STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 451, Complainant, vs. CITY OF CENTRALIA, Respondent.	CASE 11233-U-94-2625 DECISION 5282 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Craig Nelson, City Attorney, by Shannon M. Murphy, Assistant City Attorney, appeared on behalf of the employer.

Webster, Mrak and Blumberg, by James H. Webster and Michael A. Duchemin, Attorneys at Law, appeared on behalf of the union.

On July 8, 1994, the International Association of Fire Fighters, Local 451, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The union alleged that the City of Centralia had violated RCW 41.56.140(4), by unilaterally changing its crew size and equipment staffing without giving notice and providing opportunity for collective bargaining. A hearing was held in Olympia, Washington, on February 22, 1995, before Examiner William A. Lang. Post-hearing briefs were filed on May 9, 1995.

BACKGROUND

The City of Centralia operates under a council-manager form of government. The seven member elected city council hires the city manager, sets city policy (including the level of service to be provided its citizens), and approves the city budget. The city

manager is responsible for the day-to-day administration of the policies. The city operates a fire department headed by a fire chief and assistant chief. At the times pertinent, hereto, Charles Newbury was the fire chief.

The employer has paid non-supervisory fire fighters who staff a single fire station. The fire fighters are represented by International Association of Fire Fighters, Local 451. At all times pertinent, Richard Mack was president of the union.

The employer and union were parties to a collective bargaining agreement in effect from January 1, 1992 through December 31, 1994. The employer normally assigned three fire fighters to each 24-hour shift, to respond to fire suppression incidents and medical emergencies. The fire fighters worked an average of 42 hours per week. The department relied on the call-back of off-duty personnel for fires and medical emergencies.

This controversy arose out of the employer's decision to reduce the normal shift manning to two fire fighters per 24-hour shift. On January 11, 1994, Chief Newbury posted a memorandum to shift officers and acting officers which stated, in relevant part:

> A code-1 Medical will be requested from Lewis County Communications when the desired level of call back personnel is two (2).
>
> A code-1 Fire will be requested from the Lewis County Communications when the desired level of call back personnel is four (4).
>
> A code-1 Fire will be requested only if four (4) people in the station are necessary. The probable main reason that four (4) people would be necessary in the station is that someone may need to be called to the incident.
>
> Some incidents may warrant more off duty response to be requested and it will be the responsibility of the person making the request to justify the code that will be requested and transmitted from Lewis County Communications.

> If staffing level is below three (3) on duty shift personnel, the proper Code will automatically be requested by the responding shift officer and the desired level of staffing will be called back. The Chief or Assistant Chief may alter that request if they are in the station and decide otherwise.
>
> Overtime will be paid to those employees that are called back to duty. While there is no mandatory call day at this time, every effort should be made by off shift personnel to cover call back requests.
>
> District 12, Chehalis Fire and/or Care Ambulance can be called if no call back personnel are available.

In a January 19, 1994, letter directed to the then-City Manager,[1] complaining that Chief Newbury had posted memorandums on January 11, 1994, covering vacation scheduling, staffing and holiday pay on shift.[2] With respect to those memorandums, Mack wrote:

> The first of them concerned how vacations would be scheduled for 1994. As you are aware, this was a subject hashed over last year culminating in a proposal from the union to resolve the issue dated October 7, 1993. That proposal stated that unless the City responded to the contrary, it was agreed that the Union would forgo processing the grievance it had filed on the subject at that time, provided that the city in the future to negotiate changes in working conditions necessary to meet staffing shortfalls as required by RCW 41.56. Subsequently no contrary response was received by the Union and it was determined to be agreed.
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> **The second memorandum posted January 11, 1994, concerns the apparent desire of the Fire Administration to operate the Fire Department with**

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[1] City Attorney Craig Nelson took over as city manager in February 1994, thereupon assuming the duties of city manager in addition to his duties as city attorney.

[2] Under Article XII Holidays (d) of the contract, a fire fighter assigned to another shift was to receive the same holiday pay as his original shift.

> **just two people on duty. This poses a very grave concern to the Union.** This subject was also hashed over last year. In a letter from Chief Newbury received June 25, 1993, four (4) options were listed as solutions to meet staffing shortfalls created by scheduled vacations. One of these options included working with a two (2) man crew.
>
> The seriousness of the issue prompted the union to seek legal counsel. This resulted in a request to bargain from the Union's Attorney on all options listed. No bargaining ensued and as you know the course of action taken by the Fire Administration was to cancel vacations.
>
> The third memorandum posted January 11, 1994 is retaliatory in nature, as it is clearly an attempt to circumvent Article XII of the current bargaining agreement. This memorandum suggest that employees will no longer be assigned to a shift. This action is believed to be a result of a grievance filed by an employee regarding holiday pay.
>
> The intent of the language in Article XII, Section (D) is to prevent an employee from losing pay as a result of a temporary reassignment to another shift. That section of Article XII stated that employees are assigned an original shift.
>
> In summary, the Union hereby requests that the City first bargain the proposed change to Article XII of the Labor Agreement and the Union again requests that the City first bargain changes in working conditions required to meet staffing shortfalls as per the Agreement dated October 7, 1993 and Article VII of the current Collective Bargaining Agreement.
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> [Emphasis by **bold** supplied.]

