

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

THURSTON COUNTY FIRE
PROTECTION DISTRICT 8

and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 2903

For clarification of an existing
bargaining unit.

CASE 130975-C-18

DECISION 12978 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Christopher Ross, President, for the International Association of Fire Fighters,
Local 2903.

Dave J. Luxenberg, Attorney at Law, McGavick Graves, for the Thurston County
Fire Protection District 8.

On September 24, 2018, the Thurston County Fire Protection District 8 (employer) and the International Association of Fire Fighters, Local 2903 (union) jointly filed a petition to clarify an existing bargaining unit represented by the union. The current bargaining unit includes the following positions: assistant chief, lieutenant, and dayshift firefighter. The issue is whether the Public Employment Relations Commission (PERC) should accept the parties' joint request to modify the existing bargaining unit and include the newly created position of battalion chief in the bargaining unit and exclude the existing position of assistant chief from the bargaining unit.

The parties' joint request to modify the bargaining unit is granted. The battalion chief shares a community of interest with the existing bargaining unit. The assistant chief is a confidential employee because of the labor nexus associated with the duties of that position. Including the battalion chief position and excluding the assistant chief position would create an appropriate bargaining unit of the full-time, nonsupervisory firefighters in the district.

BACKGROUND

In November 2014, as a result of a popular vote, the employer merged with the Thurston County Fire Protection District 7, which expanded the jurisdiction of the employer's protection services. Post-merger, the employer's name remained the same. On January 14, 2015, PERC issued an order clarifying the bargaining unit, which added lieutenant and dayshift firefighter positions into the bargaining unit represented by the union.

As the fire district has grown post-merger, the employer's operational needs and service demands have changed. The increased growth and service demands have created staffing challenges for the employer, which have resulted in "browning-out" fire stations when sufficient staffing is not available. Based on these challenges, the employer determined it needed to reorganize its operational model. The reorganization included hiring additional career responder staff, changing the rank and position structure, creating a confidential employee position, and placing some of the career lieutenants on a 24-hour shift to support volunteer training and supervision for improved around-the-clock incident readiness and response.

The employer and union successfully renegotiated the existing collective bargaining agreement to address the impacts of the employer's reorganization. As part of the renegotiated collective bargaining agreement, the employer created a new battalion chief position filled by a single employee. The battalion chief position is scheduled on a 24-hour shift, similar to some career lieutenants. The position performs similar duties to those positions already in the bargaining unit.

The parties also jointly requested that the existing rank of assistant chief, filled by a single employee, be removed from the bargaining unit. The assistant chief position will have a substantial and fundamental change in job duties, rendering the status of the position confidential. The assistant chief position will become confidential because the new job duties will include participating directly on behalf of the district in the formulation of labor relations policy, collective bargaining negotiations, and administering any collective bargaining agreement to which the employer is party.

ANALYSISCommunity of Interest—Battalion Chief*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). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

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).

In making bargaining unit determinations, the Commission considers "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." RCW 41.56.060(1). The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case and any one factor could be more important than another, depending on

the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. Public Employment Relations Commission*, 101 Wn.2d 435 (1984).

Application of Standard

The battalion chief position has a community of interest with the existing bargaining unit. In the present case, due to the staffing challenges the employer hired additional career responder staff, changed the rank and position structure, and placed some of the career lieutenants on a 24-hour shift to support volunteer training and supervision for improved around-the-clock incident readiness and response. The battalion chief position works similar 24-hour shifts and assists in responding to emergency service needs, so the employer does not have to “brown-out” fire stations. The battalion chief position should not be excluded as a supervisor because there is not sufficient evidence that the position performs a preponderance of supervisory duties or spends a preponderance of the time performing supervisory duties under WAC 391-35-340.

