

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 2903

Involving certain employees of:

THURSTON COUNTY FIRE DISTRICT 8

CASE 24769-E-12-3714

DECISION 11524-A - PECB

ORDER REMANDING CASE

*Ricky Walsh*, International Association of Fire Fighters 7<sup>th</sup> District Vice-President,  
for the union.

McGavick Graves, P.S., by *Dave Luxemburg*, for the employer.

On May 3, 2012, the International Association of Fire Fighters, Local 2903 (union) filed a petition to represent six fire fighters employed by Thurston County Fire District 8 (employer). The union petitioned to represent a bargaining unit of all full-time uniformed employees as defined by RCW 41.26.030. The employer employed eight paid employees: the Fire Chief, the district secretary, three Assistant Chiefs, and three employees classified as "Intern -- Temporary Trainee Fire Fighters (Interns)." The employer also maintained a volunteer fire fighter force. The union sought to represent the Assistant Chiefs and the Interns. The employer challenged the unit on the basis that the Interns were temporary employees, the Assistant Chiefs were supervisors, and that at least one Assistant Chief should be confidential. After a hearing, the Executive Director concluded that the Interns were temporary employees not entitled to collective bargaining rights under Chapter 41.56 RCW and dismissed the petition.<sup>1</sup> The union filed a timely appeal.

<sup>1</sup> *Thurston County Fire District 8, Decision 11524 (PECB, 2012).*

The issue before the Commission is whether the Executive Director erred in concluding that the employees in the Internship Program were temporary employees and dismissed the petition because the petition sought an inappropriate bargaining unit.

For the reasons discussed below, we remand the case to the Executive Director.

The intent and purpose of Chapter 41.56 RCW is for “implementation of the right of public employees to join and be represented by labor organizations.” *Nucleonics Alliance, Local Union No. 1-369, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984), RCW 41.56.010. Chapter 41.56 RCW is remedial in nature and should be liberally construed to effect its purpose. *International Ass’n of Firefighters Local 469 v. Yakima*, 91 Wn.2d 101, 109 (1978); *Roza Irr. Dist. v. State*, 80 Wn.2d 633 (1972).

RCW 41.56.030(12) broadly defines “public employee” as any employee of a public employer except elected officials, individuals appointed to boards or commissions, or confidential employees. The Commission has interpreted the legislative intention of the term “employee” in RCW 41.56.030(12) to apply only to persons who have a reasonable expectancy of an ongoing employment relationship with the employer. *City of Auburn*, Decision 4880-A (PECB, 1995). The Commission has included regular part-time employees in the same bargaining unit with full-time employees. The Commission has excluded temporary and casual employees from bargaining rights on the basis that those employees “normally lack a community of interest with full-time and regular part-time employees.”<sup>2</sup> *City of Auburn*, Decision 4880-A. Employees who worked at least one-sixth of the time full-time bargaining unit employees worked have been included in bargaining units. *Kitsap County*, Decision 4314 (PECB, 1993).

Distinctions have been drawn between casual employees and employees who share a community of interest with the bargaining unit. In *City of Auburn*, seasonal employees who worked up to 40 hours per week for up to four months were excluded from the bargaining unit. Some of the

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<sup>2</sup> The community of interest factors determine whether a group of employees share enough aspects of employment to negotiate a collective bargaining agreement with the employer.

employees returned for a second or third season, but rarely did the seasonal employees become full-time employees. The key factors to the Commission were: (1) the seasonal employees rarely became permanent full-time employees because they generally did not meet the minimum qualifications for regular positions; and (2) only a minority of the seasonal employees returned to work a subsequent summer. The Commission found that the seasonal employees lacked an expectancy of a continued employment relationship.

The Commission is not bound by the titles or labels employers confer upon employees. *King County*, Decision 3049 (1988). Employees classified as student interns and student fire fighters have been afforded statutory collective bargaining rights. *Municipality of Metropolitan Seattle (METRO)*, Decision 2986 (PECB, 1988); *Thurston County Fire Protection District 9*, Decision 461 (PECB, 2001). In determining whether the Interns should be afforded statutory collective bargaining rights, it must be established that the Interns perform work that is pecuniary in nature and, if so, the Interns have a reasonable expectation of continued employment. *See METRO*, Decision 2986.

On remand, whether the Interns are entitled to collective bargaining rights under Chapter 41.56 RCW should be examined in light of the existing precedent cited above. If a determination cannot be made on the record, the hearing should be re-opened to develop a record on the petitioned-for Interns about the nature of the Interns' employment relative to the existing precedent.

The decision did not address the issues of whether the Assistant Chiefs were supervisory or confidential. If a determination can be made on the existing record, on remand the Executive Director should address whether the Assistant Chiefs are supervisory or confidential employees. If the record is insufficient to make a determination as to whether the Assistant Chiefs are supervisory or confidential employees, the record should be re-opened to obtain sufficient evidence to make a determination.

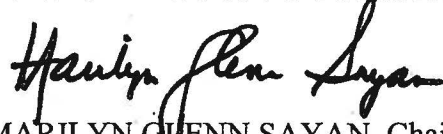
NOW, THEREFORE, it is

ORDERED

The case is remanded to the Executive Director for further proceedings.

ISSUED at Olympia, Washington, this 15<sup>th</sup> day of January, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN QUENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

*Majel C. Boudia*  
BY: /S/ MAJEL C. BOUDIA

CASE NUMBER:	24769-E-12-03714	FILED:	05/03/2012	FILED BY:	PARTY 2
DISPUTE:	QCR UNORGANIZED				
BAR UNIT:	FIREFIGHTERS				
DETAILS:	-				
COMMENTS:					
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