

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
INTERNATIONAL ASSOCIATION OF ) CASE 13390-E-97-2232  
FIREFIGHTERS, LOCAL 3780 )  
Involving certain employees of: ) DECISION 6550 - PECB  
NORTH HIGHLINE FIRE DISTRICT ) DIRECTION OF CROSS-CHECK  
\_\_\_\_\_ )

James L. Hill, International Vice President, appeared on behalf of the Petitioner.

Perkins Coie, by John Deery-Schmitt, Attorney at Law, appeared on behalf of the Employer.

On September 8, 1997, International Association of Firefighters, Local 3780 (union), filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the North Highline Fire District (employer). An investigation conference was conducted on October 10, 1997, and an investigation statement issued on the same date identified limited issues for hearing. A hearing was held on March 31, 1998, before Hearing Officer Kenneth J. Latsch.

This controversy concerns a separate bargaining unit of supervisors. The employer asserted that all of those proposed for inclusion in that bargaining unit should be excluded from bargaining rights as "confidential" employees. The Executive Director finds that one individual is properly excluded as "confidential" and directs an election giving the remaining individuals an opportunity to vote on their representation.

BACKGROUND

Under the policy direction of an elected three member Board of Commissioners, the North Highline Fire District provides fire suppression, fire inspection and emergency medical services. The area served consists of approximately nine and one-half square miles around Burien and White Center, Washington, and has a population of approximately 43,000. The employer operates two fire stations, with administrative personnel working in the employer's main facility. At all times pertinent to these proceedings, Russell Pritchard served as Chief.

At the time of hearing, the employer used about 25 volunteers and 24 full-time fire fighters to fulfill its mission. The full-time employees in the ranks of fire fighter and lieutenant are represented by International Association of Fire Fighters, Local 1810.

When Pritchard started his service as Chief, in 1996, the operation was in a state of turmoil. An attempted consolidation with a neighboring fire district had failed, and morale was very low. Pritchard believed it was necessary to change management styles to improve the situation, and he reorganized the command structure with that in mind. Pritchard initiated a "management team" concept consisting of five full-time battalion chiefs, one volunteer battalion chief, and a chaplain. Each of the battalion chiefs has a specific assignment within the department.

As part of his new management approach, Pritchard began a series of meetings to discuss a wide range of issues. On September 3, 1996, Pritchard issued a memo outlining planned meetings, as follows:

The following memo will be a brief outline of meetings that will be held weekly and month-

ly. I am a firm believer that we should not have meetings just to have meetings, but certain meetings must be held on a regular basis to make sure of communications between divisions, and to make sure all of the department goals and objectives are being met.

ADMINISTRATIVE COUNCIL MEETINGS

*2nd and 4th Fridays of each month, 0900 hours at station 13.*

The Administrative Council consists of all Battalion Chiefs and above, and the Administrative Assistant. All on-duty ad council personnel will be required to attend these meetings. All other ad council personnel should make every attempt to attend so we can have full input from all division chiefs. This meeting will include a report from each division chief on the progress of their division and what their future goals for the division are. There will also be an open-forum type discussion.

QUARTERLY OFFICERS' MEETING

*Every three months on the 3rd Wednesday of the month at 0830 hours, at st.13. Meetings will be held in September, December, March and June.*

This will be a mandatory meeting for all officers of the fire department. Overtime will be paid out when necessary. This meeting will consist of a report from all division chiefs on the status of their division, a report from each operations BC on their shift progress and a report from each Lt. on the progress of their shift or division. These reports should focus on the accomplishments of the past quarter and the goals and objectives for the upcoming quarter. At the end of the meeting their [sic] will be an open-forum type discussion with input from all officers. Minutes will be kept on this meeting so we can look back at the next meeting and see if all the goals and objectives were met.

EXECUTIVE 1810/AD COUNCIL MEETING

*1st Friday of each month, 0800 hours at station 13.*

All on-duty Ad Council personnel will be required to attend this meeting and all other ad council personnel are urged to attend, so your input can be heard. This meeting will be for the most part an open-forum type discussion between administrative council and 1810 executive board members.

