

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
THURSTON COUNTY FIRE DISTRICT 3)	CASE 8522-C-90-487
)	
For clarification of an existing)	DECISION 3859 - PECB
bargaining unit of employees)	
represented by:)	
)	
INTERNATIONAL ASSOCIATION OF FIRE)	ORDER CLARIFYING
FIGHTERS, LOCAL 2903, AFL-CIO.)	BARGAINING UNIT
)	
)	

Foster, Pepper & Shefelman, by P. Stephen DiJulio, Attorney at Law, appeared on behalf of the employer.

Webster, Mrak & Blumberg, by Mark E. Brennan, Attorney at Law, appeared for the union.

On April 3, 1990, Thurston County Fire District 3 filed a petition with the Public Employment Relations Commission, seeking clarification of an existing bargaining unit of its employees represented by International Association of Fire Fighters, Local 2903, AFL-CIO. Specifically, the employer sought a ruling that employees holding the titles of "fire prevention specialist" and "community safety education specialist" were excluded from the bargaining unit. A hearing was held on March 1, 1991, before Hearing Officer Rex L. Lacy. The parties filed post-hearing briefs.

BACKGROUND

Thurston County Fire District 3 is organized and operated pursuant to Chapter 52.30 RCW. The employer provides fire suppression, emergency medical response, fire prevention, fire code enforcement, construction plan review, and fire education services in an area which includes the City of Lacey and a portion of unincorporated

Thurston County, Washington. Fire Chief James Broman directs the day-to-day operations and reports to a three-member board of elected fire commissioners. Deputy Chief William Pierpoint is the employer's personnel officer. Assistant Chief Ken Walkington supervises the fire suppression and emergency medical services.

The employer operates seven fire stations, two of which are staffed by employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7). That workforce consists of seven fire fighters, six lieutenants, eight paramedics, and one training officer. The employer utilizes volunteer fire fighters to staff its remaining stations, and to supplement the work of the uniformed personnel. Other positions on the employer's staff include an emergency medical services officer, a fire marshal, an assistant fire marshal, a mechanic, a finance secretary, and the two "fire prevention specialist" positions at issue in this proceeding.¹

International Association of Fire Fighters, Local 2903, AFL-CIO, is the exclusive bargaining representative of a bargaining unit that was described in the certification issued by the Public Employment Relations Commission on August 5, 1983, as follows:

All uniformed firefighters (as defined in RCW 41.56.030(6)), employed by the employer, excluding the chief, assistant and deputy chiefs, supervisors, and confidential employees.

Thurston County Fire District 3, Decision 1685 (PECB, 1983).²

¹ At the time of the hearing in this matter, the "community education specialist" position had been authorized, but was vacant. Although the employer indicated that it intended to fill that position, the Hearing Officer did not take testimony on the position, because of the uncertainty as to when it would become operative.

² The statute has subsequently been amended, resulting in the renumbering of the definition of "uniformed personnel" from RCW 41.56.030(6) to RCW 41.56.030(7).

James Butler is president of Local 2903. Steve Neff previously held office as president of Local 2903.

The employer has a history of using job classifications with dual titles (e.g., inspector/duty officer, inspector/lieutenant, fire inspector/firefighter, fire prevention specialist/firefighter, plan review technician/fire prevention specialist, and firefighter/public education specialist). During negotiations in 1989, the parties agreed to affix singular job titles to bargaining unit positions. The current job titles used in the contract are "firefighter", "training officer", "lieutenant", and "paramedic". In addition, the employer affixed singular job titles to the classifications of fire marshal, vehicle maintenance supervisor, vehicle mechanic, community education specialist, finance secretary, and fire prevention specialist. The recognition clause of the parties' 1989 collective bargaining agreement specified:

ARTICLE - Policy

Section 1 - Recognition

The Employer recognizes the Union as the exclusive bargaining representative for all full-time uniformed personnel (as defined by RCW 41.56.030(6)) [sic] employed by the Employer, excluding:

- | | |
|--------------------|-----------------------|
| a. Fire Chief | e. District Secretary |
| b. Deputy Chief | f. EMS Officer |
| c. Assistant Chief | g. All employees of |
| d. Fire Marshal | the Fire District |
| | who are not uniformed |
| | employees as defined |
| | by RCW 41.56. |

The latest agreement between these parties is effective from January 1, 1990 to December 31, 1991. The recognition clause of that contract omits the exclusion of the "District Secretary" position from the bargaining unit, but no issue has been raised in this proceeding concerning that change.

