenting member of the civil service commission would have only allowed a formal letter of reprimand to be placed in Raebel's personnel file. Hence, no member of the civil service commission approved a more severe penalty for Raebel's infraction.

---

[4] There is no claim or evidence that Raebel was unaware of the D.I.'s, or of D.I. 1.9 in particular.

[5] The record does not disclose what became of the traffic citation.

On or about September 19, 1990, Chief Francis rescinded D.I. 1.9, together with the D.I. provisions which created the review board. Francis testified in this proceeding that the point system contained some problems (e.g., that in 90 percent of the cases the accidents were very minor, there was little damage, and the point value resulted in no discipline of the officer, even if there was clear evidence of "fault" or negligent driving conduct). Francis further testified:

> I felt that despite the fact that the accidents were minor in nature, that if the officer was at fault, that he needed to be held responsible and accountable for his driving that caused the damage to City property. ... Therefore, I felt that [it was] within my prerogative to not go by the recommendation or by the point total, and, in most cases, take some kind of disciplinary action.

Francis also noted that the employer had recently implemented a "loss control committee" to study accidents involving police officers, and had also recently implemented a safety committee. He expressed the view that the continuation of a third committee (i.e., the board of review) was "redundant". Francis did not recall negotiating any change in those departmental instructions with the exclusive bargaining representative.[6]

On October 21, 1990, the union, through its attorney, Karl Nagel, demanded to bargain concerning the abolition of the point system that had been contained in D.I. 1.9. The employer declined to bargain that issue. The union's unfair labor practice complaint followed, on February 25, 1991.

---

[6] Francis testified that the departmental instructions are revised regularly, and were completely revised in 1991. He also acknowledged that rules regarding absenteeism, neglect of duty and tardiness were addressed in the "D.I.'s", and that violations of those rules could result in disciplinary action.

POSITIONS OF THE PARTIES

The union contends that the employer had a bargaining obligation in both of the circumstances presented here. Specifically, the union urges that city officials had an obligation to notify the union of the contemplated changes, and then to negotiate with the union prior to making any changes in the training reimbursement and accident investigation rules. Viewing the employer's actions as unilateral, and without notice, the union urges a finding that the employer violated RCW 41.56.140.

The employer argues that the requirement for early-departing employees to pay back training costs is of long duration, predating the current agreement, that no request was ever made by the union to negotiate this policy, and that no change of practice has been made with regard to the training reimbursement policy. With respect to the accident report policy, the employer argues that the union waived its right to grieve disciplinary matters reviewable by the civil service commission, and waived the right to negotiate matters of discipline under the collective bargaining agreement. The employer argues that there is a "past practice" of the police chief altering the D.I.'s without negotiating with the union, and hence his abolition of the "Board of Review" procedure was not in violation of RCW 41.56.140 or the bargaining obligation.

DISCUSSION

The Commission has often cited NLRB v Katz, 369 U.S. 736 (1962), for the proposition that an employer commits an unfair labor practice if it effects a "unilateral" change of an existing term or condition of employment of its represented employees, without having exhausted its obligations under the collective bargaining

statute. See, also, Litton Financial Printing v NLRB, ___U.S.___, 137 LRRM 2441 (1991).[7]

The most difficult time for employers to change working conditions of its employees is the period where there has been no bargaining and no contract, but an organization has filed a petition seeking status as exclusive bargaining representative of the employees. Once a petition is filed, the employer comes under an obligation to maintain the status quo, and any change of practice that arguably is more onerous to employees could be seen as a threat or coercion, in violation of RCW 41.56.140(1). Even changes arguably favorable to the employees can be seen as unlawful enticements which interfere with employee rights under RCW 41.56.140(1). Accordingly, many employers do nothing during such a time.

After an exclusive bargaining representative has been recognized or certified, negotiations commence toward the conventional goal of a written and signed collective bargaining agreement which will regulate affairs between the parties for a period of up to three years. The possibility of an "impasse" in contract negotiations always exists, and the conventional result in the private sector is a strike or lockout. Chapter 41.56 RCW does not confer a right to strike on public employees.[8] The employees involved in these cases are "uniformed personnel" within the meaning of RCW 41.56.030(7), which places them under the additional strike prohibition found in

---

[7] "Unilateral change" is a cautious description, which has gathered analytical moss over the decades. The phrase tends to conjure up an image of a small coterie of white-collar executives, with ties askew, plotting their next tactical move in an effort to aggravate, humiliate or annihilate the union position and its adherents. See, General Electric, 150 NLRB 152 (1964). More often than not, however, supervisors on or near the "shop-floor" cause the changes with an end toward efficiency and/or cost-saving, but not malicious intent to demean the employees' working conditions.