MONTHLY COMMISSIONERS' MEETING

*Scheduled on a month-to-month basis, at 5:30 pm, at station 13.*

All division chiefs should attend or have someone attend to represent your division. All 5 day work week personnel can come in later that day to compensate for staying later for the meeting.

Each division chief will be required to give a report on the progress of your division the last month and what goals your division will be working on during the upcoming month. Remember, all division chiefs must give a report or have a representative of your division there to give the report.

WEEKLY PROGRESS MEETINGS

*Monday Morning*

Weekly progress meetings will be held according to the following schedule:

<b>TIME</b>	<b>NAME</b>	<b>DIVISION</b>
0830 hrs.	Charlotte Grobe	Administrative Assistant
0900 hrs.	Scott LaVielle	BC/Fire Marshal
0930 hrs.	Juel Hammond	BC/Support Services
1000 hrs.	Fred Allinson	BC/Volunteer Coordinator

Senior BC Collins will be scheduled on a week-to-week basis to coincide with his on-duty shift. These meetings will require a report on what was accomplished during the previous week and we will discuss what needs to be done in the upcoming week and future projects.

BATTALION CHIEF/LIEUTENANT/CREW MEETINGS

Meetings between operation BCs, Lts. and crews will be scheduled by the senior BC of Operations through the chain of command.

**NOTE:** The Fire Commissioners will be encouraged to attend any or all of the above meetings at any time that their schedule allows, so it is very important that each officer comes to these meetings prepared with their scheduled report or assignment.

[Emphasis by underline, *italics* and **bold** in original.]

The record reflects that the above-outlined meeting schedule was in operation at the time of hearing.

At the time of hearing, the five full-time battalion chiefs were Scott LaVielle, Juel Hammond, Michael Collins, Paul Fray, and David Malo.

#### POSITIONS OF THE PARTIES

The employer contends that the battalion chiefs actively participate in the employer's labor relations policy formulation, and that they have participated in the bargaining process by preparing information used by the employer to evaluate and make bargaining proposals. The employer notes that all of the battalion chiefs attend meetings with the chief and the Board of Commissioners, and that the chief's management style encourages open dialogue on a variety of issues, including personnel matters. The employer reasons that the new management style would be hampered if the battalion chiefs were allowed to form a bargaining unit.

The union contends that the employer must be held to a stipulation entered into at the investigation conference, and that it should not be allowed to expand the scope of inquiry to include all of the battalion chiefs. The union argues that the disputed positions do not meet the statutory criteria for exclusion as confidential

employees, that the battalion chiefs should be allowed to form a bargaining unit, and that the employer's management structure would not suffer by the creation of a battalion chief bargaining unit.

## DISCUSSION

### The Scope of Inquiry

The Executive Director ratifies and adopts the Hearing Officer's ruling limiting the scope of inquiry to the issues framed in the investigation statement.

The union's petition sought a bargaining unit consisting of five employees, and described as:

All full-time uniformed battalion chiefs of the employer.

The employer was asked for a list of the employees involved, and its attorney provided a list of five names in which it claimed that Collins, Hammond, and LaVielle should each be excluded as a "confidential employee". The employer was represented by counsel during the investigation conference conducted by a member of the Commission staff, and it held to the same position at that time. The investigation statement outlined only the following issues for hearing:

The parties disagree on the eligibility status of Michael Collins, Juel Hammond, and Scott LaVielle. The employer's position is that the three employees are confidential and should be excluded and that Scott LaVielle does not have a community of interest.

The investigation statement issued on October 10, 1997, clearly cited WAC 10-08-130 and WAC 391-08-210, clearly indicated that it was issued "to control the subsequent course of the proceedings", and clearly indicated that its contents would constitute binding stipulations if no objections were received within 10 days. The employer did not file any objections within 10 days thereafter.

In a letter filed on March 23, 1998, just one week before the hearing, the employer sought to amend the investigation statement to claim that all five of the battalion chiefs should be excluded as confidential employees. After considering the parties' arguments at the outset of the hearing held on March 31, 1998, the Hearing Officer denied the employer's motion.

