STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
KING COUNTY FIRE DISTRICT NO. 39	)	CASE NO. 6052-C-85-305
	)	
For clarification of an existing bargaining unit of its employees represented by:	)	DECISION 2638 - PECB
	)	
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2024	)	ORDER CLARIFYING BARGAINING UNIT
	)	

Perkins, Coie, by Lawrence B. Hannah, attorney at law, appeared on behalf of the employer.

Webster, Mrak and Blumberg, by James H. Webster, attorney at law, appeared on behalf of the union.

On October 24, 1985, King County Fire District No. 39 (hereinafter referred to as Fire District 39 or the employer) filed a unit clarification petition with the Public Employment Relations Commission questioning the propriety of an existing bargaining unit consisting of: non-fire combat dispatcher, firefighter, lieutenant, captain and coordinating captain. International Association of Firefighters, Local 2024 (hereinafter referred to as the union) is the exclusive bargaining representative of the bargaining unit. A hearing was conducted on January 15, 1986 before Hearing Officer Frederick J. Rosenberry. The parties filed post-hearing briefs.

BACKGROUND

The employer operates a fire department in the southern part of King County. At the time of the hearing, the employer had about 67 regular employees and about 75 volunteer firefighters in its workforce.

The bargaining relationship between the employer and the union dates from 1971, when the employer voluntarily recognized the union as the exclusive bargaining representative of its firefighter employees. At that time, the employer exclusively utilized firefighters to perform dispatching duties.

In 1981, Fire District 39 agreed to take over dispatching functions for King County Fire District No. 2, and to incorporate Fire District 2's existing workforce of dispatchers into Fire District 39's workforce. The dispatchers employed by Fire District 2 were not, and did not become, firefighters covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (LEOFF) set forth in Chapter 41.26 RCW. Fire District 39 and the union agreed, however, to add the transferred dispatchers to the firefighter bargaining unit at Fire District 39. That agreement was memorialized in a signed addendum to the parties' 1981-82 collective bargaining agreement. The transfer and the addendum were effective September 1, 1981. For their 1983-84 collective bargaining agreement, the parties incorporated their understandings on the wages, hours and working conditions of the "non-fire combat dispatchers" into the main body of their agreement, and they thereupon dispensed with the addendum. It was also agreed, as between the parties, that the dispatchers would be entitled to the interest arbitration provisions of RCW 41.56.430, et seq., notwithstanding the limitation of the coverage of that statute to "uniformed personnel" as defined in RCW 41.56-.030(6).

Dispatching duties are now performed by ten employees. Among the dispatchers, three classes of employees are identified:

- The dispatch function is headed by an employee who holds the rank of lieutenant. That individual came from the ranks of the employer's firefighting force, and is a member of the LEOFF retirement system.

- Five of the dispatcher employees, i.e., those who are referred to in the existing unit description as the "non-fire combat dispatchers", hold positions traceable to the transfer from King County Fire District No. 2. Those employees are not members of the LEOFF retirement system, and are referred to for the purposes of this decision as "civilian" dispatchers.

- The four remaining dispatcher positions are rotated among members of the employer's firefighting workforce who are covered by the LEOFF retirement system. Those assignments are made for two-year periods, during which the employee works only as a dispatcher and is not subject to call for fire suppression or emergency medical service work.[1] These employees are referred to for the purposes of this decision as "sworn" dispatchers.

The parties commenced negotiations in 1984 for a collective bargaining agreement to replace their 1983-84 agreement expiring on December 31, 1984. Notice is taken of the docket records of the Public Employment Relations Commission in Case No. 5588-M-84-2318, which indicate that a request for mediation was filed for those negotiations on December 10, 1984.

