

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
INTERNATIONAL ASSOCIATION OF)	CASE NO. 2685-C-80-124
FIREFIGHTERS, LOCAL 2024)	
For clarification of an existing)	ORDER CLARIFYING
bargaining unit of employees of)	BARGAINING UNIT
KING COUNTY FIRE PROTECTION)	DECISION NO. 1023 PECB
DISTRICT NO. 39)	
_____)	

Appearances:

Robert E. Stead, Attorney at Law, appearing for the employer.

Dennis G. Parlari, appearing for the union.

Local No. 2024 of the International Association of Firefighters filed a petition on March 25, 1980, wherein it requested a ruling with respect to whether a newly created position of "Public Information Officer" should be included in or excluded from the bargaining unit represented by Local No. 2024. A hearing was held on July 28, 1980, before Ronald L. Meeker, Hearing Officer.

Position of the Parties:

The employer contends the position of Public Information Officer should be excluded from the bargaining unit as an administrative position with a confidential relationship under RCW 41.56.030(2)(c).

The union contends the Public Information Officer is a public employee and does not qualify as an exception under RCW 41.56.030(2)(c).

The employer and the union cite, in support of their respective positions, the Washington Supreme Court decision in International Association of Firefighters, AFL-CIO, Local No. 469 v. The City of Yakima, 91 WN.2d.101, 582 p2d. 165 (1978).

STATUTORY PROVISIONS:

"RCW 41.56.030 Definitions. As used in this chapter:

. . .

(2) 'Public employee' means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer."

"41.56.060 Determination of a bargaining unit - Bargaining representative. The department, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the department 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."

Background:

Firefighters Union, Local No. 2024 has, for several years, had a collective bargaining agreement with the King County Fire Protection District 39.

Over the years there have been several mergers of other districts with District 39. The latest occurred on April 1, 1980, when District 30 merged with District 39. In the past employees of a district merging with District 39 were not demoted, with the exception of the Chief of District 22 being assigned the position of Deputy Chief in District 39 and the Chief of District 32 being assigned the position of Fire Marshall in District 39.

In this latest merger, the Assistant Chief of District 30, a Mr. William Zigalla, was assigned a newly created position of Public Information Officer (PIO).

Zigalla does not engage in normal firefighting duties. In answer to a question as to the duties of the PIO, the Fire Chief testified:

"Duties are numerous. In addition to PIO, which is giving out news releases, informing the public of all facets of the fire department--his duties in addition to the PIO are many. He's actually an assistant to me; it is not an Assistant Fire Chief, but to assist me in any and all of my duties that I need or can use him in.... This was my feelings with Bill Zigalla that he should not be asked to take a demotion during the time of the merger with District 30 and 39 and therefore we created a new position and it was titled PIO. The title is probably not really what it should be because his duties are far greater than PIO. He assists me in negotiations, as an example, as my representative on the board of the negotiating team; he will help me in preparing the budget; he will help me in hiring new people; he will help in establishing new policies by advising me and running down information for me to establish new policies for the district."

Discussion:

The duties and responsibilities indicated, especially representing the Fire Chief on the district's negotiating team, create a confidential relationship as defined by the Washington Supreme Court in Firefighters v. Yakima, supra.

The union contends the bargaining team responsibilities were was only an afterthought on the part of management, designed to keep the PIO out of the bargaining unit. The union further argues that the PIO was not put on the district negotiating team until after the prehearing conference, where the hearing officer advised both parties to be prepared to address evidence and argument to both RCW 41.56.030(2)(c) and RCW 41.56.060. The argument of the union cannot be accepted in light of the testimony of the PIO:

- Q. "For that meeting on the 21st of May when were you told that you should attend the meeting... that particular meeting?
- A. I couldn't give you an exact date; I don't recall. It was not...nothing like a month ahead of time or nothing like that.
- Q. Could it have been within...like 24 hours?
- A. No it was better than that; probably closer... well, two to three days I would say of the date of the meeting."

