

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION	)	
OF FIRE FIGHTERS, LOCAL 1747,	)	
	)	
Complainant,	)	CASE 15107-U-00-03812
	)	
vs.	)	DECISION 7380 - PECB
	)	
CITY OF KENT,	)	PROTECTIVE ORDER
	)	
Respondent.	)	
	)	
	)	

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Emmal, Skalbania and Vinnedge, PLLC, by Alex Skalbania, Attorney at Law, represented the union.

Summit Law Group, by Otto G. Klein, III, Attorney at Law, represented the employer.

On March 24, 2000, the International Association of Fire Fighters, Local 1747 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Kent (employer) as respondent. A preliminary ruling was issued on June 7, 2000, under WAC 391-45-110, finding a cause of action to exist on allegations that the employer interfered with the rights of Lieutenant Tom Shepard, in violation of RCW 41.56.140(1). The employer filed an answer on June 28, 2000, and Walter M. Stuteville was designated as Examiner in the matter. A hearing was held on October 10 and 11, December 20, 21, and 22, 2000, and January 11, 2001, during which certain exhibits were received in evidence under an interlocutory protective order. After the close of the hearing and the setting of a date for the filing of simultaneous briefs, the parties jointly requested extension of the deadline for the briefs. On April 20,

2001, the union notified the Commission that the parties had reached a voluntary settlement of the issues in this case, and it requested that its complaint charging unfair labor practices be withdrawn.

The Examiner has considered the matter, and concludes that the closure of the proceedings should be accompanied by a permanent protective order.

### DISCUSSION

#### The Exhibits Admitted Under Protective Order

At the beginning of the first day of hearing, the union moved for enforcement of a subpoena duces tecum by which it called upon the employer to produce documents related to the tactical and psychological testing of certain candidates for the battalion chief position at issue in this proceeding. The employer raised two concerns over its compliance with the subpoena:

First, because the documents under subpoena included psychological tests of the candidates, the employer needed to protect the confidentiality of the examinations.

Second, because the documents under subpoena were copyrighted materials, the employer questioned the propriety of making the copies normally required for admission of exhibits in evidence before the Commission.

As to the second of those objections, the employer explained that it had contacted the California firm which owns the copyright, Dennis A. Joiner & Associates, upon receipt of the subpoena duces tecum. Joiner did the candidate testing under a contract with the employer, and Joiner authorized the employer to show the documents

to the union, but refused to allow them to be copied. The Examiner ordered the employer to turn over its single copy of the subpoenaed documents to the union for inspection, which brought the employer into compliance with the subpoena duces tecum and allowed the union to determine whether it wanted to move for admission of the copyrighted documents in evidence. Prior to the end of the first day of hearing, the union informed the Examiner and the employer that it wanted the documents introduced into evidence.

#### The Interlocutory Protective Order

After hearing the parties' arguments, the Examiner ordered the employer to produce both the psychological testing documents and the copyrighted tactical examinations. By specific order, the documents were to be handled differently than other exhibits.

#### The Psychological Testing Documents -

The Examiner ordered the employer and union to work together, to obtain appropriate releases from the employees whose psychological tests had been subpoenaed. Once those releases had been signed, the documents were marked as Exhibits 49, 50, and 51 for the purposes of this case. The Examiner then limited the availability of those documents to: (1) The parties to this case; the Examiner; and to any appellate body, if the Examiner's final decision were to be appealed. The Examiner further ordered that the psychological tests be sealed upon the closing of this case, so that they would not be available as a part of the public record.

#### The Copyrighted Materials -

On the second day of the hearing, the copyrighted documents were marked as Exhibits 45, 46, 47, and 48 for the purposes of this case. So that the hearing could proceed in an orderly fashion, copies of those documents were made and provided to the parties

while the Examiner retained the original documents. The Examiner further ordered that the copies were provided only for the parties' use until the case was closed, that no additional copies were to be made or distributed to persons not involved in this proceeding, and that all copies were to be returned to the Examiner upon the closure of the case (either by a final order issued by the Examiner or a final order issued by an appellate body). Finally, the Examiner ordered that, upon return of the copies to the Examiner, the original document was to be returned to the employer and all copies were to be sent to the copyright holder.

NOW, THEREFORE, it is

ORDERED

1. The documents marked as Exhibits 49, 50, and 51 and any copies of those documents made during the processing of this case and in the possession of the Commission shall be sealed to protect the privacy rights of the subject employees, and shall not be made available as a matter of public record.
2. The documents marked as Exhibits 45, 46, 47, and 48 shall be sealed and disposed of as follows:
  - a. The employer and union, together with their officers, attorneys and agents, shall immediately return to the Examiner any and all copies of those exhibits which are in the possession of the parties to this case. Each such transmittal shall be under cover of a signed statement by the person making the transmittal, attesting to full and complete conformity with this order.

- b. Upon receipt of all copies of those exhibits, the Examiner shall return the original documents to the employer, for its permanent records.
  - c. Upon receipt of all copies of those exhibits, the Examiner shall forward all of those copies to the originator of the documents.
  - d. Any and all electronic copies or images of those exhibits made by the Commission shall be sealed and expunged to protect the copyright rights of the author, and shall not be made available as a matter of public record.
3. The withdrawal of the complaint charging unfair labor practices in the above-captioned matter is accepted and the case is CLOSED.

Issued at Olympia, Washington, this 17<sup>th</sup> day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner