

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 1805,)	CASE 7698-U-88-1624
)	
Complainant,)	DECISION 3428 - PECB
)	
vs.)	
)	
CLARK COUNTY FIRE PROTECTION)	FINDINGS OF FACT,
DISTRICT NO. 6,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondent.)	
)	
)	

Brian Johnson, President, appeared on behalf of the complainant.

Alan K. Baird, Labor Relations Consultant, appeared on behalf of the respondent.

On December 1, 1988, Clark County Fire Fighters, Local 1805, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Clark County Fire Protection District No. 6 had violated RCW 41.56.140(4), by implementing a new volunteer fire fighter program without prior bargaining. The complaint was reviewed by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110, and a letter was directed to the union on January 19, 1989, allowing a period of 14 days for the filing of an amended statement of facts conforming to the requirements of the rules and setting forth specifics on which the demand for bargaining was based. The union was given an extension of time, and it filed an amended complaint on February 24, 1989. A hearing was conducted on September 14, 1989, in Vancouver, Washington, before Examiner Jack T. Cowan. The parties filed post-hearing briefs to complete the record in the matter.

BACKGROUND

The employer provides fire suppression services in the suburbs of Vancouver, Washington. The union is the exclusive bargaining representative of the employer's full-time firefighter employees. The employees in the bargaining unit are "uniformed personnel" within the meaning of RCW 41.56.030(7).

On October 6, 1988, Deputy Chief Larry Reese, issued the following memorandum concerning volunteer "ride out" with the duty crew:

SUBJECT: VOLUNTEER RIDE OUT

Several volunteers have contacted me concerning riding out with the duty crew.

The administration has discussed this idea and has found it agreeable, adhering to the following guidelines:

1. The program shall be allowed between the hours of 0800 - 2200 (8 A.M. - 10 P.M.).
2. A maximum of two (2) volunteers shall participate at each station per shift.
3. All scheduling and approval shall be done through me, 72 hours prior to a shift at the stations.
4. Volunteer(s) shall wear the department uniform, including badge, name tag, black shoes or boots, black belt and black socks (if boots are not worn). In cold weather, the participant shall wear the turn out coat or a coat approved by me.
5. Volunteer(s) shall assist in station maintenance and any other tasks performed by paid personnel, and shall be under the direction of the station officer and/or the shift captain.
6. The volunteer(s) shall be guided by the Rules and Regulations and SOP's of District #6, and any violation of these policies shall require corrective action.

Volunteers so assigned will supplement the duty shift and will not be used to take the place of regular shift personnel.

The union viewed this as a change in policy which impacted bargaining unit employees in the areas of wages, hours, and working conditions, and as a bargainable issue under Chapter 41.56 RCW. The union so advised Chief Richard Streissguth and the Board of Fire Commissioners, by letter.

In a letter dated October 18, 1988, Chief Streissguth responded to the union. That letter states, in part:

Since it was formed in 1954, Clark County Fire District #6 has always had volunteer firefighters, and this practice has continued since the first paid employee was hired in the mid-1960's.

As a continuing part of the District #6 program, volunteers have always had the right to be in District #6 stations and to respond to calls. Chief Reese's directive of October 6 indicates that if volunteers plan to be in a station for the purpose of responding to calls, that they schedule this with the department, wear their department uniform, and participate in the daily activities. Specific mention was made of the fact that such volunteers are not to be used to take the place of regular (paid) personnel.

The district has no legal obligation to bargain with volunteers regarding their conditions of participation.

In your letter of October 16, 1988, you indicated it is your opinion that the directive regarding volunteers "impacts bargaining unit employees in the area of wages, hours, and working conditions, and is therefore a mandatory bargaining issue under RCW 41.56".

Your letter does not indicate in what manner you believe the directive impacts, in any way, on the wages, hours, or working conditions of Local 1805 personnel, or why you feel it would

should be the subject of collective bargaining.

At this time, without your identifying for our consideration the rationale for your opinion, I was not prepared to take any further action regarding the October 6, 1988 directive.

As discussed with you, the matter has been scheduled as an agenda item for the next regular meeting of the Board of Fire Commissioners".

The subject was considered by the Board of Fire Commissioners at its November, 1988 meeting. As a result, an additional response was sent to the union, stating in part:

It was the opinion of the board that the directive did not change any conditions for bargaining unit employees in the areas of wages, hours, and working conditions.

The board voted to not take any action regarding your letter, noting that the contract provided avenues to pursue if this did not meet with your approval.

Article 1.141 of the "Clark County Fire District No. 6 Response Procedures", dated 1987, provides in part:

1.141 RESPONSE TO FIRE CALLS - Duty crew responses on equipment will be as follows:

(Volunteers or call back personnel will respond with a second engine, 642, 661 or 682.)

(Call back personnel and volunteers at Stations will be counted as available crew members.)

1.142 RESPONSE ON VEHICLE ACCIDENT CALLS:

Station 2 Area

Volunteer Response: A Station 2 engine will respond if additional manpower is needed.

Station 3 Area

Volunteer Response: A Station 3 engine will respond if additional manpower is needed.

POSITIONS OF THE PARTIES

The union contends the volunteer "ride out" procedure, as set forth in the employer's October 6, 1988 memorandum, constitutes a removal or "skimming" of bargaining unit work without collective bargaining. The union points to the portions of the memorandum that define duty hours, the maximum number of personnel on duty per shift, describes uniforms to be worn, and details the station maintenance duties to be performed by the "volunteers".