The fire marshal's office is located at the employer's headquarters station, which is known as Station 31. Tom Miller is the fire marshal. The fire marshal's office performs fire investigations, fire inspections, conducts public education classes and provides public relations services to patrons of the district. Prior to the events giving rise to this case, the fire marshal's office consisted of the fire marshal, a firefighter/public education specialist, a fire inspector/fighter, and a plan review technician/fire prevention specialist.

On December 5, 1989, Pierpoint notified the union, by means of a letter to Neff, that the employer desired to discuss changes in several dual job classifications. Specifically, Pierpoint indicated that it was the employer's desire to eliminate the "public education/firefighter", "fire inspector/firefighter", and "district secretary/firefighter" classifications. The employer proposed to reassign the individuals holding those positions to the bargaining unit position of fire fighter. At the same time, Pierpoint informed the union that the employer was planning to create a new classification titled "fire prevention specialist", and that the employer proposed to fill that classification with civilian employees who would not be included in the bargaining unit.

On December 7, 1989, Neff notified Broman of the union's desire to negotiate the employer's proposed change in the bargaining unit status of the new classification of "fire prevention specialist". At the same time, Neff informed Broman that the union believed that the employer's unilateral actions involved a "mandatory" subject of bargaining and, further, indicated that if the employer did not negotiate with the union about the changes, unfair labor practice charges would be filed.

On December 14, 1989, Broman wrote to the chairman of the district's civil service commission, requesting that the classifica-

tions of "duty officer/public education technician", "inspector/firefighter", and "district secretary/firefighter" be discontinued, effective January 1, 1990. At the same time, Broman requested that the civil service commission create new classifications titled "lieutenant", "fire fighter", "training officer", and "emergency medical services officer". Broman proposed to transfer the incumbents of the three discontinued dual job classifications to fire fighter positions. The civil service commission complied with Broman's request.

In 1990, the job titles of "assistant fire marshal", "community education specialist" and "fire prevention specialist" were added in that office. The "assistant fire marshal" replaced the previous "plan review technician/fire prevention specialist" position, which had been held by an individual who was not within the definition of "uniformed personnel" and was not within the bargaining unit. The previous "fire inspector/firefighter" title evolved into the "fire prevention specialist" classification, while the former "firefighter/public education specialist" position evolved into the vacant "community education specialist" job.

The employer filed this unit clarification proceeding shortly after the effective date of the changed job titles. The union followed through on its earlier statement by filing unfair labor practice charges challenging the unilateral assignment of bargaining unit work to persons outside of the bargaining unit.³

³ Case 8590-U-90-1864, filed on May 10, 1990. Since Chapters 391-35 WAC (unit clarification) and 391-45 WAC (unfair labor practices) have different procedures, and involve different burdens of proof, it has been the practice of the Commission to process related matters in sequence, rather than together. In this situation, the unfair labor practice case has been held in abeyance. This case answers the question of whether the disputed positions are within the bargaining unit; the unfair labor practice case will then proceed from that premise.

The job description for the "fire inspector/firefighter" position which existed from 1983 until 1989 read:

NATURE OF WORK

Fire Inspectors, under direction of the Fire Marshal, are responsible to assure all required inspections are completed as per departmental policy and procedure. The work involves coordination and interaction with volunteer fire inspectors. The Fire Inspector/Firefighter exercises considerable judgement and action and is reviewed by the Fire Marshal through conferences, reports and results obtained.

WORK INVOLVED

- Conduct inspections of public assembly, educational, institutional, residential store and office, manufacturing, industrial, storage and special occupancies for compliance with fire codes and ordinances in order to eliminate hazards.
- **Respond to major alarm calls. Will assist with fire suppression activities as assigned.**
- Conduct re-inspection and initiate proceedings to induce compliance if necessary.
- Maintain inspection records and files.
- Teach a variety of fire and life safety classes as assigned.
- Investigates fires as assigned. Cover Duty Inspector shifts as assigned.
- Responds to complaints and reports of hazardous conditions.
- Participates on a supervisory level at community activities to insure fire safety compliance, aiding in fire department personal relations with community members.
- Participates in the coordination of volunteer activities in the fire prevention field.
- **Periodically drills with other members of the fire department in fire fighting skills.**
- Performs inspections and writing of burning permits relative to as necessary.

