

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 3173) CASE 7639-E-88-1307
Involving certain employees of:)
PORT OF PASCO) DECISION 3398-A - PECB
DECISION OF COMMISSION
AND CERTIFICATION

Critchlow, Williams & Schuster, by Alex Skalbania and Robert Merriman, Attorneys at Law, appeared on behalf of the petitioner.

McKinley, Hultgrenn & Vanderschoor, by Edward H. McKinley, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on timely objections filed by the Port of Pasco, pursuant to WAC 391-25-590(2), to challenge rulings made by Executive Director Marvin L. Schurke.

BACKGROUND

The union involved, International Association of Fire Fighters, Local 3173, filed a representation petition with the Commission on October 26, 1989. It sought certification as exclusive bargaining representative of a bargaining unit it described as: "All personnel serving as fire fighting personnel for the Tri-Cities Airport excluding supervisory personnel". The employer objected to the petition. It contended that the correct description of those employees which the union sought to represent was "maintenance workers or guards"; not "fire fighters".

After a hearing before Hearing Officer J. Martin Smith on May 23 and 24, 1989, and the filing of post-hearing briefs, the Executive

Director determined that a bargaining unit described as: "All full-time and regular part-time non-supervisory rescue and fire fighting personnel employed at the Tri-Cities Airport" was appropriate. He expressly refrained from deciding whether the petitioned-for employees were "uniformed personnel" within the meaning of RCW 41.56.030(7).¹ The Executive Director issued an order on January 23, 1990, directing a cross-check of records to determine whether a majority of the employees in that bargaining unit desired representation by the petitioning union.

POSITIONS OF THE PARTIES

The employer takes issue with the Direction of Cross-Check for two reasons. First, it contends that a cross-check was unfair, because of the delay that has resulted since membership applications were signed. The employer believes that such applications may no longer reflect the desires of the bargaining unit employees. Only an election, it argues, would provide a reasonably current expression of opinion from the bargaining unit's membership. Second, the employer objects to the fact that the Executive Director left unresolved the principal issue advanced by both parties, i.e., whether the employees at issue are, in fact, "full-time fire fighters" with all the rights that terminology implies. The employer urges that the omission leaves the parties headed to the bargaining table with no clear idea as to their impasse rights.

The union agrees with the Executive Director's decision, and urges the Commission to affirm it.

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Together with law enforcement officers employed by the state's larger cities and counties, paid fire fighters employed by various cities, fire districts and at least the Sea-Tac International Airport operated by the Port of Seattle come within the definition of "uniformed personnel". Those employees are subject to the "interest arbitration" procedures of RCW 41.56.430 et seq.

DISCUSSIONThe "Full-Time Fire Fighter" Issue

The Executive Director recognized that the parties had devoted most of their energy to arguing over whether the petitioned-for employees are full-time fire fighters. The employer acknowledges that the petitioned-for employees have a right to organize for the purposes of collective bargaining, without regard to whether they are "uniformed personnel". Nevertheless, it strenuously objects to characterization of the bargaining unit as "full-time ... fire fighting personnel". We can appreciate the employer's concern that sidestepping the issue only postpones it for another day. There is a benefit in this case, though, to doing that.

The principal reason for the employer's sensitivity regarding the characterization of the bargaining unit is a concern that the individuals therein will thereby qualify for coverage under the Law Enforcement Officers and Fire Fighters (LEOFF) retirement system established by Chapter 41.26 RCW.² The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, defines "uniformed

² RCW 41.26.030(4) defines "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 or fireman if this title is used by the department, 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; ...

Chapter 41.26 RCW is administered by the Department of Retirement Systems.

personnel" by reference to the LEOFF statute.³ It is obviously preferable that there be consistency in applying the "fire fighter" definition. In close cases, it also seems preferable that, whenever practicable, the issue first be presented to the agency or official responsible for administering the statute from which the definition is derived.⁴ The bargaining process gives the parties time to do that. Consequently, we find no error in the fact that the Executive Director chose not to resolve the principal issue advanced by both parties.

Bargaining units are generally described in terms of the work performed by the employees at issue, rather than by their specific job titles. This is done to avoid subsequent jurisdictional problems in the event a job title is changed. City of Seattle, Decision 3131-A (PECB, 1989). In his decision, the Executive Director found that the "community of interest" which binds the petitioned-for employees together is their "rescue and fire fighting" duties, skills and working conditions. The record certainly supports the finding that such duties are performed. The record also persuades us that the description of the bargaining unit should be modified in one respect.

Since the Executive Director expressly refrained from deciding whether the employees at issue met the definition of "uniformed personnel" as full-time fire fighters, we believe it is preferable to define the bargaining unit as "all full-time and regular part-time non-supervisory personnel employed by the Port of Pasco at the Tri-Cities Airport who perform rescue and fire fighting duties".

³ RCW 41.56.030(7) specifies, in relevant part:

"Uniformed personnel" means ... fire fighters as that term is defined in RCW 41.26.030, as now or hereafter amended.

⁴ In this case, the Director of the Department of Retirement Systems, which administers the LEOFF statute, and the Director of the Department of Retirement Systems.

This description, subject to the standard exclusions, eliminates reference to whether the "fire fighting" duties are performed on a "full-time" basis, because that is the very issue which the Executive Director chose not to resolve.