In contrast, the employer maintains that the memorandum was nothing more than a means of limiting the number of volunteers who may assist in station maintenance and other tasks normally performed by paid personnel, during what has historically been the established time (8 a.m. to 11 p.m.) for "volunteers" to have access to the fire station. The employer contends that participating in "ride out" with paid firefighters is an activity in accordance with the rules, regulations and SOP's of District #6. The employer asserts that the disputed memorandum merely assures that any volunteer personnel will be appropriately and uniformly dressed. The employer emphasizes that volunteers so assigned will supplement the duty shift, and will not be used to take the place of regular shift personnel.

DISCUSSION

Chief Streissguth gave unrefuted testimony that volunteer firefighters have been working in the employer's stations since 1954,

and that volunteers and paid firefighters have worked together since the hiring of the employer's first paid firefighter in the mid-1960's. The union makes no pretense of representing the volunteer firefighters.

The union does not contest the long-standing volunteer program or the volunteer activities in general, except as they overlap or conflict with the scope of bargaining unit work. The union's concern in this area is based on long-standing Commission precedent which indicates that an employer has a duty to give notice to and, upon request, bargain with the exclusive bargaining representative of its employees prior to transferring bargaining unit work to persons outside of the bargaining unit. South Kitsap School District, Decision 472 (PECB, 1978).

The language of the "ride out" memorandum does not appear to mandate shifts or attendance. Rather, it provides a means of accommodating possible volunteer interest in station activities. Scheduling and approval serve to limit daily participation to only two volunteers. The 8 a.m. to 10 p.m. time frame limits the period when volunteers will have access to the station, rather than assigning them duty hours or a shift schedule.

According to unrefuted testimony provided by Deputy Chief Larry Reese, volunteer participation in station activities has been limited in both nature and number of participants:

- Q. How often does that happen where there are two (volunteers) at the station in uniform in your judgement?
- A. To my knowledge, it has never happened that there were two at any one station. And I believe there are only, to the best of my recollection, four people that have ever participated in this program and it's been very sporadic.

The recollection of the deputy chief in this matter covered the period of approximately one year between the October, 1988, issuance of the memorandum in question and the date of the hearing in September, 1989.

Concern has been voiced by the union as to possible employer action in the event that proposed tax levies were to fail. Advertisements favoring one such levy emphasized the possibility of lay-offs of paid firefighters if that levy were to fail. In this vein, the union argues that having volunteer firefighters appearing in uniform or turn-out gear, whether at the stations or on the engines, could be misleading, causing the public to believe that the fire department was adequately staffed and not really in need of additional financial assistance. The "ride out" memorandum did not, however, create or alter the historical and on-going practice of having volunteers appear alongside the paid firefighters. Thus, an erroneous perception of the employer's staffing level could have been derived by members of the public at any time prior to or since the disputed memorandum.

The union further contends that utilization of volunteers in accordance with the "ride out" memorandum may serve to lull the employer into a feeling of false security, *i.e.*, a belief that the stations could be adequately staffed by a low cost, volunteer workforce in the event of a levy failure. Employer apathy was not evidenced by the record, however. The employer was affirmatively seeking financial support for continuation of its present style of operations. A more likely interpretation of the employer's actions is that it was well aware that a volunteer is, as the term implies, a person acting of his own volition. In other words, the employer cannot use the volunteer to perform station maintenance or other duties until and unless the volunteer wishes to do or perform such duties. There is no duty or obligation which cannot be altered, the relationship is terminable at will. To structure firefighting capability and response on anything less than the

existing, stable, trained and experienced paid staff, as supported by the volunteers, would not be logical in the absence of some un-anticipated and dire need.

Implementation of the October, 1988 memorandum has caused no actual loss of work or wages for the members of the bargaining unit. No reduction in force has occurred. The possibility of staff reductions in the event of a levy failure was a cautionary warning targeted at the public as part of the political campaign, and was not reasonably perceived as being targeted at the paid firefighters. No threatened actions appear in the evidence. Unfounded anticipatory action does not in itself constitute adequate justification for the charges as set forth. The union has failed to meet the necessary burden of proof, and its charges must be dismissed.

FINDINGS OF FACT

1. Clark County Fire Protection District No. 6 is a public employer within the meaning of RCW 41.56.030(1). Since the onset of its operations, and at least since 1954, the employer has maintained and used "volunteer" firefighters to accomplish its fire suppression functions. Since the 1960's, the employer's volunteer firefighter force has supplemented the work of paid firefighters.
2. International Association of Fire Fighters, Local 1805, a bargaining representative within the meaning of RCW 41.56-.030(5), represents all regular paid firefighters employed by Clark County Fire Protection District No. 6.
3. The union and the employer were parties to a collective bargaining agreement for the period from January 1, 1987 through December 31, 1989.

4. On October 6, 1988, Deputy Chief Larry Reese issued a memorandum concerning "ride out" procedures for members of the employer's existing volunteer force, setting forth a process whereby volunteers could participate in station activities on a limited basis, also setting forth policies concerning the uniforms to be worn by such volunteer firefighters at the fire stations. The procedures so announced did not make any substantial change from past practices and did not result in any actual diminution or loss of wages, hours or working conditions of employees represented by the union.
5. On December 1, 1988, the union filed a complaint charging unfair labor practices, alleging that the employer had unlawfully "skimmed" certain bargaining unit work, without notice to the union or opportunity for bargaining on the matter.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The record fails to establish that the employer has acted to remove bargaining unit work or has refused to engage in collective bargaining, so that there has been no violation of RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in the above matter is dismissed.

DATED at Olympia, Washington this 23rd day of February, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. T. COWAN, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.