

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

KENT FIRE DEPARTMENT REGIONAL
FIRE AUTHORITY

and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1747

For clarification of an existing
bargaining unit.

CASE 23403-C-10-1435

DECISION 11070 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Mark Jones, President, for the union.

Jim Schneider, Fire Chief, for the employer.

On July 26, 2010, the Kent Fire Department Regional Fire Authority (employer) and the International Association of Firefighters, Local 1747 (union) jointly filed a unit clarification petition under Chapter 391-35 WAC, seeking to clarify a bargaining unit of fire fighters. The parties' current collective bargaining agreement defines the bargaining unit as "all regular, full time, uniform employees with the rank of Battalion Chief and below"

The parties requested the bargaining unit be clarified to remove the nine Battalion Chiefs because they are supervisory employees. Hearing Officer Emily Martin held a prehearing conference call on September 1, 2010, where the parties stipulated that the positions were supervisory. The parties also filed joint written stipulations on February 1, 2011.

ISSUE

Should the Battalion Chiefs be excluded from the bargaining unit because they are supervisors?

The Executive Director accepts the parties' stipulations and clarifies the existing bargaining unit to exclude the Battalion Chiefs because they are statutory supervisors.

APPLICABLE LEGAL PRINCIPLES

Supervisors are employees within the meaning of Chapter 41.56 RCW and are entitled to organize for the purpose of collective bargaining. *METRO v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). In order to prevent a conflict of interest, supervisors are separated from the bargaining units that contain the employees they supervise. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). This principle has been codified in WAC 391-35-340(1):

It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

Chapter 41.56 RCW does not contain a definition of supervisor, but the agency has traditionally looked to the definition of supervisor set forth in RCW 41.59.020(4)(d). *Granite Falls School District*, Decision 7719-A (PECB, 2003). According to that definition, a supervisor is:

any employee having authority, in the interest of an employer to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment. . . . The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

A supervisor can perform a "preponderance" of the supervisory duties in two ways. If a majority of an individual's time is spent performing supervisory duties, that individual is a supervisor. *Richland School District*, Decision 10151 (PECB, 2008). Alternatively, an individual who spends less time performing supervisory duties but performs a preponderance of

the enumerated duties, may be considered a supervisor. *King County*, Decision 10075 (PECB, 2008).

ANALYSIS

The parties stipulate that the nine Battalion Chief positions are supervisory because a preponderance of their time is engaged in supervisory activities including hiring, assigning, promoting, transferring, and disciplining. The “preponderance” test for supervisory employees is satisfied when those employees spend a majority of their time on supervisory duties. *Richland School District*, Decision 10151 (PECB, 2008). Therefore, the Battalion Chiefs, are supervisory employees and should be excluded from the rank-and-file firefighter bargaining unit.

CONCLUSION

The Executive Director finds that the stipulations filed by the parties are sufficient to constitute a basis for a ruling. Nothing has come to the attention of the Commission staff or Executive Director that contradicts the propriety of the clarification requested by the parties. The Executive Director accepts the parties’ stipulations that the Battalion Chiefs exercise authority on behalf of the employer over subordinate employees pursuant to WAC 391-35-340, and are therefore excluded from the existing rank-and-file bargaining unit. The parties have waived their right to appeal this matter to the Commission.

FINDINGS OF FACT

1. The Kent Fire Department Regional Fire Authority is a public employer within the meaning of RCW 41.56.030(13).
2. The International Association of Firefighters, Local 1747, is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union is the exclusive bargaining representative of a bargaining unit consisting of all regular, full-time, uniformed employees with the rank of Battalion Chief and below.
4. The parties jointly petitioned for determination of the supervisory status of the Battalion Chiefs.
5. The parties stipulate that the Battalion Chiefs spend a preponderance of their time performing supervisory duties.

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. The Battalion Chiefs are supervisors under WAC 391-35-340.

ORDER

1. The Battalion Chiefs are excluded from the existing uniformed bargaining unit because they are supervisors.
2. The existing bargaining unit shall be modified as follows:

All uniformed personnel of the Kent Fire Department Regional Fire Authority as defined in RCW 41.26.030, excluding supervisors, confidential employees and non-uniformed employees.

ISSUED at Olympia, Washington, this 17th day of May, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director



PUBLIC EMPLOYMENT RELATIONS COMMISSION

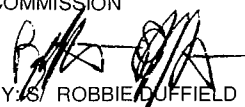
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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE CUFFIELD

CASE NUMBER: 23403-C-10-01435
DISPUTE: COMMUNITY INT
BAR UNIT: SUPERVISORS
DETAILS: Battalion Chiefs
COMMENTS:

FILED: 07/26/2010

FILED BY: JOINT

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