STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: TEAMSTERS UNION, LOCAL 690 Involving certain employees of: CITY OF CHEWELAH	CASE NO. 7559-E-88-1296 DECISION 3103 - PECB ORDER DETERMINING CHALLENGED BALLOT

John DeLauder, Business Agent, appeared on behalf of the petitioner.

Duane Wilson, Labor Relations Representative, appeared on behalf of the employer.

The petition for investigation of a question concerning representation was filed in the above-entitled matter on September 9, 1988. The petitioned-for bargaining unit includes "public safety dispatchers". A routine inquiry was directed to the employer on September 12, 1988, requesting a list of employees in the petitioned-for bargaining unit. The Commission was advised by the City Administrator on September 19, 1988, that the city would be represented by Duane Wilson & Associates. The requested list of employees was finally provided by the employer in a letter from Wilson filed on October 13, 1988, which stated:

> Pursuant to your request, the following employees of the City of Chewelah Police Department meet the criteria of Public Safety Dispatchers as specified in the union's petition of September 7, 1988.
>
> Mildred Schneider, Dispatcher
> Frances Trapp, Dispatcher

That letter indicates, on its face, that a copy thereof was sent to the city administrator.

A pre-hearing conference was conducted by a member of the Commission staff on October 27, 1988 at Chewelah. The union was represented at that time by DeLauder. Present on behalf of the city were Wilson, the city administrator and the chief of police. The city at that time indicated a preference to have a hearing and decision concerning the eligibility of a third employee prior to the conduct of any election.

The parties subsequently entered into an Election Agreement pursuant to WAC 391-25-230, and a Supplemental Agreement pursuant to WAC 391-25-270, both of which were executed by DeLauder and Wilson, and filed with the Commission on November 8, 1988. The parties therein stipulated the propriety of a bargaining unit of "public safety dispatchers", the existence of a question concerning representation in such a unit, and the eligibility of both Mildred Schneider and Frances Trapp to vote in a representation election to be conducted by the Commission. The parties reserved an issue concerning the inclusion of Mildred McBee in the bargaining unit, based on the employer's claim that she was a confidential employee and/or supervisor.

A representation election was conducted by the Commission on November 23, 1988. The official eligibility list contained the same three names that were mentioned in the Election Agreement and Supplemental Agreement filed by the parties, with the ballot of Mildred McBee to be taken under challenge. McBee cast a challenged ballot, as anticipated. The employer's observer at the election presented a typewritten note, stating:

> The City wishes to challenge the vote of Frances Trapp. We question her eligibility for the following reasons:

> 1. She is paid from Fire Department Funds and is a part of their budget.
>
> 2. The Fire Chief has the ability to direct her work in certain matters.

Accordingly, Trapp was permitted to vote under challenged ballot procedures, and the matter has been referred to the Executive Director for further processing.

A letter was directed to the employer on December 8, 1988, noting that the employer's challenge to the eligibility of Frances Trapp appeared to be in derogation of the employer's stipulation to the eligibility list attached to the Election Agreement, and ordering the employer to show cause why the challenge to Trapp's ballot should not be overruled.

A written response filed on December 14, 1988 by Wilson, on behalf of the employer, is summarized as follows:

1. Trapp is paid from fire department funds, and the fire chief has not given his unequivocal consent to be bound by any terms of a subsequent labor agreement.

2. Including Trapp in a police dispatch unit would set up an inappropriate multi-employer bargaining unit.

3. Any unit including Schneider and Trapp would be inappropriate, because they work out of their homes, conducting their dispatching tasks on a "sporadic" basis by means of radio equipment installed in their homes, and receive a fixed monthly stipend. The City of Chewelah cannot afford to operate a 24-hour dispatch center, so has established this unorthodox alternative arrangement to cover its dispatching needs. This is not the type of bargaining unit contemplated by Chapter 41.56 RCW.

The question before the Executive Director at this time is limited to the disposition of the challenged ballot cast by Trapp. A hearing will be held, and a decision rendered, on McBee's status, as called for by the Supplemental Agreement.