On January 25, 1994, Mack filed a group grievance regarding the reduction of shift personnel. Mack noted that the February work schedule showed four consecutive shifts were to be covered by two persons. The union believed that the schedule violated a prevailing rights clause found in Article VII of the contract. The union argued that a status quo existed where staffing levels had never fallen below three fire fighters on a shift. The union contended

that working with a two person crew jeopardizes the safety of the fire fighters, observed that the four shifts being short-staffed resulted from vacation scheduling, reported that the employee had offered to cancel his vacation, and asserted that the request had been denied. The union asked for a remedy of restoration of the status quo, together with bargaining on any change in staffing prior to implementation.

On February 1, 1994, Mack wrote to Councilman Dale Anderson, stating that the union was gravely concerned about the staffing. Mack reminded Anderson that the city council had voted unanimously to staff the department with a fire chief, an assistant chief, and 15 fire fighters. Mack informed Anderson that the staffing had been reduced to 12, due to retirement and disability. Mack stated that the situation was potentially of "catastrophic proportions". Mack expressed serious concern regarding the apparent desire of the fire administration to staff shifts with only two firefighters, and the "safety implications posed the citizens of Centralia".

In a February 4, 1994 letter to the city council, Mack complained that he had been called into Newbury's office and threatened by Newbury with termination of his employment because of his letter to Councilman Anderson and other contacts with the city council. Mack stated that he had similar meetings with Newbury when he engaged in activities on behalf of the union. Mack asked the city council to stop the illegal interference.

On February 7, 1994, union attorney Michael Duchemin wrote Nelson to confirm Nelson's assurances that Mack would not be disciplined for union activities. Attached to his letter was a settlement agreement dated December 17, 1990, under which the employer agreed to repeal a rule that prohibited any fire fighter from contacting city council members or the city manager on any matter affecting the department, except through the fire chief.

On February 14, 1994, Mack again wrote to the city council regarding Newbury's attempts to intimidate him. This time, he recounted several meetings over the years, including an instance in May of 1993 when Mack was told by an assistant chief that Newbury knew the content of a telephone conversation between Mack and a union representative. Mack stated there had been numerous documented instances of monitoring private telephone conversations. Mack again asked the city council to stop the interference.

Also on February 14, 1994, union attorney Duchemin wrote a letter to Nelson, canceling a meeting previously scheduled for February 17, 1994. Duchemin indicated the union did not feel Chief Newbury would correct his behavior toward the union. He expressed frustration that the chief only changed his behavior for a short period of time when faced with costly litigation, and then reverted back to his unlawful behavior. As an example, Duchemin enclosed a copy of an amended complaint filed against the city in 1990.

On February 15, 1994, Nelson acknowledged Duchemin's letter, stating that the union had a right of free speech but should accurately portray the situation regarding the union's relationship with the fire chief. Nelson rejected the three grievances filed on January 25, on the basis that none of them were reviewed by the contract's grievance committee and that they failed to state what contract provisions were violated. Schedules posted for the months of February and March of 1994 reflected the reduced staffing.

In a February 17, 1994 letter telling Nelson that it opposed the change from a safety standpoint, Mack renewed the union's demand to bargain the staffing change.

On February 18, 1994, Nelson wrote to Mack that he was confused that the scheduled meeting with the union attorney was canceled for "unproductive and unfair reasons". The city manager declared the employer felt it had addressed the union's concerns with alterna-

tive staffing responses and an offer of compensatory time at the status quo rate and conditions. Nelson renewed an offer to meet at any time, but considered the issue moot because of time restraints. Nelson thought the issue had degenerated into "game playing", without rules and with uncertain players.

On February 22, 1994, Mack filed another grievance on behalf of the union, this time claiming the new staffing violated the prevailing rights clause of the collective bargaining agreement.

Newbury denied the February 22, 1994 grievance on March 2, 1994, stating:

> [T]he use of volunteers from Lewis District #12 will assure us more personnel on the fire scene than we have by only using Centralia personnel. Over twenty trained firefighters from District #12 either live in the city limits of Centralia or are very close and will provide quick responses if called upon.
>
> ...
>
> **By using the trained personnel available from Lewis District #12 we are able to reduce our work load and provide a safer environment** because of the number of personnel at the incident. This is an important safety concern of management because of the low average callback response of this department.
>
> No member of this department will receive less money, work more or less hours and the working conditions will be much improved because of the safety concerns of management mentioned in the earlier paragraph.
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> [Emphasis by **bold** supplied.]

Newbury enclosed a number of exhibits, including a city map showing the residences of District 12 volunteers, summaries of Commission decisions supporting his arguments, and a copy of a March 1 memo from Fire Chief Grill of District 12, confirming immediate response by Engine 12-1 when Centralia requests mutual aid, with the volunteers responding directly to scenes closer than the station.

The union's unfair labor practice complaint filed on July 8, 1994, was timely for events beginning with the January 11, 1994 memo.

On December 14, 1994, the employer issued a press release in response to questions raised at a public forum conducted at the city hall a week earlier. It stated the employer was developing a certified list of available temporary fire fighters to cover employees on medical leave and overtime situations. The press release reported that the fire department had responded to 1,160 emergency medical service (EMS) calls in 1994, plus 262 fire calls (of which 32 involved structures). It went on to report that Lewis County Fire District 12 had responded with three to six men on 13 occasions since the mutual aid agreement went into effect. The employer stated that it was moving toward training its own volunteer division. It further explained its staffing in 1994 as being 12 full-time fire fighters in four companies of three each, working one day on duty and three days off. Because two fire fighters were on medical leave, two of the companies were below their regular complement. The employer asserted that its desire to change the schedule to "one day on and two days off" with three crews of four fire fighters each had led to a "union campaign". The employer admitted that the department did not spend $100,000 of its budget, but opined that it should utilize alternative resources such as Fire District 12 and Care 2 Ambulance, in view of the costs of maintaining a fire department.