The propriety of the existing "mixed" unit consisting of both uniformed and non-uniformed personnel may have first been brought to the attention of the parties when questioned by the undersigned Executive Director in a preliminary ruling issued on February 28, 1985 concerning a "unilateral change" unfair labor practice case filed by the union. See: King County Fire District 39, Decision 2160 (PECB, 1985).[2]

The docket records of the Commission concerning Case No. 5588-M-84-2318 further indicate that the contract negotiations dispute remained unresolved

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1 It is a matter of simple mathematics that the "rotation" of the dispatching assignment among the employer's firefighters is, at best, a slow process which cannot possibly reach all of the firefighters. With four dispatcher positions available at a time and a two-year cycle, only 40 members of a firefighter workforce numbering in excess of 50 employees will have a turn at the dispatching function within a twenty-year period that is qualifying for full benefits under the LEOFF retirement system. See, RCW 41.26.100. Disabilities, quits and discharges aside, an employee could put in a full career with this employer and achieve normal retirement without rotating into the dispatch function.

2 Another unfair labor practice case filed by the union in 1985, Case No. 5650-U-85-1035, has been held in abeyance by the Examiner pending a determination here as to whether any or all of the dispatchers are within the existing bargaining unit.

as of October 24, 1985, when the employer initiated this unit clarification proceeding.[3]

POSITIONS OF THE PARTIES

The employer initially sought the removal of "non-fire combat dispatchers" from the bargaining unit on the basis that those employees are not "uniformed personnel" as defined by RCW 41.56.030(6). Noting that those employees were not covered by the LEOFF system, as provided in RCW 41.26.030, the employer contended that they should not be commingled with its employees who were statutorily eligible for the "interest arbitration" impasse procedures of RCW 41.56.430, et seq. Under the employer's initial position, all of the employees covered by the LEOFF system would have been placed in one bargaining unit and the dispatch function would have been divided between two bargaining units.

The union contended at the hearing that the existing "mixed" bargaining unit was appropriate, based on the history of recognition and bargaining, and that the employer's petition should be dismissed on a number of procedural grounds.

Following the close of the hearing and initial work towards the preparation of a decision, the Executive Director asked the parties to comment on the propriety of a third alternative not suggested by either party, i.e., a separation of the existing bargaining unit into two bargaining units along functional lines: one composed of employees performing firefighting duties and the other composed of employees performing dispatching duties. While the employer endorsed such a division, the union held to its position that the existing "mixed" bargaining unit is the only appropriate bargaining unit.

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3 Additional information concerning the somewhat stormy relationship between these parties is found in King County Fire District 39, Decisions 2328, 2329 and 2330 (PECB, 1985).

DISCUSSION

Procedural Issues

Contract Bar -

The union contends that the employer's petition is untimely under the standards set forth by the Commission in its decision in Toppenish School District, Decision 1143-A (PECB, 1981). It contends that the employer failed to raise any issue as to the exclusion of the civilian dispatchers while the parties were engaged in negotiations.

The employer maintains that the notice requirements of Toppenish School District, supra, are not statutory, and that the Commission has the authority to decide the propriety of the bargaining unit as raised by the employer.

In Toppenish School District, supra, the Commission adopted a two-step test for determining the timeliness of employer petitions seeking unit clarification mid-term in a collective bargaining agreement. Absent evidence of changed circumstances during the contract term sufficient to warrant an immediate change of bargaining unit status, the employer must wait until the end of the contract to disturb a unit to which it agreed in a contract. The employer is admonished to then raise the issue with the union in bargaining, and it must file any unit clarification petition prior to the conclusion of negotiations. Similar requirements were imposed on union-initiated mid-term unit clarification petitions in Cowlitz County, Decision 2229 (PECB, 1985). Careful review of both Toppenish and subsequent decisions readily leads to the conclusion that the "time for filing" requirements apply only to unit clarification petitions filed during the term of a contract. See: Central Kitsap School District, Decision 1296 (PECB, 1982); Sedro Woolley School District, Decision 1351 (PECB, 1982); Whatcom County, Decision 1483-A (PECB, 1983); South Kitsap School District, Decision 1541 (PECB, 1983); Cowlitz County, supra; Monroe School District, Decision 2536 (EDUC, 1986). It is clear from the docket records of the Commission that no collective bargaining agreement was in effect between these parties when the employer initiated

this unit clarification proceeding. Further, it is abundantly clear that, however initially framed, these parties now have a current actual dispute concerning the propriety of the existing bargaining unit. Toppenish does not preclude resolution of that dispute here.[4]

Tentative Agreement -

The union also contends that, during the course of negotiations in August, 1984, the employer had tentatively agreed to continue the recognition language from the parties' 1983-84 collective bargaining agreement without change of the existing bargaining unit description. The union thus contends that the employer's tentative agreement on recognition language should act as a bar, necessitating dismissal of the petition.

The employer maintains that a tentative agreement is not enforceable unless and until a collective bargaining agreement has been executed.

It has long been established that a tentative agreement between parties does not constitute a "contract bar" for purposes of a representation proceeding. City of Port Orchard, Decision 483 (PECB, 1978). Other precedent confirms, in a broader context, the expectancy that tentative agreements between parties will be ratified and embodied in a written and signed collective bargaining agreement. See: Port of Edmonds, Decision 844-B (PECB, 1980); State ex rel. Bain v. Clallam County, 77 Wn.2d 541 (1970). It appears that the possibility of a defect in the unit description was first called to the attention of the parties well after the tentative agreement was reached but well ahead of ratification of a new contract. The tentative agreement reached in August, 1984, does not bar the petition in this case.

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[4] Subsequent to the filing of the petition in this case, the parties signed a new collective bargaining agreement which did not change the "recognition" clause. They likely had no other choice. Given that unit determination is not a mandatory subject of bargaining, City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division III, 1981), cert. den., 96 Wn.2d 1004 (1981), neither party could have gone to impasse on the unit. Under Toppenish, they signed their new contract knowing that its recognition provision could be affected by the results of these proceedings.

Appropriate Bargaining Units

The determination of appropriate bargaining units is a function delegated by the Legislature to the Public Employment Relations Commission. City of Richland, supra. The standards for making a unit determination are set forth in RCW 41.56.060, as follows:

> 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.

The Commission defines an appropriate unit, recognizing that there may be more than one configuration of appropriate bargaining units in any given organization. Unit determinations are thus made on a case-by-case basis.

Similar policies are followed in determining whether a bargaining unit is appropriate under the National Labor Relations Act. In Pacific Southwest Airlines v. NLRB, 587 F.2d 1032 (9th Cir., 1978), the Court followed a community of interest test adopted by the National Labor Relations Board (NLRB), looking to:

1) similarity in skills, interests, duties, and working conditions;
2) functional integration of the plant, including interchange and contact among employees;
3) the employer's organizational and supervisory structure;
4) the employees' desires;
5) bargaining history; and
6) the extent of union organization among the employees.[5]

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5 See, also, Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. at 153 (1941); NLRB v. Security-Columbian Banknote Co., 541 F.2d 135, 140 (3rd Cir., 1976).

The NLRB balances individual freedom against the need for efficiency and stability in bargaining. The critical issue becomes whether or not certain employees share a substantial community of interests sufficient to justify their inclusion in a single bargaining unit.

History of Bargaining -

The history is considered here first, since much of the union's argument is based on the history of voluntary recognition and bargaining. However,

> 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.

City of Richland, supra.

Any voluntary recognition agreement made by these parties was and is inherently subject to the statute and to the unit determination authority of the Commission.

The original voluntary recognition agreement between these parties is not at issue. Subsequent to the onset of their bargaining relationship, however, the Legislature enacted RCW 41.56.430, et seq., in 1973, establishing "interest arbitration" impasse resolution procedures for certain limited classes of "uniformed personnel" as defined in RCW 41.56.030(6).

By the time these parties entered into their amendatory voluntary recognition agreement in 1981, adding the civilian dispatchers to the existing firefighter bargaining unit, they knew or should have known that such a "mixed" unit was considered inappropriate under the unit determination policies of the Commission. Three separate decisions had been issued which noted or specifically held that such a "mixed" unit was inappropriate. The first decision to maintain the separation of "uniformed personnel" from other public employees was Thurston County Fire District No. 9, Decision 461 (PECB, 1978), where non-LEOFF firefighter personnel of the fire district were placed

in a bargaining unit separate and apart from that employer's LEOFF firefighters. In City of Seattle, Decision 689 (PECB, 1979), civilians holding positions of personnel director and records manager in a police department were excluded from a bargaining unit of police department supervisors who were "uniformed" personnel within the meaning of RCW 41.56.030(6), noting:

> The legislature's policy pronouncement regarding uniformed personnel that "there should exist an effective and adequate alternative means of settling disputes," is the exception rather than the rule. The [interest arbitration] panel would not be empowered to make any determination regarding civilian personnel.

In affirming that decision, the Commission stated:

> Because of the difference in impasse resolution procedures available to uniformed, but not to non-uniformed personnel, the civilian personnel director and records manager were properly excluded from the bargaining unit.

Decision 689-A (PECB, 1979).

Those principles were again followed in City of Yakima, Decision 837 (PECB, 1980), where a bargaining unit which had historically included both "uniformed" and civilian personnel of a fire department was found to be inappropriate due to the special impasse resolution procedure for uniformed personnel.

It follows that the bargaining unit at issue here has been inappropriate from the time the civilian dispatchers were added to that unit, and that the history created by the parties is of no help to the union here.

Extent of Organization -

The "extent of organization" element of the unit determination criteria calls for consideration of the bargaining unit against the whole of the employer's operation and workforce. The Commission has adopted a general policy to avoid unnecessary fragmentation of an employer's workforce. See, Oak Harbor School District, Decision 1319 (PECB, 1981); Tacoma School District No. 10, Decision 1908 (PECB, 1984); North Thurston School District, Decision 2085

(PECB, 1985); METRO, Decision 2358-A (PECB, 1986). The NLRB also discourages fragmentation, making it difficult to obtain severance of a craft or departmental unit from a larger unit. See, Mallinckrodt Chemical Works, 162 NLRB 387 (1966), cited with approval in Yelm School District, Decision 704-A (PECB, 1980).

The bargaining unit at issue is essentially a "wall-to-wall" unit consisting of all of the regular employees of the employer, and so draws support from the "anti-fragmentation" precedents, but the case cannot be decided on that basis alone. Concerns regarding fragmentation are contradicted by the need to maintain separation between those who are and those who are not eligible by statute for the interest arbitration impasse procedure. The conclusion, based on long-established Commission precedent, that the existing unit is inherently inappropriate also disposes of any "extent of organization" arguments favoring its preservation.

Desire of Employees -
Where two or more bargaining unit structures could be appropriate, the desires of the employees are ascertained by conducting a unit determination election. Even if the employees would prefer to be in a single bargaining unit, however, they cannot be offered such a choice in a unit determination election if the result would be an inappropriate unit. Clark County, Decision 290-A (PECB, 1977).

Duties, Skills and Working Conditions -
It being clear from the foregoing that the existing bargaining unit must be divided to at least separate out the civilian dispatchers, the task remaining is the identification of at least two communities of interest within the existing bargaining unit.

All of the employees of the employer work in a limited geographical area under a single governing body and paramilitary top management. All of the employees, both firefighters and dispatchers alike, share some benefits in common, such as longevity pay.

Dispatching duties consist of answering incoming telephone calls, including both business (non-emergency) and emergency calls. Non-emergency calls are routed to the proper individual. In the case of emergency calls, the dispatcher uses radio equipment to dispatch the appropriate emergency vehicles for the response. Dispatchers also perform certain computer data entry work. All of the dispatchers, both "civilian" and "sworn", perform exactly the same duties. The civilian dispatchers work only as dispatchers. The sworn dispatchers work exclusively as dispatchers during the period of their assignment to dispatching functions. Dispatching duties are clearly distinguished from firefighter duties, which involve training for and actual response to fire and medical emergencies.

