STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY DEPUTY SHERIFF'S ASSOCIATION, Complainant, vs. SPOKANE COUNTY, Respondent.	CASE 12105-U-95-2853 DECISION 5698 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Stamper, Rubens, Stocker & Smith, by Thomas R. Luciani, Attorney at Law, appeared for the union.

James R. Sweetser, Prosecuting Attorney, by Martin F. Muench, Deputy Prosecuting Attorney, appeared for the employer.

On October 12, 1995, the Spokane County Deputy Sheriff's Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Spokane County had committed violations of RCW 41.56.140(1) and (4). Specifically, the union alleged that the employer refused to bargain a change of work week schedules for certain of its employees, and that the employer interfered with the union's statutory right to file and process unfair labor practice complaints and contractual grievances. A hearing was held at Spokane, Washington, on March 14 and 15, 1996, before Examiner Rex L. Lacy. The parties filed post-hearing briefs.

BACKGROUND

Spokane County (employer) provides traditional law enforcement and corrections services through the Spokane County Sheriff's Depart-

ment. John Goldman is now the elected sheriff of Spokane County. Michael Aubrey is one of two appointed undersheriffs.

The Spokane County Deputy Sheriff's Association (union) is the exclusive bargaining representative of a bargaining unit which includes all law enforcement officers of the Spokane County Sheriff's Department, up to and including the rank of sergeant. Those employees are "uniformed personnel" within the meaning of RCW 41.56.030(7). Fred Ruetsch is president of the union.

The employer and union have been parties to a series of collective bargaining agreements, the latest of which is effective from January 1, 1994 through December 31, 1996. That contract contains a provision that governs the assignment of deputies, detectives, and sergeants to schedules consisting of "five eight-hour work days" (5/8) or "four ten-hour work days" (4/10).

Prior to a labor/management meeting held by the parties on July 26, 1995, the union learned of the employer's intention to change the sergeants working on the first shift (late night to early morning) from the 4/10 schedule to a 5/8 schedule. The record indicates the sergeants who were then working on the 4/10 schedule informed Ruetsch that they preferred to remain on the 4/10 schedule.

At the July 26, 1995 meeting, the union informed the employer that the union believed the change in schedules for the first shift sergeants would have to be negotiated with the union under the terms of the 1994-1996 collective bargaining agreement. Ruetsch thereafter informed the employer that the first shift sergeants preferred the 4/10 schedule.

At a labor/management meeting held by the parties on August 30, 1995, the parties again discussed the issue of changing the work week of the patrol sergeants. The union continued to express its opinion that the contract required the employer to negotiate the

shift change. The employer presented research indicating that the 5/8 schedule would provide more patrol sergeants on duty during the hours of greatest need, but the meeting ended without the parties reaching any agreement to negotiate the dispute. The employer did indicate that, if another method of coverage could be found, the alternative scheduling issue might be implemented on a six-month trial basis.

On September 1, 1995, the employer implemented a 5/8 work schedule for sergeants on the second (day) and third (afternoon) shifts. The employer did not provide the union with any advance notice of that schedule change, and did not bargain it with the union.

On September 6, 1995, the union sent a letter to the employer, demanding to bargain the issue of the shift changes for sergeants. The employer did not agree to bargain the shift change issue.

On September 15, 1995, Undersheriff Aubrey sent a memorandum to the First Shift Problem Solving Team which indicated that the pursuit of the union's demand to bargain the shift change and the union's filing of a formal grievance would likely have a "chilling effect on the modification of future shift hour schedules since it is being contended that we are required to negotiate with SCDSA any changes".

On October 10, 1995, the union filed a demand with the employer for bargaining on a proposed shift change for patrol sergeants on the first shift. The employer did not agree to bargain that shift change with the union. This unfair labor practice case followed, on October 12, 1995.

On October 25, 1995, the union informed the employer that a work schedule for detectives which was proposed to start on November 1, 1995 was acceptable to the detectives. Further, the union stated that it did not desire to bargain that shift change.

On November 14, 1995, the employer informed the union that the employer believed the schedule change for detectives was authorized by Article V of the parties' collective bargaining agreement. Further, the employer notified the union that it considered that its duty to bargain the issue had been satisfied.

