

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 5363

Involving certain employees of:

SPOKANE COUNTY FIRE DISTRICT 4

CASE 134728-E-21

DECISION 13583 - PECB

ORDER OF DISMISSAL

Matt T. Paxton, Attorney at Law, Chmelik Sitkin & Davis P.S., for International Association of Fire Fighters Local 5363.

David W. Ballew, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for the Spokane County Fire District 4.

On December 30, 2021, the International Association of Fire Fighters Local 5363 (IAFF) filed a petition to represent a bargaining unit of full-time firefighters at Spokane County Fire District 4 (employer). On January 5, 2022, the agency sent a routine letter to the employer requesting a list of the petitioned-for employees. The employer responded to that request on January 14, 2022, and provided a copy of the most recent collective bargaining agreement between the employer and Teamsters Local 690 (Local 690). The agreement indicated Local 690 represented the petitioned-for employees and Local 690 and the employer were parties a valid contract that expires on December 31, 2024. Based upon this information, Representation Case Administrator Dario de la Rosa issued a deficiency notice informing the IAFF that its' petition appeared to be untimely under RCW 41.56.070 and WAC 391-25-030 because a contract bar appeared to exist. The deficiency notice provided the IAFF an opportunity to show cause as to why its petition should not be dismissed.

On January 22, 2022, the IAFF filed a response asserting the existing bargaining unit represented by Local 690 is inappropriate because it improperly mixed full-time firefighters who are interest

arbitration eligible with part-time firefighters who are not interest arbitration eligible. Based upon this assertion, the Representation Case Administrator directed further proceedings to determine whether the IAFF's petition was timely. On May 5, 2022, the Representation Case Administrator conducted a hearing and the parties filed post-hearing briefs. During the hearing and in its brief, the IAFF asserted that Local 690 and the employer negotiated an impermissible pre-hire agreement that should not preclude its representation petition. On July 7, 2022, the parties were asked to provide information about when the full-time firefighters were hired by the employer and on August 1, 2022, the employees provided the requested information.

The IAFF's petition is not timely because Local 690 and the employer entered into a valid collective bargaining agreement covering the petitioned-for employees. When the employer created the full-time firefighter positions, all firefighting work at the district was part of Local 690's historic work jurisdiction. The employer voluntarily recognized Local 690 as the exclusive bargaining representative of an appropriate bargaining unit of full-time firefighters to avoid mixing interest arbitration and noninterest arbitration employees in the same bargaining unit. Local 690 and the employer then negotiated a collective bargaining agreement for the full-time firefighters that does not expire until December 31, 2024. Because the IAFF did not file its petition in accordance with RCW 41.56.070 and WAC 391-25-030, the petition must be dismissed.

BACKGROUND

The employer provides fire services to north Spokane County and is based in Deer Park, Washington. Bill Nickels currently serves as the Fire Chief. Prior to 2021, the employer only employed part-time firefighters. In 2006, this agency certified Local 690 as the exclusive bargaining representative of "all regular employees of the Spokane County Fire District 4 employed in the classification of firefighter/EMT . . ." *Spokane County Fire District 4*, Decision 9460 (PECB, 2006). At the time of certification, no other employees in the district performed firefighting and emergency medical technician work so Local 690 could legally claim that work as part of its historic work jurisdiction. None of the employees in the firefighter/EMT job class qualified as full-time firefighters under RCW 41.56.030(14) at the time of certification and therefore were not eligible for interest arbitration.

In December 2020, Local 690 and the employer entered into a collective bargaining agreement that expires on December 31, 2024. Sometime thereafter, former Fire Chief Randy Johnson contacted Local 690 to notify it that the employer was considering creating full-time firefighter positions. In May 2021, Nickels notified the union that it was moving forward with creating full-time firefighter positions starting in July 2021 and the employer began the recruitment process. Firefighter Frank Cresci signed an offer of employment on June 29, 2021, and that document indicated a start date of July 15, 2021.¹ At the time Cresci was hired, he worked as a part-time firefighter with District 4 and was included in Local 690's bargaining unit. On August 1, 2021, three full-time firefighters, including Cresci, officially started employment with the district.² A full-time Fire Captain started employment on October 1, 2021, and a fourth full-time firefighter was hired on December 1, 2021.

