

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-A - PECB |
| bargaining unit of employees      | ) |                        |
| represented by:                   | ) |                        |
|                                   | ) |                        |
| INTERNATIONAL ASSOCIATION OF FIRE | ) | DECISION OF COMMISSION |
| FIGHTERS, LOCAL 2903, AFL-CIO.    | ) |                        |
| _____                             | ) |                        |

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.

This matter comes before the Commission on a timely petition for review filed by International Association of Fire Fighters, Local 2903, AFL-CIO, seeking to overturn an Order Clarifying Bargaining Unit issued by the Executive Director.<sup>1</sup>

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 a portion of unincorporated Thurston County, as well as the City of Lacey. The day-to-day operations are directed by Fire Chief James Broman, who reports to a three-member board of elected fire commissioners. Deputy Chief William Pierpoint is the

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<sup>1</sup> Thurston County Fire District 3, Decision 3859 (PECB, 1991).

employer's personnel officer, and Assistant Chief Ken Walkington supervises fire suppression and emergency medical services.

Two of the employer's seven fire stations are staffed by employees who are "uniformed personnel" within the meaning of RCW 41.56.030-(7).<sup>2</sup> That group is composed of seven fire fighters, six lieutenants, eight paramedics and one training officer. Volunteer fire fighters staff the remaining five stations. Other positions of the employer's staff include a fire marshal, an assistant fire marshal, an emergency medical service officer, a finance secretary, a mechanic and the two "fire prevention specialists" who are involved in this proceeding.

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

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

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

That bargaining unit description has not been amended by Commission order since its issuance on August 5, 1983.

Prior to contract negotiations between the parties in 1989, the employer had a practice of using job classifications with dual titles. Those dual titles included "fire inspector/fire fighter", "fire prevention specialist/fire fighter", "plan review technician/

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<sup>2</sup> The definition of "uniformed personnel" was formerly codified as RCW 41.56.030(6), and that reference is found in several of the documents relevant to this case.

fire prevention specialist", "district secretary/fire fighter", and "fire fighter/public education specialist".

The practice of using dual job titles was changed during the 1989 negotiations, so that the current job titles in the contract are "fire fighter", "training officer", "lieutenant", and "paramedic". The recognition clause of the parties' collective bargaining agreement covering calendar year 1989 provided that the union was the exclusive representative for "all full-time uniformed personnel (as defined by RCW 41.56.030(6))". Apart from the titles excluded from the bargaining unit by the certification, the 1989 contract excluded the "fire marshal", "district secretary", "EMS officer" and "all employees of the fire district who are not uniformed employees as defined by RCW 41.56".<sup>3</sup>

The parties' latest agreement, effective from January 1, 1990 to December 31, 1991, omits reference to the "district secretary" as a position excluded from the bargaining unit.

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

In December of 1989, Pierpoint notified the union, by means of a letter to local union President Steve Neff, that the employer desired to discuss changes in several of the dual job classifica-

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<sup>3</sup> The 1989 agreement does not contain an exclusion of "confidential" employees.

tions. He specifically indicated that it was the employer's desire to eliminate the "public education/fire fighter", "fire inspector/fire fighter", and "district secretary/fire fighter" classifications, and to reassign the individuals holding those positions to the 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.

Two days later, Neff notified Broman of the union's desire to negotiate the employer's proposed change in the bargaining unit status of the "fire prevention specialist" classification, and advised him that the union believed that the employer's unilateral actions involved a mandatory subject of bargaining. Neff indicated that unfair labor practice charges would be filed if the employer did not negotiate about the changes.

Late in December of 1989, Broman wrote to the chairman of the employer's civil service commission and requested that the classifications of "duty officer/public education technician", "inspector/fire fighter", and "district secretary/fire fighter" be discontinued, effective January 1, 1990. At the same time, he 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 classifications to "fire fighter" positions. The civil service commission complied with Broman's request.

In 1990, three new job titles were added to the fire marshal's office, as follows:

An "assistant fire marshal" replaced the previous "plan review technician/fire prevention specialist" position. The old title had been held by an individual who was not within the definition of

"uniformed personnel" and was not part of the bargaining unit represented by the union.

The previous "fire inspector/fire fighter" title evolved into the "fire prevention specialist" classification.

The former "fire fighter/public education specialist" position evolved into the "community specialist" position, but that position remained vacant.<sup>4</sup>

On April 3, 1990, shortly after the effective date of the changed job titles, the employer filed the petition to initiate this unit clarification proceeding. The union filed unfair labor practice charges on May 10, 1990, challenging the unilateral assignment of bargaining unit work to persons outside of the bargaining unit.<sup>5</sup> The Executive Director chose to process the related matters in sequence, rather than together, and went forward with this unit clarification proceeding, to determine whether the disputed positions are within the bargaining unit. The unfair labor practice case was held in abeyance, and remains before the Commission in "Special Open" status, pending the outcome of this case.