[8] RCW 41.56.120.

RCW 41.56.490. The statute makes special provision, however, for resolution of "uniformed personnel" impasses in RCW 41.56.430, et seq., by "interest arbitration".[9]

Situations may arise where an employer finds it necessary or convenient to make changes during the term of a collective bargaining agreement. If those changes affect terms or conditions of employment of represented employees, the employer will need to fulfill its bargaining obligations under Chapter 41.56 RCW. The conventional procedure is for the employer to give the union notice of the contemplated change. If bargaining is then requested by the union, the employer must bargain in good faith with the union about that change. The recent cases involving unilateral action during a contract term include: Evergreen School District, Decision 3954 (EDUC, 1991); Clark County Fire District 6, Decision 3428 (PECB,

---

[9] The situation of "uniformed personnel" is thus distinguished from that of other public employees, who are covered by RCW 41.56.123. That section provides:

> After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law. ...

While the employer is severely limited for 12 months in changes it can make from what had existed in an expired contract, the doctrine of "impasse" leaves such parties walking on a minefield. Impasse suspends, but does not terminate, the duty to bargain. Atlas Tack Company, 226 NLRB 222 (1976). Even after a legitimate impasse has occurred under the doctrines of Katz and Taft Broadcasting, 163 NLRB 475 (1967), **enf'd sub nom.** AFTRA v. NLRB, 397 F.2d 611 (D.C. Circuit, 1968), any "unilateral changes" made by the employer must be consistent with offers previously made to the union. Seattle School District, Decision 2079-C (PECB, 1986). Unlike the "interest arbitration" procedure, RCW 41.56.123 does not deal directly with the negotiation of a successor contract.

1990); Mukilteo School District, Decision 3795-A (PECB, 1992); Mason County, Decision 3706-A (PECB, 1991); Spokane County Fire District 9, Decision 3661-A (PECB, 1991); Wenatchee School District, Decision 3240-A (PECB, 1990); City of Yakima, Decision 3564-A (PECB, 1991); Kennewick School District, Decision 3330 (PECB, 1989); City of Clarkston, Decision 3286 (PECB, 1989); and City of Olympia, Decision 3194 (PECB, 1989).

Apart from procedural defenses, the employer may have any of several defenses at its disposal where unfair labor practice charges filed by a union allege a "unilateral change", as follows:

(1) Absence of Change (i.e., that the disputed action does not constitute any change of practice);[10]

(2) Absence of Bargainable Subject (i.e., that the disputed **decision** is not a mandatory subject of collective bargaining, even though effects of that decision may be bargainable).[11]

(3) Violation of Contract (i.e., that the dispute involves only a claimed violation of a collective bargaining agreement already in existence between the parties).[12]

---

[10] See discussion of vacation and sick leave exchange in City of Yakima, supra.

[11] See discussion of school program decision (kindergarten hours) in Wenatchee School District, supra, and discussion of employer's decision on level of emergency medical services to be provided in King County Fire District 16, Decision 3714 (PECB, 1991).

[12] The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Where the employer's conduct is **arguably protected or prohibited** by a contract containing provision for final and binding arbitration of grievances, and the employer does not assert procedural defenses to arbitration, the dispute will likely be "deferred" to arbitration under policies restated in City of Yakima, supra.

(4) Waiver by Contract (i.e., that the employer cites some explicit contract provisions which allow it to take the disputed actions);[13]

(5) Waiver by Conduct (i.e., that the union fails to request bargaining, or fails to advance meaningful proposals in bargaining, after being given notice by the employer of the contemplated change).[14]

(6) Emergency (i.e., that the employer was faced with a situation of such import that bargaining was not required).[15]

Both of the changes at issue in this case occurred at a time when there was a collective bargaining agreement in effect between the employer and union.

The Six-Month Statute of Limitations

The employer has moved for dismissal of the claim with respect to the training reimbursement policy, on the grounds that the complaint was filed after the six-month period of limitations set forth in the statute. RCW 41.56.160 provides:

> ... [A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the Commission.

The employer contends that the statute of limitations period should be computed as beginning with the date Officer Reierson signed the reimbursement contract (i.e., to cover the six-month period

---

[13] See the discussion of a well-crafted management rights clause in City of Kennewick, Decision 482-A (PECB, 1980).

