City of Centralia, Decision 5282-A (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 451, Complainant,	CASE 11233-U-94-2625
vs.	DECISION 5282-A - PECB
CITY OF CENTRALIA, Respondent.	DECISION OF COMMISSION

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.

This case comes before the Commission on a timely petition for review filed by the International Association of Fire Fighters, Local 451, seeking to overturn a decision issued by Examiner William A. Lang.[1]

BACKGROUND

The City of Centralia (employer) operates a fire department which is currently staffed by a fire chief and assistant chief, as well as 12 paid non-supervisory fire fighters represented by International Association of Fire Fighters, Local 451 (union). The Fire Department operates one fire station, and uses only one fire truck for first responses to emergency calls. The fire fighters work an average of 42 straight-time hours per week.

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[1] City of Centralia, Decision 5282 (PECB, 1995).

The employer and union were parties to a collective bargaining agreement in effect from January 1, 1992 through December 31, 1994. Prior to January of 1994, the employer normally had 15 fire fighter positions and assigned at least three fire fighters to each 24-hour shift. The department relied on the call-back of off-duty personnel when necessary to maintain the minimum staffing of three fire fighters on duty. Off-duty personnel received overtime pay when they were called back.

Foreseeing a reduction to two-person crews on some shifts to save labor costs, the employer entered into agreements with neighboring jurisdictions to supply additional (volunteer) fire fighters at fire scenes when needed. On January 11, 1994, the fire chief posted a memorandum providing, in part, for contingency action when the staffing level would fall below three on-duty shift personnel. The memorandum provided for calling back bargaining unit personnel when the desired level of call back personnel was two or four; if no call back personnel were available, Lewis County Fire District 12, the Chehalis Fire Department and/or Care Ambulance were to be used.

By letter of January 19, 1994, the union notified the employer of its concern about operating with only two fire fighters on duty, and requested to bargain the issue. On January 25, 1994, the union filed a grievance regarding the reduction of shift personnel, requesting the employer to maintain the status quo regarding shift staffing, and to bargain any change prior to implementation.

On January 31, 1994, the employer issued Standard Operating Procedure 24a, specifying that "at least four members shall be assembled before initiating interior firefighting operations at a working structure fire", but allowing immediate action with less than four persons at the scene in the case of an imminent life threatening situation. This statement continued an existing practice.

On February 1, 1994, the union president wrote to a member of the city council, again expressing concern about operating with only two personnel on duty.[2]

On February 16, 1994, the employer rejected the grievance filed on January 19th, on the basis that it was not reviewed by a contractual grievance committee and that the union failed to state what contract provisions were violated.

By letter of February 17, 1994, the union advised the employer that it opposed two-person staffing from a safety standpoint, and renewed its request to bargain the issue prior to implementation.

On February 18, 1994, the employer responded that it had addressed the union's concerns with alternative staffing responses and an offer of compensatory time at the "status quo" rate and conditions. Although the employer considered the issue moot because of time constraints, it offered to meet at any time to discuss labor-management relations.

On February 22, 1994, the union filed another grievance reiterating its request to restore the status quo with respect to equipment and fire crew staffing. The employer denied this grievance on March 2, 1994, stating that staffing is a non-mandatory subject of bargain-

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[2] We have no "interference" or "discrimination" allegation before us in this case. The evidence indicates, however, that some threats were made to union leaders in a connection with this issue. In a February 4, 1994 letter to the mayor and city council, the union president stated that he had been called into the fire chief's office and threatened with termination because of the February 1, 1994 letter to the councilman and other contacts with the city council. On February 7, 1994, a union attorney wrote the employer's attorney, confirming the employer's assurances that the union president would not be disciplined for communicating with city council members. On February 14, 1994, the union president again wrote to the city council regarding the fire chief's actions over the years in attempting to restrict union activity.

ing, and that workload and safety were impacted in a positive way with the change. The employer stated that no member of the department would receive less money, work more or less hours, and the working conditions would be much improved with the changes it was implementing.

On July 8, 1994, the union filed a complaint charging unfair labor practices, alleging that the employer violated RCW 41.56.140(4), by unilaterally changing its crew size and equipment staffing without giving notice and providing opportunity for collective bargaining. Examiner William A. Lang held a hearing on February 22, 1995, and issued a decision on September 29, 1995. Examiner Lang found that the employer's staffing decision was not a mandatory subject of bargaining and dismissed the unfair labor practice charge. The union petitioned for review, thus bringing the matter before the Commission. The parties presented oral argument before the Commission on May 20, 1996.