POSITIONS OF THE PARTIES

The union contends that the Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW, that hours of work are a mandatory subject of collective bargaining under that statute, and that Article V, Hours of Work, Section A(2) of the parties' contract did not waive the union's right to negotiate shift changes affecting bargaining unit members. The union contends, therefore, that the employer refused to bargain in violation of RCW 41.56.140(4) when it refused the union's requests for bargaining on shift changes for bargaining unit members. Finally, the union contends that the employer interfered with employee rights in violation of RCW 41.56.140(1) when it announced that pursuit of grievances and/or this unfair labor practice complaint would have a "chilling" effect on the parties' future labor relations.

The employer contends that the Commission does not have jurisdiction over this matter, that the collective bargaining agreement provides that employees can be scheduled under either the 5/8 or 4/10 patterns, and that the union waived its right to renegotiate the hours of work issue pursuant to Article V, Section A(2) of the parties' contract. Additionally, the employer asserts that the union has thwarted the purposes of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Finally, the employer contends that it did not interfere with the union's right to file and pursue contractual grievances or this unfair labor practice case.

DISCUSSION

The "Refusal to Bargain" Claim

Controlling Legal Principles -
This employer and union bargain collectively under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The bargaining obligation is defined in that statute, as follows:

> RCW 41.56.030 DEFINITIONS. As used in this chapter:
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> ...
>
> (4) "Collective bargaining" means the 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. ...

As described in Pierce County, Decision 1710 (PECB, 1983), citing NLRB v. Katz, 369 U.S. 736 (1962), it is an unfair labor practice for an employer to implement changes of the wages, hours or working conditions of represented employees, unless it has first discharged its bargaining obligations under the statute. Whenever an employer is contemplating a change which affects a mandatory subject of bargaining,[1] its first obligation is to give notice to the exclu-

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[1] Even if the decision itself is not bargainable, the duty to bargain will still exist as to the effects of that decision upon bargaining unit employees. First National Maintenance Corp., v. NLRB, 452 US 666 (1981); Lewis County, Decision 2957 (PECB, 1988); and Wenatchee School District, Decision 3240 (PECB, 1990).

sive bargaining representative of its employees and provide opportunity for bargaining prior to making the final decision. If bargaining is requested,[2] the parties must bargain in good faith. If an agreement is reached, the purpose of the collective bargaining process will have been well-served.

If a lawful impasse is reached in collective bargaining, the general rule described in Pierce County, supra, would permit the employer to implement changes it had previously proposed to the union. An exception is made, however, for employees who are "uniformed personnel" eligible for interest arbitration under RCW 41.56.430 et seq. In City of Seattle, Decision 1667-A (PECB, 1984), the prohibition against unilateral changes found in RCW 41.56.470 was applied to issues arising mid-term in a collective bargaining agreement. For a unit of "uniformed personnel", such as the employees involved in the case now before the Examiner, the parties would need to proceed through the negotiation/mediation/arbitration procedure of RCW 41.56.440 and .450, and the employer could only implement such changes as are approved by an interest arbitration panel.

An exception to the entire bargaining obligation occurs if there has been a waiver by contract. City of Kennewick, Decision 482-B (PECB, 1980).[3] Waiver is narrowly defined, however, as "intentional relinquishment of a known right". Spokane County, Decision 2377

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[2] If a union does not make a timely request for bargaining when presented with an opportunity to do so, it will be found to have made a "waiver by inaction". City of Yakima, Decision 1124-A (PECB, 1981); Lake Washington Technical College, Decision 4721-A (PECB, 1995).

[3] Discussion regarding "waiver by contract" can also be found in City of Walla, Decision 104 (PECB, 1976); Newport School District, Decision 2153 (PECB, 1985); Spokane County, Decision 2377 (PECB, 1986); City of Yakima, Decisions 3564 and 3564-A (PECB, 1990); Mukilteo School District, Decision 3795 (PECB,1992); and City of Pasco, Decision 4197 (PECB, 1992).

(PECB, 1986). The Commission has also held that the waiver must be clear and unambiguous. Generally, broad and unspecific language will not create a waiver.

The Supreme Court of the State of Washington has given a strict interpretation to the words "execute a written agreement" found in RCW 41.56.030(4). In State ex rel. Bain v. Clallam County, 77 Wn.2d 542 (1970), the Supreme Court noted that collective bargaining under Chapter 41.56 RCW involves doing the public's business and, expressing a strong preference for a clear record of such transactions, held that all collective bargaining agreements under Chapter 41.56 RCW **must** be in writing.