[14] See the discussions of waivers by inaction in City of Yakima, Decision 1124-A (PECB, 1981) and Newport School District, Decision 2153 (PECB, 1985).

[15] See discussion of emergency school closure in face of work stoppage in Mukilteo School District, supra.

beginning on August 15, 1988 and ending on February 15, 1989), and that the unfair labor practice complaint filed on February 22, 1991 should not be processed. The union opposes dismissal, and would place the focus of attention on the date when the reimbursement contract was enforced against Officer Reierson (i.e., October 22, 1990, only four months prior to the filing of the complaint).

In a number of decisions, the Commission has ruled that the Executive Director should review the actual events which occurred before determining the point at which an unfair labor practice could have been said to exist, (e.g., the date on which an employer made a unilateral change of a contract term, discharged an employee for cause, etc.) See, City of Dayton, Decision 2111 (PECB, 1985) and Morton General Hospital, Decision 2217 (PECB, 1985). Here, it is arguable that a "circumvention" complaint might have been filed within the six months after the employer dealt directly with employee in signing the reimbursement contract,[16] but that is not the exclusive theory being advanced by the union in this proceeding. The union also alleged a "unilateral" action by the employer in enforcing the reimbursement agreement, for which the operative event was the employer's message to Officer Reierson that it was going to enforce the reimbursement policy. The unfair labor practice complaint filed on February 22, 1991 was well within the six-month limitation as to that event. The employer's motion to dismiss is denied.

The Training Reimbursement Policy

Police and fire departments have a unique problem: Under current laws relating to the police and fire services, a considerable amount of money is spent on training during an employee's first year of employment. Employers can hope to amortize those costs

---

[16] Officer Reierson was already an active employee in the bargaining unit when the employer got around to asking him to sign the reimbursement contract.

over several years of productive employment, but if the employee leaves prematurely, a significant investment is lost to the municipality.[17] The idea of having a "reimbursement agreement" of the type at issue in this case is not uncommon in police and fire departments this state.

Existence of a Change -

The issue in this case is whether there has been any change of employee terms or conditions of employment within the period for which this complaint is timely. The issue is whether the policy existed, not whether an officer had been made to re-pay under its terms.[18] The union's complaint admits, as a matter of fact, that a training reimbursement policy was in existence when the parties signed their current collective bargaining agreement. Letters attached to the complaint made reference to an understanding that the reimbursement policy would apply to police officers.[19]

---

[17] This is distinguished from the situation of a civil engineer, certified public accountant, or city attorney, who must be fully qualified and licensed before commencing work in their job.

[18] As noted above, the potential "circumvention" issue that lurks in these facts is not before the Examiner in this case. The letters attached to the complaint made reference to employees signing the reimbursement agreement prior to beginning their work at Pasco, and reference was made to conversations during contract negotiations, but no union official or attorney testified as to the 1990 negotiations, or as to this issue.

[19] The union might also have pursued a grievance claiming a misinterpretation of the parties' contract. Article XVI, Police Academy Attendance, sets out the overtime obligations for payment to officers who attend the academy or "other training facilities", as well as pay for travel to such training. The City agrees in this article to reimburse officers for clothing and equipment up to $100.00. Had the reimbursement for training expenses been negotiated, this would have been the logical place for such an amendment. A deferral to arbitration under City of Yakima, supra, or a dismissal under City of Walla Walla, supra, would have been indicated here.

Taking the record as a whole, the Examiner concludes that the policy enforced against Officer Reierson in 1990 had existed at the time of his hire, and that it existed continually during his employment with the City of Pasco. The employer's enforcement of the executory contract incorporating that policy was not a "unilateral change" giving rise to a duty to bargain.[20] There is no need to go beyond the first of the potential defenses outlined above; the complaint in Case 9043-U-91-2001 must be dismissed.

The Board of Review--Accident Report Policy

Existence of a Change -

As with policies concerning the use of firearms or dealing with the public, the chief of police uses the "D.I." book to set forth performance standards regarding police officers' use of vehicles and reporting of accidents. Exhibits 11 and 12 in this record establish that the D.I. book contained the "board of review" procedure since at least May 7, 1986, and certainly prior to the actions at issue in this unfair labor practice case. It is clear that the employer abolished the board of review process by a change of its department instructions made in September of 1990.