The Executive Director's decision fully sets forth the job descriptions for "fire inspector/fire fighter" and "fire prevention specialist", noting two significant differences between them:

First, the "fire inspector/fire fighter" job description included **"Respond to major alarm calls. Will assist with fire suppression activities as assigned"** and **"Periodically drills with other members of the fire department in fire fighting skills"** under the heading of "WORK INVOLVED", while the job description for the "fire prevention specialist" does not contain such requirements.

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<sup>4</sup> The employer sought a ruling in this proceeding excluding the position of "community education specialist" from the bargaining unit. The authorized position had not been filled at the time of the hearing, and the Hearing Officer therefore did not take testimony on the position.

<sup>5</sup> Case 8590-U-90-1864.

Second, the "fire inspector/fire fighter" job description included "**Successfully complete level I fire suppression training.**" under the heading of "MINIMUM QUALIFICATIONS", while the job description for "fire prevention specialist" does not contain such a requirement.

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 these inspections and to submit inspection reports to the fire marshal.

Before the 1990 reorganization, the fire inspector/fire fighter performed the more difficult inspections. These inspections are now performed by the two fire prevention specialists.

A hearing was held on March 1, 1991, before Hearing Officer Rex L. Lacy. The parties filed post-hearing briefs. The Executive Director's decision, issued on September 6, 1991, relied upon Commission precedent holding that employees who are "uniformed personnel" within the meaning of RCW 41.56.030(7), and therefore eligible for the special impasse resolution procedure, should not be mixed in the same bargaining unit with employees who are not so eligible. The Executive Director ruled that the employees holding the job title of "fire prevention specialist" are not "uniformed personnel", that they do not have a community of interest which is inseparable from that of the "uniformed personnel" performing fire suppression and emergency medical response functions, and that they should not be included in the bargaining unit represented by the union.

#### POSITIONS OF THE PARTIES

The union takes the position that the Executive Director erred by:  
(1) holding the union's unfair labor practice complaint in abeyance

while this matter is pending; (2) finding that the fire prevention specialists do not participate in emergency responses or training classes on firefighting skills; (3) finding that the fire prevention specialists have separate supervision from bargaining unit employees; (4) finding that fire prevention specialists are not uniformed personnel within the meaning of RCW 41.56.030(7); (5) finding that fire prevention specialists do not share a sufficient community of interest to be included in the bargaining unit represented by the union; (6) finding that fire inspector/fire fighters performed fire suppression training and duties in the year before the fire prevention specialists assumed their duties; and (7) ordering the exclusion of fire prevention specialists from the bargaining unit represented by the union.

The employer's response to the petition for review is in substantial agreement with the Executive Director's findings, conclusions and order.

## DISCUSSION

### Sequence of Case Processing

The Executive Director's decision to hold the unfair labor practice complaint in abeyance while this matter is decided follows the Commission's practice of processing related matters in sequence, rather than together. The employer's petition was filed on April 3, 1990, whereas the unfair labor practice charge was filed May 10. This case answers a question that is necessary to the processing of the unfair labor practice case (i.e., whether the fire prevention specialist position is within the bargaining unit), and the unfair labor practice case may proceed from the decision made herein.

Bifurcated proceedings may sometimes cause delay in the ultimate resolution of an unfair labor practice complaint, but there are

also occasions when a unit clarification decision will effectively resolve an unfair labor practice complaint; thus avoiding the time and cost of taking additional evidence. While there are certainly valid arguments that can be made for the benefit of consolidating proceedings in some instances, we find no error in the Executive Director's decision to follow the Commission's general practice of bifurcated proceedings.

The Commission also disagrees with the union's suggestion that the record before us suffices, without further proceedings, to enter findings and conclusions here that the employer "refused to bargain collectively about the transfer of the work outside the Unit". Such a determination, if appropriate, will have to be made after the matter has been fully litigated in the unfair labor practice proceeding.

#### Unit Determination Criteria

RCW 41.56.060, which gives the Commission authority to determine or modify bargaining units, provides:

In determining, modifying, or combining the bargaining unit, the Commission shall consider the **duties, skills, and working conditions** of 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 ... [Emphasis by **bold** supplied].

The Commission's use of the unit determination authority to avoid conflicts of interest within bargaining units has been affirmed by the courts. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).



