

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

SHORELINE FIRE DEPARTMENT
(KING COUNTY FIRE DISTRICT 4)

and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1760

For clarification of an existing
bargaining unit.

CASE 130839-C-18

DECISION 12954 - PECB

ORDER CLARIFYING BARGAINING
UNIT

Gabe Debay, President, for the International Association of Fire Fighters, Local 1760.

Matt Cowan, Fire Chief, for the Shoreline Fire Department (King County Fire District 4).

On August 16, 2018, the International Association of Fire Fighters, Local 1760 (union) and the Shoreline Fire Department (employer) jointly filed a unit clarification petition to remove the battalion chiefs, fire marshal, and administrative medical services officer from the nonsupervisory bargaining unit of fire fighters represented by the union. The parties assert that the position duties of five battalion chiefs, one fire marshal, and one administrative medical services officer have changed following a recent reorganization. The parties have shown that duties of those positions now conflict with the nonsupervisory bargaining unit, and the battalion chiefs, fire marshal, and administrative medical services officer no longer share a community of interest with nonsupervisory firefighters in the existing bargaining unit. The bargaining unit will be clarified to remove the battalion chiefs, fire marshal, and administrative medical services officer positions from the existing bargaining unit.

BACKGROUND

The union represents a nonsupervisory bargaining unit of firefighters in the employer's workforce. Historically, the five battalion chiefs, one fire marshal, and one administrative medical services officer have been included in the union's nonsupervisory bargaining unit. Four of the battalion chiefs were "shift" officers whose main foci were command and control of emergency activities and overall shift personnel accountability and discipline. The fifth battalion chief was responsible for all firefighter training activities and the training budget.

The shift battalion chiefs also oversaw the employees performing the 911-response service. The 911-response service provides both basic and advanced level life support medical services. Firefighter/EMTs (emergency medical technicians) and firefighter/paramedics staff the 911-response service. The administrative medical services officer also had some oversight of the paramedics.

The fire marshal oversees the Prevention Division and conducts building inspections, building plan reviews, fire code compliance, alarm system inspections, commercial sprinkler system inspections, occupancy inspections, and other related activities for state and county compliance. The Prevention Division staff promote public safety and make recommendations about the planning and permitting processes that affect the community. The Prevention Division is staffed by one deputy fire marshal and two fire inspectors.

2018 Reorganization

In 2018, the employer reorganized its workforce to address work load issues on the executive team and to facilitate more direct oversight to various divisions including fleet/facilities, fire prevention, and information technology and on capital projects. The reorganization also sought to provide clearer lines of supervision and flow of authority for more effective communication through utilizing the chain of command. As a result of the reorganization plan, the training battalion chief, fire marshal, and administrative medical services officer were reclassified to the newly created division chief job classification.

The four shift battalion chiefs remain in charge of the work shifts and focus on command and control of emergency activities as well as overall shift personnel accountability and discipline. Each battalion chief remains responsible for managing a shift of firefighters. Following the reorganization, the shift battalion chiefs are now the initial investigators for formal complaints and policy violations and have the authority to discipline their subordinate firefighters. The battalion chiefs are now also involved with preparing and supporting employee succession development from within the organization.

The fifth battalion chief position, now titled division chief – suppression/training, is responsible for all fire-related training activities, regularly represents the department in public activities, and is tasked with speaking on behalf of management for department activities as well as financial commitments. The division chief – suppression/training establishes and manages a significant section of the training budget.

The fire marshal position, now titled division chief – fire prevention, remains in charge of the Prevention Division and oversees the employees in that unit. The position continues to develop the work plan and objectives for the division and remains responsible for developing policies and procedures related to building inspections, building plan reviews, fire code compliance, alarm system inspections, commercial sprinkler system inspections, occupancy inspections, and other related activities for state and county compliance.

The administrative medical services officer, now titled division chief – EMS, oversees all of the employer's medical services officers and paramedics. The employer's 911-response service includes basic and advanced level life support medical services. The position oversees and develops paramedic and emergency medical technician training and development programs as well as established quality assurance procedures. The administrative medical services officer also plans the basic and advanced level life support medical services budget and is in charge of purchasing.

ANALYSIS

Applicable Legal Standard

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of Chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency as well as the parties to a collective bargaining relationship a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

The legislature delegated to the Commission the authority to determine appropriate bargaining units. RCW 41.80.070(1). When the Commission certifies a bargaining unit, a presumption that the bargaining unit is appropriate attaches. *Cowlitz County*, Decision 12115 (PECB, 2014). That other groupings of employees may also be appropriate, or more appropriate, does not render a bargaining unit certified by the Commission inappropriate. The Commission is required to certify an appropriate bargaining unit, not the most appropriate bargaining unit. We decline to use severance as a means to create a more perfect unit.

Severance

A petition to sever employees from an existing bargaining unit seeks to disrupt the status quo of the existing bargaining unit. To obtain severance, the petitioner must overcome the stability and maturity of relationships usually present in established bargaining units that lead to sound labor relations. To do so, the petitioner must establish either that (1) the petitioned-for employees no longer share a community of interest with the existing bargaining unit or (2) the incumbent bargaining representative has inadequately represented the petitioned-for employees. *State – Social and Health Services*, Decision 12542-B (PSRA, 2016).

The petitioner must show that a change in the community of interest has occurred to make the existing bargaining unit inappropriate. This is usually demonstrated by substantial changes to the job duties or working conditions of the petitioned-for employees or substantial changes in the employer's operations. *King County*, Decision 11441-A (PECB, 2013).