POSITIONS OF THE PARTIES

The union contends that, when balancing the interests of management prerogatives with fire fighter concerns about safety, workload, and the loss of overtime pay, staffing levels are a mandatory subject of collective bargaining under Chapter 41.56 RCW. It thus contends that the employer made an unlawful unilateral change.

The employer argues that fire fighter staffing levels are an issue of entrepreneurial control, and are not a mandatory subject of collective bargaining. The employer also argues that the union failed to discuss its safety concerns prior to the hearing on this complaint.

DISCUSSION

Staffing As A Mandatory Subject of Bargaining

The Public Employees' Collective Bargaining Act provides, in RCW 41.56.140(4), that it "shall be an unfair labor practice for a public employer ... [t]o refuse to engage in collective bargaining." Collective bargaining is defined in RCW 41.56.030(4) as:

> [T]he performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement **with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions**, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

There is generally little disagreement about whether proposals concerning wages and hours are mandatory subjects of collective bargaining, because those topics are specifically mentioned in the statute. Lower Snoqualmie Valley School District, Decision 1602 (PECB, 1983). Disputes often arise, however, concerning the scope of bargaining under the "working conditions" term of the statute.

In determining whether a particular working condition is a mandatory subject of bargaining, the interest of the employer in

managing the enterprise must be weighed against employee interests in the working condition. The Examiner in Edmonds School District, Decision 207 (EDUC, 1977), wrote:

> [W]hen a disputed subject is found to constitute either wages or hours, the Commission is not to exercise discretion but is to find such subject a bargainable item. It is only in that less definite area of "other terms and conditions of employment" that the Commission may exercise some form of balancing approach should the given issues so warrant.

Examples of cases in which the subject matter was determined to be a mandatory subject of bargaining are: Seattle School District, Decision 2079 (PECB, 1984) [time allocation standards]; City of Vancouver, Decision 808 (PECB, 1980) [contracting out of unit work]; City of Wenatchee, Decision 2216 (PECB,1985) [promotions to positions in the bargaining unit]; City of Kelso, Decision 2633-A (PECB, 1988) [layoff to accommodate budget cuts]; City of Olympia, Decision 3194 (PECB, 1989) [prerequisites of continued employment, such as drug testing, safety rules or physical fitness]; and Washington State Patrol, Decision 4757-A (PECB, 1995) [discipline decisions].

Other cases which have weighed the interests of the employer and union and determined the subject to be permissive. King County, Decision 1957 (PECB, 1984) [revocation of police commissions]; King County Fire District 39, Decision 2160-A (PECB, 1985) [pre-employment qualifications]; City of Kelso, Decision 2633 (PECB, 1988) [annexation to contiguous fire district]; King County Fire District 16, Decision 3714 (PECB, 1991) [required certification in defibrillation]; Port of Seattle, Decision 4989 (PECB, 1995) [determinations of labor costs and scope of customer services are entrepreneurial budget decisions made in the course of normal business and are not subject to collective bargaining].

The Commission's policy relating to the "scope" of collective bargaining is outlined in WAC 391-45-550, COLLECTIVE BARGAINING---POLICY, as follows:

> It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.

There have been a number of decisions on whether various minimum staffing proposals are encompassed within "working conditions."

In City of Yakima, Decision 1130 (PECB, 1981), the number of police officers in the department was held to be a fundamental prerogative of management. The record in that case failed to establish a safety issue, so the union committed an unfair labor practice by insisting to impasse on a permissive subject of bargaining. Yakima stands for the proposition that subjects remote from wages, hours and working conditions are regarded as a prerogative of management, and a non-mandatory subjects of bargaining. Accord: Pierce County, Decision 1710 (PECB, 1983). See, also, City of Bellevue, Decision 3343-A (PECB, 1990), holding that a proposal to increase the number of budgeted "lieutenant" positions in the fire department was a permissive subject, absent a direct relationship to safety.

In City of Spokane, Decision 4746 (PECB, 1994), the employer did not commit an unfair labor practice by modifying fire suppression

staffing levels, where the union did not prove safety was an issue. The Examiner in that case ruled that staffing was a management prerogative, not a mandatory subject of bargaining. The Examiner noted that the union's actual concern there dealt with the wisdom of the employer's decision, and not with competing interests involved in staffing issues or the employer's position that it was allocating scarce resources.