The record demonstrates that during July 2021, Local 690 and the employer discussed the terms and conditions of employment for the full-time firefighter positions. During those discussions, the union proposed adding the full-time firefighters to the existing part-time firefighters bargaining unit and extend interest arbitration rights to the entirety of the bargaining unit. The employer opposed extending interest arbitration rights to the part-time employees and the parties' negotiations were limited to issues surrounding the full-time firefighters. On July 27, 2021, Local 690 and the employer executed a memorandum of understanding that applied unique and separate provisions that only applied to the full-time firefighters, such as a wage and overtime provisions; vacation, sick, and bereavement leave provisions; and employee seniority. Certain provisions of the existing part-time firefighters collective bargaining agreement to the full-time firefighters also applied to the full-time firefighters, the grievance procedure. The memorandum of understanding became effective August 1, 2021, and expires on December 31, 2024.

¹ IAFF exhibit 5.

² Declaration of Lena Mack, exhibit A.

ANALYSIS*Applicable Legal Standard*

The determination of appropriate bargaining units is a function delegated by the legislature to the Public Employment Relations Commission. RCW 41.56.060. While parties may agree on unit determination matters, unit determination is not a subject for bargaining in the usual mandatory/permissive/illegal sense. *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), *rev. denied*, 96 Wn. 2d 1004 (1981). The statute only requires this agency's involvement in a representation proceeding if there is a disagreement about any aspect of the representation, such as the appropriateness of the bargaining unit or the eligibility of employees to be included in an appropriate bargaining unit. RCW 41.56.050. If a disagreement exists, the parties *must* submit the dispute to this agency for an appropriate ruling. *Id.* If voluntary recognition is extended, the employer is then obligated to bargain with the union. *City of Kennewick*, Decision 482-B (PECB, 1980).

A voluntarily recognized bargaining unit is not granted the same legal status as a bargaining unit certified by this agency. For example, a voluntarily recognized bargaining unit does not enjoy the privileged of the RCW 41.56.070 and WAC 391-25-030 certification bar. *Wapato School District*, Decision 2227 (PECB, 1985). However, voluntarily recognized units are otherwise subject under the statute and rules to petitions for decertification, change of exclusive bargaining representative, severance, or merger of units on the same basis as are units certified by the Commission. *Id.* A petitioner in such a subsequent representation case is not limited to the bargaining unit structure established by the employer and the incumbent exclusive bargaining representative in their voluntary recognition transaction. *Kitsap County*, Decision 2116 (PECB, 1984).

While an employer's decision to voluntarily recognize a labor organization as the exclusive bargaining representative of its employees lacks the legal authority to create a certification bar, a contract bar could be created if the employer and labor organization ratify and implement a collective bargaining agreement. To service as a contract bar to a representation petition, the agreement must cover a bargaining unit that is appropriate under the applicable statute; the

agreement must be in writing and signed by the parties; the agreement must contain a fixed expiration date not less than 90 days after it was signed, and the agreement will only operate as a bar for the first three years after its effective date. WAC 391-25-030(1)(a).³ If all conditions of a contract bar are met, a subsequent representation petition cannot be filed until the statutory window period is present or the existing agreement has expired with no subsequent agreement.

Application of Standard

The IAFF's petition must be dismissed because the July 29, 2022, memorandum of understanding signed between Local 690 and the employer serves as a contract bar under RCW 41.56.070 and WAC 391-25-030(1)(a). The voluntarily recognized bargaining unit of full-time firefighters is appropriate under the statute. The collective bargaining agreement executed by Local 690 and the employer was also in writing and signed by the parties and the agreement contained a fixed expiration date that was not less than 90 days after it was signed.

The Bargaining Unit is Appropriate

The voluntarily recognized bargaining unit of full-time firefighters is an appropriate bargaining unit under chapter 41.56 RCW because it does not improperly mix interest arbitration eligible employees with noninterest arbitration eligible employees. Numerous agency decisions recognize that a bargaining unit configuration that includes only the full-time firefighters of a particular employer is appropriate. *See, e.g., Lewis County Fire District 5, Decision 13554 (PECB, 2022); Grant County Fire District 8, Decision 13458 (PECB, 2022)*. Because full-time firefighters are eligible for interest arbitration as a means contract impasse resolution under RCW 41.56.030(14)(e), a bargaining unit that includes full-time and part-time firefighters is

