

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
INTERNATIONAL FEDERATION OF	)	CASE NO. 3496-C-81-165
PROFESSIONAL & TECHNICAL	)	
ENGINEERS, LOCAL NO. 17	)	DECISION NO. 1480 - PECB
For clarification of an existing	)	
bargaining unit of employees of:	)	
KING COUNTY	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND ORDER
	)	

Richard Basarab, Business Agent, appeared on behalf of the petitioner.

J. Wes Moore, Administrative Assistant, appeared on behalf of the employer.

Dustin Fredrick, Business Representative, appeared on behalf of the intervenor, Public Safety Employees, Local No. 519.

On June 22, 1981, International Federation of Professional & Technical Engineers, Local No. 17 (petitioner), filed a petition requesting the Public Employment Relations Commission to clarify an existing bargaining unit with respect to the classification "Fire Protection Engineer". Public Safety Employees, Local 519 (intervenor), timely intervened as representative of the bargaining unit to which the disputed position is presently assigned. A hearing was conducted on November 19, 1981, before Jack T. Cowan, Hearing Officer. The parties did not submit post-hearing briefs. The record made up to that point was submitted to the Executive Director for consideration pursuant to WAC 391-35-190. After substantial effort towards preparation of a decision, the record made by the parties was found to be insufficient. The matter was thereupon remanded for further hearing on specific questions dealing with the history of bargaining of the employees and their representatives. A pre-hearing conference was held on July 26, 1983, at which time the parties entered into stipulations which obviated the need for further hearing in the matter.

BACKGROUND:

King County has collective bargaining relationships with a number of employee organizations including International Federation of Professional &

Technical Engineers, Local 17, and Public Safety Employees, Local 519. Local 17 represents approximately 260 employees working in a variety of clerical, technical and engineering classifications in several departments, including the Building and Land Development Division. Local 519 represents bargaining units of employees involved with police and fire prevention activities including the Fire Marshal Section of the Building and Land Division.

The origins of the present dispute date back more than ten years. At least as early as August, 1970, the Seattle and King County District Council of Carpenters was the exclusive bargaining representative of a bargaining unit of:

Carpenters, Addressing and Plat Coordinators, and
Furnace, Fire, Building, Housing and Zone Inspectors
employed by King County, Washington.

At least one individual classified as "deputy fire marshal" was on the eligibility list for a union security election conducted in that bargaining unit on August 10, 1970. The various "inspector" classifications were later consolidated into classes titled "General Inspector I", "General Inspector II" and "Fire Inspector I". On March 4, 1975, the Washington State Department of Labor and Industries (which then administered Chapter 41.56 RCW) conducted a representation election in that bargaining unit, resulting in the decertification of the union.

In 1977, Local 17 filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation in a claimed appropriate bargaining unit limited to employees in the "General Inspector I" classification. King County resisted that petition on "fragmentation" grounds. A hearing was held and a decision was issued dismissing the petition based on a conclusion that the unit sought was not an appropriate unit for purposes of collective bargaining. King County, Decision 342 (PECB, 1978).^{1/} Neither party petitioned for review of the decision by the full Commission, and those proceedings were thus closed.

^{1/} Decision 342 was issued on January 17, 1978 by Willard G. Olson, acting as "authorized agent" for the Commission under repealed Chapter 391-20 WAC. Since February 1, 1978, when Chapter 391-21 WAC took effect, (and continuing under Chapter 391-25 now in effect), decisions in representation and unit determination cases have been made by the Executive Director subject to the right of the parties to petition for Commission review. The undersigned was Executive Director of the Commission at the time Decision 342 was issued, but has not had occasion to rule on the propriety of the bargaining unit involved.

On July 12, 1978, Local 17 directed a letter to the county, requesting recognition as exclusive bargaining representative for employees classified as "General Inspector I, II and Fire Inspector". Those parties held a meeting on September 13, 1978 concerning the recognition demand. The results of that meeting were summarized in a letter directed by the county to the union under date of September 19, 1978, indicating that the union had modified its demand for recognition to exclude the fire inspection personnel, and that the county agreed to a "reassignment of the 'final inspection' function from the fire inspectors to the general inspector; said function then becoming work of the bargaining unit." The employees in the General Inspector I and II classes were accreted to an existing bargaining unit of county employees represented by Local 17. Those arrangements were formalized in a letter and a memorandum of understanding executed by representatives of King County and of Local 17 under date of October 9, 1978.

On October 30, 1978, Tom McDonald became Fire Marshal. The uniform fire code was amended in 1976 to absorb what had been the life safety code portion of the building code, and King County adopted those changes in 1980. There has been a substantial increase in the size and activity of the Fire Marshall Office since 1978, and it has been increasingly separated from other functions in the county's Building and Land Development Division.

