

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the Petition of)	
)	
TEAMSTERS UNION LOCAL NO. 763)	CASE NO. 1170-E-77-219
)	
Involving certain employees of:)	DECISION NO. 395-PECB
)	<u>DIRECTION OF CROSS-CHECK</u>
CITY OF ISSAQUAH)	
)	
_____)	

APPEARANCES:

FOR PETITIONER: JON L. RABINE, Secretary-Treasurer

FOR EMPLOYER: JOHN A. HACKETT, Attorney-At-Law

On October 10, 1977, the Teamsters Union Local No. 763 filed a petition seeking certification as the representative of all full-time Fire Department personnel employed by the City of Issaquah. Specifically excluded were volunteer personnel. A formal hearing was held on January 5, 1978 before Jack T. Cowan, Hearing Officer.

POSITION OF THE PARTIES

The City first contends the duties of the full-time fire lieutenant are those of a deputy or administrative assistant within the meaning of the act, whose duties necessarily imply a confidential relationship with the executive head of the employer. In the alternative, the employer contends the lieutenant should be excluded from the bargaining unit because it is a supervisory position.

The union contends the fire lieutenant is a public employee, employed by a public employer. The union further contends the supervisory duties performed by the lieutenant are something less than those specified in the National Labor Relations Act definition of "supervisor".

STATUTORY AUTHORITY

RCW 41.56.030(2) provides:

"(2) 'Public employee means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer or (c) whose duties as a deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer."

Jurisdiction in this matter is derived from RCW 41.56.060:

"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 desires of the public employees. . ."

DISCUSSION

The City of Issaquah Fire Department has only two (2) full-time employees: one fire lieutenant and one fire fighter. Other personnel are in a part-time or volunteer status. Part-time employees are the chief, assistant chief and the chief of training. Volunteers include the captain, two additional lieutenants and the remaining fire fighters.

Operating within the guidelines set forth by the chief, the full-time lieutenant is responsible for the day-to-day activities in the fire station, including maintenance, cleaning and fire fighting duties. Questions from the public on matters pertaining to building codes and fire code are answered where possible or are routed to the chief, city engineer or administrative assistant for decision. When directed, the Lieutenant participates in gathering data for budget input and also responds within limitation to informational requests from the City. Personnel duties such as scheduling of leave or vacation, disciplinary actions and the authority to hire or fire employees are not included as a part of the position.

The fire lieutenant is neither elected to office nor appointed to office for a specified term of office. The issue thus becomes whether his "duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship" to an excluded management official. See: RCW 41.56.030(2). Testimony indicated the lieutenant reports directly to the chief, but the assistant chief was also regarded as a superior officer. In response to the question, "Do you ever directly communicate from time to time with the Mayor on matters that concern the department?", the response by the lieutenant was in the negative. Occasional contacts with top management, and indirect contacts through excluded personnel are not sufficient to base a claim that this position is "confidential". See City of Buckley, Decision No. 287-A (PECB, 1977).

Supervisors are employees within the meaning of RCW 41.56. City of Tacoma, Decision No. 95-A (PECB, 1977). Supervisors may be included in the same unit with rank and file employees, but will be excluded from rank and file units where it is found that they have distinct duties, skills and working conditions which require separate unit treatment. See: City of Buckley, supra, as compared with City of Richland, Decision No. 279-A (PECB, 1978). Section 2 (11) of the National Labor Relations Act defines supervisor as follows:

"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature but requires the use of independent judgement."

Volunteers are not regular employees of the City and would not be included in the proposed bargaining unit. The lieutenant's "supervision" of volunteers at a fire scene or otherwise would not constitute the type of exercise of authority referred to in Section 2 (11) of the NLRA.

In the determination of supervisory status, the criterion which is looked to first and most often is the authority of the person in question to hire or fire employees or to effectively recommend (without further investigation by superiors) such hiring or firing. W. Horace Williams Co., 130 NLRB 223. The lieutenant cannot effectively recommend the hire or discharge of the fire fighter.

Neither the lieutenant nor the full-time fire fighter lives at the Station. Both wear the same uniform. There are no substantial differences between

the lieutenant and the fire fighter in terms of duties, skills and working conditions. The lieutenant is not involved in handling grievances. Although the rate of pay is different, benefits are the same for both. The lieutenant's time is primarily spent on unit work, not in directing other employees. Other levels of supervision are involved - the assistant chief and the chief. The lieutenant cannot discipline, transfer or assign staff. Independent judgement is limited to operating within the constraints established by the chief.

FINDINGS OF FACT

1. The City of Issaquah is a municipal corporation of the State of Washington, located in King County.

2. Teamsters Local No. 763, a bargaining representative, claims to represent a majority of the employees in a bargaining unit composed of all full-time employees of the City of Issaquah Fire Department; and filed a substantial showing of interest in support of its petition herein.

3. The Fire Department of the City of Issaquah is headed by a part-time employee holding the title of chief. Immediately subordinate to the chief are a part-time assistant chief and a part-time chief of training. Other officers of the Fire Department, as well as a number of persons who perform fire fighting duties, are volunteers.

4. One lieutenant and one fire fighter are the only full-time employees of the Fire Department. The lieutenant performs duties similar to and receives benefits similar to those of the fire fighter, they have similar hours and working conditions and are required to possess similar skills.

5. The fire lieutenant does not have authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or effectively to recommend such action.

CONCLUSIONS OF LAW

1. The Fire Lieutenant is a public employee within the meaning of RCW 41.56.030(2).

2. A unit composed of all full-time and regular part-time employees of the City of Issaquah Fire Department, excluding the Chief, other chief officers and volunteers, is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

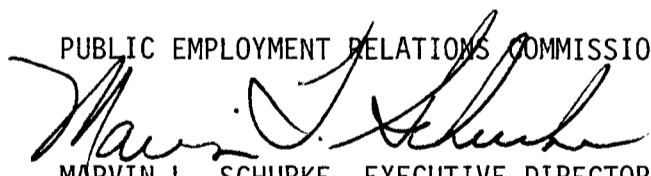
3. A question concerning representation has arisen in the appropriate bargaining unit described in paragraph 2 of these conclusions of law; and such question concerning representation can appropriately be resolved under RCW 41.56.060 and WAC 391-21-125 by a cross-check of records.

NOW, THEREFORE, it is

DIRECTED

A cross-check of records shall be conducted under the direction of the Public Employment Relations Commission by comparison of authorization cards filed in support of the petition filed herein against the employment records of the City of Issaquah, to determine whether a majority of the employees in the bargaining unit described as: All full-time and regular part-time employees of the City of Issaquah Fire Department; excluding the Chief, other chief officers and volunteers, have designated Teamsters Local No. 763 as their exclusive bargaining representative.

DATED at Olympia, Washington this 7th day of April, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, EXECUTIVE DIRECTOR