---

[20] Counsel for the union stated at the hearing, "This is not a case where we are attacking the contract itself, but rather the enforcement, which is a new policy ..." [Transcript at page 21.] "A promise may be conditional, that is, its performance becomes due only if a specified event occurs. This does not mean that the promise is not binding before the event occurs. It only means that the event must occur before there can be a claim for breach of the promise." See, generally: Carlill v Carbolic Smoke Ball Co. 1 Q.B. 256 (1893). "Condition" refers to an event, assumed to be **in some measure not certain to occur**, by reference to which the undertaking of a contracting party is limited or qualified. Farnsworth, Cases and Materials on Contracts, (Foundation Press, 1972) Second Edition p. 633.

Mandatory Subject of Bargaining -
The board of review was an intermediary step, created by the management, to interpose itself between the police chief and the employees with respect to certain matters. The very nature of those matters (i.e., traffic accidents and firearms usage) is such that discipline was a distinct possibility for an employee found to have engaged in any misconduct. Discipline is clearly a term or condition of employment that is of substantial interest to the employees. Since 1986, the police officers at Pasco have been able to rely upon this independent review process in these sensitive areas, so as to make the existence of that process a part of the employees' conditions of employment.

Violation of Contract -
The parties' collective bargaining agreement has no provision regarding police officers' use of vehicles, reporting of accidents, "re-training", or the board of review process. The union has not claimed, and does not ask the Commission to remedy, any violation of the parties' collective bargaining agreement.

Waiver by Contract -
The management rights clause of the parties' contract, at Article III(2)(b), reserves to the employer a right to discipline employees. The grievance procedure of the contract, at the preamble to Article V, implies that the employer's decisions concerning discipline of police officers are reviewable before a civil service commission created pursuant to Chapter 41.12 RCW.[21] No local civil

---

[21] That statute gives local civil service commissions authority to consider appeals from disciplinary actions taken against city police officers. The Commission and courts have ruled that matters delegated to civil service commissions created by Chapter 41.12 RCW are **not** removed from the scope of collective bargaining by RCW 41.56.100. City of Yakima, Decision 3503-A, 3504-A (PECB, 1990), affirmed, 117 Wn.2d 655 (1991). Discipline of police officers was one of the matters at issue in the Yakima case.

service rules were introduced in evidence at the hearing in this matter, but the employer does not dispute the findings of the civil service commission with respect to officers Raebel and Walker.

The union does acknowledge, at Article III of the contract, that the chief has a right to establish and operate the department through reasonable rules, to accomplish the "proper functioning" of the department. Hence, the union cannot demand to bargain new D.I. rules or the alteration of existing rules. Even where a decision does not give rise to a mandatory duty to bargain, however, the employer will be obligated to bargain under Chapter 41.56 RCW with respect to the **effects** of such work-rule changes.

Waiver by Conduct -

The union has not requested bargaining in the past on changes of the departmental instructions book, although it appears that the union has sought solutions at the bargaining table during contract negotiations for some impacts on working conditions or conditions of employment. The employer incorrectly characterizes the chief's past changes of the D.I. book as a "past practice",[22] and it wrongly assumes that a waiver on one or more occasions will be a basis for inferring a waiver on a subsequent occasion. See, City of Wenatchee, Decision 2194 (PECB, 1985).

Chief Francis sent out memorandum 90.09.12 on September 19, 1990, announcing the change of the D.I. book that is at issue here. The parties were just beginning to bargain a contract for 1991-92, and the union made its request to bargain the change on October 10,

---

[22] In the labor-management context, a past practice is a course of dealing acknowledged by the parties **over an extended period of time**, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. Here, there was no expressed or implied agreement that the chief was free to change the D.I. book in a manner which altered employee working conditions.

1990. The union thus moved quickly to seek bargaining on the effects of the abolition of the board of review. The union had a right to demand bargaining, because the change affected discipline -- a mandatory subject of bargaining. No waiver is shown here. The Examiner notes that the witness remembered different methods used to communicate D.I. changes to the force in the past, including the issuance of written memos from the chief's office in more significant cases. It stands to reason that less important revisions of the D.I. book, and particularly those accomplished without fanfare or memorandum, would not touch on mandatory topics of collective bargaining.

Emergency -
Nothing in the evidence indicates that any outside influence or condition compelled quick action on the part of the employer. The change appears to have occurred as the result of the chief's own initiative.

Conclusions -
It is concluded that the City of Pasco committed an unfair labor practice when it failed to bargain the effects of its abolition of the board of review, upon the timely request of the union made in October of 1990. The employer will be ordered to bargain the effects of the changes it has made.[23]

FINDINGS OF FACT

1. The City of Pasco is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).

---

[23] Because Officer Raebel's discipline was reversed in part by the civil service commission, no change will be made in the board of review decision in his case.

