

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 4189)	CASE 20739-C-06-1289
)	
For clarification of an existing)	DECISION 9845 - PECB
bargaining unit of employees of:)	
)	
KING COUNTY FIRE PROTECTION)	ORDER CLARIFYING
DISTRICT 13)	BARGAINING UNIT
)	
_____)	

Webster, Mrak & Blumberg, by *James H. Webster*, for the union.

Schwerin Campbell Barnard & Iglitzin, by *Terrance Costello* and *Carson Glickman-Flora*, for the union.

Joseph F. Quinn, Attorney at Law, for the employer.

On October 27, 2006, the International Association of Fire Fighters, Local 4189 (union), filed a petition for clarification regarding a bargaining unit of fire fighters employed by King County Fire Protection District 13 (employer). The union, which represents the rank-and-file fire fighters, sought to include Battalion Chief Training/Safety Officer Cari Coll, in the bargaining unit. The employer opposed including Coll in the unit, contending that Coll is a confidential employee. The petition was timely filed under WAC 391-35-020(e). The hearing was held before Hearing Officer Emily Martin on January 31, 2007. The parties filed post-hearing briefs which were considered.

ISSUE

Is the battalion chief a confidential employee and therefore appropriately excluded from the certified bargaining unit?

The Executive Director finds that the battalion chief does not have the necessary, regular, and ongoing confidential work assignments required to establish confidential status.

APPLICABLE RULE

The authority to determine and modify bargaining units is specifically delegated to the Commission in RCW 41.56.060. A party seeking a confidential employee designation has a heavy burden of proof, because confidential status deprives an employee of all rights of collective bargaining representation. RCW 41.56.030(2)(c). See *Pierce County*, Decision 8892-A (PECB, 2006) and *City of Redmond*, Decision 7814-B (PECB, 2003). It is not enough to "simply establish the existence of an intimate fiduciary relationship between the alleged confidential employee and a public official" because the "labor nexus" between actual job duties and the formation of labor relations policy must be demonstrated as well. *City of Mountlake Terrace*, Decision 3832-A (PECB, 1982).

Employees are confidential under WAC 391-35-320(1) if they participate directly on behalf of an employer in the formation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements. Employees who assist and act as an assistant or secretary to a confidential employee under WAC 391-35-320(1), are also confidential employees under WAC 391-35-320(2). Confidential employees' work assignments do not have to be exclusively or

primarily confidential, but the employees must have "necessary, regular, and ongoing" confidential work assignments. *City of Redmond*, 7814-B (PECB, 2003), citing *City of Cheney*, Decision 3693 (PECB, 1991).

In the instant case, an important piece of the employer's argument is that the battalion chief attends management meetings. Prior cases have examined the confidential status of battalion fire chiefs or deputy fire chiefs who participated in management meetings. In *City of Seattle*, Decision 1797-A (PECB, 1985), deputy chiefs participated in meetings with their fire chief that were primarily about the effective operation of the fire department but also included wide range of general policy issues. Those deputy chiefs were not determined to be confidential employees. In *North Highland Fire District*, Decision 6550 (PECB, 1999), several battalion chiefs participated in management meetings but only the battalion chief who had other labor relations duties was determined to be a confidential employee. The confidential battalion chief helped to draft negotiating proposals and served as a liaison between the employer and a contracted labor negotiator. In *City of Bellingham*, Decision 565 (PECB, 1979), battalion chiefs attended management meetings and discussed personnel issues with the fire chief and an assistant chief. Those battalion chiefs were also not determined to be confidential employees.

ANALYSIS

According to the testimony of Fire Chief Keith Yamane, the main responsibilities of the battalion chief involve training and safety. The battalion chief's job description shows that her training duties include conducting fire fighter training, writing lesson plans, coordinating exams, preparing training calendars, and

conducting officer training and training drills. Coll's safety officer duties include researching safety policies, responding to calls as an incident safety officer, and measuring safety protocols to ensure that guidelines are met.

As the fire department is on Vashon Island, occasionally, when the fire chief is away, the battalion chief commands the entire department. However, this duty is too occasional to have any impact on the question of her confidential status.