POSITIONS OF THE PARTIES

The union argues that reduction in the minimum crew size increased fire fighters' risk of death or injury, increased workload, decreased compensation, and is a mandatory subject of bargaining. It contends that safety and workload issues should predominate over any managerial interests that the employer may have. The union takes issue with portions of paragraphs 4, 5, 6, 7, 8, and 9 of the Examiner's Findings of Fact, and urges the Commission to overturn the Examiner's decision.

The employer argues that staffing and service levels do not directly affect the safety, workload and compensation of the fire fighters, and are within its entrepreneurial control. The employer asks the Commission to uphold the Examiner's dismissal of the case.

DISCUSSION

The Duty to Bargain

The duty to bargain under the Public Employees' Collective Bargaining Act is defined in RCW 41.56.030(4) as follows:

> "Collective bargaining" means ... 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 ...

[Emphasis by **bold** supplied.]

That definition is patterned after the National Labor Relations Act. The Supreme Court of the State of Washington has ruled that decisions construing the National Labor Relations Act (NLRA), are persuasive in interpreting state labor acts which are similar or based on the NLRA. Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1981).

The potential subjects for bargaining between an employer and union are commonly divided into categories of "mandatory", "permissive" and "illegal". Matters affecting wages, hours, and working conditions are mandatory subjects of bargaining, while matters considered remote from "terms and conditions of employment" or which are regarded as a prerogative of employers or of unions have been categorized as "nonmandatory" or "permissive". See, Federal Way School District No. 210, Decision 232-A (EDUC, 1977), citing NLRB v. Wooster division of Borg-Warner, 356 U.S. 342 (1958), affirmed, Federal Way Education Association v. Public Employment Relations Commission, WPERR CD-57 (King County Superior Court, 1978). The concept of mandatory bargaining is premised on the belief that collective discussions will result in decisions that

are better for both management and labor and for society as a whole. First National Maintenance Corporation v. NLRB, 452 U.S. 666, 678 (1981).

In determining whether an issue is a mandatory subject of bargaining, the Commission weighs the extent to which the issue effects personnel matters. Where a subject relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to determine which of these characteristics predominates. International Association of Fire Fighters, Local 1051 v. Public Employment Relations Commission (City of Richland), 113 Wn.2d 197 (1989).

Although the Court in Richland distinguished between shift staffing levels, where there would be a strong managerial prerogative, and equipment staffing, which is "not so importantly reserved to the prerogative of management", it espoused the view that it may be appropriate for parties to bargain over shift staffing levels in certain circumstances. The Supreme Court stated specifically:

> **When staffing levels have a demonstratedly direct relationship to employee workload and safety**, however, we believe that, **under appropriate circumstances, requiring an employer to bargain over them will achieve the balance of public, employer and union interests that best furthers the purposes of the public employment collective bargaining laws.** We have said as much before, in another case involving fire fighter staffing levels. In Everett v. Fire Fighters, Local 350, Int'l Ass'n of Fire Fighters, 87 Wn.2d 572, 555 P.2d 418 (1976), we deferred to arbitration the question of whether a fire fighter union's minimum shift proposal was a mandatory subject of bargaining, noting that
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> > **the size of the crew might well affect the safety of the employees and would therefore constitute a working condition**, within the meaning of RCW 41.56.030(4) defining collective bargaining.
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> [Emphasis by **bold** supplied.]

The critical consideration in determining whether an employer has a duty to bargain a matter is the nature of the impact on the bargaining unit. Spokane County Fire Protection District 9, Decision 3661-A (PECB, 1991).

Staffing as Mandatory Subject of Bargaining

Labor Cost Considerations -

At oral argument, the union argued that the stated reason for the change was wage-cost, and that the Supreme Court of the United States said in First National Maintenance Corporation v. NLRB, supra, a change will be deemed a mandatory subject of bargaining if it is only a wage-cost issue. The union argued that, whether or not the balancing test of Richland is applied, the impact of the change on employee safety is so dramatic it is plainly germane to working conditions and a mandatory subject of bargaining.

