Garfield County, Decision 7641 (PECB, 2002)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1476-G, Complainant,	CASE 15813-U-01-4011
vs.	DECISION 7641 - PECB
GARFIELD COUNTY, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Audrey Eide, General Counsel, Washington State Council of County and City Employees, for the complainant.

Davis Grimm Payne Marra & Berry, by *Joseph G. Marra*, Attorney at Law, for the respondent.

On May 14, 2001, Washington State Council of County and City Employees, Local 1476-G (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Garfield County (employer) as the respondent. A preliminary ruling was issued under WAC 391-45-110, finding a cause of action to exist on allegations summarized as:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative "interference" in violation of RCW 41.56.140(1)], by its unilateral change in the work schedule of Public Works employees without providing an opportunity for bargaining.

A hearing was conducted on September 25, 2001, before Examiner Kenneth J. Latsch. The parties filed briefs on November 7, 2001.

The Examiner finds that the union waived its bargaining rights by the language of a collective bargaining agreement that was in effect between the parties, so that no duty to bargain existed as to the changes at issue here. The complaint is DISMISSED.

BACKGROUND

Located in the southeast portion of Washington State, Garfield County provides the services customarily provided by counties. The employer's operations are under the general policy direction of an elected three-member board of county commissioners. Appointed department directors provide daily supervision of the various operations.

Washington State Council of County and City Employees, Local 1476-G, is the exclusive bargaining representative of certain employees of Garfield County.

The employer and union are parties to a collective bargaining agreement for the period from January 1, 2000, through December 31, 2001, in which the existing bargaining unit is described as:

> [A]ll full-time and regular part-time employees of the Garfield County Road Department and Solid Waste Division, excluding the Director, County Engineer, Supervisors and Confidential Employees.

At the time of hearing, there were approximately 15 employees in the bargaining unit.

There is little factual dispute concerning the events which led to the instant unfair labor practice complaint:

Traditionally, the employees in this bargaining unit worked a "4-10" schedule, composed of four-ten hour days on the Mondays through Thursdays of each week. During January and February, the crew was divided into two components, to assure that the employer would have sufficient coverage for any snow removal operations. A "snow plow policy" adopted by the board of commissioners on December 30, 1996, states, in pertinent part:

> We will attempt to provide safe road conditions seven days a week during weather conditions that are not too severe. The Road Department Snow Plow Schedule assigns operators and equipment to plow specific routes. Snow plow assignments provide for a Monday through Thursday crew and a Tuesday through Friday crew that are on duty from 6:30am to 5:00pm or longer. Tuesday-Friday crews respond on Saturday and Monday-Thursday crews respond on Sundays. Severe weather conditions that jeopardize safety of our personnel or equipment as determined by the County Engineer may cause temporary suspension of plowing until conditions improve. . . .

The workforce was thus divided in two, with part of the employees working ten hour shifts on Monday through Thursday and the remainder of the employees working ten hour shifts on Tuesday through Friday. Employees were paid at the overtime rate for work on Saturday and/or Sunday.

Several severe storms in January of 2001 made driving conditions very hazardous. The board of county commissioners decided that a change of work schedules was needed, to make sure there was adequate coverage, particularly on Saturdays.[1] The

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[1] The record indicates that several serious accidents took place on Saturdays, and that the accidents, at least in part, occurred because the roads were not adequately sanded and plowed.

Commissioners directed County Engineer Mike Selivanoff to schedule two employees to work on Saturdays, with days off in the middle of the week. That schedule was to last for approximately four weeks, corresponding with the period when the most severe weather occurs.

The County Engineer asked for two employees to volunteer to work the new schedule, and the record indicates that two employees accepted the Saturday schedule as established by the employer. Apart from providing consistent Saturday coverage, the new schedule also saved the employer significant overtime costs. The employer was aware that savings would accrue from the new schedule, and wanted to take advantage of the schedule change to save money.

On January 26, 2001, the union's staff representative, T. Kae Roan, sent a letter to the employer's prosecuting attorney, John R. Henry, questioning the change in work schedules. Roan expressed the union's concerns in the following terms:

> I understand the employer has proposed a change in working conditions regarding employee work schedules. The contract provides that employees start work at fixed time each morning and normally work the regularly scheduled department work hours. The lack of language as to the specific day the workweek starts and ends does not override a clear past practice of the employer for a Monday through Friday workweek. The Union requests negotiations on this change in working conditions. . . .