To show inadequate representation, the petitioner must demonstrate more than a short-term inability of the incumbent union to achieve the bargaining goals of the petitioned-for employees or the employees' dissatisfaction with their bargaining representative's accomplishments. *State – Social and Health Services*, Decision 12542-B. Inadequate representation may be shown by factors such as lack of opportunities to participate in union affairs, lack of collective bargaining agreement provisions addressing specific concerns of the employees at issue, and lack of involvement by the petitioned-for employees in negotiation processes. Inadequate representation may also be demonstrated by a lack of any formal or informal efforts by the incumbent union to resolve issues of concern to the employees at issue. Where a bargaining relationship has been in existence, the "history of bargaining" weighs against its disruption by severing the unit into two or more components. *Cowlitz County*, Decision 4960 (PECB, 1995). These considerations should not be read as a mechanical test, as each case is fact dependent and may present different variables worthy of consideration.

If the petitioner meets its burden of proof and the conditions for severance are met, the Commission will evaluate the appropriateness of the petitioned-for bargaining unit and whether the residual unit would maintain its appropriateness. *State – Social and Health Services*, Decision 12542-B. If

either of the resulting bargaining units would be inappropriate under the statute, then severance shall not be granted and the original unit shall be maintained. *Id.*

Application of Standard

The parties' request to sever the bargaining unit by removing the four battalion chiefs and the three division chiefs from the existing nonsupervisory bargaining is granted. The employer's recent reorganization created a change in circumstances that altered the duties performed by these positions. The reorganization has disrupted the community of interest that previously existed, demonstrates that the battalion chiefs and division chiefs now have their own community of interest, and the resulting bargaining units are appropriate under the statute.

The battalion chiefs and division chiefs have expanded authority over the employer's rank-and-file fire fighters following the reorganization. The positions are now responsible for developing strategies for succession development of personnel from within the organization. The battalion chiefs and division chiefs are also responsible for developing work plans and goals for their assigned employees. This includes developing key performance measures and quality assurance for projects and trainings. Although the positions do not have the independent authority to discharge subordinate employees, they do have the authority to independently issue discipline to levels authorized in existing policies.

The battalion chiefs and division chiefs now oversee fleet/facility, fire prevention, information technology, and capital projects within the district. The positions develop and implement employer policies that the nonsupervisory employees in the workforce will be expected to follow and initiate. Because the battalion chiefs and division chiefs are now expected to represent management in developing, implementing, and enforcing policies over the nonsupervisory employees of the department, an identifiable conflict of interest now exists that has altered the community of interest for the battalion chiefs and division chiefs.

The resulting bargaining unit configurations are also appropriate units under statute. The rank-and-file firefighters bargaining unit will now contain all nonsupervisory firefighters who are eligible for interest arbitration. The battalion chiefs and division chiefs also share a community

of interest based upon their duties, skill, and working conditions, and the parties also agree that that these employees constitute an appropriate bargaining unit. The existing bargaining unit definition shall be modified to reflect the change in circumstances.

FINDINGS OF FACT

1. The Shoreline Fire Department is a public employer within the meaning of RCW 41.56.030(12).
2. The International Association of Fire Fighters, Local 1760 (union), is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of nonsupervisory firefighters that includes the battalion chiefs, the fire marshal, and the administrative medical services officer.
4. In 2018, the employer reorganized its workforce to address workload issues on the executive team and to facilitate more direct oversight to various divisions including fleet/facilities, fire prevention, and information technology and on capital projects. The reorganization also sought to provide clearer lines of supervision and flow of authority for more effective communication through utilizing the chain of command.
5. Following the reorganization, four shift battalion chiefs remain in charge of the work shifts and focus on command and control of emergency activities as well as overall shift personnel accountability and discipline. Each battalion chief remains responsible for managing a shift of firefighters. Following the reorganization, the shift battalion chiefs are now the initial investigators for formal complaints and policy violations and now have the authority to discipline their subordinate firefighters. The battalion chiefs are now also involved with preparing and supporting employee succession development from within the organization.

6. The fifth battalion chief position, now titled division chief – suppression/training, is responsible for all fire-related training activities, regularly represents the department in public activities, and is tasked with speaking on behalf of management for department activities as well as financial commitments. The division chief – suppression/training establishes and manages a significant section of the training budget.
7. The fire marshal position, now titled division chief – fire prevention, remains in charge of the Prevention Division and oversees the employees in that unit. The position continues to develop the work plan and objectives for the division and remains responsible for developing policies and procedures related to building inspections, building plan reviews, fire code compliance, alarm system inspections, commercial sprinkler system inspections, occupancy inspections, and other related activities for state and county compliance.
8. The administrative medical services officer, now titled division chief – EMS, oversees all of the employer's medical services officers and paramedics. The employer's 911-response service includes basic and advanced level life support medical services. The position oversees and develops paramedic and emergency medical technician training and development programs as well as established quality assurance procedures. The administrative medical services officer also plans the basic and advanced level life support medical services budget and is in charge of purchasing.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon findings of fact 3 through 8, the battalion chiefs, division chief – suppression/training, division chief – fire prevention, and division chief – EMS no longer share a community of interest with the bargaining unit described in finding of fact 3.

ORDER

The bargaining unit represented by the International Association of Fire Fighters, Local 1760 is modified to remove the battalion chiefs, division chief – suppression/training, division chief – fire prevention, and division chief – EMS and shall be described as:

All uniformed firefighters as defined by RCW 41.26.030 employed by Shoreline Fire Department (King County Fire District 4), excluding the supervisors, confidential employees, battalion chiefs, division chief – suppression/training, division chief – fire prevention, and division chief – EMS, and all other employees.

ISSUED at Olympia, Washington, this 21st day of December, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "M. Sellars", is written over the printed name of the Executive Director.

MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.



RECORD OF SERVICE

ISSUED ON 12/21/2018

DECISION 12954 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 130839-C-18

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