Representation proceedings are formal administrative adjudication conducted under Chapters 34.05 and 41.56 RCW and Chapter 391-25 WAC. The Commission operates under a legislative directive to be both "... impartial ..." and "... efficient ..." in its administration of public sector labor relations.<sup>1</sup> There is an inevitable tension between the parties in such cases, and it is commonly accepted that delay influences outcomes in representation proceedings. The Commission has long held to the policy that representation cases should be processed expeditiously,<sup>2</sup> and it has modified its representation case procedures from time to time, to improve their efficiency and avoid unnecessary delays. It is possible to get from filing of a petition to certification of an exclusive bargaining representative in 32 to 53 days (depending on whether a cross-check or election procedure is used), and the Commission's rules call upon parties to respond in a timely manner at various points in the procedure.

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<sup>1</sup> RCW 41.58.005(1).

<sup>2</sup> See, City of Redmond, Decision 1367-A (PECB, 1982).

Several years ago, the Commission began using telephonic conferences to go over, with the parties, the limited issues that can properly arise in representation cases. That procedure was widely accepted as cost-effective for the parties and the agency alike, and became a standard feature of the Commission's representation case processing. It was codified in rule amendments adopted in 1996. Thus, the parties were called upon to participate in an investigation conference in this case, under the following rule:

WAC 391-25-220 INVESTIGATION CONFERENCES. (1) The agency **routinely** conducts conferences with the parties, **to investigate a representation petition according to a checklist provided to the parties.**

(a) **The issues which may properly arise in representation cases include:**

- (i) The identification of the parties;
- (ii) The jurisdiction of the commission;
- (iii) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;
- (iv) The existence of a question concerning representation;
- (v) The timeliness of the petition;
- (vi) The existence of blocking charges under WAC 391-25-370;
- (vii) The propriety of the petitioned-for bargaining unit;
- (viii) **The list of employees eligible to vote or be considered in determining a question concerning representation, and cut-off date for eligibility; and**
- (ix) The method and arrangements for determining a question concerning representation.

(b) The investigation conference may be conducted by telephone conference call, or in-person by agency staff;

(c) **The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.**

(2) **The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued in**



lieu of an election agreement or cross-check agreement.

(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days thereafter.

(b) **An investigation statement shall be binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ten days following issuance of the statement.**

(3) When all conditions precedent to an election or cross-check in an appropriate bargaining unit have been met, the executive director shall proceed with the determination of the question concerning representation. Objections by parties named in the investigation statement shall be limited to matters relating to specific conduct affecting the results of an election.

(4) The parties may set forth stipulations in election agreements, cross-check agreements, and/or supplemental agreements provided for in this chapter.

[Emphasis by **bold** supplied.]

The checklist was provided to the employer's attorney under cover of a letter dated September 24, 1997, which was well in excess of seven days in advance of the scheduled investigation conference. The checklist itself repeats the content of the rule, indicating that the parties will be asked to make stipulations on eligibility issues, specifically including "confidential employee" claims.

The Commission has historically enforced the stipulations made by parties during the preliminary processing of representation cases, in the absence of a showing of good cause to relieve a party of its previous stipulation. Community College District 5, Decision 448 (CCOL, 1978). There is no reason to deviate from that principle under the much more specific language of the current rule. In this

case, the employer has shown no more than that it had a change of heart about the number of "confidential" claims it wanted to make. The employer has certainly not shown any significant change of circumstances that would permit it to withdraw from the stipulation it made at the investigation conference.

#### The Applicable Standard

The law on confidential exclusions is clear, and nothing advanced by the parties warrants reconsideration or revisiting the analysis of long-established principles in this case. To summarize: Under language found in the definition of "public employee", employers are allowed some reasonable number of personnel who are exempt from the rights of the collective bargaining statute, in order to perform the functions of employer in the collective bargaining process:

RCW 41.56.030 DEFINITIONS. As used in this chapter:

...

(2) "Public Employee" means any employee of a public employer except any person ... (c) **whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance, executive head or body of the public employer.**

[Emphasis by **bold** supplied.]

The Supreme Court of the State of Washington interpreted that exclusion narrowly in City of Yakima v. International Association of Fire Fighters, 91 Wn.2d 101 (1978), where it wrote:

When the phrase confidential relationship is used in the collective bargaining act, we

believe it is clear that the legislature was concerned with an employees' potential misuse of confidential employer labor relations policy and a conflict of interest. ... We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official ... The nature of this close association must concern the official and policy responsibilities of the public office or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exclusion.