In City of Richland, Decision 2448-A (PECB, 1987), the union proposed a wage reopener if the levels of equipment staffing were to change. The undersigned Examiner ruled there that a change in equipment staffing could potentially affect safety, that the reopener would have permitted the union an opportunity to show any safety impact on changes, and that the proposed reopener was a mandatory subject of bargaining on that basis.[3] The Commission reversed, ruling that the staffing was per se a management prerogative and that the union proposal was a transparent attempt to make staffing decisions a mandatory subject of bargaining by a tie to wages. City of Richland, Decision 2448-B (PECB, 1987). The Supreme Court vacated the Commission's decision, however, and remanded the case for a determination on whether equipment staffing affects safety. Public Employment Relations Commission v. Local 1052, 113 Wn.2d 197 (1989).[4] Citing the decision of the Supreme Court of the United States in Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964), the state Supreme Court observed that the relationship the subject has to "wages, hours and working conditions" is on one side of the balance, and the extent to which the subject lies at the core of entrepreneurial control is on the other side of the balance. The clear message is that a case-by-case approach is necessary.

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[3] There was no specific finding that equipment staffing was a mandatory subject of bargaining as a safety issue, because such an inquiry was not necessary at that stage of the parties' relationship.

[4] Also reported in the WPERR at CD-442.

Each side of the present controversy has quoted extensively from Richland, supra. The union relies on the Court's assertion that:

> 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 employee's concern with working conditions on the other, will vary.
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> 113 Wn.2d at page 207.

The employer cites that case as holding that "general staffing levels are fundamental prerogatives of management",[5] so as to be a permissive subject.

Timely Communication of Concerns on Safety

The employer raised a threshold issue based on City of Spokane, supra, arguing that the complaint should be dismissed because the union failed to communicate its actual safety concerns to the employer when the union first objected to the change. The employer contends the union did not demonstrate its concerns until the time of the hearing, when it presented "arduous" testimony on how the proposed staffing levels would affect safety and workload. If the employer's assertion is correct, then the union would have waived its right to bargain by union failing to advance any proposals. The controversy would go no further, and the complaint could properly be dismissed. See Newport School District, Decision 2153 (PECB,1985).

The facts of the City of Spokane and Newport School District cases are, however, distinguishable from the facts of this controversy. In Spokane, another local affiliate of the International Association of Fire Fighters continually voiced its apprehension about reducing the employer's fire suppression staffing, but did not

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[5] 113 Wn.2d at page 205.

stress safety concerns with the employer. In Newport School District, a union was notified that the employer was considering contracting out of bargaining unit work, but failed to make any proposals over a period of four months. In contrast, the evidence in the case now before the Examiner demonstrates that the union clearly voiced its apprehension about how the reduced staffing affected safety, and requested a meeting. Mack's February 17 letter to Nelson clearly demanded to bargain the staffing change.

The perceived antagonism of Fire Chief Newbury toward the union appears to have interfered with the union's opportunity to explain its concerns. Less than a month after the January 11 onset of this dispute, Mack wrote to the city council on February 4 because he felt he was being threatened by Newbury. On February 14, 1994, the union's legal counsel informed City Manager Nelson that the union was canceling the meeting scheduled for February 17 to discuss the intimidation, because it did not feel Chief Newbury would correct his behavior toward the union. In point of fact, Newbury had summarily dismissed the grievances, declaring staffing was a nonmandatory subject of bargaining.

Nelson's February 18 reply stated that he was confused by the canceled meeting, but believed that Chief Newbury had addressed the union's staffing concerns so that the issue was moot. Nelson indicated a willingness to meet, and it should have been clear that the union's additional grievance filed on February 22 contradicted Nelson's expressed belief that the issue had been resolved. The processing of the February 22 grievance would have presented an opportunity to discuss the union's safety concerns, but Chief Newbury also denied that grievance.

It is particularly difficult to cast the union as the villain in a breakdown of communications on safety when, without any discussion of the union's concerns, Newbury claimed on March 2 that the use of personnel from Fire District 12 provided a safer environment. It

is clear from Chief Newbury's reply that he was addressing safety concerns raised by the union. It is also clear by this exchange of correspondence that the opportunity to discuss the union's safety concerns was foreclosed by a climate of antagonism and distrust.

Staffing and Fire Fighter Safety

Continuing technological changes have improved fire fighter safety. The record in City of Richland, supra, addressed some of these improvements:

> Fire fighting is generally acknowledged as a hazardous occupation. Fire fighting technology is constantly developing so as to change the ways that manpower is deployed and the methods of attack at the fire scene. These developments range from "preconnected" hoses to improved chemical fire suppression systems to building improvements which permit early fire detection and containment. Technological improvements have enabled fire departments to accomplish more with fewer resources and have reduced some of the risks and hazards that firefighters face.
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> ...
> [F]irefighter safety is heavily dependent upon utilizing protective clothing and devices, e.g., respirators, helmets, and turnout gear as well as following safety procedures. The Washington State Department of Labor and Industries has promulgated safety standards for firefighters under WAC 296-305-001. Those rules provide for an enforceable set of safety and health standards detailing the proper use, cleaning and storage of all manner of equipment and clothing.
> ...

City of Richland, supra, at page 7 - 8.

On January 31, 1994, the Standards Council of the National Fire Protection Association (NFPA) approved a new tentative interim agreement (TIA). It requires at least four fire fighters at a fire scene before initiating interior firefighting operations, except if fire fighters arriving on the scene find an imminent life threaten-

ing situation in which immediate action may prevent loss of life or serious injury.

Fire Chief Newbury acknowledged in his testimony that the use of only two firefighters at a fire scene raised safety considerations:

> Q. [By Ms. Murphy] From your experience with the fire department, do you perceive that there is a safety issue?
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> A. [By Mr. Newbury] If all we had was two people on the fire scene, that's a safety issue. Two people in the firehouse, I don't perceive that to be a safety issue.