SKILLS AND KNOWLEDGE

- Ability to clearly express oneself orally and in writing.
- Knowledge of occupational related personal safety practices and procedures.
- Ability to interact with the public under conditions of code enforcement, fire investigation and fire prevention education duties with tact, discretion and without loss of authority.
- Knowledge and ability to perform the objectives specified in the State Fire Chief's Standards for Fire Inspector I and II.

MINIMUM QUALIFICATIONS

- ...
- **Successfully complete Level I Fire Suppression Training.**

Exhibit 8 [emphasis by **bold** supplied].

The job description for the newly created "fire prevention specialist" classification reads:

Nature of Work:

This is a non Civil Service, non-uniform position under the direction of the Assistant Fire Marshal and Fire Marshal. This position will be assigned a non scheduled 40 hours of work per week. This position performs Fire Marshal Office activities as assigned and is required to work closely with the public, Fire District personnel, developers, builders, architects, installation technicians and other governmental officials. This position will also be scheduled for fire investigator stand-by shifts.

Examples of Work:

Assignments may include, but are not limited to the following:

Conducts new construction plan reviews and field verification to insure systems, buildings and processes, including the storage, handling and use of hazardous substances,

materials and devices are in compliance with adopted fire and building codes enforced by the Fire Marshal Office.

Conducts code consultations with the public and other agencies concerning Fire and related Building and Mechanical Code issues.

Responds to fire code complaints.

Conducts regularly scheduled fire inspections and reinspections.

Processes fire code permits.

Prepares program and occupancy reports.

Conducts formal fire investigation activities for the District. This may also include assisting fire district personnel with simple fire investigations. Completes regularly scheduled "Investigator 3" duty shifts as assigned.

Processes Transmittal Memorandums submitted by the local Planning Departments and attends Presubmission Conferences and Site Plan Review Meetings concerning new construction activities as assigned.

Performs other public education, information or relations duties as assigned.

Attends Fire Marshal Office training to maintain and develop job skills as assigned.

Teaches Fire Marshal Office classes when assigned.

Performs Target Hazard Program and Risk Analysis tasks as assigned.

Shall perform other necessary duties as assigned.

Desirable Knowledge, Abilities and Skills.

Knowledge of basic operational procedures within the Fire Marshal Office.

Knowledge of the Uniform Fire Code and the Uniform Fire Code Standards; non structural aspects of the Uniform Building Code and the Uniform Building Code Standards; local fire and building codes and amendments; and NFPA pamphlets: 13, 13A, 13D, 20, 22, 71, 72A, 72C, 72D, and 72C.

Ability to work as a team with other members of the Fire District and other related agen-

cies to effect proper disposition of work assignments.

Ability to clearly express oneself orally and in writing.

Ability to speak in front of groups of people.

Ability to use applicable Fire District computer equipment.

Ability to enforce codes with a balance maintained between the intent of applicable fire and related codes and their precise literal definition.

Ability to interact with the public, under conditions of code enforcement, with tact, discretion and without loss of authority.

Ability to read and understand blueprints, ordinances, specifications and construction plans, as well as the ability to identify areas of noncompliance within fire and related life safety codes.

Ability to identify code deficiencies and specify corrections for proper code compliance when conduction plan reviews, field verifications and inspections.

Ability to identify fire cause indicators, properly document fire investigation findings, conduct fire scene interviews and precess evidence when investigating fires.

Ability to maintain accurate records and prepare written reports.

Ability to walk and climb for extended periods of time, this includes lifting, stooping and carrying items as necessary.

Ability to set realistic goals and insure their completion.

Exhibit 6

Prior to the reorganization of the fire marshal's office, routine fire inspections on mercantile and office buildings were performed by engine company personnel. Engine companies continue to do those inspections, and they continue to submit inspection reports to the fire marshal.

Before the reorganization, the fire inspector/firefighter performed the more difficult inspections. The record indicates that the most complex inspections are now performed by the two fire prevention specialists.

POSITIONS OF THE PARTIES

The employer contends that the employees working under the "fire prevention specialist" title are not "uniformed personnel" as defined by RCW 41.56.030(7); that the disputed positions are filled with civilian employees who have different skills, training, duties, working conditions, and supervision than the employees in the bargaining unit; that the "fire prevention specialists" do not share a sufficient community of interest with the full-time uniformed personnel to be included in the bargaining unit; and that the affected employees are specifically excluded from the bargaining unit under the terms of the collective bargaining agreement.