Henry responded with a letter dated January 30, 2001, stating the employer's position as follows:

> The alleged "change in working conditions" that you refer to in your letter is not a change, is not a contract issue, nor a negotiable item; and in fact in line with clear

> past practices. The Road Department has always had someone available to work Saturdays, to do emergency snow plowing during the winter months. Rather than pay overtime however, two employees will simply be assigned to work that day, and be given another day off. Nothing in the current labor agreement dictates that employees of the Road Department work only Monday through Friday. This decision by management is in strict compliance with Article III - Management Rights, Section 3.1(I) and 3.1(K). Any attempt by the union to interfere with these management rights would be viewed as a breach of the 2000-2001 Agreement and an unfair labor practice.
>
> Therefore, the County does not intend to schedule "negotiations" regarding this matter. However, the Union representative is certainly entitled to appear at regular commissioner's meeting and discuss their concerns with management and the commissioners.

On January 31, 2001, the union filed a "class action grievance" claiming that the employer had violated several sections of the parties' collective bargaining agreement (Article 30, Section 1; Article 30, Section 2; Article 31, Section 1), as well as several sections of the federal Fair Labor Standards Act.[2]

On February 12, 2001, County Engineer Selivanoff responded to the grievance, denying that any violation took place. He reasoned:

> Monday through Friday is the regular work week, but past practice for the last few years or more has established that Saturday winter emergencies be addressed by an assigned Tuesday-Friday crew while Sunday winter emergencies be addressed by an assigned Monday-Thursday crew.

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[2] The cited contractual provisions are set forth in full below, in the "Discussion" section of this decision.

> In assigning two crew people to work Saturdays during winter, commissioner's intent is that personnel exchange a day during the previous or forthcoming workweek, i.e., their regular workweek, for their assigned Saturday. Doing so does avoid overtime compensation but is not the primary reason for assigning Saturday personnel. The primary justification for assigning Saturday personnel lies in Article III - Management Rights, Section 3.1(I) and 3.1(K) regarding scheduling the workforce and scheduling overtime.

On February 20, 2001, the union advanced the grievance to the board of commissioners.[3] The commissioners heard the grievance at its regularly-scheduled meeting on March 19, 2001.

On March 21, 2001, Henry sent a letter to Roan, summarizing the employer's position in the following terms:

> After due consideration of the grievance that was filed concerning the working of Saturdays, the Board of County Commissioners, at its regular hearing on March 19, 2001, concluded that this decision by management is in strict compliance with Article III - Management Rights, Section 3.1(I) and 3.1(K) of the 2000-2001 Agreement, and is not in violation of any provision of the Fair Labor Standards Act. Therefore, no remedial action is required.

The union then filed the instant unfair labor practice complaint, on May 14, 2001.

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[3] In submitting the dispute to the board of county commissioners, the union appears to have followed the grievance procedure established in the parties' contract. The employer has not claimed any procedural defect with regard to the work schedule grievance.

POSITIONS OF THE PARTIES

The union argues that the employer violated RCW 41.56.140(4), by unilaterally modifying employee working conditions without prior negotiations. The union contends that the employer had a duty to bargain its proposed change in the work schedule, and that the employer refused the union's request for bargaining. The union maintains that the collective bargaining agreement does not create a waiver of bargaining rights, and that it properly filed this case as an unfair labor practice because the existing grievance procedure does not provide for final and binding arbitration of grievance disputes. As a remedy, the union asks that the affected employees be paid at the overtime rate for work performed on Saturdays, that the employer be ordered to bargain the issue, that the employer post appropriate notices, and that the employer pay the union's attorney fees.

The employer contends it did not commit any unfair labor practice in this case. It maintains that the parties' collective bargaining agreement contains management rights language which clearly and specifically allows the employer to make changes in work schedules. The employer further maintains that the Commission should take notice of the grievance procedures in the parties' existing contract, and should defer any inquiry to the decision already rendered by the board of county commissioners.

DISCUSSION

Pertinent Contractual Provisions

Given the nature of the dispute presented here, it is necessary to set forth several sections of the collective bargaining agreement.