Dispatchers are specifically trained for the skills needed in the dispatching function. Those skills and training are quite different from those needed for firefighting and emergency medical services. The sworn dispatchers do not receive firefighter training while working as members of the dispatch workforce. The civilian dispatchers do not receive firefighting or emergency medical services training at any time.

All of the dispatchers, both civilian and sworn alike, have identical work hours. Those work hours are different, both in terms of shift hours and weekly/annual work hours, from the employer's firefighting workforce.

All of the dispatchers, both civilian and sworn alike, have identical vacation and holiday benefits. Those benefits and their administration are different from those of the employees in the firefighting workforce.

All of the dispatchers, both civilian and sworn alike, work under the direction of the lieutenant who heads the dispatching function. The employees in the firefighting workforce are under different immediate supervisors in the various emergency response units operated by the employer.

Thus, in many significant aspects of the employment relationship, all of the dispatchers have a community of interest with one another and are distin-

guished from the employees in the firefighting workforce. One significant deviation from the trend is wages, where the record shows that the sworn dispatchers are paid the same salary rates as the employees in the firefighting workforce, while the civilian dispatchers are paid on a substantially lower wage scale.[6]

Another significant deviation from the trend is in the area of retirement benefits, where the statutory benefits made available to sworn dispatchers as a result of their inclusion in the LEOFF retirement system are significantly greater than the benefits made available to the civilian dispatchers under the retirement system to which they have been assigned. This is by no means, however, the first occasion on which the Commission has been called upon to decide a unit determination dispute where an employee appeared to be "miscast for their role" in relation to their assignment to one of the state's several statutory retirement systems. In considering the community of interests, the Commission must focus under RCW 41.56.060 on the actual duties, skills and working conditions of the employees in the classification. This principle was addressed in College Place School District, Decision 795 (EDUC, 1980), wherein it was stated:

> In early examination of this case, the Executive Director concluded that the Association's "she has a certificate, ergo she is certificated" argument is unpersuasive. It is the position which must be examined. A decision based solely on the qualifications of an over-qualified incumbent would have the effect of boot-strapping the disputed position into a bargaining unit which has no appropriate claim to the work actually required and performed.

It was determined, on the facts of that case, that the individual in question was doing the work of a teacher and so was entitled to the rights provided by the Educational Employment Relations Act,[7] and inclusion in a bargaining unit

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6 It appears that a civilian dispatcher at the top step of the wage range is paid 82% of the 1st Class Firefighter wage rate.

7 Chapter 41.59 RCW.

of certificated employees under that statute, notwithstanding the employer's characterization of the employee as an "aide" and its assignment of her to the "Public Employees Retirement System" created by Chapter 41.40 RCW rather than to the "Teachers Retirement System" created by Chapter 41.32 RCW. See, also, Olympia School District, Decision 799 (EDUC, 1980), where the decision was based on a review of the actual position requirements imposed by the employer for the position held by the disputed employee. After noting:

> Unit determinations must be based on position requirements, and cannot be guided by incumbent qualifications.

it was concluded that the employee who held a teaching certificate was volunteering work beyond the position requirements, and that she was properly allocated to an "aide" bargaining unit.

The employer's practice of having dispatching duties performed by employees covered by the LEOFF retirement system as well as by civilian personnel imposes a need for close examination in this case of the legislature's intent in providing a separate impasse resolution mechanism for uniformed personnel. The intent of the legislature is codified in RCW 41.56.430, as follows:

> The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

"Uniformed personnel" is defined in RCW 41.56.030(6) as:

> . . . (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 any county of the second class or larger, or (b) fire fighters as that

> term is defined in RCW 41.26.030, as now or hereafter amended. (emphasis supplied)

The Legislature thus indicated a view that those limited classes of public employees falling within the definition of "uniformed personnel" compose such a vital segment of the overall work force that a strike by those public employees would affect the welfare and public safety of the state more so than a strike by other types of public employees. The constitutionality of such a distinction was upheld in Yakima County Deputy Sheriff's Association v. Board of Commissioners for Yakima County, 92 Wn.2d 831 (1979).

