

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 760

Involving certain employees of:

PANGBORN MEMORIAL AIRPORT

CASE 127502-E-15

DECISION 12550 - PECB

ORDER REMANDING CASE

*Paul A. Parmley*, Business Representative, for Teamsters Local 760.

*W. Scott Snyder*, Attorney at Law, Ogden Murphy Wallace, P.L.L.C., for Pangborn Memorial Airport.

On July 22, 2015, Teamsters Local 760 (union) filed a petition seeking to represent certain employees of Pangborn Memorial Airport (employer). The petition seeks a bargaining unit that includes the Airport Maintenance Technicians/Firefighters and excludes all supervisory and confidential employees, clerical staff, and fueling personnel. The union claims the proposed bargaining unit is appropriate because the Airport Maintenance Technicians/Firefighters are “uniformed personnel” who are eligible for interest arbitration while no other airport employees are eligible for interest arbitration.

The employer objects to the bargaining unit configuration sought by the union. The employer asserts the Airport Maintenance Technicians/Firefighters are not uniformed personnel and that other unrepresented employees in its workforce perform duties similar to those performed by the petitioned-for employees. The employer argues that a broader bargaining unit is the only appropriate unit configuration. The matter was forwarded to hearing. On October 8, 2015, Hearing Officer Stephen W. Irvin conducted a hearing to take testimony and evidence, and the parties filed post-hearing briefs for consideration.

The union’s proposed bargaining unit configuration is not appropriate. The Airport Maintenance Technicians/Firefighters are not uniformed personnel eligible for interest arbitration, and other

non-uniformed personnel in the employer's workforce share a community of interest with the Airport Maintenance Technicians/Firefighters. The duties of the Airport Maintenance Technicians/Firefighters overlap with the duties of the Aviation Line Service Technicians in such a manner that these two job classifications have a substantial community of interest. Including one classification in a bargaining unit while excluding the other would create work jurisdiction issues and result in an inappropriate bargaining unit.

### BACKGROUND

Pangborn Memorial Airport is located in Douglas County and is jointly owned by the Ports of Chelan and Douglas Counties. The employer has a six-member board of directors consisting of three elected members from each of those entities. Director Trent Moyers oversees the daily operations of the airport, which has 12 full-time employees and one seasonal employee. Four employees are in the Airport Maintenance Technician/Firefighter job class.

#### *Aircraft Rescue and Firefighting Services*

The employer provides air carrier transport services on a daily basis. Federal Aviation Administration regulations require the employer to provide aircraft rescue and firefighting (ARFF) services at the airport. In order to facilitate ARFF coverage, the employer and Douglas County Fire District No. 2 (district) entered into an interlocal agreement for fire protection services. The interlocal agreement allows the two entities to share resources.

Under terms of the interlocal agreement, at least one ARFF-qualified firefighting employee shall be available to provide ARFF standby coverage 15 minutes before and after commercial passenger aircraft takeoff, landing, servicing, or loading. The employer is responsible for ensuring that any employee, whether employed by the airport or the district, is provided aircraft rescue and firefighting training and is ARFF certified. The employer assigns an Airport Maintenance Technician/Firefighter to provide ARFF coverage Monday through Friday from 5:30 a.m. until 5:30 p.m. The district assigns a district employee to provide ARFF services Monday through Friday from 5:30 p.m. until 5:30 a.m. and on weekends. Special rules apply on holidays or when

employees are on leave, and employees of either the airport or the district may be assigned to provide ARFF coverage.

The interlocal agreement also requires the employer to provide one-district qualified firefighting employee to be available to respond to district calls for structural and wildland fire protection. The district ensures that the employer's Airport Maintenance Technicians/Firefighters have completed structural and wildland firefighting training and are proficient in the district's firefighting requirements. The district directs and coordinates airport fire protection services and supervises the Airport Maintenance Technicians/Firefighters when they are involved in fire protection activities. The ARFF/Airport Maintenance Supervisor supervises the Airport Maintenance Technicians/Firefighters when they are not engaged in fire protection activities.

