

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, LOCAL 3680) CASE 12286-E-96-2043
Involving certain employees of:) DECISION 5486 - PECB
CITY OF UNION GAP) DIRECTION OF ELECTION
_____)

James L. Hill, International Union Vice-President,
appeared on behalf of the union.

Paul Burlingame, City Manager, appeared on behalf of the
employer.

On January 22, 1996, International Association of Fire Fighters, Local 3680, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission pursuant to Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the City of Union Gap. Specifically, the union described the bargaining unit sought as consisting of "all full-time and regular part-time uniformed employees" in the employer's Fire Department.

A pre-hearing conference was held in the matter on March 15, 1996, by telephone conference call. During the course of that conference the parties stipulated to description of an appropriate bargaining unit. A statement of results issued on the same date described the bargaining unit as follows:

All full-time and regular part-time, uniformed employees of the City of Union Gap [Fire Department], excluding supervisors, confidential [employees], and all other employees.

Statement of Results at page 2. (The inadvertent omission of the terms in [brackets] is corrected here.)

The parties agreed that there are, in fact, no part-time employees in the employer's Fire Department at the present time. The parties also stipulated to all other conditions precedent to the determination of the question concerning representation, including the conduct of an election by mail ballots to be issued on March 27, 1996, and to the list of employees eligible to vote in that election.

On March 25, 1996, within the time specified for the filing of objections to the statement of results of pre-hearing conference, the employer asserted that the unit description should be modified to exclude "part-time employees".

DISCUSSION

The description of an appropriate bargaining unit is a necessary ingredient in any final order certifying an exclusive bargaining representative. Such unit descriptions are the subject of stipulation between the parties in representation cases, or are the subjects of rulings by the Commission under the unit determination authority conferred by RCW 41.56.060. The quandry in this case is in assessing how to proceed where the issue framed is a theoretical one having no present impact on the parties or the determination of the question concerning representation.

Commission precedents dating back nearly to the onset of agency operations have used generic terms such as "full-time and regular part-time" in unit descriptions, so there is ample basis for the language used by the union in its petition and the language stipulated by the parties during the pre-hearing conference. At the same time, there are substantial questions about the use of the conventional terminology in this case:

(1) The employer has no "part-time employees", let alone any "regular part-time employees" at the present time;

(2) Even if the employer had part-time employees, or even if it were to employ one or more part-time employees in the future, Commission precedent codified in newly-adopted WAC 391-35-310 provides, "employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration", so that any regular part-time employees would also need to qualify as "uniformed personnel" under RCW 41.56.030(7) to be properly included in this bargaining unit; and

(3) The definition of "uniformed personnel" in RCW 41.56.030-(7) refers to the definitions contained in Chapter 41.26 RCW, where "fire fighter" is defined in terms of "full-time" and "fully compensated" employment.

In City of Redmond, Decision 1367-A (PECB, 1982), the Commission provided direction to get on with the early determination of questions concerning representation whenever possible, and to defer hearings and determinations on issues which do not necessarily affect the outcome of the question concerning representation. In keeping with that direction, the Executive Director deems it appropriate to proceed with conducting the election, as scheduled, among the employees on the stipulated eligibility list. If the union prevails at the election, an interim certification would permit the parties to commence bargaining while a hearing is being conducted and legal arguments are being advanced and considered on the possible status of part-time employees who may never exist.

DIRECTION OF ELECTION

A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, among all uniformed personnel employed in the Fire Department of the City of Union Gap, excluding confidential employees and supervisors, for the purpose of determining whether a majority of

the employees in that unit desire to be represented for the purposes of collective bargaining by International Association of Fire Fighters, Local 3680, or by no representative.

Issued at Olympia, Washington, on the 25th day of March, 1996.

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.