The union contends that the "fire prevention specialists" have a strong community of interest with the bargaining unit employees; that the disputed employees have similar skills, duties, and working conditions with members of the bargaining unit; and that they have similar pay, benefits and training, report to work at the same locations, perform similar types of functions, and fill out the same types of paperwork as do the bargaining unit fire fighters.

DISCUSSION

The authority of the Public Employment Relations Commission to determine bargaining units is stated generally in RCW 41.56.060, as follows:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT -- BARGAINING REPRESENTATIVE. The commission, 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 commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. . . .

Separately, the Legislature has adopted an "interest arbitration" procedure for resolving impasses involving "uniformed personnel". RCW 41.56.430, et seq.

Applying its unit determination authority in the context of the separate and distinct impasse resolution procedure available to "uniformed personnel", the Commission has ruled that employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7) should not be mixed in the same bargaining unit with employees who are not eligible for the special impasse resolution procedure. Thurston County Fire District 9, Decision 461, (PECB, 1978); City of Yakima, Decision 837 (PECB, 1980); King County Fire District 39, Decision 2638 (PECB, 1987).

Status as "Uniformed Personnel"

The definition of "uniformed personnel" contained in Chapter 41.56 RCW has little or nothing to do with the type or uniformity of clothing worn by employees. Rather, RCW 41.56.030(7) defines the class of employees eligible for interest arbitration as follows:

"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 offi-

cers 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]

Chapter 41.26 RCW is the statute which creates the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF), and RCW 41.26.030 contains the definitions applicable to that chapter, including:

(4) "Firefighter" 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 RCW 52.12.031; Provided, That for persons who establish membership in 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 41.15 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;

(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; and (h) the term "fire fighter" also includes any person employed on or after November [1,] 1975, and prior to December 1, 1975, as a director of public safety so long as the duties of the director substantially involve only police and/or fire duties and no other duties. [emphasis supplied]

In 1974, this employer established a civil service commission to promulgate and administer rules and regulations regarding hiring, promotions, appointments, transfers, layoff, recall, and discipline of employees. By resolution of the fire district, authority has been delegated to the civil service commission concerning the following employees:

The officers and firefighters employed in such department, who are paid regularly by the District and devote their time to firefighting and fire prevention activities and emergency medical response.

That civil service system continued in effect through the time of the hearing in this matter.

Hiring -

Employees hired prior to 1990 for the "fire inspector/firefighter" classification were required to take and pass a written test and a physical examination. They were assigned a numerical score under the civil service procedure, and were interviewed and hired in accordance with their placement on the civil service hiring register. Those procedures continue in effect for employees in the "firefighter" classification.

Prior to 1990, the employer also had some employees who were not covered by the civil service system. They were not required to take a civil service examination for their position, and were simply hired by the fire chief or his designee.

When they were hired in 1990, the employees holding the "fire prevention specialist" positions were not required to take a civil service examination. They were simply hired and assigned to the newly created classification.

Training -

Along with other bargaining unit employees, the employees who held the title of "fire inspector/firefighter" were required to complete "Level I" fire fighter training as a minimum qualification for the job. While employed, they participated in training and drills on firefighting skills.

Significantly absent from the job description of the disputed classification is any reference to experience or training as a fire fighter. The fire prevention specialists do not, in fact, participate in training classes on firefighting skills.

Emergency Responses -

The bargaining unit members who held the former "fire inspector/firefighter" title responded to fire alarms and engaged in fire suppression activities. The record indicates that the employer's operations have grown, and that the fire inspector/firefighter performed less and less fire suppression training and duties in recent years, as the district grew.

The disputed fire prevention specialists do not participate in fire suppression responses. In theory, the fire prevention specialists could be at home in their beds while one or more buildings in the district burned down. It appears that they would be called out only after the fire was put out, and then only in an "investigation" capacity.

Conclusions -

Together with the change of hiring procedure, the lack of any training or responsibilities of the disputed employees for fire

suppression is a significant change of circumstances which must be considered in light of the statutory definition of "uniformed personnel". The disputed employees have been enrolled for retirement coverage under the Public Employees' Retirement System, Chapter 41.40 RCW, rather than the LEOFF retirement system.

The employees holding the job title of "fire prevention specialist" in this case are not "uniformed personnel" within the meaning of RCW 41.56.030(7). That distinction alone is cause for their exclusion from the bargaining unit represented by the union. The same rationale used to exclude other employees from bargaining units of "uniformed personnel" in Thurston County Fire District 9, supra; City of Yakima, supra; and King County Fire District 39, supra, must be applied to this case.