The extension of the "interest arbitration" process to additional groups of public employees, including fire department dispatchers, has been a recurrent issue before the Legislature.[8] Only a select few of those efforts have been successful.[9] After recent legislative amendments expanding the scope of interest arbitration for certain county law enforcement personnel, the Commission has approved voluntary stipulations by parties to divide "mixed" bargaining units into separate bargaining units of uniformed and non-uniformed personnel. See: Cowlitz County, Decision 2067 (PECB, 1984); Benton County, Decision 2221 (PECB, 1985).

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8 See, for example, 1983 HB 85 (law enforcement officers of smaller cities and counties); 1985 HB 47 (fire department dispatchers); 1985 HB 522 (health care employees); 1985 HB 651 (state patrol troopers); 1985 SB 3126 (state patrol troopers); 1985 SB 3343 (public transit employees); 1985 SB 3375 (law enforcement officers of port districts and universities); 1985 SB 3526 (county jail corrections officers); 1985 SB 3567 (health care employees); 1986 HB 1852 (state patrol troopers); 1986 SB 4471 (transit employees); 1987 HB 145 (faculty of state 4-year colleges/universities); and 1987 HB 498 (fire dispatchers and "sleeper" firefighters).

9 1983, c 287, sec. 1 [RCW 53.18.015] had the effect of extending the interest arbitration procedure to firefighters employed by port districts (i.e., those employed by the Port of Seattle at the Seattle-Tacoma International Airport); 1984, c. 150, sec. 1 [amending RCW 41.56.030(6)] extended interest arbitration to deputy sheriffs in the ten counties then within the "A", "first" and "second" classes; 1985, c. 150, sec. 1 [RCW 41.56.495] extended interest arbitration to certain emergency medical service personnel popularly known as "paramedics".

The definition of "uniformed personnel" found in RCW 41.56.030(6) is couched in terms of the definitions of the LEOFF statute. In turn, the definition of "firefighter" found in RCW 41.26.030 is limited to:

> (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;
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> (b) anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;
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> (c) supervisory fire fighter personnel;
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> (d) any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031: 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;
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> (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;
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> (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
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> (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. (emphasis supplied).

None of the dispatchers are claimed to be supervisory firefighter personnel, so as to invoke subsection (c). Subsections (d) and (e) are similarly inapplicable to the dispatchers at issue here. Neither party has claimed that the civilian dispatchers should be entitled to LEOFF coverage under (or even that the sworn dispatchers are affected by subsection (f). Nor is there any suggestion that subsection (g) has any application here. Fire District

39 does not have a civil service examination for either dispatchers or firefighters so as to invoke subsection (a), but the "and who is actively employed as such" language of that subsection is instructive as to legislative intent concerning persons qualified for but working outside of the firefighting function.

The question comes down to whether the sworn dispatchers "are actively employed as full time firefighters", within the meaning of RCW 41.26.030 (4)(b). It is clear that the civilian dispatchers never perform firefighting duties and that the sworn dispatchers do not perform any firefighting duties during the two-year period of their assignment to the dispatching function. While this employer at one time required that its dispatchers be "firefighters", it watered-down the minimum qualifications for work in that function by incorporating the employees transferred from Fire District 2 into its workforce. Subsequently, it has maintained "civilians" in fully half of its dispatcher positions, and has hired new employees for those positions without requiring them to meet the qualifications for "firefighter". The legislative intent was to provide interest arbitration to firefighters, as opposed to dispatchers. The employer has made a clear distinction between firefighting and dispatching duties. Based both on analysis of the functions and duties of the employees while serving as dispatchers and on the language of RCW 41.26.030(4)(a) and (b), the employer's dispatchers, be they civilian or sworn, do not fall within the definition of "uniformed personnel".