Transcript at page 97, lines 4-9.

Chief Newbury issued a revised Standard Operating Procedure 24 (SOP-24), in order to comply with the new TIA at fire scenes.[6] The terms of SOP-24 included:

* Establishing a water supply and attacking the exterior of a burning building;

* Responses by chief officers with the first engine, when available, to free up fire suppression personnel;

* Determinations by officers on "imminent danger" situations; and

* Medical attention to be provided by other agencies who routinely respond to emergency calls, to free up fire suppression personnel.

The employer contends that the utilization of its chief officers, its call back of off-duty fire fighters, and its use of volunteer fire fighters from Lewis County Fire District 12, would all greatly reduce any danger at the fire scene. Those arguments are not

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[6] Standards developed by NFPA do not have the force of law, unless adopted by the authority having jurisdiction. Because the NFPA standards are generally recognized by courts, however, Newbury cautioned that the liability to the officer and department for a deviation could be "monumental", should a firefighter be injured or killed.

persuasive on the question directly before the Examiner, however, because they go more to the substantive debate which might have gone on at the bargaining table than to the balancing of interests. Similarly, Newbury's rejection of the grievances on March 2, 1994, was based on his view of the environment at the fire scene.

Evidence on EMS Responses -
The union contends that three fire fighters are needed on medical assistance calls for incidents on Interstate 5, which runs through Centralia. The union sees a need for two in the aid car and one to drive the fire engine (which is usually parked so as to screen and protect the medics from oncoming traffic) and to set flares.

The employer thought one medic could drive the aid car while a second employee could drive the fire engine to the scene and then join the medic at the scene. The employer observes that Care 2 ambulance personnel would also be responding to the call, and would be available to assist.[7] In the press release it issued on December 14, 1994, the employer stated a position that, in view of the costs of maintaining the fire department, alternative resources such as Fire District 12 and Care 2 ambulance should be utilized.

The record shows that two medics normally respond to medical emergencies. The new staffing had been in effect for over a year at the time of the hearing, yet there apparently had not been any actual effect on fire fighter safety. At least, the union has not shown any actual problems.

Evidence on Fire Responses -
The union established that the employer traditionally staffed its fire station with three fire fighters on each 24-hour shift. If the staffing was reduced because of disabilities, another fire

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[7] The union correctly reasons that assistance from a privately-owned ambulance service would constitute contracting out, if paid for by the employer.

fighter was called in on an overtime basis. The employer's policy required any on-duty firefighter who was away from the station (e.g., inspecting buildings for fire code violations or performing other assignments) to return to the station when a fire alarm was received, or respond to the fire scene, whichever was closer.[8]

With three-person staffing, the driver/engineer could remain at the pump to monitor hose pressures, while the remaining two fire fighters on the crew could enter the interior of a structure to rescue occupants and conduct the fire suppression efforts. This would have particularly been true in multi-unit structures, where the preferred strategy for confronting a fire calls for fire fighters to enter the burning building and attack the source of the fire.[9] In any case, those going inside utilized a "buddy system" to enhance safety.

When a fire alarm occurred during the work hours of the chief officers, the assistant chief would immediately go to the fire scene to direct the fire suppression efforts and the fire chief would stay at the station to call in more manpower, if needed. Call-backs and mutual aid responses usually take 8 to 10 minutes.

The union contends that a response by only two firefighters is dangerous, and it presented substantial testimony on how the lack of staffing would affect fire fighter safety. The employer's fire chief acknowledged that such a situation would be dangerous.

Where two fire fighters arrive at a fire scene where it is not necessary to enter a burning structure to effect a rescue, a "blitz line of attack" can be utilized. A 2-1/2" hose is used to direct

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[8] The time lapse would normally be five minutes if the distance of travel was six blocks, and up to nine minutes for longer distances.

[9] This is because delays in controlling the spread of a fire may endanger tenants in other units of such a structure.

a stream of water from outside of the building to the ceiling of the burning area. One fire fighter monitors the pressure and pump controls, which puts the remaining firefighter directing the stream of water. Backpressure on the 2-1/2" nozzle makes it difficult for one fire fighter to control and move the hose, and backlash could injure a fire fighter who attempts to direct the stream of water alone. The evidence indicates that two fire fighters are required to control the 2-1/2" hose line in order to prevent injuries. A rapid attack with a hose pre-connected is intended to contain the spread of the fire until help arrives, but 500 gallons of water carried on the fire engine amounts to only about a four to five minute supply.

A concern arises that interior operations by a lone fire fighter may be called for when a loss of life is at risk. Any interior attack would be extremely hazardous with a two-person response, because one fire fighter would be required to enter the structure alone. The record clearly shows that it is substantially more difficult and dangerous for a fire fighter to pull heavy fire hoses through burning structures alone.

As it did in City of Richland, supra, the evidence here indicates that a lack of personnel at a fire scene enables the fire to spread, get hotter, and to become more dangerous to control. In addition, there is increased danger of "flash over" as furniture and other contents reach ignition temperatures. In the latter situation, fire fighters could be trapped in the burning structure. Because delays increase the severity of the fire, salvage and clean-up operations are made more difficult.