Community of Interest

Fire inspection functions have been, and continue to be, among the services provided by the employer to its residents. Fire inspection is within the purview of the employer's civil service commission, and has been included within the scope of bargaining unit work in the past. Nothing presented in this record would prevent or preclude the continuation of the "fire inspection" function within the bargaining unit.

At the same time, at least three past decisions indicate that the performance of fire code enforcement work does not necessarily equate with being a "fire fighter" within the meaning of RCW 41.26.030 or, in turn, within the definition of "uniformed personnel" found in RCW 41.56.030(7). In Clark County, Decision 290-A (PECB, 1977), a separation of fire inspectors from a larger bargaining unit of "civilian" employees was rejected. In City of Yakima, Decision 1124, 1124-A (PECB, 1981), nothing was found to be fundamentally improper about a transfer of the fire inspection function from that employer's fire department to its building

department.⁴ Most recently, a union was found guilty of a refusal to bargain violation in City of Pasco (International Association of Fire Fighters, Local 1433), Decision 3641 (PECB, 1990), where the employer properly gave notice and sought to bargain a proposed transfer of fire inspection work to its building department.⁵

Further, the record in this case indicates a separation within the employer's table of organization. Although Broman has the ultimate supervisory authority over the disputed fire prevention specialists, along with all other district employees, he does not supervise them on a daily basis. Fire Marshal Tom Miller has that responsibility. Miller assigns work to the fire prevention specialists, evaluates their performance, and can adversely affect their continued employment through disciplinary action. If the fire prevention specialists were "uniformed personnel", supervisory responsibility would devolve instead to Walkington.

The record in this matter does not indicate that the disputed "fire prevention specialist" employees have a "community of interest" which is inseparable from that of the "uniformed personnel" performing fire suppression and emergency medical response functions.

FINDINGS OF FACT

1. Thurston County Fire Prevention District 3 is a "public employer" within the meaning of RCW 41.56.030(1). The employer provides fire suppression, fire inspection, and fire

⁴ The decision in that case turned on a finding that the union's bargaining rights concerning the "skimming" of unit work had been waived by inaction.

⁵ Recognizing that RCW 41.56.470 precludes an employer of "uniformed personnel" from acting unilaterally at impasse, the Examiner's remedial order in that case required the parties to go to interest arbitration on the "skimming of unit work" issue.

prevention services to residents of the City of Lacey and unincorporated Thurston County, Washington.

2. International Association of Fire Fighters, Local 2903, AFL-CIO, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of employees of Thurston County Fire District 3 who are "uniformed personnel" within the meaning of RCW 41.56.030(7). That bargaining unit currently includes employees in the job classifications of "fire fighter", "paramedic", "lieutenant", "emergency medical services officer", and "training officer". That bargaining unit formerly included employees in the job classification of "fire inspector/firefighter".
3. The employer and union have had a series of collective bargaining agreements since 1983, the latest of which is effective from January 1, 1990 to December 31, 1991.
4. In January, 1990, the employer's civil service commission approved the employer's request for elimination of certain dual-titled classifications, including that of "fire inspector/firefighter". At the same time, the employer transferred the employees holding the eliminated titles to the bargaining unit classification of "fire fighter".
5. During 1990, the employer created and filled a new classification of "fire prevention specialist". The employees hired into that classification were not hired through the examination procedures of the employer's civil service system, and were not provided coverage under the retirement system established by Chapter 41.26 RCW.
6. Fire prevention specialists perform complex and difficult fire inspections and investigations, perform plan reviews concern-

ing new construction projects, process fire code permits, respond to fire code complaints, perform the duties of the open range burning ranger, teach fire marshal office training classes, and perform public education informational tasks. Fire prevention specialists do not participate in training for fire suppression functions, and do not respond to fire suppression alarms.

CONCLUSIONS OF LAW

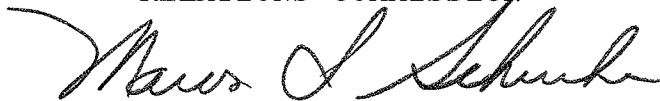
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Employees of Thurston County Fire District 3 in the current job classification of "fire prevention specialist" are not "uniformed personnel" within the meaning of RCW 41.56.030(7).

ORDER

The employees of Thurston County Fire District 3 in the current job classification of "fire prevention specialist" are not included in the bargaining unit represented by International Association of Fire Fighters, Local 2903.

DATED at Olympia, Washington, this 6th of September, 1991.

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.