Confidential Status—Assistant Chief

Applicable Legal Standard

Excluded from the definition of “public employee” are employees whose duties imply a confidential relationship to the bargaining unit or to the executive management of the employer, such as an appointee to a board, commission, or committee for a particular term of an elected official. RCW 41.56.030(11)(c)(i)–(iii). Anyone who meets the confidential employee definition is precluded from exercising collective bargaining rights under the statute. *Id.* Because confidential employees are precluded from exercising collective bargaining rights, a heavy burden is placed on the party seeking a determination that the employees at issue are confidential. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

A labor nexus test is used to determine whether an employee is confidential under the statute. The employee’s duties are examined for a labor nexus and whether the employee’s actual duties imply a confidential relationship that flows from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. *International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

The nature of the close association between the employee and the executive head of the bargaining unit or public official must concern the official and policy responsibilities of the executive head or public official, including formulation of labor relations policy. *Id.* at 106-107. If the employee's official duties require ongoing and regular interaction with the executive head or public official regarding the employee's collective bargaining position, that employee should not be placed in a position where that employee's loyalties are tested. The confidential employee exclusion prevents potential conflicts of interest between the employee's duty to his or her employer and status as a union member. *Walla Walla School District, Decision 5860 (PECB, 1997).*

Application of Standard

The assistant chief position should be removed from the unit because of its confidential nature. The position will participate directly on behalf of the district in the formulation of labor relations policy, participate on behalf of the employer in collective bargaining negotiations, and administer any collective bargaining agreement to which the employer is party. Accordingly, the assistant chief is removed from the existing bargaining unit, and the bargaining unit description is redefined.

FINDINGS OF FACT

1. Thurston County Fire Protection District 8 (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The International Association of Fire Fighters, Local 2903 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit that includes: assistant chief, lieutenant, and dayshift firefighter positions. All three positions are uniformed employees within the meaning RCW 41.56.030(13)(e).
4. In November 2014, as a result of a popular vote, the employer merged with the Thurston County Fire Protection District 7, which expanded the jurisdiction of the employer's protection services. Post-merger, the employer's name remained the same. On

January 14, 2015, PERC issued an order clarifying the bargaining unit, which added lieutenant and dayshift firefighter positions into the bargaining unit represented by the union.

5. As the fire district has grown post-merger, the employer's operational needs and service demands have changed. The increased growth and service demands have created staffing challenges for the employer, which have resulted in "browning-out" fire stations when sufficient staffing is not available. Based on these challenges, the employer determined it needed to reorganize its operational model. The reorganization included hiring additional career responder staff, changing the rank and position structure, creating a confidential employee position, and placing some of the career lieutenants on a 24-hour shift to support volunteer training and supervision for improved around-the-clock incident readiness and response.
6. The employer and union successfully renegotiated the existing collective bargaining agreement to address the impacts of the employer's reorganization. As part of the renegotiated collective bargaining agreement, the employer created a new battalion chief position filled by a single employee. The battalion chief position is scheduled on a 24-hour shift, similar to some career lieutenants. The position performs similar duties to those positions already in the bargaining unit.
7. The parties also jointly requested that the existing rank of assistant chief, filled by a single employee, be removed from the bargaining unit. The assistant chief position will have a substantial and fundamental change in job duties, rendering the status of the position confidential. The assistant chief position will become confidential because the new job duties will include participating directly on behalf of the district in the formulation of labor relations policy, collective bargaining negotiations, and administering any collective bargaining agreement to which the employer is party.

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. A bargaining unit of battalion chiefs, lieutenants, and dayshift firefighters employed at the Thurston County Fire District 8 is an appropriate bargaining unit under RCW 41.56.060.

ORDER

The battalion chief is added to the existing lieutenants and dayshift firefighters bargaining unit and the assistant chief is removed from the existing bargaining unit. The bargaining unit shall be redefined as follows:

All full-time uniformed fully commissioned firefighters (as defined by RCW 41.56.030(13)(e)) holding the rank of battalion chief, lieutenant, or dayshift firefighter employed by Thurston County Fire Protection District 8, excluding volunteer fire officers, volunteer firefighters, confidential employees, the assistant chief, the fire chief, and all other employees.

ISSUED at Olympia, Washington, this 21st day of March, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MICHAEL F. 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 03/21/2019

DECISION 12978 - 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 130975-C-18

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