The employer asserted at oral argument that safety at the fire scene is not compromised, because of the additional backup it has with neighboring jurisdictions.[3] The employer claims that in 1994, the year it went to two person crews, the actual overtime budget increased by $12,000, but fire fighter staffing actually decreased by two, thus a significant savings was realized anyway. It contends that this is a pure "shift-staffing" case, and that this type of staffing is a managerial prerogative under Richland.

We have carefully reviewed the record and find the union's interpretation of First National Maintenance Corporation v. NLRB, supra, persuasive. In that case, the United States Supreme Court said that management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business, and held that the decision to shut down part

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[3] It acknowledged that there would be a safety issue without the backup.

of a business purely for economic reasons is one for the employer to make. In the process of deciding that case, however, the Court considered that an employer's desire to reduce labor costs alone is a matter "peculiarly suitable for resolution within the collective bargaining framework". First National Maintenance Corporation v. NLRB, at 679-680. Here, the employer was not attempting to decrease its service or change the scope of the enterprise; the employer has pointed to no other reasons for its actions but to reduce labor costs. Under First National Maintenance, the issue is clearly suitable for collective bargaining.[4]

Safety Considerations -

Even though we find the issue in this case a mandatory subject of bargaining under First National Maintenance, we proceed with an analysis of precedent under Richland. In some cases where the Commission has found a managerial prerogative, it has found safety to have actually increased with the change. For example, in King County, Decision 4893-A (PECB, 1995), the Commission applied the balancing test of Richland, to dismiss unfair labor practice allegations upon finding that the employer imposed driving restrictions due to its own safety concerns and interest in the affected employee carrying out certain functions in a safe manner. In City of Bellevue, Decision 3343-A (PECB, 1990), the Commission noted the Supreme Court's observation in Richland that bargaining may be required if staffing levels relate to employee workload and safety, and, finding no such allegations, dismissed a complaint

[4] While the employer has articulated its interest in maintaining the same or an improved level of public service and attempted to show that safety has not been compromised by the change to two person crews, it has not articulated any reasons, besides cost, why the change should be considered a managerial prerogative and within its entrepreneurial control. That the new system may operate more efficiently and effectively is not enough, for the same system or even better one might have been developed through collaboration and bargaining with the union.

concerning an increase in "lieutenant" positions in a fire department, commenting that the increased coverage provided by the new positions would likely reduce workload and enhance safety.

The Commission seriously considers any attempt to undermine the safety of employees.[5] The union has persuaded us that the foreseeable risk to employees is significantly aggravated when only two fire fighters constitute the initial response to a structure fire. The employer's own policy establishes a four-person crew as the preferred staffing for interior attack on a fire. Three persons can more safely deploy and advance hose lines and force entry, with one person monitoring the pump to ensure proper pressure to the hose while the other two start an interior attack or perform search and rescue as necessary. With less staff, it is not possible for personnel to watch out for each other or to identify hazards that others may not see. The safety of a two-person crew could also be compromised if the crew is the first to arrive at an emergency medical incident on the interstate highway which bisects Centralia. A third person would be helpful to position a fire engine, flares and safety cones to protect the crew, while others treat the patient(s) at the scene.

We realize that even with a three person crew, there may be times when one person is out performing inspections or out for other reasons, so that the third person may not be part of the immediate response team. We also recognize that a three-person crew would not comply with the four-person requirement of SOP 24a to begin operations for interior structural attacks. With the change to

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[5] In King County Fire Protection District 39, Decision 2160-A (PECB, 1985), the Commission ordered a hearing on a complaint which alleged that restriction of a pool of candidates for new fire fighters would result in the hiring of less competent persons, thereby posing a safety hazard to employees. (The case was later deferred to arbitration, where the arbitration panel found the safety concerns only "speculative".)

two-person minimum staffing, however, we are convinced that at least a portion of the time, there are going to be less personnel at the scene initially. The limited testimony in this record suggests that the fire station may have been staffed with two persons about half the time during the summer and autumn of 1994. This means coverage for initial emergencies has been reduced a substantial portion of the time. We are also convinced that if only two fire fighters appear on the scene, and there is someone in the structure, the fire fighters might proceed, no matter what the regulations say.[6]

"Shift" vs. "Equipment" Considerations -

We are not persuaded by the employer's argument that this is a "shift staffing" case only. We find components of both "shift staffing" and "equipment staffing" in this "one fire truck" situation. The decision was to staff each shift with fewer personnel, but the end result is to staff the employer's only first-response equipment with fewer personnel. Thus, shift staffing and equipment staffing become one-in-the-same on these unique facts. Since Richland allows for bargaining of equipment staffing generally, this case falls squarely into that category. Likewise, the record in this case establishes a strong employee interest in safety, so that this case falls within the Richland category of cases allowing for bargaining of shift staffing when it has a direct relationship to employee safety and workload.