In Yakima, the Supreme Court took direction from the definition of confidential employee found in the Educational Employment Relations Act, Chapter 41.59 RCW, at RCW 41.59.020(4)(c):

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person.

Because exclusion as a confidential employee deprives the individual of all rights under the Public Employees' Collective Bargaining Act, such exclusions are not lightly granted. A heavy evidentiary burden is placed on the party which proposes a confidential exclusion. City of Seattle, Decision 689-A (PECB, 1979); Pateros School District, Decision 3911-B (PECB, 1992).

Application of the Standard

Only one of the three disputed individuals is found to be excludable as a "confidential employee" under the statute.

Battalion Chief Juel Hammond

Hammond serves as the employer's support services officer. His job description details his typical work in the following manner:

The Support Services Officer reports to the chief of the department. The position requires minimum supervision and is accountable for enforcing rules, regulations and policies established by the department as is all battalion chief ranked officers.

## TYPICAL DUTIES:

1. Establish administrative goals and objectives for the support services division and complete assigned tasks in the time frame set by the chief.
2. Responsible for ensuring that district policies and procedures are in full compliance with ... standards.
3. Acts as the liaison between the District and OSHA, WISHA, and the Department of Labor and Industries.
4. Acts as the Infectious Control Officer.
5. Responsible for the district vaccination program.
6. Acts as the Incident Safety Officer as directed by the incident commander at scene.
7. Attends fire and emergency scenes as required, assumes control as the Incident Commander when warranted ....
8. Acts as the Community Disaster Planning liaison with City of Burien and other agencies, and ... department disaster plan.
9. Attends meetings on a regular basis or as requested, to include:

Administrative Council meetings

Board of Commissioner meetings

Safety Committee meetings

Other meetings as necessary or required by the chief

Attends conferences ... to upgrade job knowledge and skills for support services division.

10. Responsible for coordinating, overseeing and is the administrative member of the department's monthly safety meetings and review boards.

11. Management of Information Systems Division, to include:

Responsible for ... computer equipment and software

Data Processing systems

Telephone systems

Radio and telecommunications systems

Budgeting and purchasing

12. Management of Dispatch Communications, to include:

Coordination with all contracting agencies ... and maintain harmonious relationships with all agencies

Coordination and participation with 800 MHZ committee ... and others as required

Budgeting and purchasing

13. Coordination of General Liability Insurance, to include:

Coordination of all claims

Changes in policy

Long-range and short-range forecasting ...

Budgeting and planning

**14. Assist in Labor Negotiations, to include:**

**Development of contract proposals**

**Negotiations over successor contracts with IAFF Local 1810**

**Processing** grievances, **unfair labor practices**, and general contract administration **under the direction of the chief.**

**Other labor-related issues as assigned by the chief**

**Budgeting and planning**

15. Purchasing to include:
  - Capital purchases ...
  - Operational purchases ...
  - Utilization of quote and bid processes ...
16. Budgeting to include:
  - Assisting the fire chief with **operational** and capital **budget forecasting for all assigned programs and divisions**
  - Budget management for all programs and divisions with other division heads
17. Maintain department SOP's with up-to-date, current information.
18. Maintain department Policies and Procedures with up-to-date, current information.
19. Oversee the maintenance of all department records ....
20. Responsible for the sale of surplus items and equipment ....
21. Conduct purchasing activities ....
22. Work with the Battalion Chief/Fire Marshal, in the following areas:
  - Performing fire inspections
  - Performing re-inspections
  - Teaching public education classes
23. Participates in command duty [under] department policy regarding Battalion Chiefs.
24. Projects an image of professionalism ....
25. Subject to assignment of additional responsibilities and assignments as directed by the chief.

[Emphasis by **bold** supplied.]

Hammond's office is located in the employer's main facility, and his work shift is from 8:00 a.m. to 4:30 p.m. on Mondays through Fridays.