ARTICLE III - MANAGEMENT RIGHTS

3.1 Except as specifically limited by the express terms of this Agreement, the Union recognizes that the Employer retains the right to operate and manage all aspects of its operations, to direct, control and schedule its operations and workforce and to make any decisions affecting the County. Such management prerogatives shall include all matters not specifically limited by the agreement herein and any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate. Such prerogatives shall include, but not limited to, the right to:

A) Hire; promote

B) Lay-off;

C) Assign, classify, reclassify, evaluate, transfer;

D) Discharge and discipline employees;

E) Suspend employees with pay;

F) Suspend employees without pay;

G) Select and determine the number of its employees, including the number assigned to any particular work;

H) Increase or decrease that number;

I) *Direct and schedule the work force;*

J) Determine the location and type of operations;

K) *Determine and schedule when overtime shall be worked;*

L) Install or move equipment;

M) Determine the work duties of employees;

N) Promulgate, modify, post and enforce policies, procedures, rules and regulations governing the conduct

and acts of employees during working hours;

O) Select supervisory and managerial employees;

P) Train employees;

Q) Create or eliminate jobs;

R) Relieve employees because of lack of work or retirement;

S) Discontinue or reorganize or combine any department or branch or operation;

T) Subcontract or relocate bargaining unit work;

U) Introduce new and improved methods of operation or facilities;

V) Establish work performance levels and standards of performance of the employees;

W) And in all respects carry out, in addition, the ordinary and customary functions of management.

. . . .

ARTICLE XXX - HOURS OF WORK AND OVERTIME FOR COUNTY EMPLOYEES

30.1 Full-time personnel shall start work at a fixed time each morning, unless notified of a different starting time, and shall normally work the regularly scheduled department work hours from that time, exclusive of their lunch period.

30.2 Any employee performing work in excess of forty (40) hours per week may be compensated at the rate of one and one-half (1½) the regular hourly wage for said position; provided, however, no employees shall be granted extra compensation of working any hours in excess of forty (40) hours per week if such is done without the knowledge and prior approval of the department head. . . .

ARTICLE XXXI - EMPLOYEE CALL-BACK TIME

> 31.1 Anytime in which an employee is subject to "call-back time" (being called back to work after the regularly scheduled work shift or called back on a day not scheduled for work), those employees who are called back will be paid at one and one-half (1½) times the regular hourly rate for all call-back time and will be given a minimum of two (2) hours of work time for each call back.

(emphasis added).

Although the parties' contract contains a grievance procedure, that procedure does not end with final and binding arbitration.

Deferral to the Contractual Grievance Procedure

The Examiner rejects the employer's contention that the Commission should defer to the decision rendered by the board of county commissioners in denying the grievance filed by the union in the instant matter. While the Commission has long supported "deferral" under circumstances, deferral is not automatic, and several factors required for deferral are absent in the instant case.

The Grievance Arbitration Process -
RCW 41.58.040 establishes that the parties to a collective bargaining relationship each have responsibilities for resolving disputes:

> In order to prevent or minimize disruptions to the public welfare growing out of labor disputes, employers and employees and their representatives shall:
>
> (1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, includ-

> ing provision of adequate notice of any proposed change in the terms of such agreements;
>
> (2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or a respective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and
>
> (3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the commission under this chapter for the purpose of aiding in a settlement of the dispute.

Beyond directing parties to make an effort to resolve their differences without intervention by others, the statutes clearly anticipate the need for intervention if the parties' bilateral efforts are not successful. RCW 41.58.020 generally promotes the use of contractual dispute resolution procedures for grievance disputes:

> (4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . .

In addition, RCW 41.56.122 specifically authorizes that collective bargaining agreements can:

> (2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

The Commission implements those statutory provisions, by making members of its staff available to arbitrate grievances, under RCW 41.56.125 and WAC 391-65-070, and by referring lists of arbitrators

from its Dispute Resolution Panel, under WAC 391-65-090 and WAC 391-55-120.

Deferral to Arbitration Policy -

The Legislature has given the Commission authority to prevent unfair labor practices in RCW 41.56.160, as follows:

> (1) 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.*

(emphasis added).

The types of conduct that are prohibited under the Public Employees' Collective Bargaining Act are set forth in RCW 41.56.140 and RCW 41.56.150. Within the latitude given to it by the Legislature, the Commission has dealt with the interface of the unfair labor practice and grievance arbitration processes in a number of case precedents and rules.