Removal of Work from Bargaining Unit -

At oral argument, the employer stated that it has increased its level of service by using personnel from other jurisdictions. In rebuttal, the union noted that this sounded like "skimming" of

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[6] The record contains no facts that fire fighters have actually proceeded in life-saving situations without four personnel at the scene. It just strains credulity to think they would not.

bargaining unit work which would, itself, be an unfair labor practice.[7]

The Commission has found a duty to bargain exists when a change results in loss of work opportunities or pay to bargaining unit employees. See, City of Mercer Island, Decision 1026-A (PECB, 1981), where a duty to bargain arose because the creation of promotional positions resulted in loss of unit work for the bargaining unit. In Spokane Fire Protection District 9, Decision 3482-A (PECB, 1991), an unfair labor practice was found regarding a change of compensation to volunteers that affected the call-back opportunities of uniformed personnel.[8] In City of Kelso, Decision 2120-A (PECB, 1985), the Commission specifically held that "contracting out" fire suppression services was a mandatory subject of bargaining.[9]

The Examiner in this case found no duty to bargain the removal of work, in part because the employer was not compensating neighboring jurisdictions for their services, as in City of Kelso.[10] That decision, however, was based on the impact to the bargaining unit and not whether the persons who would perform the work were paid or

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[7] The Examiner's stated that no "contracting" decision was before him, and that the union did not demand to bargain any such decision.

[8] In that case, the Commission found no unfair labor practice in the employer's changed frequency of calling out volunteers, because the action did not inherently diminish work opportunities of the bargaining unit, and did not alter the established practice of first turning to volunteers for standby duty.

[9] Situations where the employer maintains legal control and "contracts out" are a mandatory subject of bargaining in most cases. City of Kelso, Decision 2633-A (PECB, 1988).

[10] Decision 2120-A (PECB, 1985).

unpaid.[11] One reason this employer could unilaterally reduce its crew size was because of its agreements with neighboring jurisdictions to provide extra staffing in emergencies. The employer solicited assistance from other sources to perform work previously performed by bargaining unit members, and decreased its total number of paid personnel. Even though the assistance solicited was unpaid, the employer's action resulted in the same effect to employees in the bargaining unit as "subcontracting" or "skimming" would, that is, loss of work for the bargaining unit, and further supports an unfair labor practice charge.

Increase in Workload -

At the same time it removed work from the bargaining unit, the employer increased the workload of the paid fire fighters on duty. The non-emergency workload is a constant, so a decrease in station staffing would naturally yield an increase in the workload of the personnel on each shift. With the change, less personnel are available to clean the vehicles, equipment and work area. Less personnel are available to perform fire prevention inspections and associated data entry. With less people to perform drills, the workload is increased for the two who are actually performing the drill. In an emergency situation, if there are only two to accomplish the task as opposed to three, the work is likely to get

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[11] The decision was premised on the concurring opinion of Justice Stewart in Fibreboard Corp. v. NLRB, 379 U.S. 203 (1964), who said, in part:

> The question remains whether this particular kind of subcontracting decision comes within the employer's duty to bargain. On the facts of this case, I join the Court's judgement, because all that is involved is the substitution of one group of workers for another to perform the same task in the same plant under the ultimate control of the same employer. The question whether the employer may discharge one group of workers and substitute another for them is closely analogous to many other situations within the traditional framework of collective bargaining.

accomplished less quickly. After a fire, the work involved in cleaning the hose, hanging the hose, filling air bottles, breathing apparatus bottles, and placing the equipment back into service is increased for two persons. If a fire burns unchecked, as it would with less personnel to immediately attend to it, the fire grows in intensity, and becomes harder to extinguish. The salvage and overhaul process is increased, so the workload is increased for everyone.

