

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CITY OF YAKIMA)	CASE NO. 2140-C-79-98
)	
For clarification of an existing bargaining unit of employees represented by:)	DECISION NO. 837-PECB
)	
LOCAL 469, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO.)	ORDER CLARIFYING BARGAINING UNIT
)	

Lawrence J. Wittenberg, Assistant City Manager, appeared on behalf of the employer.

Kenneth F. Groth, representative, appeared on behalf of the union.

On June 25, 1979, the City of Yakima filed a petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit of fire department employees, to exclude therefrom employees who are not "uniformed personnel" within the meaning of RCW 41.56.030(6). A hearing was held at Yakima, Washington on January 4, 1980, before Marvin L. Schurke, Executive Director.

BACKGROUND

The union was certified by the Department of Labor and Industries, on March 10, 1969, as the exclusive bargaining representative of "the fire fighters employed by the City of Yakima," excluding persons defined as exempt by RCW 41.56.030(2). Careful examination of that correspondence indicates that the action of the administrative agency merely confirmed a previous voluntary recognition of the union by the City. Reference is made in the correspondence to "eighty-four (84) fire fighters are on payroll", and it was undisputed at the hearing in this matter that the 84 employee count had to have included fire department employees who were not covered by the "LEOFF" retirement system created by Chapter 41.26 RCW.

Following the "certification" issued by the Department of Labor and Industries, the parties negotiated collective bargaining agreements covering all employees of the fire department.

In early 1973, a dispute arose between the parties concerning the classifications of "battalion chief" and "fire marshall". While those proceedings involving this same unit remained in litigation until finally resolved by decision of the Supreme Court in City of Yakima v. IAFF, 91 Wn.2d 101 (1978), the issue before PERC in the instant proceeding was never raised.

The issue now before the Commission traces its origin to the enactment of Chapter 131, Laws of 1973, establishing "interest arbitration" procedures for the resolution of impasses occurring in bargaining between public employers, including the City of Yakima, and certain "uniformed personnel" defined as:

"41.56.030 Definitions. As used in this chapter:

. . .

(6) "Uniformed personnel" means (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended, of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of AA counties or (b) fire fighters as that term is defined in RCW 41.26.030, as now or amended."

RCW 41.56.030(4) defines "fire fighter" as follows:

41.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

. . .

(4) "Fire fighter" means:
 (a) any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, or fireman if this title is used by the department, and who is actively employed as such;
 (b) anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;
 (c) supervisory fire fighter personnel;
 (d) any full time executive secretary of an association of fire protection districts authorized under chapter 52.08 RCW: Provided, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;
 (e) the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW: Provided, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;
 (f) any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fireman or fire fighter; and

(g) any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971 was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

Following enactment of the interest arbitration legislation, the parties included provisions in their collective bargaining agreement which attempt to deal with the problem of disparate impasse remedies among the employees in the bargaining unit. The 1978 - 1979 collective bargaining agreement between the parties, which was in effect at the time the petition was filed to initiate this proceeding, contained the following provisions pertinent hereto:

ARTICLE I - UNION RECOGNITION - BARGAINING UNIT

The City hereby recognizes the Union as the exclusive bargaining representative of employees within the bargaining unit, which consists of all full-time permanent employees of the Yakima Fire Department except those persons permanently appointed to the positions of Chief and Battalion Chief.

. . .

ARTICLE IV - COLLECTIVE BARGAINING COMMITTEES

Collective bargaining between the parties shall be carried out by the City Manager or his designates, on behalf of the City Council, and a committee representing the Union. The Secretary of the Union shall notify the City Manager in writing of the names of the persons constituting the Union's collective bargaining committee.

ARTICLE V - COLLECTIVE BARGAINING - L.E.O.F.F. EMPLOYEES

Section 1:

All negotiable matters pertaining to wages, hours and working conditions shall be established through the negotiation procedure as provided by R.C.W. 41.56. All ordinances existing at the time of execution of this agreement relating to wages, hours and working conditions for members of the bargaining unit shall not be reduced or rescinded during the term of this agreement.

