STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 27, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 10901-U-94-2536 DECISION 4687 - PECB ORDER DENYING MOTION FOR SUMMARY JUDGEMENT
CITY OF SEATTLE, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 27, Respondent.	CASE 10913-U-94-2538 DECISION 4688 - PECB ORDER DENYING MOTION FOR SUMMARY JUDGEMENT

Mark A. Sidran, City Attorney, by Mary Kay Doherty, Assistant City Attorney, appeared on behalf of the employer.

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

On January 21, 1994, International Association of Fire Fighters, Local 27, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had refused to bargain in violation of RCW 41.56.140(4) and (1), by refusing to bargain a union proposal concerning supplemental pension benefits for employees represented by the union.[1]

[1] Case 10901-U-94-2536.

On January 24, 1994, the City of Seattle filed a complaint charging unfair labor practices with the Commission, alleging that Local 27 had breached its duty to bargain in good faith, in violation of RCW 41.56.150(4) and (1), by bargaining to impasse on supplemental pension benefits proposals which are in violation of the city charter and pre-empted by state and/or federal law, and by failing to furnish a sufficiently detailed proposal supported by authority establishing the legality of its proposed supplemental retirement benefits.[2]

BACKGROUND

Local 27 represents a bargaining unit of approximately 900 persons employed in the ranks of fire fighter, lieutenant, and captain in the Seattle Fire Department. Those employees are covered by the Law Enforcement Officers and Fire Fighters (LEOFF) retirement system created by Chapter 41.26 RCW,[3] and are thus also "uniformed personnel" eligible for interest arbitration under RCW 41.56.030(7) and 41.56.440 et seq.

This controversy arises out of negotiations between the parties on a "reopener" within a collective bargaining agreement they signed on April 8, 1992. That agreement includes the following provisions pertinent to this dispute:

> ARTICLE 23 - PENSIONS
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> 23.1 Pensions for employees and contributions to pension funds will be governed by the Washington State Statute in existence at the time.

2 Case 10913-U-94-2538.

3 The LEOFF system has two plans: LEOFF II applies to persons who first became members of the system on and after October 1, 1977. RCW 41.26.030(29).

ARTICLE 24 - SUBORDINATION OF AGREEMENT

24.1 It is understood that the parties hereto and the employees of the City are governed by the provisions of applicable Federal Law, State Law, and the City Charter. When any provisions thereof are in conflict with the provisions of this Agreement, the provisions of said Federal Law, State Law or City Charter are paramount and shall prevail.

24.2 It is also understood that the parties hereto and the employees of the City are governed by applicable City Ordinances and said Ordinances are paramount except where they conflict with the express provisions of this Agreement.

* * *

ARTICLE 29 - DURATION OF AGREEMENT

29.1 This Agreement shall become effective upon signing by both parties and shall remain in effect through August 31, 1994. Written notice of intent to amend or terminate must be served by the parties five (5) months prior to the submission of the City budget in the calendar year 1994 as stipulated in RCW 41.56-.440.

29.2 At the appropriate time as described in Section 29.1 above, any contract changes desired by either party must be included in the opening letter and shall not be accepted at a later date unless mutually agreed upon by both parties.

29.3 Upon thirty (30) days advanced written notification, either the City or the union may require the other party to meet for the purpose of negotiating those amendments to this Agreement which relate solely to the following issues:

(a) Supplemental pension benefits, per Article 24 of this Agreement, may be opened on or before May 1, 1993, and may be arbitrated at the Union's discretion after impasse has been reached. ...

The union opened negotiations pursuant to paragraph 29.3(a) of the parties' contract, by submitting a comprehensive proposal for supplemental pension benefits for employees covered by the LEOFF II

plan. After initial discussions, the union requested mediation on July 12, 1993.[4]

By September of 1993, the employer had asserted that a number of components in the union's proposal were outside of the scope of the contractual reopener provision, and thus not open for bargaining at that time. In December of 1993, the union revised its proposal to eliminate provisions which would have created a joint board to administer the supplemental plan. On January 12, 1994, the employer reiterated its previous claims that the union's proposals were in violation of the city charter and/or state law.

On January 20, 1994, the dispute was certified for interest arbitration, based on the mediator's recommendation that an agreement could not be reached in mediation.[5] These unfair labor practice charges followed.

These cases were processed by the Executive Director under the "preliminary ruling" procedure of WAC 391-45-110.[6] On February 9, 1994, a cause of action was found to exist with respect to the union's complaint; on February 28, 1994, a cause of action was found to exist with respect to the employer's complaint. Because the issue raised by the employer calls into question the legality of the proposals advanced by the union regarding a supplemental pension plan, the issue was "pulled" from the interest arbitration pending resolution of the unfair labor practices. The parties were

[4] Notice is taken of the Commission's docket records for Case 10581-M-93-3980.

[5] Case 10894-I-94-230.

[6] At this stage of the proceedings, all of the facts alleged in the complaint were assumed to be true and provable. The question at hand there was whether, as a matter of law, the complaint stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

given 21 days from the dates of the respective preliminary ruling letters to file answers which specifically admitted or denied or explained each fact alleged in the complaint. The parties were also directed to state whether deferral to arbitration was requested, and to assert any affirmative defenses that were going to be claimed.