The fire inspection employees remained unrepresented until 1980, when Local 519 filed a petition with the Commission seeking certification as exclusive bargaining representative of those employees. The county and Local 519 entered into a cross-check agreement with a stipulated eligibility list containing the names of ten employees. A cross-check was conducted and Local 519 was certified. King County, Decision 821 (PECB, 1980). That proceeding involved employees in the "Assistant Fire Marshal", "Fire Investigator" and "Fire Inspector I" classifications.

The parties stipulated to an organization chart of the Building and Land Development Division which indicates eight sections in addition to the division manager's office. One of the sections (Plan Implementation) has no organized employees. The employees in two of the sections (Staff Services and Plans Review) have been represented by Local 17 since approximately 1971 or 1972. All but two of the employees in the Permit Service Center and certain support employees in the Development Controls and Fire Marshal Sections have also been represented by Local 17 since 1971 or 1972. The employees in the Inspections and Code Enforcement Sections came under representation by Local 17 as a result of the October 9, 1978 recognition agreement. Other than the two support employees represented by Local 17, the employees in the Development Controls Section were represented for the purposes of collective bargaining prior to 1974, but decertified their exclusive bargaining representative at that time and have since remained unrepresented. The remaining section is the Fire Marshal Office.

Two persons listed on the organization chart for the Fire Marshal Office are law enforcement officers "on loan" from the King County Police Department. They are included in the law enforcement officer bargaining unit rather than in the bargaining unit established by King County, Decision 821, supra. An arson unit has been established within the Fire Marshal Office. Five employees (including the two on loan from the Police Department) hold special commissions giving them arrest powers. There is, however, interchange between the fire inspection and fire investigation tasks without change of pay or status.

The building inspection function ends with the completion of the building, marked by issuance of an occupancy permit. The fire inspectors inspect for "fire" related issues during construction of the building, but also conduct periodic follow-up reviews. Some fire districts within the county do the follow-up inspections within their jurisdiction.

The position at issue in these proceedings was created on January 1, 1981 as part of the staff in the Fire Marshal's Office. The proposal for the new classification was submitted to the county's personnel office, which established a salary range to be applied. The job description for the position specifies:

FIRE PROTECTION ENGINEER

DEFINITION:

This is independent and responsible technician fire prevention work.

DISTINGUISHING CHARACTERISTICS OF WORK:

The employee occupying the position allocated to this classification is responsible to check building construction and equipment installation plans, drawings and specifications to ascertain if fire and life safety requirements have been included and adequate in design, use or operation. Employee works under the general supervision of the Fire Marshal. Work is reviewed for accuracy and adequacy through periodic conferences and reports and through review of the results obtained.

REPRESENTATIVE EXAMPLES OF WORK:

Develop, implement and coordinate a full fire and life safety plans examination program.

Advise and assist contractors, architects, engineers and others for purpose of safeguarding life and property against fire, explosion and related hazards.

Provide information and advise regarding (sic) code interpretation.

Recommend materials, equipment or methods for alleviation of conditions to (sic) fire.

Evaluate technical and scientific publications concerned with fire and life safety and participate in activities of related professional organizations to update knowledge.

Compile and write educational material to be used for training sessions.

Maintain files and records consistent with efficient and expeditious handling of plans in order to properly issue required permits.

Evaluate the adequacy of laws, ordinances and regulations effecting (sic) fire prevention or fire safety and recommend changes or revisions.

Perform related work as required.

KNOWLEDGES, ABILITIES AND SKILLS:

Thorough knowledge of the principles of fire prevention and protection.

Thorough knowledge of the proper methods of building construction and installation.

Good knowledge of nationally recognized building, fire and life safety codes and standards.

Ability to establish and maintain effective working relations with co-workers, public and private officials and the public.

Ability to express ideas effectively orally and in writing.

QUALIFICATIONS:

DESIRABLE MINIMUM: Graduation from a college or university with major course work in an Engineering field, and three (3) years of related work experience.

OR

Substituting one (1) year (12 mos.) of related fire prevention experience for each year (9 mos.) of the required education to a maximum of four (4) years (36 mos.).

The record indicates that the fire protection engineer performs the duties specified in the job description as stated above. Working under the general supervision of the fire marshal, the fire protection engineer provides expertise on specific fire safety matters that arise in building construction and maintenance. As part of regular duties, the fire protection engineer meets with employees from the plans review section. These employees, holding the position of "Plans Examiner II" perform duties as outlined in the following job description:

PLANS EXAMINER II

GENERAL STATEMENT OF DUTIES: Reviews and checks building and site plans to insure compliance with County codes and ordinances; does related work as required.

DISTINGUISHED FEATURES OF THE CLASS: An employee in this class is responsible for checking building permit applications and reviewing construction and site plans submitted by architects and contractors for major structures and developments to insure compliance with building and zoning codes and ordinances, including ordinances governing heating, ventilating and mechanical systems. Supervision is received from a Plans Examiner III.