The conclusions reached here are in harmony with the decisions of labor relations agencies in other states. In other jurisdictions, the issue of whether dispatchers should be included with law enforcement or firefighter personnel is sometimes resolved by statute. In City of Waterbury, Decision 2472, 8 NPER CT-17021 (Conn. SBofLR, 1986), civilian dispatchers that had historically been included in a firefighter bargaining unit were excluded by a statute requiring that firefighter bargaining units be comprised only of those employees who serve in a "uniformed or investigatory" capacity. Other jurisdictions focus on community of interest criteria similar to those found in RCW 41.56.060. Thus, in City of Tallahassee, 8 NPER FL-16235 (Fla. PERC,

1985), affirmed 491 So.2d 589 (Fla. App. Dist. 1, 1986), civilian police dispatchers found to lack a substantial community of interest with police officers were excluded from the police bargaining unit. The dispatchers worked in a separate location under separate supervision and did not share certain protections and benefits afforded police officers under local, state and federal statutes. The dispatcher position was not part of a career "ladder" leading to training for police officer positions, nor were the dispatchers subject to the same restrictions on outside employment. In addition, the police officers had maintained a successful eight-year bargaining history on their own. A contrary result was reached in City of North Port, 8 NPER FL-16291 (Fla. PERC, 1985), where civilian police dispatchers were included in a police officer bargaining unit based on evidence showing that the dispatchers shared a community of interest with police officers. Dispatchers and police officers worked the same shift under the same supervision and were both jointly governed by departmental policies and procedures. Both classifications enjoyed the same sick leave policy and a special annual leave benefit, which were unique among city employees. There was also some interdependence of job functions, with dispatchers conducting prisoner searches and certain building security functions. In Town of Manchester, 8 NPER VT-17004 (Vt. LRB, 1986), dispatchers were included in a bargaining unit with police because of their high degree of work function integration. In City of Canby v. Canby Police Association, 68 Or. App. 317, 680 P.2d 1033 (Or. App. 1984), rev. den. 297 Or. 546, 685 P.2d 997, a "mixed" unit of dispatchers and police officers was held to be appropriate based on the parties' stipulation that a community of interest existed between the dispatchers and police officers. The Court also cited a provision of the Oregon statute which seemed to contemplate "mixed" units by prohibiting an employee who is a member of a bargaining unit eligible for interest arbitration from participating in a strike, even though the employee occupies a position not statutorily eligible for arbitration.[10]

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[10] Under the Oregon statute existing at that time, dispatchers were authorized to strike, while police officers were provided with interest arbitration as an alternative means of impasse resolution. "Emergency telephone workers" were added to the statute prohibiting

CONCLUSIONS

The civilian dispatchers at issue in this matter must be separated from the existing bargaining unit based on community of interest principles as well as on their status as non-uniformed personnel.

To break the existing bargaining unit into two along lines of retirement system coverage would have the effect of fragmenting the employer's dispatcher function and workforce, inviting recurrent "work jurisdiction" and "skimming of unit work" problems of a type which the Commission seeks to avoid among employees working in closely related functions. See, City of Seattle, Decision 781 (PECB, 1979). The fact that the sworn dispatchers are members of the LEOFF retirement system, and the fact that they serve as firefighters before and/or after their two-year period as dispatchers, make this determination more difficult, but not impossible. The sworn dispatchers do not qualify as "uniformed personnel" under the provisions of RCW 41.26.030, as they are not actively employed as full time firefighters during the two-year period of time they are serving as dispatchers. To divide the existing unit into three groups (i.e., separate units of civilian dispatchers, sworn dispatchers, and active firefighters) would further fragment the employer's workforce without curing the potential for work jurisdiction problems between the two dispatcher units that would be so created.