Several circumstances do tend to demonstrate the union's substantial "safety" interest in the staffing level:

* The NFPA standards (restated as SOP 24), state that fire fighters should not enter a burning building unless there are at least four fire fighters at the scene. Such a situation is likely

to occur in Centralia only for fires occurring during the office workweek, when the chiefs are at the station. If life threatening situation is not involved, a three-person response by Centralia fire fighters to a structure fire outside of the office workweek would be required to wait until the arrival of: One of the chiefs, off-duty personnel called back to work, or District 12 personnel.

* The NFPA standards (restated as SOP 24), state that three fire fighters may commence an interior fire suppression attack, if there is an imminent life-threatening situation. In such circumstances, two fire fighters could enter the structure to conduct the rescue, using the "buddy system", while a third fire fighter monitored the hose pressures and directed other fire fighters arriving at the fire scene. If only two fire fighters arrive at a fire scene, as is possible up to 50 percent of the time under the current staffing,[10] and they discover that citizens are trapped in the burning structure, the NFPA standards would direct them to wait up to ten minutes for assistance. The record establishes that it would be extremely dangerous for one fire fighter to enter the burning structure alone.

The controversy thus narrows to the question whether a potential time delay of eight to ten minutes while the firefighters wait for the arrival of call-back personnel or Fire District 12 personnel affects the safety of the Centralia firefighters to a significant extent. The union assumes that any delay causes adverse affects. There is a measure of uncertainty in the record as to the degree of severity caused by delays of up to ten minutes. The record speculates, but does not determine, whether such a delay would be sufficient, in and of itself, to tip the balance of interests in favor of the employees and their union.

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[10] This inference is based on the employer's press release, which indicates that two of its four shifts are short-handed because of disability and retirement.

It is evident that any substantial delay would necessarily imperil any persons trapped in a burning structure, and make their rescue more difficult. That may, however, be a political issue between the city council and its electorate.

In theory, only with two fire fighters and a chief officer arriving at the fire scene would the Centralia Fire Department be able to utilize the "buddy system" to enter a burning structure if loss of life was threatened. Under other circumstances, two fire fighters arriving at a fire scene where loss of life was threatened would have to either: (1) Have one fire fighter enter the building alone in violation of the NFPA standards and the chief's own policy, or (2) obey the NFPA standard and confine their efforts to a blitz line from outside the structure. The union's "safety" interest is in not having its members ordered to enter a building alone.

In practice, only 12.2 percent of the 262 fire calls to the Centralia Fire Department in 1994 involved structures. Lewis County Fire District 12 responded 13 times with three to six fire fighters, thus participating in only 5 percent of the total fire calls of the Centralia Fire Department but up to 40 percent of Centralia's structure fire alarms. The record does not demonstrate that there has been any actual adverse affects on fire fighter safety resulting from delays in the 13 instances when District 12 personnel were summoned in 1994.

The task before the Examiner is to balance, based on the evidence of record, any adverse safety consideration with the prerogative of the employer to set the level of service to the taxpayers. The Examiner recognizes that the favorable experience to-date under two-person staffing does not guarantee the future safety of the fire fighters, and the Examiner is persuaded from the foregoing analysis that it would be unsafe if two fire fighters arriving at a fire scene were required to initiate rescue efforts or attack without waiting for additional personnel to arrive. There is also

some potential danger from "flash over" of interior furnishings when fire fighters enter a burning building after waiting 8 to 10 minutes for additional back-up. The union's substantial concerns about fire fighter safety are only part of the equation when balancing the competing interests.

It is the nature of a democracy that basic governmental decisions are made through the political process. As observed in City of Kelso, Decision 2633 and 2633-A (PECB, 1988), a municipality is entitled to make "entrepreneurial" decisions about the types and amounts of facilities or services provided its citizens.[11] One of the basic "entrepreneurial" decisions concern the staffing of the fire department. Beyond the Kelso option of turning over the function to a regional provider, an elected city council could decide not to have a fire department, could decide to fund only a volunteer fire department, or could decide the level of service to be provided by paid fire fighters. Any of those alternatives necessarily involves a political dialogue among the elected representatives, the citizens whose property and very lives are at stake, and other vested interests such as insurance companies, risk underwriters, health providers, and local business interests.[12]

The fire fighters could certainly participate in such discussions, to the extent that they are part of the affected citizenry. A serious difficulty with holding that staffing decisions are a mandatory subject of collective bargaining under Chapter 41.56 RCW is that it places a basic governmental decision in the hands of only one constituency within the political process, and omits others who would normally voice their concerns at a public hearing.

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[11] The Commission concluded in Kelso that an annexation decision approved by the statutorily specified democratic process was outside of mandatory collective bargaining.

[12] The record in this case does not disclose whether the decision to reduce staffing was made with notice and/or public hearing.

The general public and other interests are not at the bargaining table. It is inadequate to expect that all citizens and other interests will be represented through the elected city council or the union. The "existence of service" and "level of service" issues are too complex to not afford an opportunity for others to voice their concerns or support.

There are further difficulties with making decisions concerning the basic level of governmental services a mandatory subject of collective bargaining. In the event the employer and union reach an impasse in negotiations, the decision would be subjected to the interest arbitration procedure established by RCW 41.56.450, et seq., thereby placing the basic decision on the level of service in the hands of an outside arbitrator. Citizens or other vested interests would, of course, be precluded from appearing before the interest arbitration panel.