EXAMPLES OF WORK: (Illustrative Only)

Examines plans, blueprints and specifications of commercial, institutional, public or large residential developments to insure compliance with building and zoning codes and ordinances;
Examines plans, blueprints and specifications of large commercial or public structures to insure compliance with heating, ventilating and mechanical requirements;
Recommends issuance of building permits when requirements are met;
Advises contractors and builders on construction and design requirements;
Assists Building Inspectors in difficult or unusual code interpretations as it applies to various structures;
Answers public inquiries on construction and zoning matters;
Reviews proposed changes in the Uniform Building Code for impacts on County codes and on construction in the County; attends conferences and hearings to consider such changes and recommends a County position on the proposals;
Prepares and maintains records and reports of plans and examinations.

REQUIRED KNOWLEDGES, SKILLS AND ABILITIES: Thorough knowledge of structural engineering principles and practices including mechanical engineering principles as applied to building design and construction; good knowledge of building codes and zoning ordinances; ability to read and interpret blueprints, site plans and architectural designs and determine compliance with appropriate codes and ordinances; ability to establish and maintain effective working relationships with contractors, architects, the public and fellow employees; good professional judgment; good physical condition.

ACCEPTABLE EXPERIENCE AND TRAINING: Considerable experience at the level of Plans Examiner I and completion of two years of work at a college or university of recognized standing with courses in engineering or architecture; or any equivalent combination of experience and training which provides the required knowledges, skills and abilities.

In one instance, the fire protection engineer and plans examiners worked on a joint report which was submitted to the plans examiner supervisor for approval. However, the record does not indicate that the plans examiner supervisor regularly directs the fire protection engineer in the performance of the engineer's duties.

Although the plans examiners and fire protection engineer work in the same division, there is little evidence of shared responsibilities or direction. Apart from specific projects requiring coordination of services between the plans examiner's section and the Fire Marshal's Office, the plans examiners work independently from the fire protection engineer.

On January 16, 1981, Local 519 requested the employer to recognize it as the representative of the new position. By letter dated January 20, 1981, the employer recognized intervenor as the exclusive bargaining representative of the new position as part of the bargaining unit in the Fire Marshal's Office.

Local 17 directed correspondence to the county on April 3, 1981, wherein it raised a claim to the fire protection engineer position. The county responded by letter dated April 8, 1981, enclosing copies of the documents involved in the January, 1981 exchange by which the disputed position was accreted to the unit represented by Local 519. This petition followed.

POSITIONS OF THE PARTIES:

Local 17 argues that the position of fire protection engineer is aligned with the duties, skills and working conditions of the Plans Examiner II; that the preponderance of fire protection engineer duties involve formal plans checking and that such duties have in the past been performed by employees in the Plans Examiner classifications; and that the fire protection engineer position should be properly included in the bargaining unit represented by Local No. 17.

The employer contends the fire protection engineer position is a part of the fire marshal's staff and reports directly to the fire marshal; that the duties of the position align with those of the other members of the fire marshal's staff; that Local No. 519 represents all members of the fire marshal's staff; that based upon requirements as specified in RCW 41.56.060, the fire protection engineer position is appropriately a part of Local 519's bargaining unit.

Local 519 concurs with the employer that the fire protection engineer position should remain as part of the bargaining unit found in the Fire Marshal's Office. It contends that some plans checking work has always been

performed in the Fire Marshal's Office. Local 519 appears to contend that informal practice has merely been formalized with the creation of the new job title.

DISCUSSION:

This case presents difficult "second generation" unit determination problems. Substantial history exists affecting the disputed position, and the past actions of the parties have a definite impact of the current problem. Additionally, this case points out a problem inherent in structuring of bargaining units along lines of employer orientation rather than along lines of employee orientation.

The bargaining unit which existed in the 1970-75 era may not have been ideal in all respects, but it clearly grouped together a number of "inspection" classifications. The commonality of interest of "inspector" personnel is that they all perform inspection work. The fact that some have backgrounds in various construction trades or in fire suppression does not justify a separate bargaining unit for each type of background to be found among the inspectors. See: Clark County, Decision 290, 290-A (PECB, 1977). Local 17's first attempt to fragment the inspection workforce was resisted by the county. Although not cited in King County, Decision 342 (PECB, 1978), the Clark County decision issued less than a month before indicates that the King County decision was consistent with Commission policy. Had the inspection functions never been fragmented between two bargaining units, we would not have the current problem to deal with.

Local 17's second attempt to gain recognition would have avoided the fragmentation. From the arguments of the parties, it is inferred that the county may have retreated from its previous position on fragmentation, and invited exclusion of the fire inspection personnel from the bargaining unit. The county and Local 17 entered into a contractual arrangement concerning the transfer and future assignment of certain functions, and entered into a recognition agreement which set the stage for the present dispute. Local 519 can hardly be criticized for organizing a group of public employees left stranded by the recognition agreement between the county and Local 17.