As pointed out by the Executive Director, the Legislature has adopted an "interest arbitration" procedure for resolving impasses involving "uniformed personnel".<sup>6</sup> In exercising its unit determination authority under RCW 41.56.060, the Commission has ruled that employees who are "uniformed personnel" should not be mixed in the same bargaining unit with employees who are not eligible for the special impasse resolution procedure. King County Fire District 39, Decision 2638 (PECB, 1987); City of Yakima, Decision 837 (PECB, 1980); City of Seattle, Decision 689-A (PECB 1979); and Thurston County Fire District 9, Decision 461 (PECB, 1978). As with the separation of "supervisors" in Richland, supra, this exercise of the unit determination authority is deemed necessary to avoid complications in bargaining and conflicts of interest between "haves" and "have nots" within bargaining units.

Qualification as "Uniformed Personnel"

RCW 41.56.030(7) sets forth the definition of "uniformed personnel" as including certain law enforcement officers and:

**... fire fighters as that term is defined in RCW 41.26.030, as now or hereafter amended.**  
[Emphasis by bold supplied].

RCW 41.26.030 states that "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;** ... [Emphasis by bold supplied].

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<sup>6</sup> RCW 41.56.430, et seq.

There is no other definition of "fire fighter" in the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

The record indicates that, in 1974, the employer established a civil service commission to promulgate and administer rules and regulations regarding "the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotion, suspensions and discharges shall be made". By resolution of the fire district board, authority has been delegated to the civil service commission concerning the employer's officers and fire fighters:

... who are paid regularly by the District and devote their time to firefighting and fire prevention activities and emergency medical response.

We thus examine the applicability of those civil service procedures to the "fire prevention specialist" positions at issue here.

#### Hiring Procedures -

Prior to 1990, employees hired as "fire inspector/fire fighter" were required to take and pass a civil service examination, as well as a physical examination. They were assigned a numerical score on the civil service examination, and were interviewed and hired in accordance with their placement on the civil service hiring register. Such procedures continue in effect for the current "fire fighter" classification.

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

The employees holding the "fire prevention specialist" positions were not required to take the civil service examination when they

were hired in 1990, but were simply hired and assigned to the new classification.

Relying on City of Pasco, Decision 2636-B (PECB, 1987), as standing for the proposition that an employer cannot defeat the jurisdiction of a civil service commission once the position is designated as covered, the union takes the position here that the employer's designation of the "fire prevention specialist" positions as exempt from civil service was contrary to the authority it previously delegated to its civil service commission, and was therefore void.<sup>7</sup> Although we question whether this Commission has the statutory authority to invalidate a municipality's action regarding its civil service commission, we find City of Pasco to be inapposite. That decision involved a "covered" classification, while the position of "fire prevention specialist" was never covered by the employer's civil service commission.

Training -

Together with other bargaining unit employees, the fire inspector/fire fighters were required to complete "Level I" fire fighter training as a minimum qualification for the job. They participated in training and drills on firefighting skills while so employed, although, as noted by the Executive Director, "the fire inspector/fire fighter performed less and less fire suppression training and duties in recent years" as the employer's operations have grown.<sup>8</sup>

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<sup>7</sup> This entire argument is in addition to the union's claim that the employer's designation of the disputed position as non-uniformed and not covered by the civil service commission circumvented the collective bargaining rights of employees - an argument which will properly be dealt with in the unfair labor practice proceeding.

<sup>8</sup> The union mistakenly takes the position that the Executive Director found that persons filling such positions performed fire suppression training and duties in the year before the fire prevention specialist assumed his duties. No such finding was made.

The job description for the disputed classification contains absolutely no reference to experience or training as a fire fighter. The employees filling the "fire prevention specialist" positions do not, in fact, participate in most of the training classes on firefighting skills. They are not generally required to do so, the only exception being training on use of protective clothing and breathing apparatus for use if any of the "fire prevention specialist" employees elects to **inspect** a fire scene before the final extinguishment of the blaze.<sup>9</sup> We amend paragraph 6 of the findings of fact to indicate a lack of participation in most, but not all, firefighting training classes. Given the limited nature of the participation in training classes on firefighting skills, we do not feel any change in the Executive Director's ultimate decision is mandated.

Emergency Responses -

The primary function of the fire fighters in the bargaining unit represented by the union is making emergency responses for fire suppression and emergency medical services.

A major difference between the duties performed by bargaining unit members and the employees hired into the "fire prevention specialist" positions is that the latter group devotes its efforts to **fire prevention**.<sup>10</sup> The disputed employees do not participate in fire suppression activities.