In terms of the organizational structure of the department, Coll's rank is below that of the fire chief, the assistant chief, and the director of finance and administration, but higher than the paramedics and fire fighter/EMTs. Overall, the employer has a relatively small workforce. About eighteen uniformed employees are in the bargaining unit. The workforce also includes six non-supervisory and non-uniformed employees. The employer and union have stipulated that three other individuals would qualify as confidential employees: the fire chief, the assistant chief, and the director of finance and administration.

The battalion chief's job description contains no specific labor relations duties although the job description states that one of the battalion chief's duties is "as a member of the Executive Management Team, perform other duties as assigned by the Fire Chief." The management team is further described in the employer's letter to Coll confirming her acceptance of the battalion chief position. The letter lists the other members of the team as Fire Chief Keith Yamane, Assistant Chief Mike Kirk, and Director of Finance and Administration Matt Sullivan.

The union filed this petition for clarification only a few weeks after Coll was promoted into the battalion chief position. She is

at least the fifth battalion chief since the employer created the position in 2001 and her duties are substantially the same as the earlier battalion chiefs who have never been included in the bargaining unit. The union had never before sought to include the battalion chief in its bargaining unit.

Collective Bargaining Negotiations

The union and employer have not formally collectively bargained since Coll became the battalion chief. In 2005, the most recent round of contract negotiations, the bargaining team consisted of current Director of Finance and Administration Matt Sullivan, the prior fire chief, and a prior assistant chief. In 2002, during the earlier contract negotiations, the bargaining team consisted of the fire chief, a paid negotiator, and Keith Yamane. Yamane was then an assistant chief and is now the fire chief. Yamane testified about the battalion chief's role in 2002 and Sullivan testified about the battalion chief's role in 2005. According to both witnesses, prior battalion chiefs did not directly participate in negotiations as members of the employer's bargaining team. Both described the battalion chief as participating in conversations about collective bargaining. Other than these discussions, the prior battalion chiefs did not have specific work assignments related to collective bargaining. For example, no evidence was provided that prior battalion chiefs drafted language, researched proposals, or calculated the cost of economic proposals.

Not only is it speculative to determine that Coll will have an identical role in future negotiations as did prior battalion chiefs, the record does not establish that prior battalion chiefs played sufficient roles in those negotiations to warrant their exclusion from the bargaining unit. In discussing the negotiations, the prior battalion chief did learn some of the employer's confidential labor relations information. For example, Sullivan

testified that the battalion chief knew of potential pay increases for the bargaining unit and saw the employer's bargaining proposals before the union did. However, it was not clear from the testimony presented whether the management team's discussions about bargaining had a substantial role in forming the employer's bargaining proposals or why it was necessary for the battalion chiefs to be included in these conversations and be privy to the proposals. The record does not show that the battalion chief position requires expertise on labor relations policy or strategy, and the record does not establish that prior battalion chiefs had any background in labor relations or negotiations. Past battalion chiefs did not research proposals, draft language or cost out economic packages. Such specific duties are typically present when an employee is found to directly participate in the employer's collective bargaining negotiations. The battalion chief's role is more informal and less direct than that of a typical confidential employee.

Presumably, some of the discussions about negotiations occurred during management team meetings. Historically, the battalion chief has been outside of the bargaining unit. Therefore, the employer would not have needed to exclude prior battalion chiefs from labor relations discussions at management meetings even if they were not needed and did not play a significant role in labor relations policy or strategy.

Management Team Discussions

Yamane testified that he uses the informal consensus seeking discussions at the management meetings to assist him in his role of leading the department, but that he ultimately retains his authority to make final decisions. As the team would have discussed collective bargaining negotiations and proposals, there would have been instances where these meetings involved the

employer's confidential collective bargaining strategy. The management team appears to be something more than a mere "sounding board" for the fire chief, but is far short from a formal cabinet which has been delegated with the authority to make decisions on behalf of the employer. In *City of Aberdeen*, Decision 4175 (PECB, 1992), an employee who was used by a department head to act as a "sounding board" on labor relations matters was not determined to be a confidential employee; however, that department head did not serve on the employer's bargaining team during negotiations. In *Edmonds School District*, Decision 231 (PECB, 1977), an entire "cabinet" was found to have confidential status. In that case, a superintendent of schools delegated authority to his cabinet, who then used a majority vote to decide policy recommendations to the district's elected board. That cabinet supplied district negotiators with parameters as well as deciding the employer's position on matters related to contract administration. Unlike *Edmonds*, Fire Chief Yamane has not delegated his authority. Although Sullivan testified that the battalion chief learned of the economic parameters for negotiations, the record does not support a finding that the management team establishes such parameters. This management team has not been shown to have the significant role delegated to the cabinet in the *Edmonds* decision. While the factual situation in the present case is less extreme than the examples found in the *City of Aberdeen* and the *Edmonds* decisions, this management team's advisory role in collective bargaining negotiations has not been proven to be so extensive that it shows that the employer has met its high burden of proof to show that Coll is a confidential employee.

