City of Sedro Woolley, Decision 8938 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
CITY OF SEDRO WOOLLEY	)	CASE 18694-C-04-1209
	)	
For clarification of an existing bargaining unit represented by:	)	DECISION 8938 - PECB
	)	ORDER CLARIFYING
SEDRO WOOLLEY PUBLIC SAFETY GUILD	)	BARGAINING UNIT
	)	
	)	

Summit Law Group, by *Bruce L. Schroeder*, Attorney at Law, for the employer.

Garrettson, Goldberg & Fenrich, by *Becky Gallagher*, Attorney at Law, for the union.

On July 12, 2004, the City of Sedro Woolley (employer) filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission, seeking removal of fire fighters from an existing bargaining unit represented by the Sedro Woolley Public Safety Guild (union) that encompasses both fire fighters and law enforcement personnel. The parties waived a hearing, filed stipulated facts on December 6, 2005, and filed additional stipulated facts on January 14, 2005. Both parties filed briefs by January 21, 2005.

Based on the stipulated facts, the Executive Director declines to rule that the current configuration is an inappropriate bargaining unit, and concludes there has been no change of circumstances warranting the requested modification of the existing bargaining unit.

ISSUES

1. Is the historical bargaining unit configuration, which includes both fire fighters and law enforcement personnel, inherently inappropriate?

2. Was the petition in this case timely?

3. Do the circumstances warrant a change of unit configuration?

ISSUE 1 - IS THE EXISTING UNIT INHERENTLY INAPPROPRIATE?

Applicable Legal Standards -
In *City of Richland*, Decision 279-A (PECB, 1978), *aff'd,* 29 Wn. App. 599 (1981), *review denied,* 96 Wn.2d 1004 (1981), the Commission wrote: "Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate bargaining unit by agreement of the parties or by certification will not be disturbed." A key concept imbedded in that quotation and applicable in this case is that an existing bargaining unit must be modified if it is an inappropriate unit.

RCW 41.56.060 sets forth the unit determination criteria to be applied by the Commission, including "duties, skills, and working conditions . . . , history of collective bargaining . . . [and] the extent of organization . . ." RCW 41.56.430 through .470 and RCW 41.56.480 establish an interest arbitration procedure to resolve impasses in collective bargaining concerning a class of "uniformed personnel" defined in RCW 41.56.030(7) as including both fire and law enforcement employees covered by the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF) established in Chapter 41.26 RCW. In turn, the Commission's rules include:

> 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.

That rule adopted in 1996 codified Commission precedents which had found mixed units of uniformed and non-uniformed personnel to be inappropriate.

Application of Standards -

The stipulated facts indicate that the bargaining unit at issue in this case has historically encompassed both fire fighters and law enforcement officers covered by the LEOFF system. Nothing in Chapter 41.56 RCW or in the Commission's rules expressly prohibits a bargaining unit configuration which mixes subtypes within the "uniformed personnel" definition.[1]

The most that can be said is that RCW 41.56.465(c)(1) establishes different comparability standards for law enforcement officers than are established for fire fighters in RCW 41.56.465(c)(2). Those standards apply to the interest arbitration process, however, not to the unit determination process. Just as the neutral chair of an interest arbitration panel could be called upon to engage in separate analysis for different ranks / classifications within a police department or for different ranks / classifications within a fire department, separate analysis for law enforcement officers and fire fighters within a single bargaining unit does not constitute an insurmountable impediment to the process.

---

[1] Although an inference is available that the fire fighters and law enforcement officers function separately in Sedro Woolley, the Executive Director has recall of dealing with bargaining units of employees in Washington who perform both types of function.

Conclusion as to Inherent Impropriety -

Neither the statute, the applicable rules, nor the stipulated facts presented in this case provide a basis to declare that the historical bargaining unit configuration is inherently inappropriate. These parties could continue their bargaining relationship if nothing is changed.

ISSUE 2 - WAS THE PETITION TIMELY?

In the context that the existing bargaining unit configuration could continue to exist, inquiry must turn to whether the employer has satisfied its procedural obligations.