With the first negotiating session following the prehearing conference by only one day, it is inferred from the quoted uncontroverted testimony that the PIO had been ordered to attend the negotiations at least one or two days prior to the prehearing conference rather than as a result of the Hearing Officer's comments.

The duties and responsibilities of the PIO as outlined in the Policy Manual of the District which was adopted on April 1, 1980, along with the merger, are:

Schedules, writes, coordinates, prepares and distributes news releases, coordinates on-scene media coverage, magazine features, public service announcements, and other special public information programs.

Receives information, designs and distributes brochures and handouts relative to departmental or division activities.

Arranges for opening ceremonies for new facilities.

Receives and answers informational requests from the public and from the departments and divisions.

Photographs facilities, emergency scenes, special events, and other occurrences as required; maintains records for future use.

Prepares, develops, and constructs visual display materials for use at various meetings, conferences and community functions.

Performs a variety of administrative functions in conjunction with the public information responsibilities; maintains comprehensive records and files of informational activities; performs related work as required.

RCW 41.56.060 requires the Commission to consider the "duties, skills and working conditions" of public employees "in determining, modifying or combining bargaining units". The duties and other requirements of the position of the PIO appear to be more closely aligned with management and the administration than with the bargaining unit of firefighters. The PIO reports directly to the Fire Chief while other bargaining unit employees must follow the chain of command of lieutenant, captain, battalion chief, deputy chief, etc. Therefore, the PIO would also be excluded from the rank-and-file firefighter bargaining unit on community of interest principles under RCW 41.56.060.

FINDINGS OF FACT

1. The King County Fire Protection District No.39 is a public employer within the meaning of RCW 41.56.030(1).
2. International Association of Firefighters, Local Union No. 2024 is a collective bargaining representative within the meaning of RCW 41.56.030(3).

3. The King County Fire Protection District No. 39 has recognized IAFF Local No. 2024 "as the exclusive bargaining representative of all full-time employees whose classifications are listed in Article 16. Upon the establishment of any new classifications when the union and the employer cannot mutually agree if that position should be included within the bargaining unit either party may request a unit clarification from the Public Employment Relations Commission."

4. A dispute has arisen concerning the unit status of a newly created position entitled Public Information Officer.

5. The Public Information Officer is involved on behalf of the employer in collective bargaining inasmuch as he represents at the bargaining table and has an intimate fiduciary relationship with the Fire Chief, who is the chief executive officer of the fire district.

6. The Public Information Officer consults regularly and directly with the Fire Chief on matters concerning the management and administration of the fire district; and has duties, skills and working conditions distinct from those of firefighters and potentially in a position of conflict of interest with respect to the bargaining unit of firefighters.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists. The Public Employment Relations Commission has jurisdiction in this matter pursuant to WAC 391-21-300, et. seq., concerning the composition of an existing bargaining unit.

2. The Public Information Officer is a "confidential employee" excluded from coverage of the Act by RCW 41.56.030(2)(c).

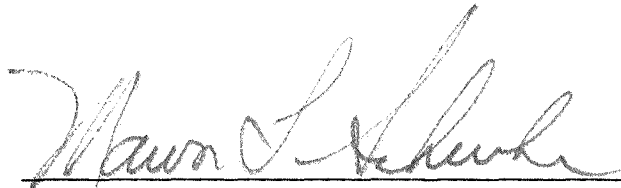
3. The Public Information Officer, if a public employee, nevertheless has duties, skills and working conditions which differ substantially from those of the members of the bargaining unit represented by IAFF Local No. 2024 and would properly be excluded from the bargaining unit represented by IAFF Local No. 2024 in accordance with RCW 41.56.060.

ORDER

The bargaining unit consisting of all firefighters employed by Fire Protection District No. 39 is clarified to exclude the Public Information Officer.

DATED at Olympia, Washington, this 28th day of October, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written over a horizontal line.

MARVIN L. SCHURKE, Executive Director