In Lake Chelan School District 129, Decision 4940-A (EDUC, 1995), the Commission balanced the interests of school teachers, who had an added responsibility of monitoring the unloading of school buses in the morning and the loading in the afternoon, against the entrepreneurial interests of the employer in assuring the safety of the students, and found the decision to make the assignment was predominantly a managerial prerogative in that it assured the safety of the students which outweighed the temporary personal inconvenience imposed on the teachers, and was not a mandatory subject of bargaining. In this case, however, the change created a substantial safety factor for employees, there is a "skimming" factor not found in Lake Chelan, and the workload increase was not temporary, as in Lake Chelan. In this case, the change in workload was the result of the staffing decision, and could be negotiated as part of the "effects" bargaining of the staffing decision.

Overtime -

The union argues that two-person crew staffing affected the overtime opportunities for bargaining unit personnel. It argues that prior to January of 1994, a bargaining unit employee would be called back to fill the third position each time the level of staffing dropped to below three as a result of leave time. With the change to two-person staffing, the employer no longer called in a replacement employee on overtime each time the crew size fell below three, thus effectively reducing opportunities for any one person.

Actions causing a reduction in compensation to bargaining unit employees are generally mandatory subjects of bargaining. In City of Hoquiam, Decision 745 (PECB, 1979), a duty to bargain arose because the deletion of a promotional position within the bargaining unit effectively reduced the pay rate for the duties formerly associated with the promotional position.

The employer's argument that its overtime budget actually increased by $12,000 during the first year it went to two-person staffing is not convincing. Employees covered by the agreement received a cost of living adjustment on January 1, 1994, so that the $12,000 increase may have been partially due to the increase in wage rates. We are unable to compute the increase in overtime hours.

The evidence in this case seems to be inconclusive on the loss of overtime, but with the use of emergency facilities from surrounding communities, and the decrease in shift staffing from three to two, it is clear that some work opportunities would have been lost to the bargaining unit. This loss of work opportunities and any potential loss of overtime could be negotiated as the effects of the staffing decision.

Waiver of Bargaining Rights

An employer's unilateral change of a mandatory subject of bargaining without agreement of the organization representing the affected employees will ordinarily constitute a refusal to bargain. Federal Way School District, supra. If the exclusive bargaining representative makes a timely request for bargaining, the employer must bargain in good faith to either an agreement or an impasse. Lewis County, Decision 3418 (PECB, 1990); Pierce County, Decision 1710 (PECB, 1983). See, also, Bates Technical College, Decision 5140-A (PECB, 1996).

Where a change is presented by an employer as a fait accompli, so that bargaining is futile, a union's failure to request bargaining cannot be deemed a waiver. City of Tukwila, Decision 2434-A (PECB, 1987). A union can, however, waive its bargaining rights when, after receiving an employer's notice of a planned change, it does not properly request bargaining on the matter. See, Mukilteo School District 6, Decision 3795-A (PECB, 1992), and Lake Washington Technical College, Decision 4721-A (PECB, 1995).

In its brief in response to the petition for review, the employer claimed the union failed to articulate its safety concerns and canceled a meeting. At oral argument, the employer contended it had been ready to bargain. To the extent that the employer now claims the union waived any right to bargain, we agree with the Examiner that the union made appropriate demands for bargaining.[12] The union canceled one meeting, but the employer made the unilateral change and steadfastly held to its position that the shift staffing issue was not a mandatory subject of bargaining.

Conclusions

The employer unilaterally implemented a new scheduling pattern,[13] which increased safety hazards of employees initially meeting the demands of an emergency, increased workload and decreased work opportunities for bargaining unit employees, and may have skimmed bargaining unit work to neighboring jurisdictions, all of which are factors the Commission has specifically recognized as potentially

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12 The Examiner's comprehensive analysis of the issue is set forth on pp. 13-15 of the decision. We agree with that analysis.

13 The fact the employer's actions were made against a backdrop of threats of discharge to the union president for contacting the city council causes us some concern, but is not material to our decision.

outweighing the management prerogative of setting shift staffing levels.[14]

We find that the employer's interest in reducing its staff was to reduce labor costs, and the change was a mandatory subject of bargaining under First National Maintenance Corporation v. NLRB, supra. We also find that under the analysis of Richland, the employees' interests in safety, workload, and pay outweigh the employer's attempts to reduce its costs. The reduction of shift staffing and the effects of that reduction are thus mandatory subjects of bargaining.