Conclusion -

The Executive Director's conclusions are supported both by the relevant job descriptions and by the record regarding what "fire prevention specialists" actually do. We conclude that the

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<sup>9</sup> All employees entering an active fire scene are required to don a self-contained breathing apparatus (SCBA) and protective clothing.

<sup>10</sup> The record indicates that firefighters perform some of the less complex inspections.

Executive Director acted properly in ruling that the employees holding the job title of "fire prevention specialist" are not "uniformed personnel" within the meaning of RCW 41.56.030(7).<sup>11</sup> We also agree that such a distinction is, by itself, cause for their exclusion from the bargaining unit represented by the union. King County Fire District 39, supra; City of Yakima, supra; City of Seattle, supra; and Thurston County Fire District 9, supra.

#### Community of Interest

The Executive Director concluded that 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 responses.

#### Supervision -

Contrary to the union's assertion, the evidence clearly shows that, while the ultimate disciplinary authority for all of the employer's employees is vested in the fire chief, Broman does not supervise all of them on a daily basis. The assistant fire marshal has the day-to-day supervisory responsibility concerning the "fire prevention specialist" positions. There is a separate chain of command for the fire suppression employees who report to the assistant chief.

#### Skills, Duties and Working Conditions -

As we have already noted, the duties of the employees hired to fill the disputed positions are primarily fire prevention. The training

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<sup>11</sup> In deciding that fire prevention specialists are not "uniformed personnel", we do not rely on the coverage of those employees under the Public Employees' Retirement System (PERS), Chapter 41.40 RCW, rather than the Law Enforcement Officer and Fire Fighters Retirement System (LEOFF), Chapter 41.26 RCW. We note that several members of the bargaining unit were also covered by PERS.

they receive emphasizes that area, rather than fire suppression and emergency medical services.

The job description for the "fire inspector/fire fighter" position which existed from 1983 to 1989 called for a knowledge of "occupational related personal safety practices and procedures" and "knowledge and ability to perform the objectives and standards specified in the State Fire Chief's Standards for Fire Inspector I and II". The "fire prevention specialist" job description stresses knowledge of basic occupational procedures within the fire marshal's office **and** knowledge of the Uniform Fire Code, Uniform Fire Code Standards, non-structural aspects of the Uniform Building Code and its Standards, as well as local fire and building codes and various National Fire Protection Association (NFPA) pamphlets. The "fire prevention specialist" job description calls for skills involving the reading and comprehension of blueprints, ordinances and construction plans, as well as the ability to identify "code deficiencies" and "fire cause indicators". The former fire inspector/fire fighter position required none of those skills.

The fire prevention specialists report for work in the fire marshal's office at the headquarters station (Station 31). The fire suppression employees report to work at Station 34 and at a separate meeting room in Station 31.<sup>12</sup>

Conclusions -

The record fully supports the Executive Director's conclusion that the fire prevention specialists do not have a community of interest which is inseparable from that of "uniformed personnel" performing fire suppression and emergency medical functions. Accordingly, the Executive Director properly ruled that employees in the current job classification of "fire prevention specialist" are not included in

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At the time of the hearing, the fire suppression employees were reporting to a temporary building attached to Station 31 during a remodeling.

the bargaining unit represented by International Association of Fire Fighters, Local 2903.

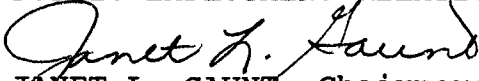
NOW, THEREFORE, the Commission makes the following:

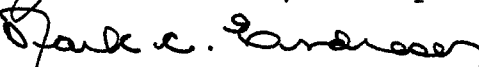
ORDER

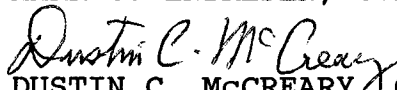
1. The findings of fact issued by Executive Director Marvin L. Schurke in the above-captioned matter are affirmed and adopted as the findings of fact of the Commission, except for paragraph 6 which is amended to read:
  6. Fire prevention specialists perform complex and difficult fire inspections and investigations, perform plan reviews concerning 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 tasks. Fire prevention specialists do not participate in most of the training for fire suppression functions, and do not respond to fire suppression alarms.
2. The conclusions of law and order clarifying bargaining unit issued by Executive Director Marvin L. Schurke in the above-captioned matter are affirmed and adopted as the conclusions of law and order of the Commission.

Entered at Olympia, Washington, the 20th day of August, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JANET L. GAUNT, Chairperson

  
MARK C. ENDRESEN, Commissioner

  
DUSTIN C. MCCREARY Commissioner