Each of the parties filed a timely answer to the complaint against it. The union's answer admitted that it had reopened the agreement to bargain a supplemental pension plan, and that the parties were at impasse. The union also agreed with the employer that the matter needed to be resolved before the issue could be submitted to interest arbitration.

On February 28, 1994, the employer and the union filed cross-motions for summary judgment, which were accompanied by briefs and affidavits on the factual background of the negotiations. On March 14, 1994, the parties filed additional briefs and affidavits in response to the opposing party's briefs and affidavits in support of their Motion for Summary Judgment.[7] On March 21, 1994, the parties filed reply briefs with the Commission. On May 27, 1994, the union notified the Executive Director that it was seeking arbitration of a grievance, to obtain interpretation of the reopener language through the procedure specified in the parties' contract.

POSITION OF THE PARTIES

The employer contends that the union's proposals were illegal under state law and the city charter. It points to paragraph 24.1 of the

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[7] The parties, without consultation with the Commission, agreed upon a briefing schedule on the Motions for Summary Judgement.

parties' contract, which makes the parties' contract subordinate to conflicting provisions of state law or the city charter.

The union contends that its proposal to supplement the LEOFF II retirement plan is not in conflict with the city's charter or state law, and that Chapter 41.56 RCW would prevail in the event of a conflict. The union's briefs and affidavits asserted that the employer waived its subordination argument under paragraph 24.1 of the parties' collective bargaining agreement when it agreed not to dispute, by grievance, whether the disability and death benefit proposals were within the scope of the reopener. The union's subsequent action was, however, to invoke the grievance machinery of the collective bargaining agreement to obtain interpretation of the same provision which had been cited by the employer.

DISCUSSION

The Commission's rules provide for summary judgments at WAC 391-08-230, as follows:

> **WAC 391-08-230** **SUMMARY JUDGMENT.** A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the agency and served on all other parties to the proceeding.

The summary judgment procedure is clearly inapposite to cases where there are contested issues of fact.

Although both parties have filed motions for summary judgment in these cases, close review of the answers filed by the parties indicates the existence of contested issues of fact:

* The union's answer contested the employer's allegation that the employer had bargained collectively within the meaning of RCW 41.56.030(4), and further disagreed as to which party had the obligation to research the legality of the union's proposal. The union denied that it had refused to bargain collectively by presenting a proposal that was pre-empted by the city charter and by state or federal law, or that it was insufficiently detailed as to be incomplete. The union also denied the allegation that it had bargained regressively.

* The employer's answer contested the union's allegations that it had refused to bargain on the LEOFF II supplemental plan, that it had characterized the union's proposal as "beyond the scope of bargaining", or that the city preferred to administer the plan as a fiduciary.

While the parties have tried to clear the way for the Commission's attention to their motions for summary judgement, their answers indicate that there are still facts in contention which touch on the basic question on whether the proposal are illegal. This is further illustrated by the parties' felt need to file affidavits and clarifying affidavits on the facts of these cases. Because material facts are in dispute, an evidentiary hearing would be needed prior to a ruling by the Commission.

The matter is further complicated by the contract interpretation issues which continue to linger in these cases, notwithstanding the efforts of the parties to frame these cases for a decision by the Commission.[8] Just as it is appropriate to dispose of a case on

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[8] It is recognized that the dispute arises under a reopener clause contained in a contract which has now expired, and may now be moot. The parties could theoretically open negotiations on supplemental pension benefits without any contractual impediments, but nothing in the record suggests that such an approach has been taken. It would be inappropriate to assume the existence of a new case or controversy.

factual grounds before reaching legal questions, and to dispose of statutory questions before addressing constitutional issues, it is appropriate to resolve contractual claims before taking the time and effort to resolve statutory claims. The Commission's "deferral to arbitration" policies, as enunciated in City of Yakima, Decision 3564-A (PECB, 199), clearly indicate a preference for having contracts interpreted in the first instance by arbitrators. Indeed, if an arbitrator were to agree with the employer that the union's proposals exceeded the scope of the contractual reopener, there would be no need to pursue determination of the statutory issues raised here. The union's recent action to submit the contractual issues to arbitration thus warrants a delay of the hearing in this case until the contractual question has been cleared.

ORDER

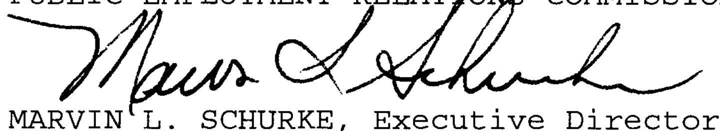
1. The motion for summary judgment made by International Association of Fire Fighters, Local 27, in Case 10901-U-94-2536 is DENIED.

2. The motion for summary judgment made by the City of Seattle in Case 10913-U-94-2538 is DENIED.

3. Further proceedings in these matters shall be DEFERRED pending the outcome of the grievance arbitration proceedings initiated by the union on May 6, 1994.

ISSUED at Olympia, Washington, this 21st day of October, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director