³ This last requirement for a contract bar – the agreement will only operate as a bar for the first three years after its effective date – is not applicable to this case because the existing collective bargaining agreement was only in effect for approximately five months at the time the IAFF filed its petition. Additionally, this rule appears to conflict with statutory changes to RCW 41.56.070. This rule was consistent with RCW 41.56.070 prior to 2007 when the statute specifically limited collective bargaining agreements to a term of no more than three years. In 2007, the legislature amended RCW 41.56.070 to allow cities, counties, school districts, and municipal corporations such as this employer to enter into collective bargaining agreements with a term of up to six-years. The rule is inconsistent with the statute and the provisions of the statute must be given full effect.

inappropriate due to the different impasse procedures. WAC 391-35-310. Bargaining units that include only the part-time firefighters of a district have been deemed appropriate provided the unit excludes the full-time firefighters. *See, e.g., North Whidbey Fire and Rescue, Decision 13251 (PECB, 2020) (certifying a bargaining unit of part-time firefighters that specifically excluded full-time firefighters).*

The record clearly demonstrates that when the employer announced the creation of the full-time firefighter positions, the union suggested that the full-time firefighters be included in the same bargaining unit as the part-time firefighters and those employees be given interest arbitration rights. The record also demonstrates that the employer rejected this proposal. Rather, the employer insisted the full-time firefighters be included in a separate bargaining unit from part-time firefighters because the employer did not want to extend interest arbitration rights to the part-time firefighters. Because the bargaining unit of full-time firefighters is appropriate, the next step under the contract bar test is to determine if the employer and Local 690 had a valid collective bargaining agreement.

Local 690 and the Employer Executed a Valid Collective Bargaining Agreement

On July 27, 2021, Local 690 and the employer executed a collective bargaining agreement for firefighters effective August 1, 2021. Although the agreement took the form of a memorandum of understanding, certain provisions of the existing part-time firefighters collective bargaining agreement also applied to the full-time firefighters, such as the grievance procedure. The agreement was in writing and was signed by both parties. The agreement also contains a fixed expiration date of December 31, 2024, which is well beyond the 90-day period required by the rule. Accordingly, the collective bargaining agreement meets the WAC 391-25-030(1)(a) requirements to serve as a contract bar.

The IAFF asserts that the collective bargaining agreement should not qualify as a contract bar because the employer and Local 690 entered into an agreement that would apply to employees who have yet to be hired and therefore denied the full-time firefighters the right to select a bargaining representative of their own choosing under RCW 41.56.010. The IAFF asserts Local 690 failed to present evidence demonstrating they had the support of the full-time firefighters such

as showing of interest cards and therefore lack the support of the full-time firefighters. The IAFF also points out that decision construing chapter 41.56 RCW makes it an unfair labor practice for an employer to unlawfully assist a union concerning the selection of a bargaining representative. *See, e.g., City of Spokane*, Decision 11263 (PECB, 2011); *Whatcom County*, Decision 8245-A (PECB, 2004); *Valley Communications Center (Valley Communications Center Employee Association)*, Decision 4145 (PECB, 1992). Finally, the IAFF argues that it is unlawful for an employer to extend voluntary recognition and prematurely entered into a pre-hire collective bargaining agreement with a bargaining representative that lacks majority support. These arguments are not persuasive.

The firefighting and emergency medical technician work performed by the full-time firefighters remained part of Local 690's historic work jurisdiction at the time the employer created the full-time firefighter positions. The fact that the employer created full-time firefighters that are interest arbitration eligible employees does not change this conclusion. Absent the requirement that interest arbitration and noninterest arbitration eligible employees be in separate bargaining units, the full-time firefighters would have presumptively been included in Local 690's bargaining unit based upon that bargaining unit's historic work jurisdiction.

When the employer created the full-time firefighter positions, it had an obligation to bargain the effects of that decision with Local 690. The employer would have potentially committed an unfair labor practice if it unilaterally removed bargaining work without satisfying its collective bargaining obligation. *See, e.g., University of Washington*, Decision 11075-A (PSRA, 2012) (the decision to transfer bargaining unit work out of the bargaining unit to nonbargaining unit employees of the employer is a mandatory subject of bargaining).