The authority and responsibility of the Public Employment Relations Commission to prevent and remedy unfair labor practices is set forth in RCW 41.56.160, as follows:

> RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS. The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

The "unfair labor practices" prohibited by the statute are limited to the types of conduct described in RCW 41.56.140 and 41.56.150. There is no "violation of contract" prohibition among the unfair labor practices enumerated in Chapter 41.56 RCW. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The Commission is, however, routinely called upon to evaluate

"waiver by contract" defenses in unfair labor practice cases where unilateral changes are alleged.

The Legislature has stated a preference for resolution of disputes concerning the interpretation or application of collective bargaining agreements through grievance arbitration procedures. RCW 41.58.020(4). Where the employer conduct at issue in a "unilateral change / refusal to bargain" unfair labor practice case is arguably protected or prohibited by an existing collective bargaining agreement, the Commission prefers to defer to grievance arbitration machinery established in the contract. City of Yakima, Decision 3564-A (PECB, 1991).[4] Deferral is not a loss or surrender of jurisdiction, and the Commission retains authority to make such contract interpretations as are necessary to decide any "waiver by contract" defenses asserted in the unfair labor practice case. Moreover, deferral will not be ordered where the employer asserts procedural defenses to arbitration or where, as here, there is an "interference" or "discrimination" allegation which goes to the use of the grievance procedure and so cannot be deferred.

The Claim of Waiver by Shift Schedule Provisions -

Work hours are among the mandatory subjects of bargaining specifically mentioned in RCW 41.56.030(4). The employer maintains here that changes of work schedule are permitted by Article V, Section A(2) of the parties' collective bargaining agreement, which reads as follows:

> (2) The normal work week shall consist of five (5) days of eight (8) hours of work and two (2) of rest, or four (4) days of ten (10) hours of work and three (3) days of rest.

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[4] If an arbitrator finds the employer has violated the parties' contract, it is up to the arbitrator to remedy that violation. Conversely, an arbitrator's determination that the contract is silent will almost certainly lead to finding that an unfair labor practice violation has occurred.

> Either the days of work or the days of rest shall be consecutive, provided that no employee shall be required to work more than five (5) consecutive days during a markup change without a day off. **The parties will discharge their obligation to bargain over the reassignment of positions currently on 5 and two schedules to 4/10 schedules and vice versa.**

[Emphasis by **bold** supplied.]

The language of Article V, Section A(2) does not, however, meet the tests for a waiver by contract. Even though a narrow zone limited to two specific shift arrangements is mentioned, the collective bargaining agreement entered into by the union and the employer clearly, unambiguously, and intentionally requires the parties to bargain, upon request, concerning switches between those two scheduling options.

Charles "Skip" Wright, who was the employer's chief spokesman during the negotiations leading up to the current language in Article V, credibly testified that the employer was fully apprised of the ramifications of a language change proposed by the union. He testified that he informed then-Sheriff Larry Erickson that the employer could have to negotiate every shift change, if requested by the union, and that Erickson agreed to the union's proposed addition to the previous contract. That testimony was not controverted.

Erickson, who was the executive head of the bargaining unit at that time, signed the current collective bargaining agreement. Under State ex rel. Bain v. Clallam County, supra, the 1994-1996 contract became valid and enforceable when it was executed. Thus, changes to the normal work weeks of employees covered by the contract were not removed from the scope of mandatory bargaining while that contract is in effect, and the employer violated RCW 41.56.140(4) by refusing to bargain the changes when the union requested negotiations.

Effect of Past Waivers by Inaction -
Testimony that employees in the bargaining unit have historically been assigned to work either of the two shift options, without bargaining, is unpersuasive.

Before the 1994-1996 contract was effectuated, the reality of the situation is that the employer probably had the contractual right to assign employees to work shifts as it chose. The rules changed in 1994, however, with the addition of language to Article V, Section A(2) which requires the employer to discharge its bargaining obligations under RCW 41.56.030(4). Those obligations upon the employer include an affirmative duty to notify the union of changes in work schedules that the employer sought to make.

The employer presented evidence that several shift changes were unilaterally implemented after the 1994-96 contract was signed, without bargaining the changes with the union. Because the union did not seek to bargain those changes, the employer contends the union waived its right to bargain later changes. That contention also fails, however. Once a union receives notification of a contemplated change, it is incumbent upon the union to make a timely request if it desires to bargain the change.[5] The union presented credible evidence that its practice is to discuss proposed shift changes with the affected employees, and to seek negotiations only when the affected employees disagree with the proposed schedule change. That practice is well-supported by the union's actions in regard to the schedule changes involving the sergeants and detectives in this matter. When the sergeants objected to the employer's proposed schedule change, the union requested bargaining; when the detectives voiced no opposition to

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[5] If no timely request to bargain is made by the exclusive bargaining representative, the employer can implement the proposed change and finding of a "waiver by inaction" would be in an unfair labor practice case on the incident.

a schedule change, the union made no request to bargain the matter. That scenario applies to each and every proposed change, and the union is not obligated to re-establish its statutory bargaining rights. City of Wenatchee, Decision 2194 (PECB, 1985).