Section 2:

Each year, as appropriate, the Union shall submit to the City Manager and the City Manager may submit to the Union a written proposal for any changes in matters pertaining to wages, hours and working conditions desired by the Union or the City for the subsequent year. These written proposals shall be submitted in accordance with the requirements of R.C.W. 41.56. The Union and the City shall follow the collective bargaining procedure set forth in the said statute. All agreements reached shall be reduced to writing which shall be signed by the City Manager and the Union's representatives.

ARTICLE VI - COLLECTIVE BARGAINING - NON-L.E.O.F.F. EMPLOYEES

Section 1:

Negotiations for the members of the bargaining unit who are not included under the provisions of H.B. 176 (herein called non-LEOFF employees) shall be carried out concurrently up to the impasse date provided in H.B. 176, (and by mutual agreements, through the 10 day mediation period), with the negotiations for those members of the bargaining unit covered by H.B. 176 (herein called LEOFF employees). When a settlement is reached in negotiations for LEOFF employees, the Union will, within 7 days of the ratification or approval by both the City and the Union of such settlement, give to the City a written proposal for the application of that settlement to non-LEOFF employees. If the City objects to any part of that proposal, the City will, within 7 days, state in writing its objections to the Union's proposal.

Section 2: Fact Finding or Mediation

In the event the Union and the City are unable to resolve any annually negotiable matters relating to wages, hours and working conditions for non-LEOFF employees, and before any final City Council action by ordinance, resolution or otherwise, either party may request fact finding and/or mediation. Before fact finding or mediation is requested, the unresolved matter must be reduced to writing and reasonable notice given to the other party of intentions to seek fact finding or mediation. Fact finding shall be conducted by a committee of citizens who reside, work, or conduct business in the City of Yakima, who are not employees of the City or members of the City Council, one of whom shall be selected by the City, one of who shall be selected by the Union, and the third chosen by the two so selected. The conclusions of the fact finding committee shall be made public. Mediation shall be conducted by the Washington State Public Employee Relations Commission.

Section 3: Consideration by City Council

In the event the Union and City are unable to resolve any annually negotiable matter relating to wages, hours, or working conditions for non-LEOFF employees, such unresolved matter may be submitted by the parties hereto to the Yakima City Council for discussion and consideration by that body in an effort to satisfactorily settle such unresolved matter prior to any final City Council Action by ordinance, resolution or otherwise. Such consideration by the Council shall be made after reasonable notice to the parties who shall have the right to be in attendance and be heard. If the Union desires that there be either fact finding or mediation as provided above, in Section 2, the Union must request that such fact finding or mediation procedure be complied with prior to the consideration of the matter by the City Council.

Differences are noted in wages, benefits, hours and working conditions between the "uniformed" and "non-uniformed" employees of the fire department under the substantive provisions of the collective bargaining agreement.

Early in the negotiations for a successor agreement, the city took the position that the "uniformed" and "non-uniformed" employees should no

longer be included in the same bargaining unit. When the parties were unable to reach agreement on that issue, this proceeding was initiated. While this case was pending, the parties continued with their previous method of operation and negotiated a collective bargaining agreement for 1980 which conditionally continues the overall unit and the divided negotiations tracks found in the 1978-1979 agreement.

POSITION OF THE EMPLOYER

The city indicates that the "problem" of a co-mingled unit was called to its attention by the decision in Thurston County Fire District No. 9, Decision 461 (PECB, 1978), where any suggestion of a co-mingled unit of "uniformed" and "non-uniformed" personnel was rejected. The City contends that unit determination is within the authority of the Public Employment Relations Commission, citing City of Richland, Decision 279-A (PECB, 1978), and that the unit should be separated into two units under current PERC unit policies. The city also argues that the history of bargaining is not controlling and that substantial differences in duties, skills and working conditions between the two classes of employees justify the separation of their bargaining units.

