

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the Petition of  
CITY OF RICHLAND,  
Petitioner-Employer,  
and  
INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS, Local 1052,  
Union,  
for Unit Clarification

CASE No. 56 SK-1740

DECISION NO. 279-PECB

DECISION AND ORDER

APPEARANCES

Michael E. deGrasse (Critchlow, Williams, Ryals & Schuster) Attorney at  
Law, for the Union.

J. David Andrews (Perkins, Coie, Stone, Olsen & Williams) Attorney at  
Law, and

Cabot Dow, (Cabot Dow Associates), for the employer.

Upon a petition for a unit clarification filed under RCW 41.56.060 of the  
Public Employee's Collective Bargaining Act, herein called the Act, a  
hearing was held before Alan Krebs, a hearing officer of the Public  
Employment Relations Commission (herein called the Commission).

Upon the entire record in this case, the undersigned finds and concludes:

1. The City of Richland (herein called the City) is and has  
been at all times material herein, a public employer within the meaning  
of RCW 41.56.030(1)

2. International Association of Fire Fighters, Local 1052  
(herein called the Union) is, and has been at all times material herein,  
a bargaining representative within the meaning of RCW 41.56.030(3).

3. The Union is the exclusive bargaining representative for all of the employees of the Fire Division of the City except the Fire Chief. The City seeks to clarify the unit by excluding the position of battalion chief from a unit including rank and file fire fighters. The Union contends that the Commission should dismiss the petition because battalion chiefs are currently in the unit pursuant to a past State certification and the parties' collective bargaining agreement. 1/ The City contends that a petition for unit clarification can be filed at any time.

4. On December 20, 1972, the Union was certified by the Washington State Department of Labor and Industries as the exclusive bargaining representative for "all members of the Fire Fighting Division, Safety Services Department, City of Richland, except the Senior Battalion Chief." 2/ This certification followed a hearing in which the City asserted that the battalion chiefs should be excluded from the bargaining unit as managerial employees. The Hearing Officer therein decided that the battalion chiefs were to be included in the unit. Thereafter, the battalion chiefs were specifically included in the parties' collective bargaining agreement. Negotiations for the parties' 1976-1977 agreement began during the first half of May, 1975. On May 20, 1975, the City filed a unit clarification petition with the Department of Labor and Industries, seeking to exclude the rank of battalion chief from the bargaining unit. At the resulting hearing, which commenced on July 9, 1975, the Union objected to the jurisdiction of the Department. The hearing officer elected to adjourn the hearing and accept briefs on the matter of whether the petition should be dismissed. On July 30, 1975 the City refiled its petition for unit clarification together with its brief on the jurisdictional matter. On August 5, 1975, the parties signed a collective bargaining agreement to cover the period from January 1, 1976 through December 30, 1977. The agreement retained the recognition clause that was in effect previously, i.e., "all of the employees of the Fire Division except the position of Fire Chief and above". The position of battalion chief was included in the salary schedule appended to that contract.

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1/ The Union participated in the proceeding to the extent that its contention was considered. It elected to leave the hearing room when the city presented testimony concerning the battalion chief's job responsibilities.

2/ Prior to January 1, 1976, the effective date of the statute creating the Commission, the Department of Labor and Industries was responsible for certifying such bargaining representatives.

The subject of excluding the battalion chiefs from the unit was never discussed during the contract negotiations. In a letter to the Department of Labor and Industries dated October 31, 1975, the City reaffirmed its petition and inquired as to why no decision on jurisdiction had been reached and why no hearing had been scheduled. Thereafter, on November 19, 1975, the Union obtained a temporary restraining order in Benton County Superior Court enjoining the Department of Labor and Industries from making any determination of the City's petition. On May 5, 1976, the court dissolved the injunction and remanded the petition to the Department of Labor and Industries for transmittal to the newly established Commission.