The crux of this dispute lies with the union's demand to bargain the shift change for the sergeants. The union clearly made timely requests for bargaining, and the employer clearly refused to engage in bargaining.

The Previous Arbitration Award -
At the hearing in this matter, the employer offered in evidence an arbitration award involving another bargaining unit of Spokane County employees. The arbitrator ruled in that case that the employer could eliminate one of two similar shift options, without bargaining. That arbitration award issued under a different collective bargaining agreement is not applicable to this matter, however. The clear and unambiguous language of Article V, Section A(2) carries a much greater obligation to bargain schedule changes than is found in the language interpreted by the arbitrator.

The Interference Claim

Controlling Legal Principles -
Employees have a statutory right to file and pursue unfair labor practice charges before the Commission, and the insistence of a party on withdrawal of unfair labor practice charges is itself an unfair labor practice. Public Utility District 1 of Clark County, Decision 2045-A (PECB, 1989). Similarly, it is an unfair labor practice for an employer to interfere with or discriminate against employees in the exercise of their statutory right to file and pursue grievances. Valley General Hospital, Decision 1195-A (PECB, 1981). Although proof of the employer's intent to discriminate is necessary to find a "discrimination" violation, a finding of intent is not necessary, if the employer's actions are reasonably per-

ceived by employees as a threat of reprisal related to their lawful union activities. City of Seattle, Decision 2773 (PECB, 1987).

The Alleged Threat -

Deputy Robert Bond is a bargaining unit employee who was serving as a member of the "First Shift Problem Solving Team" during the period relevant to this case. That committee was working on alternate work schedules for first shift employees. Boyd and other committee members had spent many hours researching and compiling solutions to problems that first shift employees believed to exist, and the committee presented the employer with a thick report that included recommendations for scheduling first shift employees. Bond does not hold any official position with the union.

On September 15, 1995, Undersheriff Aubrey sent a memorandum to the first shift problem solving team which expressly stated:

> It appears that you are approaching a point of making a written proposal that may include a request for a change of your work hours. **There has been a recent event which may impact your request which your team needs to consider.**
>
> On September 6th, **Sheriff Goldman received a** letter that included a demand to bargain and a **formal grievance from the Spokane County Deputy Sheriff's Association.** The issue is in regards to work hours for day shift and swing shift sergeants. **This is likely to have a chilling effect on the modification of future shift schedules** since it is being contended that we are required to negotiate with SCDSA any changes.

[Emphasis by **bold** supplied.]

Employers are responsible for the actions of its agents and supervisors who are acting in an official capacity. City of Seattle, Decision 2230 (PECB, 1985). Boyd and other employees on the "First Shift Problem Solving Team" could reasonably have perceived Aubrey's letter as a threat of reprisal associated with

the union's pursuit of the grievance and the refusal to bargain charge discussed above. Taken literally, the letter constitutes a clear and unmistaken implication of future discrimination if the union continued to pursue the shift change issue. Aubrey's action, standing alone, interferes with the union's statutory rights to engage in protected activities, and as such, is a violation of the statute. RCW 41.56.140(1).

Remedy

The "Unilateral Change" Violation -

The conventional remedy for a "unilateral change" violation is to order the restoration of the status quo ante, together with back pay to make employees whole from the adverse effects of the unlawful action. A simple restoration of the sergeants to the 4/10 work schedule is insufficient to remedy the effects of the unlawful change in this case, because the record supports a finding that the affected employees who had been coming to work only four days per week were substantially inconvenienced by having to come to work on a fifth day each week.

The parties' collective bargaining agreement makes provision for premium pay for overtime work, as follows:

Article X - Wages/Overtime

> ...
> E) Reporting Time and Call Back Pay:
> 1. Any employee who is scheduled to report for work on his regularly scheduled shift and who presents himself for work but where work is not available or made available for him may be excused from duty and paid at his regular rate for eight (8) hours.
> 2. **Any employee called to work outside his regular shift shall be paid a minimum of four (4) hours at straight time or the rate of time and one-half his regular rate for all hours worked, whichever is greater.** ...
>
> ...