Commission precedents dating back to *City of Walla Walla*, Decision 104 (PECB, 1976), have consistently stated and reiterated that the Commission is not an arbitrator of contractual disputes. Thus, the agency does not assert jurisdiction to determine or remedy claimed contract violations through the unfair labor practice provisions of the statute.

The possibility of "deferral to arbitration" was first set forth in *City of Richland*, Decision 246 (PECB, 1976). Arising in the

context of an alleged unilateral change of working conditions, the complaint in that case provided an opportunity to address the possibility of deferring to the result reached in related proceedings on a grievance being processed through the collective bargaining agreement between those parties. That Examiner wrote:

> The NLRB adopted the policy that under certain circumstances, it will defer resolution of an unfair labor practice charge alleging an employer's unilateral changes in working conditions to the arbitration procedure outlined in the parties' collective bargaining agreement and will do so even where neither party has set in motion the grievance-arbitration machinery.

In *West Valley School District*, (PECB, 1981), an Examiner noted that "deferral to arbitration" cannot be ordered where a final and binding grievance arbitration procedure does not exist.[4]

In *City of Yakima*, Decision 3564-A (PECB, 1991), the Commission took the opportunity to harmonize and restate policies concerning deferral to arbitration that had been addressed in a number of earlier decisions. The Commission took a different approach to "deferral" than the National Labor Relations Board (NLRB) in its administration of the federal National Labor Relations Act:

> This Commission has taken a more conservative approach, limiting "deferral" to *situations where an employer's conduct at issue in a "unilateral change" case is arguably protected or prohibited by an existing collective bargaining agreement*. . . . The goal of "deferral" in such cases is to obtain an arbitra-

[4] In that case, the contractual grievance procedure ended with review of the situation by the employer's elected governing body (the school board).

> tor's interpretation of the labor agreement, to assist this Commission in evaluating a "waiver by contract" defense which has been or may be asserted in the unfair labor practice case. . . . There is not legislative preference for arbitration on issues other than "application or interpretation of an existing collective bargaining agreement". *We do not defer to arbitrators on other types of issues.*

(emphasis added).

Thus, the Commission does not defer "interference," "domination," or "discrimination" charges, or other types of "refusal to bargain" charges.[5]

In *Yakima*, the Commission specified certain fundamental factors necessary for deferral, as follows:

- The existence of a collective bargaining agreement;
- Provision for final and binding arbitration in the collective bargaining agreement; and
- Waiver of procedural defenses to processing the matter in the contractual grievance procedure.

The Commission also articulated its perception of deferral as an adjunct to unfair labor practice litigation:

> The deferral policy is not a tool by which respondents can avoid determinations as to whether they committed an unfair labor practice. It simply allows the parties an opportunity to utilize their contractual grievance and arbitration procedure to obtain a contract

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[5] The *Yakima* case involved interpretation of a management rights clause that the employer asserted was a waiver of bargaining rights by the union.

> interpretation for consideration by the Commission. It should be obvious that there will be no arbitration award "on the merits" of a grievance if the employer prevails on a procedural defense to arbitration. Only a decision "on the merits" is of interest or use to the Commission "to resolve the pending unfair labor practice" . . .

At least since *Yakima*, the Commission has kept "deferred" unfair labor practice complaints open as pending cases on the Commission's docket, and has retained jurisdiction while the related grievance matter is being heard and decided by an arbitrator.[6]

In *Yakima*, *supra*, the Commission anticipated that one of three results was likely in arbitration, as follows:

> 1. Action protected by contract. If it is determined that the contract authorized the employer to make the change at issue in the unfair labor practice case, that conclusion by either the Commission or an arbitrator will generally result in dismissal of the unfair labor practice allegation. The parties will have bargained the subject, and the union will have waived its bargaining rights by the contract language, taking the disputed action out of the "unilateral change" category prohibited by RCW 41.56.140(4).
>
> 2. Action prohibited by contract. If it is determined that the employer's conduct was prohibited by the contract, that conclusion by either the Commission or an arbitrator will also generally result in dismissal of the unfair labor practice allegation. Again, the parties will have bargained the subject,

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[6] This procedure eliminates the need for refiling cases that need further Commission action, and also avoids issues arising because of the six month statute of limitations on unfair labor practice complaints. *See* RCW 41.56.160.