2. The Pasco Police Officers' Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of commissioned law enforcement officers employed by the City of Pasco.

3. Prior to August 15, 1988, and at all times continuing through October of 1990, the City of Pasco had a policy in effect under which a police officer who voluntarily left employment within 24 months after completing certain training was required to reimburse the employer for a pro-rata portion of the employer's costs for hiring and training of that employee. Although raised as a topic during bargaining for a 1990-91 contract, the union did not make proposals to change the reimbursement policy, and no change was made in the policy as a result of those contract negotiations.

4. Dan Reierson signed an agreement on August 15, 1988, acknowledging his potential liability under the employer's policy concerning reimbursement of hiring and training costs. Reierson resigned his employment with the City of Pasco in October of 1990, less than 24 months after completing his training. The reason given for that resignation was to accept employment with another law enforcement agency.

5. In October of 1990, the City of Pasco demanded reimbursement from Dan Reierson for a pro-rata portion of the employer's hiring and training costs from its employee. Such demand was consistent with the policy continuously in effect before and during Reierson's employment.

6. Since at least 1986, and at all times continuing through September 19, 1990, the City of Pasco had a policy in effect under which an ad hoc "board of review" was established under the employer "department instructions" book, to review the

circumstances of automobile accidents or property damage that involved police officers and vehicles. The parties' collective bargaining agreement reserves to the employer a right to manage the department by adoption of reasonable work rules.

7. Officer Raebel was involved in a board of review inquiry into a vehicular accident which occurred in July of 1990. The board of review recommended a reprimand. The chief of police overturned the reprimand and imposed a three-day suspension on the officer. Upon appeal to the employer's civil service commission, that body reduced the penalty imposed by the chief of police.

8. By memo dated September 19, 1990, Chief Francis abolished the board of review procedure, and abolished the department instructions known as D.I. 1.9 and D.I. 1.18.

9. On October 21, 1990, the union demanded to bargain both the decision to abolish, and the effects of abolishing, the board of review procedure and department instructions known as D.I. 1.9 and D.I. 1.18. The employer declined to negotiate any matters concerning those changes.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The "unilateral change" allegations with respect to officer training reimbursement in Case 9043-U-91-2001 were filed within six months of the operative event which gave rise to the complaint, and hence are properly before the Commission under RCW 41.56.160.

3. The training reimbursement policy enforced upon Dan Reierson in October of 1990 was a pre-existing practice, and was not a change giving rise to a duty to bargain under Chapter 41.56 RCW, so that the employer has not committed, and is not committing, any unfair labor practice under RCW 41.56.140 by enforcing that policy.

4. The City of Pasco had an obligation under Chapter 41.56 RCW to bargain collectively, on request, with the Pasco Police Officers' Association regarding the effects of the employer's elimination of the review board procedure, and alteration of the departmental instructions known as D.I. 1.9 and D.I. 1.18, insofar as those changes impacted employee discipline, and committed an unfair labor practice under RCW 41.56.140(4) by failing and refusing to bargain those matters.

ORDER

1. Decision 4197 (PECB, 1992). The unfair labor practice complaint filed in Case 9043-U-91-2001, regarding the reimbursement agreement and Officer Reierson, is DISMISSED.

2. Decision 4198 (PECB, 1992). To remedy its unfair labor practices in Case 9044-U-91-2002, the City of Pasco, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

   CEASE AND DESIST from:

   a. Failing and refusing to bargain collectively, in good faith, with the Pasco Police Officers' Association, concerning the effects of discontinuing the "board of review" procedures formerly set forth in paragraphs 1.9

and 1.18 of the "Departmental Instructions" of the Pasco Police Department.

b. In any other manner, interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

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

a. Bargain collectively with the Pasco Police Officers' Association, upon request, concerning mandatory subjects of collective bargaining under Chapter 41.56 RCW.

b. 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". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

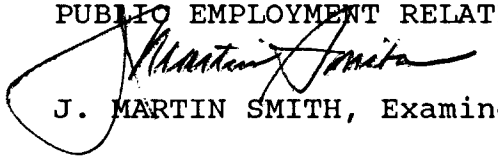
c. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days follow-

ing the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Entered at Olympia, Washington on the 23rd day of October, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, 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

APPENDIX

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, UPON REQUEST, bargain collectively with the Pasco Police Officers' Association concerning the effects of discontinuing the "board of review" procedures formerly set forth in paragraphs 1.9 and 1.18 of the "Departmental Instructions" of the Pasco Police Department.

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

DATED: _____

CITY OF PASCO

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.