> G. Overtime
> 1. Time and one-half (1-1/2) the employee's regular rate of pay shall be paid for work under any of the following conditions, but, compensation shall not be paid twice for the same hours.
> a. All work performed in excess of eight (8) hours in any work day.
> b. All work performed in excess of forty (40) hours in any work week.
> c. **All work performed before or after any scheduled work shift.**
> d. All work performed on any of the paid holidays set forth in Article V. ...

Thus, the sergeants who had been working on the 4/10 schedule would have been entitled to extra compensation if they were called out to work on a fifth day in a week.

In addition to restoring the 4/10 work schedule and maintaining it in effect until such time as its bargaining obligations are fully satisfied, the employer will be required to re-compute the pay for each employee affected by the unlawful unilateral change at issue in this case. For each week beginning with the implementation of the 5/8 work schedule, and continuing until the date on which the 4/10 work schedule is reinstated, the employer shall make the following adjustments:

1. The employer shall pay additional compensation to each employee who was assigned to the 5/8 schedule, in an amount equal to four (4) hours at the straight time rate in effect during the week, as compensation for being called to work outside his or her lawful regular shift;[6] and

2. The employer shall be entitled to reduce its payment to an employee under this order by an amount equivalent to the overtime compensation paid for working ninth and/or tenth hours on the first four days of a week when the employee was assigned a 5/8 schedule.[7]

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[6] Example: 8 8 8 8 8 = 40 recomputes as follows: 8 8 8 8 12 = 44 - 40 = 4 as remedy.

[7] Example: 8 10 8 8 8 = 43 recomputes as follows: 8 8 8 8 12 = 44 - 43 = 1 as remedy.

The "Interference" Violation -
The conventional remedy for an "interference" violation is to order the employer to cease and desist from its unlawful conduct, and to post notices to employees to clear the air. It will be so ordered.

Request for Attorney Fees -
The Commission has authority to order the payment of attorney fees to a successful complainant, as an extraordinary remedy for an unfair labor practice violation. Lewis County, Decision 644-A (PECB, 1979); affirmed 31 Wn.App. 853 (Division II, 1982), review denied 97 Wn.2d 1034 (1982).

The Examiner finds the defenses advanced by the employer to the "unilateral change" charge in this case were frivolous. Although former Sheriff Erickson has left office since the current contract was signed, incumbent Sheriff Goldman was an undersheriff involved in the negotiations which led to that contract. Even though former employer negotiator Wright is no longer with Spokane County, the employer knew or could easily have discovered what testimony Wright would give if called as a witness in this proceeding. Moreover, the employer did nothing to discredit Wright as a witness or to controvert his testimony about the intent of the added language concerning the employer's bargaining obligations on work schedule changes. Finally, each of the waiver defenses asserted by the employer was contrary to established precedent.

The Examiner finds that an extraordinary remedy is necessary to make an effective order on the "interference" charge. The Commission has been particularly protective of the dispute resolution machinery set forth in the statute, as in Mansfield School District, Decision 5238-A (EDUC, 1996), where it added an award of attorney fees upon a conclusion that discriminatory action had been directed at an employee who gave testimony against the employer. Additionally, since there was no possible doubt or evidentiary balance regarding offensive statement in this case

(which was made in Aubrey's letter intended for one or more bargaining unit employees), the defenses advanced by the employer to the "interference" charge were also frivolous.

FINDINGS OF FACT

1. Spokane County, Washington, is a public employer within the meaning of RCW 41.56.0030(1). The county is governed by an elected Board of County Commissioners. Among other public services, the employer operates and maintains a Sheriff's Department. The workforce of the Sheriff's Department includes employees titled "sergeant", "deputy sheriff", and "detective".

2. The Spokane County Deputy Sheriff's Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of all law enforcement officers employed by Spokane County, up to and including the rank of sergeant.

3. The employer and union have been parties to a series of collective bargaining agreements, the latest of which is effective from January 1, 1994 through December 31, 1996. The hours of work provision of that contract includes specific language, at Article V, Section A(2), which requires the parties to discharge their obligation to bargain over reassignments of positions currently on 5/8 schedule to the 4/10 schedule, and vice versa.

4. At labor/management meetings held on July 26 and August 30, 1995, the union informed the employer that the union considered proposed shift changes for first shift sergeants to be bargainable under Article V, Section A(2). The employer did not agree to bargain the issue of shift changes for the sergeants.