Hammond has assisted the employer's bargaining team in preparation for negotiations. While he has not made any independent proposals, he has helped draft proposals, and the record indicates that his input has been used in collective bargaining matters. In that capacity, Hammond studied collective bargaining agreements from other fire districts and prepared language on several specific issues to be addressed at the bargaining table. In addition, Hammond has served as a liaison between the employer and its contracted labor negotiator. When the negotiator needs information for bargaining, he regularly contacts Hammond who, in turn, does the necessary research to answer the specific question. Hammond has participated in negotiations at least to the extent of expressing his concerns about specific proposals, and explaining what may or may not be workable in the fire district. Hammond has also served as the chief's designee in grievance processing matters.<sup>3</sup> Hammond's direct and supportive involvements in labor relations and his "forecasting" role in the budget process are sufficient to classify him as a "confidential employee".

#### Battalion Chief Michael Collins

Collins has worked for the employer for approximately 26 years, holding positions of fire fighter, lieutenant, and now battalion chief. Collins functions as "senior battalion chief of operations", under the following job description:

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<sup>3</sup> While first level grievance processing is a supervisory function that does not necessarily indicate "confidential" status, this activity is deemed significant because it is more in the role of a "deputy" to the chief.

## SUPERVISION RECEIVED AND EXERCISED:

The Senior Battalion Chief reports, and is responsible, to the chief of the fire department. The position requires minimum supervision and is expected to take accountability for the actions of subordinate department personnel. The incumbent is answerable for enforcing rules, regulations and all policies as established by the department and within the scope of all operation levels of the department.

## ESSENTIAL DUTIES AND RESPONSIBILITIES:

Responsible for development of budget for assigned divisions and programs under operations and assigned divisions.

Responsible for making operational and capital purchases as required for divisional programs.

Responsible for personnel management, to include: training, supervision, evaluation and disciplining of personnel. Provides regular coaching, teaching and counseling to subordinates. **Participates in the development of labor contract proposals, the examination of bargaining strategies, and the administration of labor contracts.**

Responsible for training for emergency response personnel, to include: training standards, evaluating training needs, providing instruction to command officers, monitoring delivery of training from the Training Division.

Attends fires and emergency scenes as required, actively and physically participates in fire rescue and suppression activities as necessary, and assumes control as the Incident Commander when warranted; causes subordinates to take proper safety and precautionary measures to prevent injury to occupants, bystanders and personnel; ensures that the cause and origin of fire is investigated and that incendiary fires and arson incident scenes are properly preserved for investigation; assists the proper authorities in suppressing the crime of arson.



Attends meetings on a regular basis Or as requested, to include: Administrative Council meetings, Board of Commissioners meetings, or others as necessary. Attends conferences, seminars and training session to upgrade job knowledge, management and communication skills.

Subject to assignment of additional administrative responsibilities, to include: Policy Advisory Committee, Research and Development Committee, Long-Range Plan Development Task Force, Labor Negotiating Committee, etc.

Oversees assignments of planning, organizing and controlling support programs, apparatus and equipment, mechanical vehicle maintenance and all other assignments under the battalion chief jurisdiction.

TYPICAL DUTIES:

1. Supervise the response to all fire alarms and EMS calls, responding when needed, and assumes command of the scene if the situation dictates; and oversees all battalion chiefs and operations of the fire department.
2. Assumes responsibility for the daily activities of the fire department at the operations level.
3. Develops working schedules and coordinates programs for the paid personnel and works with the volunteer battalion chief on programs for the volunteers.
4. Oversees daily, monthly, annual and permanent fire department records at operations level.
5. Oversees the maintenance of staff attendance records for all fire and EMS calls and for participation in training programs.
6. Assures that all EMS training, records and reports are properly filed and logged through the Training Division.
7. Oversees the specification process for new equipment, and orders building supplies through assigned battalion chiefs.
8. Oversees the replacement of battalion chief shifts and back-up battalion chief schedule.

9. Oversees all battalion chief shift responsibilities and assignments.

10. Maintains the physical and mental fitness necessary to perform the duties of the position.

11. Assumes responsibility for the daily activities of the fire department during the absence of the fire chief.

12. Projects an image of professionalism through appearance, cooperation, compatibility, punctuality and enthusiasm.

13. Performs other job-related duties as assigned by the chief.

[Emphasis by **bold** supplied.]

In this instance, the more limited reference to collective bargaining in the job description is matched with evidence of a more limited actual involvement in labor-management relations.