5. The Act bestows upon the Commission the express authority for "determining, modifying, or combining", the unit appropriate for collective bargaining, following each application for certification. <sup>3/</sup> From this flows the Commission's implied authority to clarify such certifications in order to continually effectuate the policies of the Act. The Commission may even clarify an uncertified unit rather than go through the needless formality of conducting an election. This is reflected in WAC 391-20-151 which provides:

"Whenever a disagreement occurs on whether or not positions are to be included or excluded from the bargaining unit, the public employer or the bargaining representative may petition the Commission to conduct a representation hearing to resolve the matter..." (Emphasis supplied)

Since the initial determination this Commission has supplanted the Department of Labor and Industries in administering the statute. The Department of Labor and Industries when it administered the statute, interpreted the statute to exclude "managerial type supervisors" <sup>4/</sup>. In City of Tacoma, <sup>5/</sup> this Commission rejected this line of precedents and found that there was no statutory basis for such an exclusion. In that case the Commission found appropriate a unit consisting of supervisors and managers, <sup>6/</sup> and excluding rank and file employees. This Commission has thus announced that it will not be bound by the previous Department's method of dealing with supervisors. I shall, therefore, treat this as one appearing before me de novo. I find without merit, the Union's contention that the petition should be dismissed because the parties' collective bargaining agreement included the battalion chiefs within the bargaining unit. The National Labor Relations Board (NLRB) held that it will not entertain a unit clarification petition filed mid-term in a

<sup>3/</sup> RCW 41.56.060.

<sup>4/</sup> City of Yakima, Dept. of Labor & Industries, Case SK-1395 (1974).

<sup>5.</sup> Wn. Public Employment Relations Commission, Case 135-DEW-047, Decision No. 95-A-PECB (1977).

<sup>6.</sup> Id.

collective bargaining agreement which clearly covers the employees sought to be excluded from the unit. 7/ Even where a unit clarification is filed during the period in which mid-term modifications to the contract could be made, the NLRB has refused to entertain the petition, finding that to do so "would be disruptive of an established bargaining relationship." 8/ On the other hand, the NLRB will entertain a unit clarification petition where it is filed shortly before the expiration of the collective bargaining agreement. 9/ In the case at hand, the petition was refiled shortly before the parties' execution of a new collective bargaining agreement.

Thus, the Union was put on notice by the City that the unit composition was being questioned and that the matter would be resolved by means of the Commission's processes. Since the subject of the unit makeup was not discussed at the bargaining table, although the red flag had been raised by the petition, I conclude that my consideration of the merits of the dispute would not be unduly disruptive of the parties' collective bargaining relationship. In reaching this conclusion, I have also considered that the position of battalion chief had only been part of the bargaining unit for three years prior to the filing of the petition, and in fact, had not been included pursuant to the voluntary agreement of the parties, but had been mandated by decision of the Department of Labor and Industries.

6. The city takes the position that battalion chiefs are managerial personnel and confidential employees which should be excluded from any bargaining unit. In the alternative, the city contends that battalion chiefs are supervisors and that the Commission should reconsider its decision in City of Tacoma, 10/ and find that supervisors are excluded from coverage of the Act. In the alternative it contends that supervisors cannot be included in the same bargaining unit that they supervise.

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7/ Wallace-Murray Corp., 192 NLRB No. 160 (1971); Northwest Publication Inc., 197 NLRB No. 32 (1972); Safeway Stores, 216 NLRB No. 153 (1975).

8/ Northwest Publications, 200 NLRB No. 20 (1972).

9/ West Virginia Pulp and Paper Co., 192 NLRB No. 160 (1971); Peerless Publication, 190 NLRB No. 130 (1971); Warcester Polytechnic Institute 207 NLRB No. 157 (1973); Cincinnati Bell, Inc., 227 NLRB No. 281 (1977).

10/ Supra, note 5.

7. RCW 41.56.060 provides that:

"... In determining, modifying, or combining the bargaining unit, the Commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees..."