The Cross-Check Issue

Chapter 41.56 RCW draws many of its provisions from the federal Labor-Management Relations Act of 1947 (Taft-Hartley Act), but there are also numerous differences between the state and federal collective bargaining laws. One such difference is in the methodology for determining questions concerning representation. The statute we administer provides:

RCW 41.56.060 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 shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor. [emphasis supplied]

RCW 41.56.070 makes it abundantly clear that use of the cross-check is discretionary with the Commission:

RCW 41.56.070 ELECTION TO ASCERTAIN BARGAINING REPRESENTATIVE. In the event the commission elects to conduct an election to

ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. ... [emphasis supplied]

The Commission has adopted standards for the use of the cross-check method, in WAC 391-25-391 and WAC 391-25-410. Arguably, our authority to use the cross-check methodology is broader than we have actually utilized.

The Commission has recently had a series of cases come before it involving "cross-check" issues. The statutory provision for determination of a bargaining representative by cross-check, and the Commission's standards for use of the cross-check method have been extensively discussed in City of Centralia, Decision 3495-A (PECB, 1990) and City of Winslow, Decision 3520-A (PECB, 1990). As we noted in those cases, directed cross-checks have been infrequent, because evidence of 70% support has been required as a precondition to directing a cross-check.⁵

Where a union demonstrates such substantial support, and the employer refuses to sign an election agreement or cross-check agreement, Commission precedent indicates that the Executive

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The Commission has processed more than 8900 cases since 1976. Among those, our docket records show:

Only 120 (1.35% of all PERC cases) have resulted in certification of exclusive bargaining representatives by cross-checks;

Cross-checks were conducted in 34 cases filed while the L&I-pattern rules remained in effect (0.38% of all PERC cases; 28.33% of all cross-checks);

Cross-checks were conducted by "consent" in 82 cases filed since the Commission-pattern rules on the subject (0.92% of all PERC cases; 68.33% of all cross-checks);

Cross-checks were "directed" in **only 4 cases** filed since the Commission adopted rules on the subject (0.045% of all PERC cases; 3.33% of all cross-checks).

Director should order a cross-check within a reasonable time after the "showing of interest" has been assessed and the description of the bargaining unit has been established. City of Redmond, Decision 1367-A (PECB, 1982). We see no reason to deviate from that established precedent, particularly in light of actual cross-check results showing that the union had the support of 100% of the employees in the bargaining unit it sought to represent.

The employer argues that decisions made at the time bargaining unit employees authorized representation by the union are not, necessarily, the decisions they would make now. We recognize there may be occasions when employees change their minds regarding union representation. WAC 391-25-210 precludes withdrawal of authorization cards for the purpose of diminishing a "showing of interest", but we do not read that rule as precluding individual employees from withdrawing their authorization cards for purposes of a cross-check. WAC 391-25-410 contemplates the possibility of turnover or withdrawals of support, by permitting a union faced with losing a cross-check to opt for the conduct of a representation election. In this case, no bargaining unit employee sought to withdraw their authorization card. The mere possibility that employees could have had second thoughts does not provide justification for finding the direction of a cross-check to have been in error.

There was no issue in Redmond as to the scope of the bargaining unit. The Commission's only concern about the handling of the Redmond case was the delay caused by the hearing and decisionmaking process on the "eligibility" issues.⁶ Here, the description of the bargaining unit was at issue, and the Executive Director properly

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The Commission held that the Executive Director should have conducted a cross-check before the hearing on the "eligibility" issues. Summary determinations of questions concerning representation are now used, together with later determination of "eligibility" issues, in such situations. See, Chehalis School District, Decision 2019 (PECB, 1984).

waited until a ruling was made on the unit dispute before directing determination of the question concerning representation by cross-check. The record well supports the Executive Director's conclusion that proceeding to an election in this case would have unnecessarily and unduly delayed determination of the question concerning representation with little likelihood of altering the outcome. Subject to the modification of the unit description, we therefore find no error in his direction of a cross-check.

NOW, THEREFORE, it is:

ORDERED

1. The findings of fact, conclusions of law and direction of cross-check issued by the Executive Director are AFFIRMED, with the modification described herein.
2. On the basis of the findings of fact and conclusions of law, and the results of the cross-check conducted in this matter, it is:

CERTIFIED

The employees in the appropriate bargaining unit consisting of:

All full-time and regular part-time non-supervisory personnel employed by the Port of Pasco at the Tri-Cities Airport who perform rescue and fire fighting duties, excluding elected officials, officials appointed for a fixed term, confidential employees, supervisors, and all other employees of the employer,

have chosen:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3173

as their exclusive bargaining representative for the purposes of collective bargaining with their employer with respect to wages, hours and conditions of employment.

Issued at Olympia, Washington, the 17th day of December, 1990.

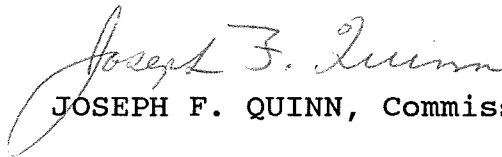
PUBLIC EMPLOYMENT RELATIONS COMMISSION



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JOSEPH F. QUINN, Commissioner