POSITION OF THE UNION

The union relies heavily on the certification issued by the Department of Labor and Industries and the long history of bargaining in which all fire department employees have been treated as a single bargaining unit. It points to the provisions which have been made to accommodate the disparate statutory impasse procedures, and to the successful negotiation of contracts through the use of that procedure. The union contends that the "uniformed" and "non-uniformed" personnel of the fire department work together in a common and coordinated effort, particularly in matters such as alarm dispatch and in-route communications, and suggests that the City benefits from the application of the "no-strike" provisions of RCW 41.56.490 to the entire fire department while all employees are in the same bargaining unit.

DISCUSSION

Whether it is viewed as a "certification" or as confirmation of a voluntary recognition covering all employees of the fire department, there was nothing improper about the creation of a department-wide bargaining unit in 1969. However, continued reliance on any administrative action may become misplaced if the underlying statutes have been changed. No case is cited, nor is any found, by which the Department of Labor and Industries endorsed the continuation of co-mingled units of uniformed and non-uniformed employees after the adoption of Chapter 131, Laws of 1973.

The city's reliance on City of Richland, supra, is well placed. The Commission there noted:

"The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense, although parties may agree on units. Such agreement does not indicate that the unit is or will continue to be appropriate." (emphasis added).

The policy against co-mingling of uniformed and non-uniformed personnel which was enunciated in Thurston County Fire District No. 9, supra, was reiterated in City of Seattle, Decision 689 (PECB, 1979) and was expressly affirmed by the Commission on appeal in that case. City of Seattle, Decision 689-A (PECB, 1979).

The city raises no question concerning representation as to either unit, and expressed its willingness to continue its recognitions of the union in two separate units. The order herein is fashioned accordingly.

FINDINGS OF FACT

1. The City of Yakima is a municipal corporation of the State of Washington and a public employer within the meaning of RCW 41.56.020.

2. International Association of Fire Fighters, Local 469, AFL-CIO, is a bargaining representative within the meaning of RCW 41.56.030(3) which has heretofore been the exclusive bargaining representative of all employees of the fire department of the City of Yakima, excluding the fire chief.

3. The bargaining unit for which Local 469 is recognized as exclusive bargaining representative includes employees who are "firefighters" within the meaning of RCW 41.26.030(4) and "uniformed personnel" within the meaning of RCW 41.56.030(6), as well as employees who are neither "firefighters" nor "uniformed personnel".

4. The parties have made provision in their recent collective bargaining agreements for separate and distinct procedures for negotiation of successor collective bargaining agreements under which "uniformed personnel" have been treated differently from "non-uniformed personnel".

5. The 1978 - 1979 and 1980 collective bargaining agreements contain numerous provisions evidencing separate and distinct wages, hours and working conditions as between "uniformed personnel" in the bargaining unit and the non-uniformed personnel in the bargaining unit.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists, and the Public Employment Relations Commission has jurisdiction in this matter to issue an order clarifying an existing bargaining unit.

2. "Uniformed personnel" of the fire department of the City of Yakima, as defined by RCW 41.56.030(6), enjoy the benefits of and are obligated to follow the impasse resolution procedures specified in RCW 41.56.430 thru RCW 41.56.490; and are significantly distinguished thereby from employees of the fire department of the City of Yakima who are not uniformed personnel within the meaning of RCW 41.56.030(6).

3. A bargaining unit consisting of all of the employees of the fire department of the City of Yakima, including both uniformed and non-uniformed personnel, is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

ORDER

The bargaining unit formerly comprised of all employees of the fire department of the City of Yakima is clarified to constitute two separate bargaining units, as follows:

- (1) All uniformed fire fighter personnel of the Yakima Fire Department, excluding the Chief and non-uniformed employees.
- (2) All employees of the Yakima Fire Department, excluding the Chief and uniformed fire fighter personnel.

DATED at Olympia, Washington, this 24th day of March, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director