Applicable Legal Principles -

In *Toppenish School District*, Decision 1143-A (PECB, 1981), the Commission evidenced dual concerns for honoring contractual rights and preserving the stability of bargaining relationships. It reinforced the previously-stated principle that a party can petition for a unit clarification any time there has been a substantial change of circumstances, but it outlined a two-step process for parties to file other unit clarification petitions affecting employees covered by a collective bargaining agreement. The party seeking a change of the unit configuration: (1) must raise the issue during negotiations for a successor contract; and (2) must file a unit clarification petition with the Commission before the parties sign an agreement on the successor contract. The Commission enforced the "Toppenish two-step" procedure in numerous subsequent cases, and eventually codified that principle in WAC 391-35-020(2).

Analysis of Timeliness Issue -

These parties began negotiations for a successor contract in July 2003. In November 2003, they tentatively agreed to contract

language that purported to give the fire fighters an ability to shift their representation to another union during the term of the successor agreement, if they so chose.[2] During a bargaining session in December 2003, the employer questioned the inclusion of the fire fighters in this bargaining unit. The parties subsequently entered mediation, where the employer reminded the union of its concern regarding the co-mingling of employees performing police and fire functions in the same bargaining unit. After expiration of the previous contract and certification of issues for interest arbitration, the employer filed the petition to initiate this clarification petition case on July 12, 2004.

It is clear from these facts that the employer placed the union on notice of the unit determination issue during the negotiations for a successor contract. It is also clear that the employer filed its unit clarification petition before an agreement was reached or an interest arbitration award was issued.

Conclusion on Timeliness -
The employer complied with the two-step process required by *City of Toppenish*, Decision 1143-A, and by WAC 391-35-020.

ISSUE 3 - IS MODIFICATION OF THE UNIT WARRANTED?

With the conclusion that the employer's petition was timely filed, the Executive Director can now turn to whether the stipulated facts warrant a change of the bargaining unit configuration.

---

[2] Another principle firmly established in *City of Richland*, Decision 279-A (PECB, 1978) is that unit determination is not a subject for bargaining in the conventional mandatory / permissive / illegal sense, and that the agreements of parties on unit matters are not binding on the Commission. The parties' purported agreement would have conflicted with RCW 41.56.070 and WAC 391-25-030(1).

Applicable Legal Principles -

In the context of RCW 41.56.030(7) and WAC 391-35-310, discussed above, RCW 41.26.030(4) defines uniformed *fire fighter* as:

> (a) Any person who is serving on a *full time, fully compensated basis* as a member of a fire department of an employer and who is serving *in a position which requires passing a civil service examination* for fire fighter, and who is actively employed as such;
>
> (b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;
>
> (c) Supervisory fire fighter personnel; . . . .

(emphasis added, provisions concerning union officials omitted as inapposite to this case).

Another Commission rule, WAC 391-35-330, precludes the creation or continuation of bargaining units that include only one employee. That rule also codified long-established precedent.

Application of Standards -

The stipulated facts indicate that two fire fighter positions have existed since March 16, 2002, but that both positions were filled with full-time employees only from March 16, 2002, to August 1, 2004. One of the full-time fire fighters was deemed to be excluded from the existing bargaining unit as of August 1, 2004, upon being promoted to an "assistant chief" position.

This vacant fire fighter position has been filled by "provisional" fire fighters since August 1, 2004. Although the stipulated facts indicate there is an intent to fill that position on a permanent basis, there has been no supplemental stipulation indicating that intent has been fulfilled. The stipulated facts do not show that

a "provisional" fire fighter fits within the definition of "fire fighter" in Chapter 41.26 RCW.

The word "provisional" is defined in Black's Law Dictionary, 7th edition, as "temporary" or "conditional". Thus, the employer's own terminology supports an inference that employees labeled as "provisional" do not meet the "*full-time*" and "in a position which requires passing a civil service examination" required to fulfill the definition of "fire fighters" that would qualify them as uniformed personnel under Chapter 41.56 RCW. In turn, that would cause the separate unit of fire fighters proposed by the employer to conflict with the prohibition of mixed units in WAC 391-35-310 and/or the prohibition of one-person units in WAC 391-35-330.