When the duties, skills and working conditions of the dispatchers are examined, not just the qualifications and prior or subsequent employment of the sworn dispatchers, it is concluded that there are two communities of interest within the employer's workforce. The sworn dispatchers share a distinct community of interests with civilian dispatchers, separate and apart from the firefighters. The existing bargaining unit is therefore divided between employees performing dispatcher work on one side and those actively employed in firefighting work on the other side.

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strikes in 1985, so that dispatchers, police and firefighters are now all required to utilize interest arbitration procedures to resolve bargaining impasses.

FINDINGS OF FACT

1. King County Fire District No. 39, a political subdivision of the state of Washington and a public employer within the meaning of RCW 41.56-.030(1), has petitioned for clarification of an existing bargaining unit, questioning the propriety of a mixed unit consisting of firefighters and dispatchers.

2. International Association of Firefighters, Local 2024, a labor organization and bargaining representative within the meaning of RCW 41.56-.030(3), is the voluntarily recognized exclusive bargaining representative of the existing bargaining unit.

3. Some dispatching work is performed by dispatchers who perform no other duties for the employer, and who are covered by a statutory retirement system other than that set forth in Chapter 41.26 RCW.

4. Some dispatching work is performed by dispatchers who are assigned, for periods of two years at a time, from among the employer's firefighter workforce and who have been continued while so employed under the coverage of the retirement system set forth in Chapter 41.26 RCW.

5. All dispatchers perform exactly the same duties, have the same work location, work the same hours, and have common supervision. Those duties, skills, and working conditions are distinct from those employees of the employer who are actively employed in full-time firefighting work. Dispatchers, including those assigned from the firefighting workforce, do not cross-over to perform firefighting work. Dispatchers accrue different hours of vacations and holidays and share their own community of interest separate and apart from firefighters.

6. Although it may have formerly done so, the employer has not required firefighter training and skills for performing as a dispatcher since 1981, when it took over dispatch functions from another employer and

commenced using dispatchers who are not members of the LEOFF retirement system established by Chapter 41.26 RCW.

7. When the parties agreed in 1981 to add the dispatchers described in paragraph 3 of these findings of fact to the existing bargaining unit of firefighters, the Public Employment Relations Commission had already ruled in at least three decisions that such a "mixed" bargaining unit was not an appropriate unit for the purposes of collective bargaining.

CONCLUSIONS OF LAW

1. No question concerning representation presently exists and the Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 and Chapter 391-35 WAC.

2. The existing bargaining unit consisting of both employees who are uniformed personnel within the meaning of RCW 41.56.030(6) and employees who are not uniformed personnel is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060.

3. The existing bargaining unit of employees of King County Fire District No. 39 may properly be divided into two separate bargaining units, one limited to employees performing dispatching work, and the other limited to employees performing firefighting work, both of which are appropriate units for the purposes of collective bargaining within the meaning of RCW 41.56.060.

ORDER

The bargaining unit formerly comprised of all employees of King County Fire District No. 39 occupying the classifications of non-fire combat dispatcher,

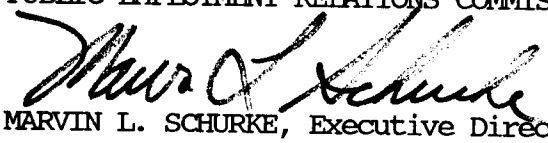
firefighter, lieutenant, captain and coordinating captain is clarified to constitute two separate bargaining units, as follows:

1. All non-supervisory uniformed personnel of King County Fire District No. 39 performing firefighting work, excluding elected officials, officials appointed for a fixed term of office, the chief of the fire department, confidential employees, supervisors and non-uniformed employees.

2. All non-supervisory dispatcher employees of King County Fire District No. 39, excluding elected officials, officials appointed for a fixed term of office, the chief of the fire department, confidential employees, supervisors and uniformed personnel performing firefighting work.

DATED at Olympia, Washington, this 6th day of March, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.