In July 2021, the employer and Local 690 negotiated a collective bargaining agreement that set unique terms and conditions of employment for the full-time firefighters while preserving Local 690's historic work jurisdiction. That agreement also respected the requirement that interest arbitration and noninterest arbitration eligible employees be in separate bargaining units. The record establishes on June 29, 2021, the employer began informing the full-time firefighters that they would start on July 15, 2021. Local 690 and the employer subsequently negotiated terms and

conditions of employment covering the full-time firefighters that ultimately took effect on August 1, 2021, the same day several of the full-time firefighters ultimately began employment. This agreement cannot be construed as a premature pre-hire agreement because the full-time firefighters had already been informed of their employment status when Local 690 and the employer commenced their negotiations.⁴

FINDINGS OF FACT

1. Spokane County Fire District 4 is a public employer within the meaning of RCW 41.56.030(13).
2. The International Association of Fire Fighters Local 5363 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Teamsters Local 690 is a bargaining representative within the meaning of RCW 41.56.030(2).
4. In 2006, this agency certified Local 690 as the exclusive bargaining representative of “all regular employees of the Spokane County Fire District 4 employed in the classification of firefighter/EMT” *Spokane County Fire District 4*, Decision 9460 (PECB, 2006). At the time of certification, no other employees in the district performed firefighting and

⁴ In its brief, the IAFF cites to cases construing the National Labor Relations Act (NLRA) as supporting its position. Decisions construing the NLRA are persuasive in interpreting state labor acts which are similar to the NLRA. *Nucleonics Alliance v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984). Several of the cases cited by the IAFF concern the legality of pre-hire agreements in the construction industry and interpret section 8(f) of the NLRA. Section 8(f) of the Act allows an employer engaged primarily in the building and construction industry to sign a union-security agreement with a union without the union’s having been designated as the representative of its employees as otherwise required by the Act. The agreement can be made before the employer has hired any employees for a project and will apply to them when they are hired. Those decisions are inapplicable to cases interpreting the Public Employees Collective Bargaining Act (chapter 41.56 RCW) because there is no similar counterpart to section 8(f) in chapter 41.56 RCW.

emergency medical technician work so Local 690 could legally claim that work as part of its historic work jurisdiction.

5. At the time of certification, no other employees in the district performed firefighting and emergency medical technician work so Local 690 could legally claim that work as part of its historic work jurisdiction. None of the employees in the firefighter/EMT job class qualified as full-time firefighters under RCW 41.56.030(14) at the time of certification and therefore were not eligible for interest arbitration.
6. In December 2020, Local 690 and the employer entered into a collective bargaining agreement that expires on December 31, 2024. Sometime thereafter, former Fire Chief Randy Johnson contacted Local 690 to notify it that the employer was considering creating full-time firefighter positions.
7. In May 2021, current Fire Chief Bill Nickels notified the union that it was moving forward with creating full-time firefighter positions starting in July 2021 and the employer began the recruitment process.
8. Firefighter Frank Cresci signed an offer of employment on June 29, 2021, and that document indicated a start date of July 15, 2021. At the time Cresci was hired, he worked as a part-time firefighter with District 4 and was included in Local 690's bargaining unit.
9. On August 1, 2021, three full-time firefighters, including Cresci, officially started employment with the district. A full-time Fire Captain started employment on October 1, 2021, and a fourth full-time firefighter was hired on December 1, 2021.
10. In July 2021, Local 690 and the employer discussed the terms and conditions of employment for the full-time firefighter positions. During those discussions, the union proposed adding the full-time firefighters to the existing part-time firefighters bargaining unit and extend interest arbitration rights to the entirety of the bargaining unit. The

employer opposed extending interest arbitration rights to the part-time employees and the parties' negotiations were limited to issues surrounding the full-time firefighters.

11. On July 27, 2021, Local 690 and the employer executed a memorandum of understanding that applied unique and separate provisions that only applied to the full-time firefighters, such as a wage and overtime provisions; vacation, sick, and bereavement leave provisions; and employee seniority. Certain provisions of the existing part-time firefighters collective bargaining agreement to the full-time firefighters also applied to the full-time firefighters, the grievance procedure. The memorandum of understanding became effective August 1, 2021, and expires on December 31, 2024.
12. On December 30, 2021, the IAFF filed a petition to represent the bargaining unit of full-time firefighters.

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 4, 5, 10 and 11, the bargaining unit of full-time firefighters represented by Teamsters Local 690 is an appropriate bargaining unit under RCW 41.56.060.
3. Based upon findings of fact 6 through 11, Spokane Fire District 4 and Teamsters Local 690 are parties to a collective bargaining agreement that creates a contract bar under RCW 41.56.070 and WAC 391-25-030(1)(a).

ORDER

The representation petition filed by the International Association of Fire Fighters Local 5363 is dismissed as untimely.

ISSUED at Olympia, Washington, this 27th day of October, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 391-25-660.



RECORD OF SERVICE

ISSUED ON 10/27/2022

DECISION 13583 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 134728-E-21

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