DISCUSSION

The stipulations made by parties in Election Agreements filed pursuant to WAC 391-25-230 are binding upon the parties, except for good cause shown. Community College District No. 5, Decision 448 (CCOL, 1978). The city's labor relations representative and city administrator were both present at the pre-hearing conference in this matter, and Wilson executed the Election Agreement on behalf of the employer. There is no apparent reason for either the union or the Commission to have doubted his authority to act on behalf of the city.

The "Fire Chief's Consent" Claim

The municipal corporation which is the "public employer" in this case under RCW 41.56.030(1) is the City of Chewelah. It must be inferred, in the absence of anything to the contrary, that the fire chief referred to is merely an officer of the City of Chewelah. Nothing in the statute would require the consent or concurrence of each department head in the formation of bargaining relationships between a public employer and a union representing its employees. See: Lewis County, Decision 644 (PECB, 1979), aff. 31 Wn.App 853 (Division II, 1982), pet. rev. den. 97 Wa.2d 1034 (1982).

The Executive Director is not disposed to become embroiled in the internal politics of city government in Chewelah, and so looks upon the actions of the city's designated labor relations

representative (taken with the apparent knowledge and consent of the city administrator) as binding on the public employer as a whole.

The "Multi-Employer Unit" Claim

The city's initial, if tardy, response to the Commission put Frances Trapp within the "public safety dispatcher" category. The city's present challenge does not deny that Frances Trapp is within the "public safety dispatcher" unit stipulated in the Election Agreement, and it is inferred that all of the dispatchers would handle both police and fire calls, as dictated by particular situations. Instead, the challenge to Trapp's ballot is based entirely on the source of funds within the city's budget.

No precedent is cited or found for the proposition that source of funds is a controlling criteria in making a unit determination. RCW 41.56.060 calls for establishing communities of interest by looking to factors such as the "duties, skills and working conditions" of the employees. It is apparent from the employer's response to the order to show cause that Trapp's dispatching duties and skills, and her "at home" working conditions, are similar to at least Schneider, whose ballot has not been challenged. The employer's arguments are insufficient to warrant overturning its original position and the stipulation of the parties in this case.

The "Not Covered by the Act" Claim

Although stated in terms of "propriety of bargaining unit", the employer's assertion that this is not the type of bargaining unit contemplated in Chapter 41.56 RCW actually solicits a ruling that these employees should be altogether excluded from

the right to organize under the Act. Thus, the real issue is whether they are "public employees" within the meaning of RCW 41.56.030(2).

The Commission and our Supreme Court have been loathe to expand the list of exclusions beyond those specified in the statute. See, City of Tacoma, Decision 95-A (PECB, 1977) and METRO v. Department of Labor and Industries, 88 Wa.2d 925 (1977) [holding that "supervisors" are employees within the meaning of the Act]; City of Yakima v. Firefighters, 91 Wa.2d 101 (1978) and numerous subsequent Commission decisions [limiting the "confidential" exclusion to those have a "labor relations nexus"]; Roza Irrigation District v. State, 80 Wa.2d 633 (1972), Nucleonics Alliance v. PERC, ___ Wa.2d ___ (1974) and Clark County PUD No. 1 v. PERC, ___ Wa.2d ___ (1988) [holding that Chapter 41.56 RCW is applicable to various types of public employers who had asserted they were exempt], and Zylstra v. Piva, 85 Wa.2d 743 (1975) [preserving the maximum collective bargaining rights for persons jointly employed by a county and a Superior Court]. In the specific area of the rights of persons working less-than-full-time, the Commission has repeatedly held that persons who work for an employer on a recurrent basis over a substantial period of time come to have an expectancy of continued employment and are eligible for the rights and protections of the collective bargaining statutes. Columbia School District, et al., Decision 1189-A (EDUC, 1981); Mount Vernon School District, Decision 2273-A (PECB, 1986), aff. Skagit County Superior Court (No. 87-2-0021-7, November 16, 1988). It is inferred from the employer's response to the order to show cause that all of the employees involved in this case are employed on an ongoing basis, with some sort of schedule to apportion on-duty time among them. Such an arrangement would indicate an even greater regularity of employment, and an even more substantial expectancy of

continued employment, than is the case for the "substitute" employees held to be "regular part-time" in Columbia and Mount Vernon. Again, the employer has not presented any basis for upsetting its earlier position and the stipulation of the parties in this case.

