

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1805

Involving certain employees of:

CLARK COUNTY FIRE DISTRICT 6

CASE 25470-E-13-3768

DECISION 11717 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Ryan Reece, Local President, for the union.

Jerry Green, Fire Chief, for the employer.

International Association of Fire Fighters, Local 1805 (union) represents two bargaining units of employees at Clark County Fire District 6 (employer): a bargaining unit of non-supervisory Fire Fighters and a bargaining unit of Battalion Chiefs. On February 15, 2013, the union filed a representation petition to include the Battalion Chiefs into the non-supervisory Fire Fighters/Officers bargaining unit. The union's petition was accompanied by a letter from Fire Chief Jerry Green stating that the employer did not oppose the outcome of the petition.¹

On April 24, 2013, Representation Case Administrator Dario de la Rosa conducted a pre-hearing conference with the parties. During that conference call, the parties were reminded of the statutory requirement that supervisory employees not be included in the same bargaining as non-supervisory employees. The parties informed the Representation Case Administrator that although the Battalion Chiefs are "supervisors" for purposes of the employer's operation, the employees did not meet the Commission's definition of supervisor. On April 26, 2013, the parties filed stipulations stating that the Battalion Chiefs:

¹ Although the union filed a representation petition, the unit clarification rules provide the best vehicle for achieving the parties' stated result. The parties will not be required to re-file the appropriate unit clarification petition; rather, the unit clarification rules and standards will be applied to this proceeding.

- Did not have the independent authority to hire or promote employees;
- Had only limited ability to transfer employees between stations provided the transfer was within the same shift;
- Had the authority to issue written or oral discipline, but did not have the authority to suspend or discharge an employee;
- Did not have the authority to adjust grievances arising from the collective bargaining agreement of the non-supervisory employees;
- Had the authority to approve sick and vacation leave;
- Prepared draft evaluations for employees that employees with a higher rank could modify.

The parties also stipulated that the Battalion Chiefs spent less than 5% of their time authorizing employees' leave and less than 5% of their time preparing employees' evaluations. Finally, the parties stipulated that the Battalion Chiefs do not perform a preponderance of the supervisory duties and did not spend a preponderance of their time performing supervisory duties.

DISCUSSION

Applicable Legal Standard

The determination and modification of bargaining units is a function delegated to the Commission by the Legislature. RCW 41.56.060. *Ronald Wastewater District*, Decision 9874-C (PECB, 2009). The exclusion of supervisors from the bargaining units of their subordinates is presumed appropriate when they exercise authority on behalf of the employer over rank-and-file subordinates, and such exclusion avoids a potential for conflicts of interest. WAC 391-35-340.

Chapter 41.56 RCW does not define supervisor. The Commission applies the definition of supervisor found in RCW 41.59.020(4)(d) to differentiate supervisors, who are excluded from bargaining units with their subordinates, from lead workers, who are included in the bargaining units with those they lead:

[S]upervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or

discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment [...]. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

Granite Falls School District, Decision 7719-A (PECB, 2003).

“Preponderance” as used in the definition of supervisor can be met in two ways. An employee is a supervisor if he or she spends a preponderance of his or her time performing one or more of the statutory supervisory activities. *City of East Wenatchee*, Decision 11371 (PECB, 2012); *Inchelium School District*, Decision 11178 (PECB, 2011). An employee may also be a supervisor if he or she spends less than a preponderance of their time performing supervisory activities but performs a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d). *City of East Wenatchee*, Decision 11371; *King County*, Decision 10075 (PECB, 2008). The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual, not on the basis of his or her title or job description. *Rosalia School District*, Decision 11523 (PECB, 2012); *Morton General Hospital*, Decision 3521-B (PECB, 1991).

When examining supervisory indicia, the Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *Rosalia School District*, Decision 11523, citing *City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *State - Office of Administrative Hearings*, Decision 11503 (PSRA, 2012).

A determination under the Commission’s definition of supervisor does not negate or strip away any titular or other supervisory authority of that employee. Indeed, an employee may possess a lower level of supervisory authority than the statutory definition contemplates and still be deemed

a “supervisor” by subordinates. The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute which would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523.

Application of Standard

The parties stipulated that the Battalion Chiefs do not hire, discharge suspend, or promote employees. Additionally, the parties stipulated that the Battalion Chiefs do not have the independent authority to adjust grievances. Although the Battalion Chief may assign work, they only have limited authority to transfer employees and prepare employees’ evaluations. The parties stipulated that the Battalion Chiefs do not spend a preponderance of their time performing these duties.

The stipulated facts reveal that the Battalion Chiefs are not supervisors for the purposes of Chapter 41.56 RCW. The Battalion Chiefs do not perform supervisory duties for a preponderance of the work time. Moreover, they do not perform a preponderance of the supervisory duties as defined by the Commission for purposes of bargaining unit determinations. Rather, the Battalion Chiefs function more like a lead worker. Accordingly, it is appropriate to include the Battalion Chiefs in the non-supervisory Fire Fighters/Officers bargaining unit.

FINDINGS OF FACT

1. Clark County Fire District 6 is a public employer within the meaning of RCW 41.56.030(1).
2. The International Association of Fire Fighters, Local 1805 is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The International Association of Fire Fighters, Local 1805 represents a bargaining unit of Fire Fighter/Officers employed by Clark County Fire District 6.

4. The International Association of Fire Fighters, Local 1805 represents a bargaining unit of Battalion Chiefs employed by Clark County Fire District 6.
5. The parties stipulated that the Battalion Chiefs do not spend a preponderance of work time performing supervisory duties.
6. The parties stipulated that the Battalion Chiefs do not perform a preponderance of the supervisory duties.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Findings of Fact 4 and 5 establish that the Battalion Chiefs are not supervisory employees within the meaning of Chapter 41.56 RCW and WAC 391-35-340.

ORDER

The position of Battalion Chief shall be included in the Fire Fighters/Officers bargaining unit.

ISSUED at Olympia, Washington, this 1st day of May, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless an appeal is filed with the Commission under WAC 391-35-210.