

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
INTERNATIONAL ASSOCIATION OF	)	CASE NO. 3744-E-81-712
FIREFIGHTERS, LOCAL NO. 1052	)	DECISION NO. 1519-A PECB
Involving certain employees of:	)	
CITY OF RICHLAND.	)	DECISION OF COMMISSION

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Critchlow & Williams, by David E. Williams, attorney at law, appeared on behalf of the union.

Perkins, Coie, Stone, Olsen & Williams, by J. David Andrews and Bruce Michael Cross, attorneys at law, appeared on behalf of the employer.

This case comes before the Commission on a properly filed Petition by International Association of Firefighters Local No. 1052 for Review of an Order of Dismissal issued by Marvin L. Schurke, Executive Director. The case originated with Local No. 1052 filing a petition with the Public Employment Relations Commission for investigation of a question concerning representation of a bargaining unit limited to battalion chiefs in the City of Richland Fire Department. The background of this case is detailed in the Order of Dismissal and will not be repeated here.

POSITIONS OF THE PARTIES

The bases for the Petition for Review are that the Executive Director erred in making Findings of Fact 5 and 7, and that he erred in making Conclusion of Law 2.

Finding of Fact 5 states:

Individuals holding the title of battalion chief and/or fire marshall in the Department of Fire and Emergency Services exercise substantial authority, in the name and interest of the City of Richland, as supervisors of non-supervisory firefighters employed by the City of Richland. The existence and exercise of that authority was previously the basis for exclusion of the battalion chiefs and/or fire marshall from the bargaining unit of non-supervisory firefighters employed by the City of Richland.

Finding of Fact 7 states:

In the processing of grievances and other matters, individuals holding the rank of battalion chief and/or fire marshall who are or have been active in the leadership of Local 1052 assume a dual role, acting in part on behalf of the employer and in part as spokesmen on behalf of Local 1052. A clear and present danger exists of a conflict of interest within Local 1052 so long as its leadership includes persons acting on behalf of the employer as supervisors of non-supervisory employees represented by Local 1052.

Conclusion of Law 2 states:

International Association of Firefighters, Local 1052, is, because of its domination by supervisors employed by the City of Richland, incapable of dealing at arm's length with the City of Richland as exclusive bargaining representative of both a bargaining unit of supervisors employed by the City of Richland and a bargaining unit of non-supervisory employees subject to the authority of those supervisors, and is therefore disqualified from certification at this time as exclusive bargaining representative of both such bargaining units.

Further, Local 1052 states that the Executive Director's Decision does not comply with RCW 41.56.010:

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the RIGHT of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

In support of its position, the union relies on International Association of Firefighters v. City of Yakima, 91 WA.2d 101 (1978), and Municipality of Metropolitan Seattle (Metro) v. L & I, 88 WA. 2d 925 (1977). The bulk of the union's arguments are directed at whether the battalion chiefs are public employees under the Act (to which there is no disagreement by the Executive Director), and at the union's competency to represent the battalion chiefs (which is not an issue in this case).

The City requests that the Public Employment Relations Commission affirm the Executive Director's decision.

#### DISCUSSION

The contention by the union that the Battalion Chiefs are "public employees" as defined by the Public Employees' Collective Bargaining Act is addressed by

the Executive Director in Finding of Fact 6 and will not be discussed here. Nor will we, absent claim or evidence of changed factual circumstances, re-litigate our previous determination that these public employees are supervisors, as found by the Executive Director in paragraphs 5 and 7 of the findings of fact.

The primary basis for the union's argument that the Battalion Chiefs should prevail in their choice of Local 1052 as their bargaining representative is that they have the right to do so under RCW 41.56.010. The error in the union argument is that this right is not absolute. As pointed out by the Executive Director, the rights of the supervisors must be seen in the same light that shines on the rights of the supervised. The decisive factor in this case - that the Battalion Chiefs manage the daily affairs of both the Fire Department and the Local Union -receives little attention in the union's brief.

Section 14(a) of the NLRA preserves the rights of supervisors to become and remain members of labor organizations. No similar provision is found in RCW 41.56, nor is such a provision necessary, since supervisors are public employees under RCW 41.56. See: City of Tacoma, Decision 95-A (PECB, 1977), Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947), City of Seattle, Decision 689, 689-A, 689-C (PECB, 1981), and Municipality of Metropolitan Seattle (METRO) v. L & I, 88 WA 2nd 925 (1977). The limits of these rights derive from concern over employer domination of rank and file units.