*The Airport Maintenance Technicians/Firefighters*

The Airport Maintenance Technicians/Firefighters perform a wide variety of duties. They perform general building, facility, and grounds maintenance as well as janitorial duties. They also provide aircraft refueling services, operate airport fuel storage facilities, and assist in parking or maneuvering aircraft. Finally, these positions provide ARFF coverage, provide structural and wildland firefighting coverage, and work within areas of aircraft landings, takeoffs, and movements. When two or more Airport Maintenance Technicians/Firefighters are on duty, only one Airport Maintenance Technician/Firefighter provides any necessary fire protection.

In September 2013 Operations Manager Ron Russ created a cost center map that helped employees record where they spent their work hours. Russ testified that the idea behind the map was to allow the employer to allocate costs to specific cost centers, based on the duties employees performed, and charge the appropriate users accordingly. In addition to ARFF duties, the initial cost center categories were airfield, terminal, non-aviation, general aviation, general aviation terminal, and equipment/shop. These categories remained intact during fiscal year 2014, and a category for Douglas County Fire District No. 2 was added in 2015.

Russ testified that ARFF duties include time spent on standby during commercial aircraft arrivals and departures, fire protection services, maintaining fire equipment, and training. From the week ending September 8, 2013, through the end of 2013, the employer's weekly summary indicated that 15.37 percent of the Airport Maintenance Technicians/Firefighters' work hours were spent on ARFF duties. In 2014 the number of ARFF hours increased to 19.31 percent, and from the beginning of 2015 through the end of August 2015, ARFF hours accounted for 19.60 percent of the total hours worked, while district hours accounted for 2.30 percent.

In 2015 the union submitted the Airport Maintenance Technician/Firefighter job description to the Washington State Department of Retirement Systems (DRS) to determine if the job class was eligible for inclusion in the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF). On September 8, 2015, DRS determined that the Airport Maintenance Technician/Firefighter job class was not eligible for LEOFF membership. Specifically, DRS ruled:

Under Washington Administrative Code (WAC) 415-104-225(2) it stipulates that "you are a firefighter . . . [if you] direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires." . . . Moreover, the primary duty of this position is maintenance, not the prevention, controlling and extinguishing of fires, which doesn't meet the definition of Firefighter per RCW 41.26.030(16) and 41.56.030(13)(g).

(first and second alteration in original). The union has appealed the DRS determination to that agency's review board.

The duties of the Airport Maintenance Technicians/Firefighters overlap with those performed by the employer's Aviation Line Service Technicians. For example, both job classes are responsible for performing basic facility maintenance, providing aircraft refueling services, operating airport fuel storage facilities, and assisting in parking or maneuvering aircraft. Both job classes are also responsible for removing snow from the airport's operating areas during inclement weather. Employees in both job classes must understand how to work within areas of aircraft landings, takeoffs, and movements and the federal regulations that surround airport work.

## DISCUSSION

### *Applicable Legal Standards*

The creation and maintenance of appropriate bargaining units is a function of this agency. RCW 41.56.060. The purpose of this function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

RCW 41.56.060(1) provides that this agency, in examining whether there is a community of interest, consider “[t]he duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” While each factor is considered in each case, no one factor dominates the others. *See King County*, Decision 5910-A.

Again, this agency’s role is to determine whether there is *a* community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015), *citing Snohomish County*, Decision 12071 (PECB, 2014), and *City of Winslow*, Decision 3520-A (PECB, 1990).

In certain situations, employees that may otherwise share a community of interest must be in separate bargaining units due to the separate impasse resolution procedures established for them. Employees defined as “uniformed personnel” under RCW 41.56.030(13) are eligible for interest arbitration. Because uniformed personnel have separate and different impasse procedures, they cannot be in the same bargaining unit as non-uniformed personnel who are not eligible for interest arbitration. WAC 391-35-310; *Chelan Public Hospital District 2*, Decision 11395 (PECB, 2012).