5. On September 1, 1995, the employer implemented shift changes affecting sergeants within the bargaining unit represented by the union.

6. On September 6, 1995, the union demanded to bargain with the employer concerning proposed changes in the work schedules of second and third shift sergeants. Again, the employer did not agree to bargain the issue.

7. On September 15, 1995, Undersheriff Michael Aubrey sent a letter to the First Shift Problem Solving Team which stated in part:

> [A] demand to bargain and a formal grievance from the Spokane County Deputy Sheriffs Association ... in regards to work hours for day shift and swing shift sergeants ... is likely to have a chilling effect on the modification of future shift hour schedules ...

Those statements were reasonably perceived by bargaining unit employees as a threat of reprisal associated with the union's pursuit of bargaining and lawful dispute resolution mechanisms under the protection of Chapter 41.56 RCW.

8. On October 10, 1995, the union requested the employer to bargain concerning the shift change for first shift patrol sergeants. The employer did not agree to bargain the issue.

CONCLUSIONS OF LAW

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

2. The provisions of Article V, Section 2(A) of the parties' collective bargaining agreement do not constitute a clear and

unmistakable waiver by contract of the union's right to bargain, under RCW 41.56.030(4), concerning changes of work schedules between the two options set forth in that section of the parties' contract.

3. By implementing changes of shift schedules for sergeants employed within the bargaining unit represented by the Spokane County Deputy Sheriff's Association, without giving notice to and bargaining with the exclusive bargaining representative concerning those changes, Spokane County has violated, and is violating, RCW 41.56.140(4).

4. By informing bargaining unit employees that the union's pursuit of its bargaining rights and the filing of a grievance under the collective bargaining agreement will have a "chilling effect" on future labor relations, the Spokane County has violated, and is violating, RCW 41.56.140(1).

5. The defenses asserted by Spokane County in this matter are frivolous, and an extraordinary remedy is necessary to make an effective order in response to the employer's attack on the dispute resolution mechanisms of Chapter 41.56 RCW.

ORDER

1. Spokane County, Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

A. CEASE AND DESIST from:

(1) Refusing to bargain, upon request, concerning proposed shift changes for employees of in bargaining unit.

(2) Threatening employees with adverse effects due to the pursuit of bargaining rights and or dispute resolution procedures provided by law.

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

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purpose and policies of Chapter 41.56 RCW.

(1) Restore the 4/10 work schedule for all bargaining unit positions affected by the unilateral changes of work schedule found unlawful in this proceeding.

(2) Make employees affected by the unlawful changes of work schedule whole, by immediate and payment of compensation equivalent to four hours at the straight time rate in effect during the week, for each week in which the employee was scheduled for a fifth shift under the 5/8 schedule. The employer shall be entitled to offset amounts paid for overtime for ninth and tenth hours worked on the first through fourth shifts of a week under the 5/8 schedule. Such back pay shall be computed with interest, in accordance with WAC 391-45-410, for each week from the date of the unilateral change to the date on which the 4/10 work schedule is reinstated pursuant to this order.

(3) Give notice to the Spokane County Deputy Sheriff's Association and provide opportunity for collective bargaining, prior to any future change of work schedules for employees in the bargaining unit represented by that organization.

(4) If bargaining is requested on any future change of work schedules, bargain in good faith and utilize the procedures of RCW 41.56.440 and .450.

(5) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

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

(7) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Dated at Olympia, Washington, this 9th day of October, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

REX L. LACY, 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.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 reinstate the 4/10 work schedule in effect for sergeants represented by the Spokane County Deputy Sheriff's Association.

WE WILL compensate employees affected by our unlawful unilateral implementation of a 5/8 work schedule, by payments to them equivalent to four hours at the straight time rate for each "fifth" shift worked under the 5/8 schedule, less a reduction for overtime paid for hours that would not have been so compensated under a 4/10 schedule.

WE WILL bargain, upon request, concerning shift work schedules for employees of the bargaining unit, and will resolve any impasse reached in collective bargaining through the procedure established by statute.

WE WILL NOT threaten employees that the pursuit of bargaining rights or the filing of grievances will have a chilling effect upon them or upon the bargaining relationship.

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.

WE WILL reimburse the Spokane County Deputy Sheriff's Association for its attorney fees in the prosecution of this case.

DATED: _____

SPOKANE COUNTY

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.