Under RCW 41.56.140(2), it is an unfair labor practice for an employer "to control, dominate, or interfere with a bargaining representative." In Douglas Aircraft Co., Inc., 53 NLRB 486 (1943), the NLRB adopted a policy of denying certification to a union organized or led by a supervisor. Later, in Detroit Association of Plumbing Contractors and James P. Duffy, 126 NLRB 1831 (1960), the NLRB further defined limitations on supervisors in bargaining units:

These supervisors, long-time members of the Union, have progressed from journeymen status to their present rank in the supervisory hierarchy, and, although no longer in the bargaining unit, they still retain their membership in the Union. While such supervisors may retain or seek union membership, we will apply the rule of respondeat superior to any active participation by them in union affairs to the same extent as we apply that rule to other areas of supervisory conduct. Accordingly, we deem such participation by these supervisors to constitute in effect participation in union activities by their employers and, hence, unlawful.

Additionally, in Sierra Vista Hospital, 241 NLRB 631 (1979), the NLRB considered the potential for abuse when rank and file employees are represented by their own supervisors.

Petitioner places heavy reliance on Village of Whitefish Bay (Police Department), Wisconsin Employment Relations Commission, Decision No. 16928, and City of Detroit (Teamsters Local 214), Michigan Employment Relations Commission, Case No. R80 C 118 (1980). We have read these cases carefully and find that they do not support petitioner's position.

The Wisconsin case arose under a specific statutory provision, and is of little guidance here. The Wisconsin law generally excludes supervisors from all bargaining rights. Section 111.70(8) Wis. Stats. permits law enforcement and firefighting supervisors to bargain collectively, but requires that they be organized in separate bargaining units and permits the administrative agency to require that the exclusive bargaining representative be a separate local entity from the representative of non-supervisory employees. A police lieutenant petitioned for an election on behalf of the Whitefish Bay Police Supervisors Association. The WERC found that association to be "a separate local entity from the Policemen's Protective and Benevolent Association of Whitefish Bay, which is the bargaining representative of certain nonsupervisory law enforcement employees of the Village." The second conclusion of law was:

2. That since the Whitefish Bay Police Supervisors Association is a separate local entity from the representative of the nonsupervisory law enforcement personnel of the Village, it cannot be disqualified by Section 111.70(8), Stats., from representing the eligible supervisory personnel employed in the Police Department of the Village of Whitefish Bay.

In the instant petition the same local union seeks to represent both supervisors and the employees they supervise.

The case of City of Detroit, supra, at first seemed to support the petitioner's position, but on close reading we are satisfied that it does not. In that case, Teamsters Local 214 petitioned for an election in a unit described as "all street sanitation ... senior street sanitation foremen." Objection was made that these employees supervised employees currently represented by the same labor organization. Nothing in the opinion suggests that, as in the instant case, the petitioning local union represented only the employees supervised by these foremen. The discussion, quoted extensively in petitioner's brief contains this language:

...The Commission has determined that supervisory employees and non-supervisory employees may be represented by the same labor organization so long as two separate units exist which function separately... The fact that the same business agent may be appointed by the local president to service both contracts does not affect this result, so long as separate officials are elected for each unit. p.4. (Emphasis ours)

The last clause of the quotation mystified us until we read City of Grand Rapids, 1979 MERC Lab. Op. 198, cited by MERC in its Detroit opinion, copy also attached to petitioner's brief, although not discussed. The petitioner in the Grand Rapids case was designated as Fraternal Order of Police, Lodge No. 97, Command Officers Division. It sought a unit of "all command officers of the Grand Rapids Police Department, including police lieutenants, police captains, and police majors, but excluding the deputy chief and chief of police." MERC said:

This Commission has indicated in a number of decisions that we will not dismiss a petition for a supervisory unit solely because the petitioning union also represents nonsupervisory employees ... The only requirement we have established is that the two units exist and function in separate units or locals. p.3. (Emphasis ours)

This language clarifies what MERC meant in its Detroit case when it said, "...so long as separate officials are elected for each unit." In the instant case, petitioner made no showing that the two firefighter units would function separately with separately elected officers. At the time of the hearing one battalion chief was president of the entire local and that another was a vice-president and paid representative of the state organization with which Local 1052 is affiliated.

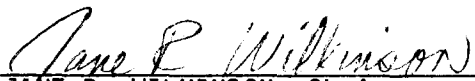
The reasoning of both Detroit Association of Plumbing Contractors, supra, and Sierra Vista Hospital, 241 NLRB 631 (1979), dictates affirmance of the Executive Director in dismissing the petition. The rights of the non-supervisory employees would be threatened if their representative is influenced by their supervisors.

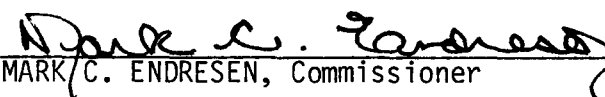
ORDER

The findings of fact, conclusions of law and order of the Executive Director are affirmed.

ISSUED at Olympia, Washington, this 25th day of March, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JANE R. WILKINSON, Chairman

  
MARK C. ENDRESEN, Commissioner

  
MARY ELLEN KRUG, Commissioner