*Application of Standards*

The union's proposed bargaining unit of Airport Maintenance Technicians/Firefighters must be denied. Those employees are not uniformed personnel eligible for interest arbitration. Therefore, the petitioned-for employees are not precluded from being in the same bargaining unit as non-interest arbitration eligible employees with whom they share a community of interest. The Airport Maintenance Technicians/Firefighters share a community of interest with the employees in the Aviation Line Service Technician job class.

*The Airport Maintenance Technicians/Firefighters Are Not Uniformed Personnel*

The first question that must be answered is whether the Airport Maintenance Technicians/Firefighters qualify as uniformed personnel under RCW 41.56.030(13). In order for employees to be eligible for interest arbitration, they must qualify as one of the several classes of uniformed personnel defined in RCW 41.56.030(13). Among the classes of uniformed personnel are firefighters as defined in RCW 41.26.030 and employees who perform crash fire rescue or other firefighting duties at a port district in a county with a population of one million or more. RCW 41.56.030(13)(e) and (f).<sup>1</sup>

The ARFF duties performed by the Airport Maintenance Technicians/Firefighters appear to be the type of crash fire rescue and other firefighting duties referenced in RCW 41.56.030(13)(f). *See, e.g., Port of Bellingham*, Decision 6017 (PORT, 1997), and *Port of Moses Lake*, Decision 7238 (PORT, 2000) (each discussing the general duties of crash fire rescue employees). However, the petitioned-for employees do not qualify as uniformed personnel under RCW 41.56.030(13)(f) because the employer is not located in a county with a population of one million or more. The estimated population of Douglas County for 2014 was 39,700.<sup>2</sup> Neither party contends that the

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<sup>1</sup> Other types of uniformed personnel include (but are not limited to) commissioned and noncommissioned jail personnel in counties with a population of seventy thousand or more, employees of fire departments who exclusively dispatch fire or emergency medical services, and advanced life support technicians as defined by RCW 18.71.200. The union does not assert that the Airport Maintenance Technicians/Firefighters qualify under the other classes of uniformed personnel set forth in RCW 41.56.030(13).

<sup>2</sup> *About Douglas County*, DOUGLASCOUNTYWA.NET, <http://www.douglascountywa.net/about.asp> (last visited Feb. 25, 2016).



Airport Maintenance Technicians/Firefighters qualify as uniformed personnel under RCW 41.56.030(13)(f).

The union contends that the Airport Maintenance Technicians/Firefighters qualify as uniformed personnel under RCW 41.56.030(13)(e), which includes as uniformed personnel employees who meet the definition of firefighter in RCW 41.26.030. Chapter 41.26 RCW is administered by DRS for purposes of its administration of the LEOFF retirement plan. Firefighters are defined as persons who are actively serving as full-time, fully compensated members of a fire department of an employer and who are serving in positions which require passing a civil service examination for firefighters. Firefighters are also defined as any persons who are actively employed as full time firefighters where the fire department does not have a civil service examination. RCW 41.26.030(16)(a) and (b).<sup>3</sup>

DRS has already determined that the Airport Maintenance Technicians/Firefighters are not firefighters as defined by RCW 41.26.030(16) and are not eligible for LEOFF membership. The union nevertheless argues that this agency should decide whether those employees meet the RCW 41.26.030(16) and RCW 41.56.030(13)(e) definitions of firefighter. To support this argument, the union points to WAC 415-104-225(2), the rule for firefighter eligibility in the LEOFF retirement plan. That rule states that an employee is considered a firefighter if the employee has the legal authority and responsibility to direct or perform fire protection activities on a full-time, fully compensated basis. The union asserts that the primary role of the Airport Maintenance Technicians/Firefighters is controlling and extinguishing fires, not just at the airport but also throughout the district. The union also suggests that a ruling by this agency that the petitioned-for employees' qualify as firefighters would assist DRS in reaching a final conclusion. These arguments are not persuasive.

