STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, Local 2024,	)	
	)	CASE NO. 5610-U-84-1021
Complainant,	)	DECISION NO. 2160 - PECB
vs.	)	
KING COUNTY FIRE PROTECTION DISTRICT NO. 39,	)	PRELIMINARY RULING
Respondent.	)	

The complaint charging unfair labor practices was filed December 2, 1984. The complainant describes its bargaining unit as:

> All non-fire combat dispatchers, firefighters, lieutenants, captains and coordinating captain employed by King County Fire Protection District No. 39.

The statement of facts in support of the complaint is brief, and is set out here in its entirety:

> 1. On November 28, 1984, the Federal Way Fire Protection District No. 39 ("the District"), announced that it was going to hire new fire fighters from a limited pool of candidates, namely, individuals with two or more years of experience with the District or six months as part time employees with the District.
>
> 2. Prior to this time, the pool of applicants for new positions with the District had never been limited.
>
> 3. The district took the unilateral action described above without notice to complainant or affording it an opportunity to bargain concerning the change in hours, wages, and working conditions of the employees represented by complainant, thus effecting the quality of the personnel to be hired and thereby adversely impacting bargaining unit employees.

The matter is presently before the Executive Director for preliminary ruling pursuant to WAC 391-45-110. At this stage in the proceedings, it is presumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether the complaint states a claim for which relief can be granted through the unfair labor practice provisions of Chapter 41.56. RCW.

A necessary condition precedent to finding a "refusal to bargain" unfair labor practice violation is that the union holds status as the exclusive bargaining representative of an appropriate bargaining unit. The reference to inclusion of "dispatchers" would seem to raise some doubts, especially in light of City of Yakima, Decision 837 (PECB, 1980). The docket records of the Public Employment Relations Commission do not disclose any record of agency certification of the bargaining unit under the terms indicated in the unfair labor practice complaint. The complaint thus appears to be deficient in this regard.

The complaint also raises a question as to whether applicants for employment are employees within the definition of RCW 41.56.030(2), which provides:

> "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

In the absence of anything specific in the statute to indicate that the legislature intended this definition to cover applicants for employment, PERC would need to be read the definition of collective bargaining (RCW 41.56.030(4)) broadly, to require bargaining over conditions for obtaining employment, as well as conventionally for conditions arising after the employment relationship is established.

The National Labor Relations Board has noted that "employees" referred to in Section 8(d) of the National Labor Relations Act "were not limited to those individuals already working for the employer" but also included "prospective employees". Houston Chapter Associated General Contractors 143 NLRB 409 (1963), (enforced, 349 F2d 449 (Cir 5th, 1965) cert. denied 382 US 1026 (1966),) citing NLRB v. Borg-Warner Corp. 356 US 342 (1958). The facts of the present allegation do not reach those of Associated General Contractors. Rather the test used by the Court in Allied Chemical and Alkalic Workers Local 1 v. Pittsburgh Plate Glass Co. 404 US 157 (1971) is more on point. In that case the Court held that retired employees were not employees within the meaning of the Act and thus their health insurance benefits were not terms and conditions of employment of which would be mandatory subjects of bargaining. Next, the Court addressed the issue of whether the retirees' benefits "vitally affects" the terms and conditions of the active employees and in that way became a mandatory subject of bargaining. The "vitally affects" test of Pittsburgh Plate Glass (supra) would allow issues related to non-employees to become mandatory subjects of bargaining if a sufficient nexus is shown with the current employees.

The complainant has alleged an unspecified change in hours, wages and working conditions of the employees represented by the complainant. It also alleges an vague claim that the quality of the personnel to be hired adversely impacts bargaining unit employees. With the guidance provided here, the complainant is invited to file an amended complaint setting forth sufficient facts to warrant processing of the case.

NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this Order to amend the complaint so that a more accurate evaluation of the allegations can be made. In the absence of an amendment, the complaint will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 28th day of February, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director