NOW, THEREFORE, The Findings of Fact, Conclusions of Law and Order issued in this matter by William A. Lang are vacated, and the Commission substitutes the following Findings of Fact, Conclusions of Law and Order.

AMENDED 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. 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

[14] See, City of Bellevue, supra.

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. The employer's decisions to reduce staffing and to solicit assistance from neighboring jurisdictions was to save on labor costs. The staffing decision affected equipment staffing.

4. In 1994, the Centralia Fire Department responded to 262 fire calls, of which 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 establishes 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. When a third crew member is not stationed at the fire house, the two fire fighters arriving at a structure fire are not able to operate as efficiently and safely as would a three-person crew.

5. 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. With reduced staffing, the safety of employees is compromised.

6. 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. With reduced staffing, the safety of employees becomes a greater concern, and workload of employees can increase.

7. In 1994, the Centralia Fire Department responded to 1,160 emergency medical service calls. The record establishes an increase in safety risks for fire fighters employed by the Centralia Fire Department related to emergency medical calls, as a result of the decrease in shift staffing. When a third crew member is not stationed at the fire house, there are less personnel to respond safely to medical service calls. With less personnel, protection of the aid crew with flares or safety cones at freeway based, emergency medical incidents may be compromised because of the requirements to treat patients at the scene.

8. As it reduced shift staffing from three to two, the employer solicited assistance from other sources to perform emergency work previously performed by bargaining unit members, effectively reducing the regular work opportunities for bargaining unit personnel.

9. The union made a demand to bargain the reduction of shift staffing, citing concern that the reduction of staffing affected fire fighter safety, workload, and overtime pay. The employer refused to bargain the issues, and implemented the staffing change.

AMENDED 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 establishes that the employer's reduction of its staffing level to save labor costs affected both equipment staffing and shift staffing, that the staffing levels have a direct relationship to employee workload and safety and that the union's interest in employee safety, workload and pay is stronger than the employer's prerogative in establishing the staffing level of its fire department, so that the employer's staffing decision is a mandatory subject of bargaining under RCW 41.56.030(4).

3. The evidence described in the foregoing findings of fact establishes that the union has a substantial interest in employee safety, workload, and pay 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 demand for bargaining on its staffing decision, the City of Centralia has refused to bargain in violation of RCW 41.56-.140(4).

AMENDED ORDER

The City of Centralia, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. Failing and refusing to bargain collectively, in good faith, with International Association of Fire Fighters, Local 451, regarding its crew size, equipment staffing, shift staffing that affects workload and safety, and the effects of those decisions.

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

a. Upon request of International Association of Fire Fighters, Local 451, bargain collectively with respect to minimum crew size, equipment staffing, shift staffing that affects workload and safety, and the effects of those decisions.

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, 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 30 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.

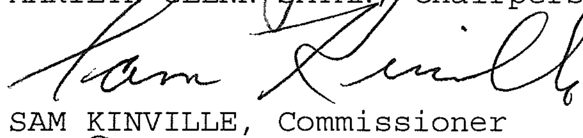
d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken

to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

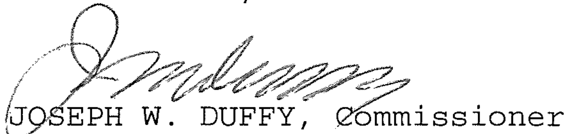
Issued at Olympia, Washington, the 18th day of June, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

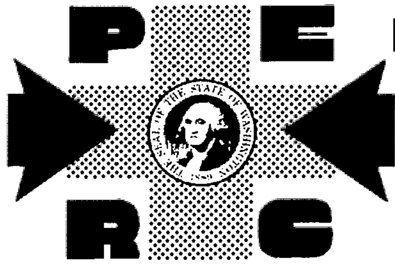
MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner



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 NOT fail or refuse to bargain with the International Association of Fire Fighters, Local 451, as the exclusive bargaining representative of our public employees employed in our fire department, excluding the Chief, Assistant Chief, and Executive Secretary.

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 CENTRALIA

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: (360) 753-3444.