No evidence was proffered with regard to the desires of the battalion chiefs or whether they are members of the Union, with the exception of the Union president who is a battalion chief.

As previously noted the battalion chiefs were included in the unit over the objections of the City as a result of the Department of Labor and Industries' 1972 unit clarification decision. In view of my conclusion that the Department of Labor and Industries' determination would not be determinative of this case, and the relatively short period that the battalion chiefs were included in the unit, I would not find the history of collective bargaining or the extent of organization to be controlling. With regard to the duties, skills and working conditions of the battalion chiefs, it appears that substantial differences exist between them and the other fighters. Further it appears that the battalion chiefs are supervisors, and are currently included in a unit with rank and file fire fighters.

The four battalion chiefs report directly to the fire chief who in turn reports directly to the city manager. Beneath the battalion chiefs in the ranking system of the Richland Fire Division are six captains, three lieutenants, one training officer, one fire inspector and twenty one fire fighters. The budget of the division is approximately one million dollars. While the fire chief works 40 hours per week, the lower ranked employees, including the battalion chiefs, normally are on duty 56 hours per week. The fire division is divided into a suppression bureau and a prevention bureau. The prevention bureau consists of three individuals, a fire marshall-battalion chief, and beneath him a training officer-captain and a fire inspector-lieutenant. The fire marshall-battalion chief is responsible for overseeing the training, prevention, and inspection duties of the fire division. The other three battalion chiefs each head one of the three shifts (or platoons) of fire fighters. Each platoon is divided into two companies. In the absence of the fire chief, the battalion chief on duty is the highest ranking officer in the fire division. While the battalion chief must accompany the firefighters to the blaze when two companies are required on the scene, he has the option of appearing or not, when only one company is required to fight a blaze.

Each one of the battalion chiefs share an office adjoining the fire chief's office and has direct access to a secretary. Unlike the lower ranked fire fighters, each battalion chief is assigned his own bedroom in the fire house and is assigned a city car. While the other fire fighters wear blue uniforms, the battalion chiefs wear white uniforms. While other fire-fighters are required to stay within their responding districts while on duty, the battalion chiefs have a considerable amount of freedom to come and go as they see fit.

Each of the battalion chiefs are required to attend a monthly staff meeting with the fire chief at which the fire division's programs, operations and problems are discussed. Except for the occasional presence of the training officer and the inspector, other fire fighters do not attend these meetings. While the collective bargaining agreement has a provision relating to overtime, the battalion chiefs do not receive overtime pay for attending these staff meetings during their off duty hours. While the battalion chiefs have higher salaries than the other fire fighters, they enjoy similar vacation, holidays, sick leave and medical benefits.

The battalion chiefs propose and discuss policy changes with the fire chief and occasionally draft new policy language. One of the battalion chiefs is designated as the budget officer. He is responsible on a day-to-day basis for making purchases on behalf of the fire division and for overseeing its financial records. He also receives input from the other battalion chiefs on budgetary matters, such as needed supplies and training materials and thereafter presents a preliminary budget to the fire chief. All of the battalion chiefs and the fire chief then meet and jointly determine the proposed budget which is to be submitted to the city council. A second battalion chief also has authority to commit the city's credit. One of the battalion chiefs is responsible for scheduling, maintaining and repairing the fire division's equipment. Another is responsible for overseeing the dispatch service. Another is in charge of overseeing the maintenance of the buildings.

The battalion chiefs can effectively recommend that a fire fighter be disciplined, even discharged. They can also effectively recommend that an employee be hired. However, ultimate authority to hire or fire rests with the city manager. The battalion chiefs prepare employee evaluations and effectively recommend merit pay increases. Within their respective shifts they determine staffing and may transfer employees and determine and assign overtime.

The battalion chiefs aid the fire chief in the preparation of promotional exams. Each of the battalion chiefs may resolve grievances pursuant to the first step of the grievance procedure described in the collective bargaining agreement. At further steps in the grievance procedure, the battalion chief may be consulted by the fire chief or higher authorities.