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<sup>3</sup> RCW 41.26.030(16) also defines firefighters as employees that are either full time executive secretaries of associations of fire protection districts authorized under RCW 52.12.031; the executive secretaries of labor guilds, associations, or organizations (if any such individuals have five years' previous membership in a retirement system established in Chapter 41.16 or 41.18 RCW); or any persons who are serving on a full-time, fully compensated basis for an employer as fire dispatchers. The union does not argue that the Airport Maintenance Technicians/Firefighters meet the definition of firefighter under any of these other provisions of RCW 41.26.030(16).

This agency has historically deferred to DRS when determining an employee's eligibility as a firefighter under RCW 41.26.030(16). *Port of Walla Walla*, Decision 9061-A (PORT, 2006); *see also Port of Pasco*, Decision 3398-A (PECB, 1990). In *Port of Walla Walla* the Commission noted that this agency "was not empowered to resolve retirement plan eligibility questions, rather the [agency] only asked if the employees were in the LEOFF plan, and if so, then the unit was certified as a 'uniformed' bargaining unit."

Consistent with the Commission's ruling in *Port of Walla Walla*, the union's request for a ruling on the Airport Maintenance Technicians/Firefighters' statuses as firefighters under RCW 41.26.030(16) must be denied. Just as it would be improper for DRS to rule on the confidential status of an employee under WAC 391-35-320, this agency lacks the authority to make eligibility rulings under RCW 41.26.030. Accordingly, this agency will continue to defer to DRS determinations on an employee's status as a firefighter under RCW 41.26.030. Furthermore, there is nothing in this record suggesting that DRS would find a ruling from this agency regarding the petitioned-for employees' statuses as firefighters to be persuasive in any proceeding before DRS.

*The Airport Maintenance Technicians/Firefighters Share a Community of Interest With Other Employees*

Having determined the Airport Maintenance Technicians/Firefighters are not uniformed personnel, the next step is to determine whether those employees share a community of interest with other employees in the employer's workforce. The Airport Maintenance Technicians/Firefighters share a community of interest with the Aviation Line Service Technicians.

The duties, skills, and working conditions of the Airport Maintenance Technicians/Firefighters overlap with those of the Aviation Line Service Technicians. Employees in both job classifications are responsible for maintaining the employer's facilities, refueling aircraft, operating the airport's fuel storage facilities, and assisting in parking or maneuvering aircraft. Both job classes are required to work in areas where aircraft are taking off or landing and must



comply with federal aviation rules. A bargaining unit that includes both job classifications would eliminate the work jurisdiction issues that would inevitably arise from the bargaining unit the union seeks.

### CONCLUSION

The Airport Maintenance Technicians/Firefighters do not qualify as uniformed personnel under RCW 41.56.030(13)(e) because they are not considered firefighters under RCW 41.26.030(16). The substantial and regular overlap between the job duties of the Airport Maintenance Technicians/Firefighters and the Aviation Line Service Technicians demonstrates that these two job classifications have a substantial community of interest. Including one classification in a bargaining unit while excluding the other would result in an inappropriate bargaining unit.

The record demonstrates the union enjoys the support of more than 30 percent of the employees in the bargaining unit configuration found appropriate through this decision. The union will be afforded an opportunity to amend its petition to add the Aviation Line Service Technicians to the scope of its proposed bargaining unit. Absent amendment, the petition will be dismissed.

### FINDINGS OF FACT

1. Pangborn Memorial Airport is a public employer within the meaning of RCW 41.56.030(12).
2. Teamsters Local 760 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Pangborn Memorial Airport is located in Douglas County and is jointly owned by the Ports of Chelan and Douglas Counties. The employer has a six-member board of directors consisting of three elected members from each of those entities. Douglas County has a population of less than one million.