Collins does not have authority to make contract proposals on his own, and he has not gone to the bargaining table as part of the employer's negotiation team. The most that is established in this record is that Collins analyzed several union proposals during the last round of negotiations between the employer and Local 1810. That analysis was done for the chairperson of the employer's Board of Commissioners, who was a member of the employer's bargaining team. Although Commissioner Lawson testified that he used that particular information in the formulation of the employer's proposals, that falls short of establishing a necessary and ongoing involvement with confidential labor relations matters. Collins appears to be a supervisor comparable to the battalion chiefs who were found to be public employees in City of Yakima, supra.

Battalion Chief Scott LaVielle

LaVielle serves as the employer's fire marshal, and is generally responsible for fire inspection, public education and coordination

of fire prevention programs. His office is located in the employer's main building, and his work shift is from 8:00 am to 4:30 pm on Mondays through Fridays. Among his other activities, LaVielle is expected to supervise the department in the event the chief and the operations chief are both absent.

LaVielle has discussed specific issues related to collective bargaining negotiations, but he has never been part of the employer's bargaining team, and he is not routinely expected to provide information to be used in the formulation of the fire district's bargaining strategy. LaVielle's involvement with the budget is limited to preparing an initial budget proposal for the fire prevention programs, and participating in discussions of various budget components at Management Council meetings. The chief has final authority to produce a complete budget proposal, and the Board of Commissioners adopts the final budget. LaVielle's limited bargaining and budgetary activities are clearly insufficient to warrant his exclusion as a "confidential employee" and he also appears to be a supervisor comparable to the battalion chiefs who were found to be public employees in City of Yakima, supra.

#### Separate Unit of Supervisors

The determination and modification of bargaining units under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060 provides:

**DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE.** The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the

bargaining unit, the commission shall consider the 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.

The Commission's decisions reflect a concern for the stability of collective bargaining relationships. See, City of Fife, Decision 3397 (PECB, 1990). The Commission has routinely exercised its unit determination authority to avoid potential conflicts of interest by separating supervisors from the bargaining units containing their rank-and-file subordinates. See, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).<sup>4</sup>

Along with Malo and Fray,<sup>5</sup> Collins and LaVielle clearly exercise supervisory authority on behalf of the employer. A separate unit

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<sup>4</sup> The case in which the Supreme Court of the State of Washington ruled that supervisors have bargaining rights under Chapter 41.56 RCW arose out of a separate unit of supervisors. See, METRO v. Labor and Industries, 88 Wn.2d 925 (1977), approving reasoning set forth by the Commission in another case involving a separate unit of supervisors, City of Tacoma, Decision 95-A (PECB, 1977).

<sup>5</sup> Malo and Fray each have some administrative duties, but their primary responsibility is to supervise one of the shifts. Malo and Fray share the same job description, which begins with the following:

To insure the firefighting readiness of all personnel and equipment ... and assist in the general operation of the district.

Their typical duties include responding to alarms and assuming command; promoting employee productivity and morale; assigning, training, motivating, and evaluating subordinates, and recommending promotion, termination or discipline of subordinates; and responding on behalf of management to employee complaints and grievances.

of supervisors is thus found appropriate in this case, and an election is directed.

Method of Determining the Question Concerning Representation

Analysis of the showing of interest cards submitted in this case reveals that there is a sufficient showing of interest to allow the use of cross-check procedures as set forth in WAC 391-25-391. Accordingly, a cross check of employment records shall be directed to resolve the question concerning representation in this matter.

FINDINGS OF FACT

1. North Highline Fire District provides fire prevention, fire suppression and emergency medical services in a portion of King County, and is a "public employer" within the meaning of RCW 41.56.030(1). The employer's operations are under the general policy direction of an elected three-member Board of Fire Commissioners, and under the daily supervision of Fire Chief Russell Pritchard.
2. International Association of Fire Fighters, Local 3780, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of a separate bargaining unit of battalion chiefs employed by North Highline Fire District.
3. The employer has a collective bargaining relationship with International Association of Fire Fighter, Local 1810, covering a bargaining unit of the employer's non-supervisory uniformed personnel.

4. Chief Pritchard has initiated a "management team" approach to operating the fire district. As part of that approach, each of five battalion chiefs were given specific areas of responsibility in addition to their regular duties. The battalion chief attend management meetings where a number of business matters are discussed. Personnel matters can be addressed in one of those meeting formats, but there have not been any significant number of personnel issues to be addressed since the meeting format was adopted.
5. Battalion Chief Juel Hammond serves as the employer's support services officer. Hammond is responsible for a wide variety of tasks, including serving as infectious control officer, supervising a vaccination program, and managing the employer's information system. Hammond has participated in collective bargaining as part of the employer's bargaining team, and has drafted proposals to be put forth by the employer during negotiations. He serves as the liaison between the employer and its contracted labor negotiator, and has undertaken research and information gathering tasks for the contracted negotiator.
6. Battalion Chief Michael Collins serves as the employer's "senior battalion chief of operations". In that capacity, he is responsible for a number of operational issues, including the enforcement of department policies. Collins assumes responsibility for department operations when Chief Pritchard is absent. Collins has never prepared any collective bargaining materials or participated in negotiations on behalf of the employer. He engaged in limited analysis of collective bargaining proposals in recent negotiations, but the evidence does not establish that as a necessary or ongoing responsibility of his position.

7. Battalion Chief Scott LaVielle serves as the employer's fire marshal, and is responsible for the fire prevention program. He participates in various management meetings, and he assumes responsibility for department operations when both Pritchard and Collins are absent. LaVielle has never participated in collective bargaining on behalf of the employer. He has offered his opinion about bargaining proposals, but has not been directed to prepare proposals or to do research for collective bargaining negotiations.
8. During the investigation conference held in this matter on October 10, 1997, the employer stipulated that Battalion Chief David Malo and Battalion Chief Paul Fray are eligible voters in the petitioned-for bargaining unit. That stipulation was reflected in the investigation statement issued in this matter on October 10, 1998, and the employer did not file any objection to that investigation statement within the 10-day period specified in the investigation statement.
9. The employer's request to withdraw from its stipulation on the eligibility of employees Malo and Fray was advanced to the Commission for the first time on March 18, 1998, which was more than 10 days after the issuance of the investigation statement. That request was not supported by a claim of changed circumstances or any showing of good cause why the employer should be excused from the stipulation it previously made in this proceeding.
10. Employees Collins, LaVielle, Malo and Fray exercise supervisory authority, on behalf of the employer, over the bargaining unit described in paragraph 3 of these findings of fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The stipulations entered into by the parties at the investigation conference held in this matter, as reflected in the investigation statement issued on October 10, 1997, are controlling under WAC 10-08-130 and WAC 391-08-210.
3. Based upon his direct and support responsibilities in labor relations matters, Battalion Chief Juel Hammond is a confidential employee within the meaning of RCW 41.56.030(2)(c), and is not a public employee who is eligible for inclusion in a bargaining unit under Chapter 41.56 RCW.
4. Battalion Chiefs Michael Collins and Scott LaVielle are supervisors, but lack sufficient regular and necessary involvement with labor relations matters to warrant their exclusion from collective bargaining rights as confidential employees under RCW 41.56.030(2)(c).
5. A bargaining unit consisting of all supervisory uniformed personnel of the North Highline Fire District, excluding elected officials, the fire chief, confidential employees, non-supervisory employees, and employees who are not uniformed personnel within the meaning of RCW 41.56.030(7), is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation currently exists in that unit.

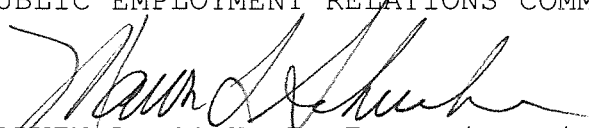


DIRECTION OF CROSS CHECK

1. A cross check of employment records shall be conducted in the appropriate bargaining unit described in paragraph 5 of the foregoing conclusions of law, to determine whether a majority of employees desire to be represented by International Association of Fire Fighters, Local 3780, for the purposes of collective bargaining under Chapter 41.56 RCW.
  
2. Michael Collins, Scott LaVielle, David Malo, and Paul Fray are eligible voters in the representation election directed herein.

Issued at Olympia, Washington, this 11<sup>th</sup> day of January, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.