The Taft-Hartley Act of 1947 11/ defined the term supervisor for the private sector of our economy in Section 2(11):

The term "supervisor" means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

As evident from the previous findings, the Richland battalion chiefs are vested with most of these indicia of supervisory authority. They have the authority to effectively recommend hires, discharges, and discipline. They evaluate employees and play a significant role in awarding promotions and merit wage increases. They schedule and assign work, determine whether overtime work is necessary, and transfer employees from station to station as needed. They each play a significant factor in determining the Department policy and budget. Each may adjust grievances. If battalion chiefs were considered nonsupervisory, in a department of 37 individuals, only the fire chief could be considered supervisory, and no supervisors would be on duty during approximately 75% of the time. The battalion chief's working conditions are distinguished from the rank and file by higher pay and different uniforms and living quarters, and by use of an office and a city car. Further, they are treated differently from the rank and file with regard to required attendance at staff meetings, reimbursement for justifiable absence, overtime and leave time. These differences in functions and working conditions indicate that the battalion chiefs have a separate community of interest from the rank and file fire fighters.

Generally speaking, I am very hesitant to include supervisors in the same unit with the rank and file employees that they supervise. In the Commission's decision in City of Tacoma 12/ an autonomous unit of supervisors,

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11/ 61 Stat., 136.

12/ Supra, note 5.

to the exclusion of rank and file employees, was found to be appropriate. The issue of whether supervisors may appropriately be included in the same unit as nonsupervisory personnel, is one of first impression before this agency.

The problems inherent in grouping supervisors and nonsupervisors in the same bargaining unit are evident in the instant case. The president of the union local is a battalion chief. As a supervisor he owes a certain fiduciary duty to management. As union president he also owes a fiduciary duty to the union membership. The dilemma is apparent when an employee under his supervisor files a grievance with him. In whose interest should he act? What pressures will he receive from either the City or the Union? Further, is it not more likely that grievances with regard to the battalion chief's actions, including imposed discipline, would not be filed? How could the aggrieved employee count on the support of his union? Wouldn't members of the battalion chief's platoon be hesitant to challenge his union leadership in view of the extent of his authority over them? Wouldn't discussion at union meetings of problems with supervision be stifled? Supervisors tend to owe a higher degree of allegiance to management than do the rank and file, or at least this is traditionally the rank and file's view. The collective bargaining process would best be served by generally excluding supervisory personnel from a unit composed of subordinate employees. This conclusion was reached as well by the NLRB, prior to the 1947 Taft-Hartley Act's exclusion of supervisors from the ambit of the National Labor Relations' Act. 13/

I do not rule out the possibility that in certain rare circumstances, supervisors and nonsupervisory personnel may be included in one unit. However, such an exception is not called for here in view of the extent of the authority of the battalion chiefs and the bargaining history. Also, I do not rule that in all instances battalion chiefs and lower ranks of firefighters should be in separate bargaining units. Each case must be evaluated independently according to the statutory criteria.

Although I have concluded that the battalion chiefs are to be excluded from the bargaining unit, I do not decide that they are denied the right to self-organization and collective bargaining pursuant to the Act. The City's contention that battalion chiefs are confidential deputies or administrative assistants to the executive head of the employer and thus

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13/ Godchaux Sugars Inc., 44 NLRB No. 172 (1942); Union Collieries Coal Co., 41 NLRB No. 174 (1942); Packard Motor Car Co., 61 NLRB No. 3 (1945), affd, Packard Co. v Labor Board, 330 U.S. 485 (1947).



are not public employees within the meaning of the Act (RCW 41.56.030 (2)), is not addressed herein since such a determination is not required for a disposition of this case.

ORDER

The unit is clarified to exclude the position of battalion chief.

DATED at Olympia, Washington this 24th day August, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
ALAN R. KREBS, Hearing Officer