

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
TEAMSTERS UNION, LOCAL NO. 58 ) CASE NO. 7189-E-87-1241  
 )  
 ) DECISION 2836-A - PECB  
Involving certain employees of: )  
 )  
COWLITZ COUNTY FIRE DISTRICT NO. 2 ) ORDER DETERMINING  
 ) ELIGIBILITY ISSUES  
 )  
\_\_\_\_\_ )

Ronald J. "Buzz" Brown, Business Representative, appeared on behalf of the union.

Dan Baxter, Fire Chief, appeared on behalf of the employer.

On December 18, 1987, Teamsters Union, Local No. 58, and Cowlitz County Fire District No. 2 filed a cross-check agreement with the Public Employment Relations Commission, seeking determination of a question concerning representation involving certain uniformed firefighter personnel of the employer. The cross-check agreement was subject to a simultaneously filed supplemental agreement in which the parties reserved certain eligibility issues for determination by the Commission. Specifically, the employer proposed the exclusion of employees in the ranks of Captain, Lieutenant and Fire Marshall as administrative personnel.

A cross-check was conducted under the rules of the Commission and a tally of the results was issued on December 18, 1987, which disclosed that the union enjoyed the support of a majority of the employees in the bargaining unit stipulated to

be appropriate. An interim certification was issued on December 28, 1987, as Cowlitz County Fire District No. 2, Decision 2836 (PECB, 1987), designating the union as the exclusive bargaining representative of a bargaining unit described as:

All full-time and regular part-time employees; excluding the fire chief, supervisors and volunteer personnel.

A hearing on the issues reserved in the supplemental agreement was held on March 25, 1988, before William A. Lang, Hearing Officer. Authority to determine the eligibility issues has been delegated to the Hearing Officer under WAC 391-25-390.

#### BACKGROUND

Cowlitz County Fire District No. 2 is governed by a board of commissioners consisting of three members who are elected to six year terms of office. The employer's fire suppression operations are manned mostly by volunteer firefighters. In 1985, the employer hired a staff of paid firefighters to cover enlarged responsibilities following an annexation of the City of Kelso to the fire district and the city's discontinuance of its own fire suppression activities.<sup>1</sup> At the time of the hearing in this matter, the employer's full time paid staff consisted of the fire chief, one deputy fire chief, one captain, two lieutenants, one mechanic, one fire marshall, twelve firefighters, secretaries and an administrative assistant.

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<sup>1</sup> Litigation between other parties continues concerning that annexation. See, City of Kelso, Decision 2633 (PECB, 1988), which is currently pending on review before the Public Employment Relations Commission.

In addition to the paid employees who staff the employer's headquarters station in Kelso, the employer utilizes approximately 120 volunteer firefighters. The volunteers are organized into three units, each of which is headed by a battalion chief. The volunteer units each have two companies staffed by a volunteer captain, three volunteer lieutenants, and volunteer firefighters. Five of the volunteer companies are assigned to an equal number of satellite stations, while one volunteer company is based at the headquarters station.

The employer operates 26 pieces of fire apparatus to protect an area of approximately 155 square miles in Cowlitz County which includes the unincorporated area surrounding the cities of Longview and Kelso, as well as the City of Kelso. In addition to fire suppression activities, the paid staff responds to medical emergencies.

The employer introduced job descriptions for each of the positions at issue, and called the incumbents of those positions as witnesses. Their testimony is not disputed, and is summarized as follows:

Captain -

The captain is paid \$2,392 per month. The job description for the captain position describes the nature of the work as being a "responsible supervisory position", in charge of all fire suppression and emergency activities in the absence of the chief or deputy chief. The incumbent testified that the job description was accurate.

Two lieutenant positions work under the captain, but the record discloses that the captain and the two lieutenants are each in charge of separate shifts of paid personnel. The shifts work one 24-hour tour of duty followed by 48 hours off duty, on a

schedule that computes to a 52 hour work week, so that the captain and lieutenants are not on duty at the same time.

At the fire scene, the captain directs subordinates in their fire suppression work.

At the station, the principal duties of the captain include supervision of the maintenance of apparatus and equipment and station facilities, as well as scheduling training programs with the training officer and deputy chief. Although the job description states that the captain assists the chief and deputy chief in determining department policy, the incumbent testified that he relays new orders from the chief to the men who work under him and answers questions on policy. He approves leave unless a superior sees a conflict and changes the leave schedule. He supervises the maintenance of records such as fire and injury reports and initials training logs and time cards kept by the men under his direction. In matters of discipline, the captain attempts correction of minor infractions bringing the more serious or the minor failing correction to the attention of the chief for action. The captain does not have a role in hiring or firing.

#### Lieutenants -

The lieutenant's salary is \$2,283 per month. The lieutenants report to the captain but, as indicated above, head separate groups of firefighters under the shift rotation system. The lieutenants coordinate and direct the activities on the shifts to which they are assigned, including directing employees on the technical aspects of fire suppression and providing emergency medical assistance. The lieutenants coordinate training for members of their crews, and evaluate their progress. The lieutenants also perform and oversee routine fire inspections of residential and commercial properties.

All of the lieutenant's work is subject to general supervision of superiors. The lieutenants schedule the members of their crews, but do not approve overtime or leaves. They do not possess disciplinary authority except to point out minor infractions to subordinates. They neither hire nor fires subordinates, nor do they make effective recommendations on these types of actions.