4. Trent Moyers is the director of the airport, which has 12 full-time employees and one seasonal employee. Four employees are in the Airport Maintenance Technician/Firefighter job class and two employees are in the Aviation Line Service Technician job class.
5. The Airport Maintenance Technicians/Firefighters perform a wide variety of duties. They perform general building, facility, and grounds maintenance as well as janitorial duties. The Airport Maintenance Technicians/Firefighters also provide aircraft refueling services, operate airport fuel storage facilities, and assist in parking or maneuvering aircraft.
6. The Airport Maintenance Technicians/Firefighters perform similar duties to employees in the Aviation Line Service Technician job class. Both job classes are responsible for performing basic facility maintenance, providing aircraft refueling services, operating airport fuel storage facilities, and assisting in parking or maneuvering aircraft. Both job classes are also responsible for removing snow from the airport's operating areas during inclement weather. Employees in both job classes must understand how to work within areas of aircraft landings, takeoffs, and movements and the federal regulations that surround airport work.
7. In accordance with Federal Aviation Administration regulations, the employer is required to provide aircraft rescue and firefighting (ARFF) services at the airport. Employees in the Airport Maintenance Technician/Firefighter job class perform ARFF functions at the airport.
8. The employer and Douglas County Fire District No. 2 (district) are parties to an interlocal agreement for fire protection services that allows the two entities to share resources. As part of the interlocal agreement, the district directs and coordinates airport fire protection services and supervises the Airport Maintenance Technicians/Firefighters when they are involved in fire protection activities. The ARFF/Airport Maintenance Supervisor

supervises the Airport Maintenance Technicians/Firefighters when they are not engaged in fire protection activities.

9. The employer provides staffing for ARFF coverage Monday through Friday from 5:30 a.m. until 5:30 p.m. The district is responsible for ARFF coverage Monday through Friday from 5:30 p.m. until 5:30 a.m. and on weekends.
10. Under terms of the interlocal agreement, at least one ARFF-qualified firefighting employee shall be available to provide ARFF standby coverage 15 minutes before and after commercial passenger aircraft takeoff, landing, servicing, or loading. The agreement also requires at least one district-qualified firefighting employee to be available to respond to district fire calls.
11. The interlocal agreement requires the employer to provide specialized training and ARFF certification (or recertification) for all ARFF-qualified firefighting personnel. The district is responsible for the costs associated with this training for firefighting personnel designated by the district.
12. In 2015 the union submitted the Airport Maintenance Technician/Firefighter job description to the Washington State Department of Retirement Systems (DRS) to determine if the job class was eligible for inclusion in the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF). On September 8, 2015, DRS determined that the job class was not eligible for LEOFF membership.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter through the provisions of Chapter 41.56 RCW, Chapter 391-25 WAC, and Chapter 391-35 WAC.
2. Based upon Finding of Fact 3, the Airport Maintenance Technicians/Firefighters are not uniformed personnel within the meaning of RCW 41.56.030(13)(f).

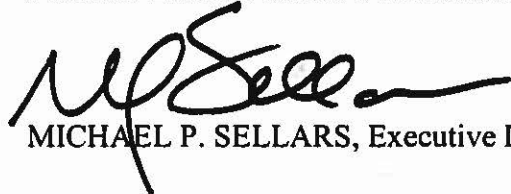
3. Based upon Finding of Fact 12, the Airport Maintenance Technicians/Firefighters are not uniformed personnel within the meaning of RCW 41.56.030(13)(e).
4. Based upon Findings of Fact 4, 5, and 6, the substantial and regular overlap between the job duties of the Airport Maintenance Technicians/Firefighters and the Aviation Line Service Technicians demonstrates that these two job classifications have a substantial community of interest, and including one classification in a bargaining unit while excluding the other would result in an inappropriate bargaining unit under RCW 41.56.060.

ORDER

Teamsters Local 760 will be given a period of 14 days to amend its petition to conform the petitioned-for bargaining unit to the appropriate bargaining unit found in this decision. If no timely amendment is filed, the petition will be dismissed.

ISSUED at Olympia, Washington, this 26th day of February, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-660.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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### RECORD OF SERVICE - ISSUED 02/26/2016

DECISION 12550 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

A handwritten signature in blue ink, appearing to read "Vanessa Smith".

BY: VANESSA SMITH

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