In this case, decisions on staffing a one station / one engine fire department merge with shift staffing, equipment staffing, and staffing at the fire ground. The Examiner has, with great reluctance, concluded that the political interests in staffing decisions at the departmental and shift levels must predominate. Even though the staffing must be found to be a permissive subject of bargaining, the effects of the employer's decision will impact upon the interests of the fire fighters, and of their union, about the safety of employees at the fire scene.

The tactics and policies applicable for a two-person response would be a subject for bargaining under Chapter 41.56 RCW, even if the overall staffing decision is not bargainable.[13] In a situation such as this, where non-mandatory and mandatory subjects are so

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[13] For example, the union might bargain to impasse on whether a lone fire fighter should be required to risk his own life by entering a burning structure to save another life. Although that is a political consequence of the staffing decision, it is also a safety effect.

closely related, the parties should act under the Commission's policy favoring full and frank discussion of issues. WAC 391-45-550. If the parties are unable to agree on contract provisions concerning tactics at the fire scene, the dispute could be submitted to an interest arbitrator. Thus, the union's safety issues could eventually be addressed.

The Workload -

The fire fighter's work day is generally divided into routine tasks which are performed while waiting, emergency calls, and tasks that must be performed after an emergency response to ensure that the equipment is available for another emergency. There was considerable evidence presented about the normal routine at the fire station and tasks required after an emergency response.

* The record is quite clear that the duties of the fire fighters at the station include making certain that the apparatus, equipment and supplies are ready for the next emergency response. These duties must be performed regardless of the staffing level.

* Typical tasks to be performed on each shift are set forth in the department's standard operating procedures. These include washing down floors, cleaning the living spaces, kitchen, bathrooms, windows and equipment. These functions impliedly take a secondary importance even under past practice, if there are emergency calls to be answered.

* Part of the fire fighter's routine is conducting fire prevention and code inspections in the community. Under the three person staffing schedule, one fire fighter remains at the station making data entries on the computerized records while the remaining two are out in the community inspecting buildings. The union contends that reducing the fire fighting staff will increase the workload of the remaining employees, but the employer contended that tasks not completed by one shift would carry over to the next shift. This also appears to be acceptable for routine assignments that are non-emergency in nature, since the routine could be easily altered to accommodate fewer staffing.

* The fire fighters conduct annual pumper tests, which involve extensive hose layouts, and then cleaning up to put the apparatus back in service after the test. The union argues that a two person crew is at a disadvantage, but the employer believes another fire fighter could be brought in for these tests.

* After an emergency response, the fire scene must be attended to for "overhaul" (which means that fire fighters carefully scrutinize the fire scene to make certain that the fire is out and has not spread to other parts of the structure) and "salvage" (which means that the fire fighters try and protect property from further damage).[14] The union argues that these tasks are much greater with two fire fighters, because on-call fire fighters return to the station to assist in putting the equipment back on-line, and are limited in the amount of time they can remain on duty.[15] The employer asserts that the on-call and Fire District 12 personnel responding are sufficient to perform these tasks in most instances. Although the two-person staffing has been in effect for over a year, there was no evidence of actual increases in fire fighter workload in the 13 instances when personnel from Fire District 12 responded.

On its face, the reduction of on-duty personnel requires the remaining fire fighters to carry an increased workload for responsibilities relating to emergency readiness. Items requiring immediate attention are associated with the equipment used in the emergency. Post-emergency tasks are quite extensive, involving cleaning and repair of equipment, filling air bottles, and repacking hoses. Conducting an inventory check of a vehicle takes somewhere between 15 minutes (per the testimony of Chief Newbury) and an hour (per testimony adduced by the union). It covers tools and supplies, and testing small equipment (such as chain saws,

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[14] This is accomplished by placing tarps over furniture in the interior of the building.

[15] The employer limits call-backs to two hours (at time and half), whether or not the tasks are completed.

respirators, pumps, personal alert devices[16], generators and smoke fans) to assure that they are running properly and are safe to use in an emergency. While the Examiner is persuaded by the record that there would be some increased workload resulting from the reduction of staff, the Examiner is not persuaded employee interests in increased workload would be sufficient, in itself, to overcome the employer's prerogative to set staffing. Because the effects of the increased workload could be bargained, the Examiner declines to rule in this controversy that work load alone makes staffing a mandatory of bargaining.

The Loss of Overtime -

The union argues that the reduction to two-person staffing has eliminated the overtime opportunities that formerly existed when a fire fighter was called back to cover the station when less than three employees remained after leave scheduling, disabilities and illnesses. While the loss of overtime opportunities is established by the evidence, it is not persuasive as a factor to be considered when assessing the balance of employee interests against the prerogative of management to set the level of service. The potential loss of overtime pay could be negotiated as the effects of the decision which reduced their income. The employees' interest in overtime pay is not sufficient to make staffing a mandatory issue of bargaining.

Conclusions -

It was clear to the Examiner that this controversy is not entirely about the pure exercise of a management prerogative to reduce on-duty staffing. It also involves the perceived transfer bargaining unit work (i.e., the work of the third fire fighter position per shift) to personnel from Lewis County Fire District 12 in event of

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[16] Personal alert devices (PALS) are carried by each fire-fighter. The device's alarm is activated when the firefighter movement stops for a set length of time, thereby alerting the other firefighters that a firefighter may be in danger.

a fire emergency, or to employees of Care 2 Ambulance in the case of a medical emergency. As noted in City of Kelso, Decision 2120-A (PECB, 1985), a contractual arrangement which had this employer paying the neighboring fire district or a private firm for services in order to reduce staffing within the bargaining unit would give rise to a duty to bargain. The evidence does not support the union's concern in this case, however.