Fire Marshall -

The fire marshall is paid a salary of \$2,392 per month, the same as the captain. The fire marshall is a trained fire-fighter who assists the deputy chief with the fire prevention program. His principal duties involve fire code enforcement and public education. He also prepares news releases issued by the employer. The fire marshall is regularly scheduled for an eight hour day and a 40 hour work week, but responds to all fires, assists in fire suppression and conducts investigations into the causes of fires. He does not supervise anyone.

DISCUSSION

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, does not define or specifically exclude "supervisors" from access to collective bargaining rights. In that respect, public sector bargaining under our statute is distinguished from the situation prevailing in the private sector under the National Labor Relations Act. See, Municipality of Metropolitan Seattle v. Department of Labor & Industries, 88 Wn.2nd 925 (1977).

It is well established by a number of decisions of the Public Employment Relations Commission (PERC), however, that supervisory employees will not be included in the same bargaining

unit as the employees they supervise. This policy of separation rests on concern for conflicts of interest within a bargaining unit, and the belief that a supervisor cannot represent the interests of management and the interests of the rank-and-file at the same time. City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App. 599 (Division III, 1981); pet. rev. den. 96 Wn.2nd 1004 (1981). Thus, the separation policy recognizes that supervisors have different duties, skills and working conditions than, and therefore a separate community of interest from, the employees they supervise.

In City of Redmond, Decision 1367, 1367-A (PECB, 1982), and in subsequent decisions, the Commission has looked behind the job titles assigned by employers, examining the actual job responsibilities of disputed employees to determine whether the positions have distinct duties, skills and working conditions which warrant their removal from the same bargaining unit as rank-and-file firefighters. Using that type of analysis on the facts of this case, it appears that the classifications in question do not possess sufficient independent authority to qualify them for the treatment given to supervisors under Chapter 41.56 RCW.

Both the captain and the lieutenants have limited authority in scheduling leave. They have no authority to effect or influence major personnel decisions such as hiring, discipline or discharge. They may initiate complaints for violation of rules, but there is no evidence that they participate in performance evaluations or promotional processes. They do not formulate policy, and only communicate policy handed down from the chief. As in King County Fire District 16, Decision 2279 (PECB, 1986), these officers are primarily in charge of shift routine and the maintenance of various records. The "supervision" exercised appears limited to the technical aspects of

fire suppression and prevention. It is clear that they do not possess sufficient independent authority to have a conflict of interest with their subordinates in the para-military rank structure.

In the case of the fire marshall, the absence of a potential for supervisory conflict of interest is even more clear. In City of Bellingham, Decision 565 (PECB, 1979), a fire marshall was excluded from a rank-and-file firefighter bargaining unit because he exercised substantial supervisory authority over four subordinate fire inspectors and because he participated in staff meetings determining policy. Unlike the situation in Bellingham, the fire marshall at issue here in the context of a much smaller department has no subordinates and is not involved in a policy role. He instead works with the lieutenants and captain in fire prevention inspections.

Looked at from the opposite perspective, the evidence shows that the disputed officers share a substantial community of interest with the rank-and-file firefighters. The captain and lieutenants work the same shift rotation and hours as the firefighters. They are all trained firefighters. They all respond to fire and medical emergencies as other firefighters. Even the fire marshall responds to fire alarms and engages in fire suppression activities, including incidents occurring outside of his normal work schedule. Officer pay levels at \$2,392 and \$2,283 per month are not significantly greater than the firefighters, who earn around \$1900 per month.

#### FINDINGS OF FACT

1. Cowlitz County Fire District No. 2 is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Union, Local No. 58, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a unit of non-supervisory firefighter personnel employed by Cowlitz County Fire District No. 2.
3. The primary duties of the captain and lieutenants employed by the employer involve responsibility, as a team member and leader, for fire prevention, fire suppression and medical emergency responses. These officers grant conditional leaves, maintain routine records, and may initiate complaints for violation of rules. They do not hire, discipline or discharge subordinate employees or make effective recommendations on such matters. They do not formulate policy. The supervision exercised is limited to the technical aspects of fire prevention and suppression, and does not create a substantial potential for a conflict of interest with respect to their inclusion in the same bargaining unit with the other firefighters.
4. Captains and lieutenants work the same hours and shifts as other firefighters. They are trained firefighters. They respond to fires and medical emergencies as other firefighters. Their levels of pay are not significantly greater than those of firefighters.
5. The fire marshal does not exercise supervisory authority. He responds to fire emergencies and engages in fire suppression activities as other firefighters. His primary duties are fire code enforcement and fire prevention activities in which lieutenants and the captain also participate as leaders of their shift crews.



CONCLUSIONS OF LAW

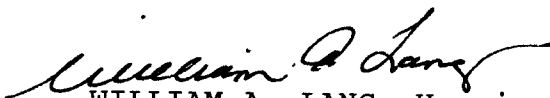
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The ranks of captain, lieutenant, and fire marshall are not supervisory positions having potential conflict of interest with respect to their inclusion in the same bargaining unit as other firefighters.
3. The positions of captain, lieutenant, and fire marshall have duties, skills, and working conditions similar to those in the existing bargaining unit, and are properly included in that unit.

ORDER

The positions of captain, lieutenant, and fire marshall shall be included in the bargaining unit of non-supervisory firefighter personnel of Cowlitz County Fire District No. 2.

DATED at Olympia, Washington, this 23rd day of May, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Hearing Officer

This order may be appealed by filing a petition for review with the Commission within seven (7) days pursuant to WAC 391-25-590(1).