FINDINGS OF FACT

1. The City of Chewelah is a municipal corporation of the state of Washington, located in Stevens County, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Teamsters Union, Local No. 690, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition raising a question concerning representation involving "public safety dispatchers" employed by the City of Chewelah.

3. The employer submitted an initial response to the Commission, indicating that Frances Trapp was within the "public safety dispatcher" unit described in the petition.

4. The parties entered into an Election Agreement pursuant to the rules of the Commission wherein they stipulated that a bargaining unit of "public safety dispatchers" is an appropriate unit for the purposes of collective bargaining, that a question concerning representation exists in such unit, and that Frances Trapp is an eligible voter in a representation election conducted by the Commission.

5. The employer challenged the ballot of Frances Trapp, citing that she is subject to funding and authority of the fire department.

6. The employer has subsequently asserted claims that the stipulated bargaining unit is inappropriate and that the petitioned-for employees should not be eligible to organize for the purposes of collective bargaining.

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 Election Agreement procedures of the Public Employment Relations Commission require the stipulation of all parties as to the list of all employees eligible to vote in a representation election conducted by the Commission pursuant to WAC 391-25-230.

3. The City of Chewelah has not made a satisfactory showing that its stipulations made in this proceeding pursuant to WAC 391-25-230 as to: (a) The propriety of a bargaining unit composed of "public safety dispatchers"; and (b) that Frances Trapp is an eligible voter in such a bargaining unit, were made inadvertently or under a bona fide mistake of fact contrary to the true facts and that its withdrawal of such stipulation at this time will not unjustly prejudice the rights of other parties to the proceeding.

4. The challenge to the ballot of Frances Trapp was made in derogation of the binding stipulations of the parties made under WAC 391-25-230.

NOW, THEREFORE, it is

ORDERED

1. The challenge to the ballot cast by Frances Trapp is OVERRULED.

2. An amended Tally of Ballots is attached hereto.

Dated at Olympia, Washington, the 23rd day of January, 1989.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

MARVIN L. SCHURKE
Executive Director

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

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STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMENDED

TALLY SHEET

NAME OF EMPLOYER City of Chewelah   CASE NUMBER 7559-E-88-1296

PART 1 - CROSS-CHECK OF RECORDS

The undersigned agent of the Public Employment Relations Commission certifies that he/she has conducted a cross-check of records in the above case, and that the results were as follows:

Number of Employees in Bargaining Unit.............................. X

Number of Employee Records Examined..............................

Number of Employee Records Counted as Valid Evidence of Representation...

PART 2 - SECRET BALLOT ELECTION

The undersigned agent of the Public Employment Relations Commission certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated below, were as follows:

1. Approximate number of eligible voters.............................. 3
2. Void Ballots.............................. 0
3. Votes Cast For: Teamsters Union, Local 690 ... 2
4. Votes Cast For: ______ ... ______
5. Votes Cast For: ______ ... ______
6. Votes Cast For: NO REPRESENTATION.............................. 0
7. Valid Ballots Counted.(total of 3, 4, 5, and 6).............................. 2
8. Challenged Ballots.............................. 1
9. Valid Ballots Counted plus Challenged Ballots (total of 7 and 8)..... 3
10. Number of Valid Ballots Needed to Determine Election.............................. 2

Challenges ☐ are ☒ are not sufficient in number to affect the results of the election.

The results of the election appear to be ☐ inconclusive. ☒ conclusive favoring choice on line 3

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DATE ISSUED ______   By [signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For ______   For ______

For ______   For ______