The only "compensation" paid by the City of Centralia to Lewis County Fire District 12 is the employer's readiness to furnish fire fighters to District 12 when it calls for assistance under the mutual aid pact. Further, the record before the Examiner does not establish that the union has ever made a demand to bargain the mutual aid pact as a "contracting" decision. Indeed, the union's bargaining demand was limited to the employer's decision to reduce staffing, because of safety concerns.[17]

Finally, the record is not clear whether the employer and the union would ultimately have discussed the safety issue, except for the apparent antagonisms. Having established that it was not obligated to bargain the decision to reduce staffing, the employer will still be obligated to bargain, upon request, concerning the effects of its decision on safety, workload, and overtime pay with the union.

FINDINGS OF FACT

1. The City of Centralia is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1). The employer operates a fire department consisting of one fire station, from which it provides fire suppression and medical emergency services.

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[17] The union did not move to conform the pleadings to the evidence, or to otherwise place the "contracting" issue latent in this controversy before the Examiner.

At times relevant to this proceeding, the fire department was under the direction of Fire Chief Charles Newbury.

2. International Association of Fire Fighters, Local 451, a bargaining representative within the meaning RCW 41.56.030(3), is the exclusive bargaining representative of the non-supervisory fire fighter personnel of the City of Centralia.

3. On January 11, 1994, Fire Chief Newbury announced a new policy of staffing some shifts with only two fire fighters, rather than the minimum of three fire fighters on duty per shift which had been the practice up to that time. The employer entered into a mutual aid pact with Lewis County Fire District 12, which operates a volunteer fire department in an area contiguous to the City of Centralia, to supply additional fire fighters at fire scenes when needed. The employer had knowledge that a private firm, Care 2 Ambulance, automatically responded to all medical emergency calls answered by the Centralia Fire Department, and was therefore available to provide medical emergency services when needed.

4. In 1994, the Centralia Fire Department responded to 1,160 emergency medical service calls. The record does not establish substantial increase in job risk for fire fighters employed by the Centralia Fire Department related to emergency medical calls, as a result of the decrease in shift staffing.

5. In 1994, the Centralia Fire Department responded to 262 fire calls, of which only 32 involved structures. Since the mutual aid agreement went into effect, Lewis County Fire District 12 has been called in to Centralia 13 times, and has responded with three to six fire fighters on each such occasion. The record does not establish actual increase in job risk for fire fighters employed by the Centralia Fire Department related to fire calls, as a result of the decrease in shift staffing.

6. Under national standards and the departmental orders issued by Fire Chief Newbury, fire fighting operations inside a burning structure would be extremely hazardous with a two-person response, because one fire fighter would be required to enter the structure alone. The record clearly shows that it is substantially more difficult and dangerous for a fire fighter to pull heavy fire hoses through burning structures alone. The employees' interest in safety proximately relates more to the fire fighting tactics used than to the employer's interest in establishing the level of service to be provided.

7. The evidence here indicates that a lack of personnel at a fire scene enables a fire to spread, to get hotter, and to become more dangerous to control. In addition, there is increased danger of "flash over" as furniture and other contents reach ignition temperatures. In the latter situation, fire fighters could be trapped in the burning structure. Because delays increase the severity of the fire, salvage and clean-up operations are made more difficult. The employees' interests in safety and workload related to these factors proximately relate more to the fire fighting tactics used and to the effects of a service level decision, than to the employer's interest in establishing the level of service to be provided.

8. The union made a demand to bargain the reduction of shift staffing. Although it cited concern that the reduction of staffing affected fire fighter safety, workload, and overtime pay, the union's substantial concerns about fire fighter safety must be balanced against the right of the employer to make "entrepreneurial" decisions, through the political process, about the types and amounts of facilities or services provided its residents.

9. The creation and staffing of a fire department are basic "entrepreneurial" decisions to be made within alternatives

ranging from not providing such services, to turning over the function to a regional provider, to funding only a volunteer fire department, or could setting a level of service to be provided by paid fire fighters. Any of those alternatives necessarily involves a political dialogue among the elected representatives, the citizens whose property and very lives are at stake, and other vested interests such as insurance companies, risk underwriters, health providers and local business interests.

CONCLUSIONS OF LAW

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

2. The evidence described in the foregoing findings of fact is not sufficient to establish that the union's interest in employee safety is stronger than the employer's prerogative in establishing the staffing level of its fire department, so that the employer's staffing decision was too remote from "personnel matters" to be considered a mandatory subject of bargaining under RCW 41.56.030(4).

3. The evidence described in the foregoing findings of fact is sufficient to establish that the union has a substantial interest in employee safety related to fire fighting tactics and other effects of the employer's staffing decision, so that those matters are within the scope of "personnel matters" that are mandatory subjects of bargaining under RCW 41.56.030(4).

4. By failing or refusing to bargain in response to the union's undifferentiated demand for bargaining on its staffing decision, the City of Centralia has not refused to bargain in violation of RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

DATED at Olympia, Washington, this 29th day of September, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

William A. Lang

WILLIAM A. LANG, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.