The management team also advises the fire chief on personnel decisions, the scheduling of shifts, and other concerns raised by the union. Therefore, the battalion chief does have some involvement in issues related to contract administration, but only as a

member of the management team. Contract administration duties play a role in determining confidential status because employees are confidential under WAC 391-35-320(1) if they participate directly on behalf of an employer in the formation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements.

The record shows that the management team has discussed specific personnel issues such as whether to change a bargaining unit member's shift from one that would provide coverage around the clock to a conventional weekday schedule. The management team also discussed hiring decisions, shift assignments, and such matters as whether an employee had successfully completed probation. In some of these discussions, the battalion chief was shown to have a significant role. In particular, the battalion chief had an important role in discussing whether an employee had successfully completed probation because of her responsibility as the department's training officer. The battalion chief's job description states that the battalion chief is the department's expert in training and safety matters. Thus, the battalion chief would have been included in these discussions. The record does not show that the battalion chief position requires expertise on labor relations matters, and the record does not establish that Coll has any background in labor relations or collective bargaining. Therefore, Coll's involvement in these discussions is more likely because she is a resource on safety and training matters, rather than because she has any specific labor relations skills or responsibilities.

Fire district or fire department employers have long argued that battalion chiefs ought to be considered confidential employees because of their involvement in management meetings that include personnel discussions. As participation in personnel decisions is more likely to be an indicia of supervisory responsibilities rather

than the basis for the finding of a confidential employee status, battalion chiefs have typically not been excluded from bargaining units merely because they were involved in personnel discussions. See *City of Seattle*, Decision 1797 (PECB, 1985). For example, in *North Highland Fire District*, Decision 6550 (PECB, 1999), only a battalion chief who had additional labor relations duties was determined to be a confidential employee while other battalion chiefs involved in management meetings were included in the unit. See also *City of Bellingham*, Decision 565 (PECB, 1979). Here, the record does not establish that the personnel discussions were more extensive than the typical discussions that supervisors can engage in without losing their bargaining rights.

A battalion chief's frequent involvement in personnel discussions could potentially indicate a role in the employer's labor relations policy making. Yamane and Sullivan gave differing accounts about how frequently the management team discusses specific personnel topics. Yamane testified that, in the nine months since he became fire chief, the management team discussed specific personnel topics every month or two. In contrast, Sullivan testified that since Coll became the battalion chief, the team had met several times a week, and "confidential union matters" were discussed at almost every meeting. Coll became battalion chief only three months before the hearing and only one month before the union filed its petition questioning her status. Because Sullivan testified about the time period that mostly occurred after the union filed its petition, Sullivan's testimony is less useful in determining what status quo was in place when the petition was filed. In contrast, Yamane's testimony suggests that the management team discussed personnel topics less frequently and so the record does not clearly establish that the battalion chief is so frequently involved in personnel topics that she is a confidential employee.

Labor Management Meetings

Historically, the battalion chief also attends labor/management committee meetings. According to the parties' collective bargaining agreement, these meetings are forums for the parties to address issues of mutual concern in order to strengthen their relationship and communication. Typically, the battalion chief would also participate in the management team's discussions in preparation for the meetings. The record did not establish whether the parties had any labor management meetings, or preparations for the meetings, during the time between Coll's appointment and the hearing.

In *City of Redmond*, Decision 7814 (PECB, 2002), an administrative commander in a police department participated in periodic labor management meetings but was not a confidential employee, as the meetings were "a natural extension of a supervisory role." The decision noted that the commander was not privy to advanced preparations. In *City of Redmond*, Decision 7814-B (PECB, 2003), the Commission affirmed that the commander was not a confidential employee and emphasized that the commander, like Coll, was new to the position, and it would be speculative to base his confidential status on the duties of his predecessor. The Commission held that the commander was not confidential until his own confidential work assignments established the necessary labor nexus.