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, has been described by the Supreme Court as "remedial" legislation, and the Supreme Court of the State of Washington has sought to preserve the maximum range of employee access to collective bargaining rights. *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978). Just as an exception to WAC 391-35-310 was allowed in *City of Blaine*, Decision 6619 (PECB, 1999), in order to avoid stranding a "uniformed" employee without any bargaining rights,[3] preservation of the existing bargaining unit configuration will maximize the collective bargaining rights of the employees at Sedro Woolley.

Conclusion as to Facts Warranting Change -

There has been no change of circumstances warranting a change of the historical bargaining unit configuration.

---

[3] The sole "uniformed" employee in *Blaine* had no other "uniformed" personnel to collect with for purposes of invoking the interest arbitration process, but could still exercise the statutory right to collect with other employees for bargaining with their employer.

FINDINGS OF FACT

1. The City of Sedro Woolley (employer) is a public employer as defined in RCW 41.56.030(1).

2. The Sedro Woolley Public Safety Guild (union) is a bargaining representative as defined in RCW 41.56.030(3).

3. On May 2, 2002, the union was certified as exclusive bargaining representative of a bargaining unit of 12 employees described as "all uniformed employees of the city of Sedro Woolley," with the customary exclusion of supervisors, confidential employees and all other employees. That bargaining unit encompassed both law enforcement and fire fighter employees covered by Chapter 41.26 RCW.

4. In 2002, the employer and union signed a collective bargaining agreement unit that was to remain in effect through December 31, 2003.

5. The parties entered into negotiations for a successor agreement in 2003. During those negotiations, the employer put the union on notice that it was questioning the propriety of the historical bargaining unit configuration encompassing both fire fighters and law enforcement officers.

6. The parties entered into mediation for a successor contract on February 27, 2004. After several mediation meetings, the issues remaining unresolved were certified for interest arbitration on June 25, 2004.

7. Prior to either an agreement being reached on a successor contract or an interest arbitration award being issued, the

employer filed the petition to initiate this unit clarification proceeding. The issue raised in this proceeding is consistent with the unit determination issue raised by the employer in the parties' contract negotiations.

8. The employer had two full-time fire fighters for a time, but has had only one full-time fire fighter since August 1, 2004. Any persons filling the second fire fighter position since that date have been in "provisional" status.

9. Exclusion of the one fire fighter currently qualifying as a "uniformed" employee eligible for interest arbitration from the existing bargaining unit would at least deprive that individual of access to the interest arbitration process and could strand the individual in a "one-person unit" situation which would deprive the individual of all access to statutory collective bargaining rights.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.

2. The existing bargaining unit created by a certification issued by the Commission, as described in paragraph 3 of the foregoing findings of fact, continues to be an appropriate unit for the purposes of collective bargaining under RCW 41.66.060.

3. Under the circumstances described in paragraphs 5 and 7 of the foregoing findings of fact, the petition filed by the employer to initiate this unit clarification proceeding was timely under WAC 391-35-020.

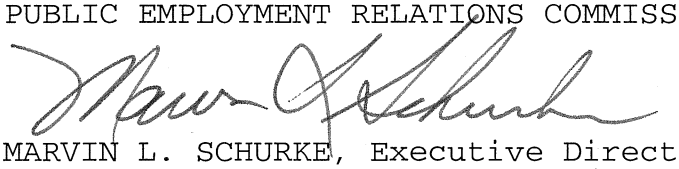
4. The facts stipulated by the parties, as described in paragraphs 8 and 9 of the foregoing findings of fact, do not warrant modification under RCW 41.56.060 of the bargaining unit configuration described in paragraph 3 of the foregoing findings of fact.

ORDER CLARIFYING BARGAINING UNIT

The existing bargaining unit of City of Sedro Woolley employees represented by the Sedro Woolley Public Safety Guild shall continue as described in *City of Sedro Woolley*, Decision 7713 (PECB, 2002).

Issued at Olympia, Washington, on the 9th day of May, 2005.

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 391-35-210.