

Town of Friday Harbor, Decision 7114-A (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF COUNTY)
AND CITY EMPLOYEES) CASE 15206-E-00-2540
)
Involving certain employees of:) DECISION 7114-A - PECB
)
TOWN OF FRIDAY HARBOR) ORDER DETERMINING
) ELIGIBILITY ISSUE
)
_____)

John Stables, Field Representative, appeared on behalf of the union.

Cabot Dow Associates, Inc., by Cabot Dow, Labor Relations Consultant, appeared on behalf of the employer.

On May 26, 2000, the Washington State Council of County and City Employees (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Town of Friday Harbor (employer). An Investigation Conference was conducted on June 21, 2000, by telephone conference call, at which time the parties disagreed as to the eligibility of one employee for inclusion in the bargaining unit. The union prevailed in a cross-check conducted by the Commission, and an interim certification was issued as Town of Friday Harbor, Decision 7114 (PECB, 2000) naming the union as exclusive bargaining representative of:

All full-time and regular part-time employees of the Town of Friday Harbor, excluding supervisors, confidential employees, elected officials, and officials appointed for a fixed term of office.

The matter was referred to a Hearing Officer for further proceedings on the eligibility issue reserved during the Investigation Conference.

Prior to a hearing, the parties filed two stipulations and asked that the Executive Director make a ruling in the matter:

1. A stipulation filed on August 30, 2000, specifying that Fire Chief Robert Low is not a confidential employee, and is not a supervisor; and
2. A stipulation filed on September 11, 2000 (supplementing the August 30 stipulation that Low is a member of the Washington State Law Enforcement Officers and Fire Fighters (LEOFF) Retirement System), that Low is the only LEOFF member in the employer's workforce.

Based on review of the file and the stipulations of the parties, the Executive Director rules that the disputed individual is properly included in the bargaining unit in this case.

DISCUSSION

By enactment of the Public Employees' Collective Bargaining Act in 1967, the Legislature has extended collective bargaining rights to nearly all employees of municipal corporations and political subdivisions within the state, including the employees of the Town of Friday Harbor. The limited exclusions from that statute have been narrowly construed by the Supreme Court of the State of Washington in Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977) [supervisors are employees with the meaning of the statute] and IAFF, Local

469 v. City of Yakima, 91 Wn.2d 101 (1978) [exclusion of "confidential" employees limited to those who meet a "labor nexus" test].

By several enactments since 1973, the Legislature has established an "interest arbitration" process to resolve bargaining impasses for some, but not all, of the employees covered by Chapter 41.56 RCW. Bargaining units composed of fire fighters, bargaining units composed of law enforcement personnel employed by larger cities and counties, corrections officers employed by the largest counties, and certain other classes of employees have access to the interest arbitration process, while other employees do not. Expansions of the coverage of the interest arbitration process have been hotly debated in the Legislature over the years.

To avoid "bootstrapping" of ineligible employees into the interest arbitration process, and to avoid prejudicing the rights of employees who should be eligible for interest arbitration, the Commission adopted WAC 391-35-310, as follows:

WAC 391-35-310 EMPLOYEES ELIGIBLE FOR INTEREST ARBITRATION. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

Because the definition of "uniformed personnel" in RCW 41.56.030(7) makes reference to the LEOFF statute, and because the individual at issue in this case is a fire fighter covered by the LEOFF system, the employer has questioned whether Low can be included in a bargaining unit which otherwise constitutes a "wall-to-wall" unit.

The employee at issue in this proceeding is ineligible for the interest arbitration process at the present time, for the simple

reason that he has nobody to collect with to form a bargaining unit that could go to interest arbitration. In decisions dating back to Town of Fircrest, Decision 248-A (PECB, 1977), the Commission has held to the interpretation that a bargaining unit cannot be considered appropriate under Chapter 41.56 RCW if it includes only one employee. That policy was, and remains, consistent with the practices and precedents under the federal National Labor Relations Act. Several subsequent decisions have rejected unit placement arguments that would have stranded individuals in "one person unit" situations. See, Pasco School District, Decision 3796 (PECB, 1991); City of Seattle, Decision 6145 (PECB, 1997). In fact, the only alternative to inclusion of the disputed position in the "wall-to-wall" bargaining unit described in the interim certification would be to deprive an employee who is stipulated to be neither a "confidential" employee nor a "supervisor" from the collective bargaining rights conferred by the statute.

The possibility that an appropriate bargaining unit of fire fighters could exist at some future time is not a sufficient basis to deprive the disputed employees of his statutory collective bargaining rights at this time. As noted by the Commission in City of Winslow, Decision 3520-A (PECB, 1990), a unit clarification would be appropriate if and when this employer acquires another non-supervisor fire fighter.

NOW, THEREFORE, it is

ORDERED

1. Under the circumstances that now exist, the fire chief position held by Robert Low is properly included in the bargaining unit involved in this proceeding.

2. The interim certification issued in this matter will stand as the final certification for purposes of WAC 391-25-030(2).

Issued at Olympia, Washington, on the 22nd day of September, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.