> taking it out of the category of "unilateral change" prohibited by RCW 41.56.140(4).
>
> 3. Action neither protected nor prohibited by contract. If it is determined that the employer's conduct was not covered by the parties' contact, further proceedings will be warranted in the unfair labor practice case. Whether the Commission makes that determination itself, or merely accepts an arbitrator's decision on the issue, such a finding will be conclusive against any "waiver by contract" defense asserted by the employer in the unfair labor practice case. Unless the employer is able to establish some other valid defense, finding of an unfair labor practice violation generally follows.

Review of subsequent decisions dealing with deferral discloses that the Commission has adhered to the standards set forth in *City of Yakima, supra*.

In January of 2000, the Commission adopted emergency rules to implement a staff reorganization and to codify the *Yakima* holding as guidance for preliminary rulings made by staff members other than the Executive Director. The same language was then adopted as a permanent rule, effective August 1, 2000:

> WAC 391-45-110 DEFICIENCY NOTICE--PRELIMINARY RULING--DEFERRAL TO ARBITRATION. The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.
>
> (1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued . . .
>
> (2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling . . . shall be issued . . .
>
> (3) *The agency may defer the processing of allegations which state a cause of action*

> *under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.*
>
> *(a) Deferral to arbitration may be ordered where:*
>
> *(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;*
>
> *(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and*
>
> *(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.*
>
> (b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and *the results of the contractual proceedings shall be considered binding, except* where:
>
> (i) The contractual procedures were not conducted in a fair and orderly manner; or
>
> (ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

(emphasis added).

Apart from codifying a long line of consistent precedent, the language of the rule was developed with the assistance of a focus group of clientele representatives and agency staff members.

<u>Application of Deferral Policy</u> -

Turning to the instant case, it is clear that deferral is not appropriate. The existing grievance procedure ends in a determination by management officials, rather than in a final and binding

decision rendered by an impartial arbitrator. The Commission cannot accept an employer decision as the basis for deferral. The matter must be determined on its merits.

Waiver by Contract

The employer argues that the parties' collective bargaining agreement contains specific waivers that allowed for the kind of change at issue in these proceedings. Waiver by contract was analyzed in detail in *Yakima County*, Decision 6594-C (PECB, 1999), where the Commission wrote:

> The principal outcome of the collective bargaining process under Chapter 41.56 RCW is for an employer and the exclusive bargaining representative of its employees to sign a written collective bargaining agreement controlling wages, hours and working conditions of bargaining unit employees for a period of up to three years. The Supreme Court has required that agreements reached in collective bargaining to be put in writing. *State ex rel. Bain v. Clallam County*, 77 Wn.2d 542 (1970). Such contracts are enforceable according to their terms, including by means of arbitration. RCW 41.56.122(2); 41.58.020(4). Thus, there is no duty to bargain for the life of the contract on the matters set forth in a collective bargaining agreement, and an employer action in conformity with that contract will not be an unlawful unilateral change. *City of Yakima*, Decision 3564-A (PECB, 1991). Waiver by contract is an affirmative defense, and the employer has the burden of proof. *Lakewood School District*, Decision 755-A (PECB, 1980).

In *Yakima County*, *supra*, the Commission ruled that the management rights language of the applicable collective bargaining agreement allowed that employer to make changes in special duty assignments

for law enforcement officers represented by the union. In reaching this conclusion, the Commission stated:

> The subjective intention of the parties is irrelevant under Washington law and Commission precedent. The Supreme Court of the State of Washington has long adhered to an "objective manifestation" theory of contracts, and imputes to a person an intention corresponding to the reasonable meaning of the person's words and acts. *Plumbing Shop, Inc. v. Pitts,* 67 Wn.2d 514 (1965). In *Lynott v. National Union Fire Insurance Company*, 123 Wn.2d 678, 684 (1994), the Supreme Court wrote, "Unilateral or subjective purposes and intentions about the meanings of what is written do not constitute evidence of the parties' intentions". Washington courts may examine the subsequent conduct of contracting parties in discerning their contractual intent, and the reasonableness of the parties' respective interpretations may also be a factor in interpreting a written contract. See, *Berg v. Hudesman* 115 Wn.2d 657 (1990), cited in *Lynott*.