Similarly, in the very short time that Coll had been the battalion chief, she had not yet played a role in the employer's preparations for labor relations meetings. Before Coll, the acting battalion chief was Mike Kirk. Kirk has a long history with the fire department and has served in many roles. The record is insufficient to show that in the short period that Kirk was the battalion chief that he was assigned enough confidential duties to be a confidential employee. Furthermore, it is speculative that Coll will fill an identical role as an advisor to the fire chief,

because Kirk, an assistant chief, is still able to advise the fire chief. And finally, as in *City of Redmond*, Coll's role in labor management meetings is a logical extension of her responsibilities as a training manager.

Reasonable Number of Confidential Employees

While management is entitled to a reasonable number of confidential employees, there is no set formula in determining what is a reasonable number. *City of Redmond*, Decision 7814-B (PECB, 2003). The battalion chief's confidential labor relations duties must be apparent in order for her to be a confidential employee. The fire chief has both the assistant chief and the director of finance and information to assist him with the employer's confidential labor relations work and as the workforce only has eighteen bargaining unit employees, it is reasonable to conclude that any confidential labor relations work could be done by three individuals without any significant disruption to the employer.

In conclusion, the employer has not met its high burden of proof. The record is insufficient to show that Coll has ongoing, regular and necessary confidential work assignments with a labor nexus. She attends management team meetings. While some management meetings may include a labor nexus, the frequency of the labor relations discussions has not been sufficiently established to conclude that the confidential work assignments are regular. The petition was filed only weeks after Coll was promoted to the battalion chief position. Thus, it is possible that if the question of Coll's confidential status were raised again, after she had sufficient time working in the position, a different record may support a finding that Coll actually has sufficient confidential duties to make her position confidential. However, this decision must be based on the record of actual duties, not speculation. Before Coll, the battalion chief position was held by a person with

a long history with the fire department. Although her duties may be substantially the same as her predecessors', the record does not contain sufficient evidence to find that she would have the same informal influence over labor relations as prior battalion chiefs. Therefore, the record does not clearly show that the labor relations work assignments are ongoing rather than speculative.

In making unit determinations, the Commission evaluates each position based upon the actual job duties exercised by an individual. *Morton General Hospital*, Decision 3521-B (PECB, 1991). The Commission does not evaluate the position on the basis of job duties a position may acquire in the future. *Washington State University*, Decision 9613 (PSRA, 2007).

FINDINGS OF FACT

1. The King County Fire Protection District 13 is a public employer within the meaning of RCW 41.56.030(1).
2. International Association of Fire Fighters, Local 4189, is the exclusive bargaining representative of the bargaining unit of the fire fighters who work for the employer.
3. Cari Coll became the Battalion Chief Training/Safety Officer in October 2006. Her training duties include conducting fire fighter training, writing lesson plans, coordinating exams, preparing training calenders, and conducting officer training and training drills.
4. It is speculative to determine that Coll will have an identical role in advising the fire chief and the employer's

bargaining team regarding negotiations and labor policy decisions as prior battalion chiefs.

5. The battalion chief is part of the employer's executive management team and, through membership on this team, the battalion chief has had only limited and sporadic access to confidential labor relations information.
6. The battalion chief also participates in labor/management meetings. The current battalion chief has not been privy to advanced preparations for labor/management meetings.
7. The battalion chief has not been assigned necessary confidential work assignments.

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 foregoing Findings of Fact do not establish that the battalion chief position is a "confidential" employee within the meaning of RCW 41.56.030(2)(c) and WAC 391-35-320(1).
3. The foregoing Findings of Fact establish that the position of battalion chief is a public employee as defined by RCW 41.56.030(2) and is appropriately placed in the bargaining unit represented by the International Association of Fire Fighters, Local 4189, for purposes of collective bargaining.

ORDER

The battalion chief position is included in the bargaining unit of fire fighters for which the International Association of Fire Fighters, Local 4189, is certified as the exclusive bargaining representative.

Issued at Olympia, Washington, this 12th day of October, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Cathleen Callahan".

CATHLEEN CALLAHAN, Executive Director

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