It is beyond the scope of this unit clarification proceeding to enforce the contractual obligations undertaken by the county and Local 17 regarding the assignment of inspection work. Similarly, although the county's recognition of Local 17 gave rise to a bargaining relationship and, inherently, gave rise to a duty on the part of the county to bargain with Local 17 concerning transfer of bargaining unit work to another bargaining unit, such matters are properly the subject of unfair labor practice proceedings and are beyond the scope of unit clarification proceedings.

Local 17's claim that the disputed position usurps work from its bargaining unit must fail, because the record does not indicate that the fire protection engineer's responsibilities were shifted from the plans examiners' regular duties. Some routine plans inspection work dealing with fire prevention was performed by fire marshal personnel prior to the creation of the disputed position. The October 9, 1978 recognition agreement shifted the focus of the unit determination from the employee-generic base of "inspection" work to the employer-oriented base of the sectional structure within the Building and Land Development Division. The sections have not developed equally. On the contrary, the Inspection and Code Enforcement Sections have shown only modest growth in size, while the fire-related section has grown from one or two employees at the time of the 1975 decertification to 12 to 14 employees currently. The disputed position was created to fill a specialized need which developed with the onset of sophisticated fire prevention techniques.

Local 17's second contention deals with a comparison of the duties, skills and working conditions of the fire protection engineer and the plans examiners. There is currently only one fire protection engineer. The organization chart shows five plans examiners in the commercial plans review function. The plans examiners are responsible for a wide variety of building code matters, reviewing construction and site plans to ensure compliance with building and zoning codes, ordinances, and heating, ventilating and mechanical requirements. The fire protection engineer position is responsible for checking construction and equipment plans to ascertain whether adequate fire and life safety requirements have been included in design and operations. Systematic evaluation of laws, ordinances and regulations affecting fire prevention and safety allows the fire protection engineer to recommend necessary changes and revisions as a part of the ongoing program. There is no doubt that there are some similarities, and that they once were (and could now be) placed in a single employee-generic bargaining unit. But, the communities of employee interest have been divided along lines of management's organization. This falls just short of the situation encountered in South Kitsap School District, Decision 1541, (PECB, 1983), where the clerical workforce of the employer was artificially fragmented between two different bargaining units. In that situation, there was neither an employee-generic nor an employer-oriented description of either bargaining unit, and both units were found to be inappropriate. In the situation at hand, there are clear lines of demarcation within the employer's organization between the Fire Marshal's Office and the other sections in the Building and Land Development Division.

The fire protection engineer works as part of the fire prevention program. The new position was a response to new emphasis and effort brought about by county implementation of the fire code. It represented an attempt by the

employer to provide additional backup to the fire prevention effort, to provide specialization and concentration on fire concerns by a fire specialist rather than by the plans examiners who are already burdened with numerous other general concerns in the plans examination process. The disputed position's supervision is from within the Fire Marshal's Office and the responsibilities compliment the assignments given to fire and arson investigators. It would be inappropriate to needlessly fragment that section of the employer's organization and Local 519's bargaining unit by placing the fire protection engineer in a bargaining unit comprised of employees in a separate office.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. International Federation of Professional and Technical Engineers, Local No. 17, is exclusive representative within the meaning of RCW 41.56.030(3), representing technical and professional employees of King County in certain sections of the Building and Land Division.
3. Public Safety Employees, Local 519, is the certified exclusive bargaining representative of certain technical and professional employees of King County in the Fire Marshal Section of the Building and Land Development Division.
4. A new position of fire protection engineer was created in January, 1981 reporting directly to the fire marshal. Local No. 519 requested and was granted recognition as exclusive bargaining representative for the position. A dispute has arisen whether the new position should be more appropriately placed in the bargaining unit represented by Local No. 17.
5. Along with other duties, the fire protection engineer performs examination of building plans concerning fire and life safety requirements. Such duties are related to and a logical outgrowth of increased responsibilities, employment levels and activity within the fire marshal section. Plans examiner classifications who are represented by Local 17 perform a more comprehensive examination and consider numerous factors in addition to fire and life safety.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The fire protection engineer classification possesses skills, working conditions and duties more similar to those of employees within the unit represented by Local 519 and the placement of the position within that bargaining unit is appropriate. Placement of the engineer into Local 17's bargaining unit would create fragmentation of bargaining units and would not be appropriate within the meaning of RCW 41.56.060.

ORDER

The classification of fire protection engineer is included in the bargaining unit consisting of the fire marshal's staff of King County.

DATED at Olympia, Washington this 27th day of January, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, Executive Director