Thus, the best expression of the parties' intent is found in the language of the collective bargaining agreement itself.

In this case, the collective bargaining agreement specifically retains a number of prerogatives to the management, ranging from contracting out or eliminating bargaining unit work to determination of what type of work is to be performed. That language is quite different from generic management rights clauses that have been consistently rejected as sufficient to constitute a waiver of statutory bargaining rights. The "*[d]irect and schedule the work force*" and "*determine and schedule when overtime is to be worked*" items in the list particularly express a clear intent to allow the employer to make decisions without bargaining. Thus, the parties'

contract constitutes a waiver of the union's bargaining rights during the term of the contract.

A "waiver by contract" conclusion based on the management rights clause of the contract does not conflict with other contractual provisions. The union argues that Article 30, concerning overtime, precludes the employer from modifying the work schedule. To the contrary, Article 30 only specifies when the overtime rate is to be paid. The scheduling of work is not affected by the overtime provision, and the authority to schedule work rests solely with the employer.

The record in this case demonstrates that the employer followed the terms of the collective bargaining agreement when it modified the work schedule of the road crew employees. Given the specific nature of the waiver and the applicable Commission precedent, the complaint charging unfair labor practices must be dismissed.

FINDINGS OF FACT

1. Garfield County is a "public employer" within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Local 1476-G, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of Garfield County employees who perform road maintenance and snow plowing functions.

3. The employer and union are signatories to a collective bargaining agreement in effect from January 1, 2000, through December 31, 2001, which contains management rights language

that reserves to the employer the right to "[d]irect and schedule the work force" and to "[d]etermine and schedule when overtime shall be worked" among a specific and detailed list of subjects.

4. Traditionally, the bargaining unit employees responsible for road maintenance and snow plowing functions worked a "4-10" schedule for most of the year, composed of four ten-hour shifts on Mondays through Thursdays. During the months of January and February, those employees would be divided into two segments, with part of the crew working four ten-hour shifts on Mondays through Thursdays and the remainder of the crew working four ten-hour shifts on Tuesdays through Fridays. If work was to be performed on Saturdays and/or Sundays, the employees performing that work were paid at the overtime rate under the terms of the collective bargaining agreement.

5. In January 2001, the employer decided to modify the work schedule to provide better coverage for adverse weather conditions occurring on weekends. Two bargaining unit employees were scheduled to work on Saturdays at their regular rate of pay, and were given days off in the middle of the week. The employer sought volunteers for the new schedule, and two employees stepped forward to work on Saturdays.

6. By a letter dated January 26, 2001, the union questioned the change in the work schedules. The employer responded on January 30, 2001, asserting that the parties' collective bargaining agreement allowed such schedule changes without bargaining.

7. On January 31, 2001, the union filed a "class action grievance" alleging that the employer violated the provisions of

the parties' collective bargaining agreement concerning hours of work and callback. The employer responded on February 12, 2001, denying that grievance.

8. The union advanced the grievance filed on January 31, 2001, to the board of county commissioners. The employer considered the grievance, after which it responded by denying the grievance.

9. The parties' collective bargaining agreement does not contain provision for final and binding arbitration of grievances before an impartial arbitrator.

CONCLUSIONS OF LAW

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

2. The deferral policy codified by the Commission in WAC 391-45-110 is inapposite to this case, in the absence of any provision in the parties' existing collective bargaining agreement for final and binding arbitration of grievances before an impartial arbitrator.

3. By the terms of the management rights language contained in the parties' existing collective bargaining agreement, and particularly by the specific language found in Article 3.1(I) and (K), the union has clearly waived its statutory bargaining rights on the subjects of determining the scheduling of the work force and to determining and scheduling when overtime shall be worked, so that Garfield County had no duty to give notice to the union or bargain with the union prior to

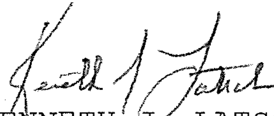
implementing the schedule changes described in Finding of Fact 5, so that no violation of RCW 41.56.140(4) or (1) has been committed in this case.

ORDER

Based on the foregoing and the record as a whole, the complaint charging unfair labor practices in the above-captioned matter is hereby DISMISSED.

DATED at Olympia, Washington this 21st day of February, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.