

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 29

Involving certain employees of:

SPOKANE AIRPORT BOARD

CASE 26323-E-14-3852

DECISION 12085 - PECB

DIRECTION OF ELECTION

Robblee Detwiler & Black, P.L.L.P., by *SaNni Lemonidis*, Attorney at Law, and *Daniel Hutzenbiler*, Attorney at Law, for the petitioner, IAFF, Local 29.

Etter, McMahon, Lamberson, Clary & Oreskovich, P.C., by *Mike McMahon*, Attorney at Law, for the employer.

Emmal Skalbania & Vinnedge, by *Alex Skalbania*, Attorney at Law, for the incumbent, IAFF, Local 1789.

The International Association of Fire Fighters, Local 1789 (Local 1789) represents the fire fighters at the Spokane Airport Board (employer). Local 1789 and the employer were parties to a collective bargaining agreement that expired on December 31, 2012. Local 1789 and the employer subsequently agreed to extend that agreement until December 31, 2013.

The International Association of Fire Fighters, Local 29 (Local 29) currently represents a bargaining unit of non-supervisory fire fighters who are employed by the City of Spokane. On February 28, 2014, Local 29 filed a petition seeking to become the new representative of the fire fighters. Local 29 indicated on the case filing form that it was seeking to change the bargaining representative of the employees employed by the employer. In a letter attached with the petition, Local 29 stated that the employees in both bargaining units had elected to be part of Local 29. However, Local 29's letter also stated that the employees would be in separate bargaining units.

Representation Case Administrator Dario de la Rosa conducted an investigation conference by e-mail where all parties stipulated to this agency's jurisdiction, Local 1789 and Local 29's qualifications as labor organizations, the timeliness of the petition, the absence of any blocking charges, the appropriateness of the petitioned-for unit, and the employee eligibility list. However, the employer challenged the appropriateness of the petition based upon the harm that it believes could be caused to the employer's operation if Local 29 were allowed to represent the at-issue employees. The employer claimed that because Local 29 represents other fire fighters in the greater Spokane area, the employer could be forced to bargain issues that are not unique to the employees at the airport. Both parties filed written statements of their positions.

The issue to be decided is whether the employer may oppose Local 29's petition to represent the employer's fire fighters because Local 29 represents other fire fighters in the Spokane area. Provided Local 29 qualifies as a labor organization under the Act, neither this agency nor the employer may limit the fire fighter's selection of a bargaining representative of their own choosing. Because Local 29 is a qualified labor organization, the employer's opposition to Local 29's petition is rejected. The petition is remanded to the Representation Case Administrator for further processing.

DISCUSSION

Applicable Legal Standard

The implementation of the right of public employees to join and be represented by labor organizations is the intent and purpose of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Nucleonics Alliance, Local Union No. 1-369, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984); RCW 41.56.010. To effectuate these rights, this agency has the authority to conduct representation elections to determine if a group of employees wish to be represented by a labor organization for purposes of collective bargaining with their employer. RCW 41.56.070.

No public employer may interfere with, restrain, coerce or discriminate against any public employee in the "free exercise of their right to organize and designate representatives of their own

choosing ...” RCW 41.56.040. Similarly, provided a labor organization qualifies as a “lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers,” this agency has no authority to place any limitations on whom the employees designate as their representative. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 45 Wn. App. 686 (1986), *review denied*, 107 Wn.2d 1030 (1987); RCW 41.56.020(12).

Application of Standards

The parties’ filings indicate some confusion about the process being implemented here and refer to this action as both an “affiliation” and a “merger.” Local 29’s representation petition is neither.

An affiliation is where a labor organization decides that it wants to join or “affiliate” with another existing labor organization during the term of a collective bargaining agreement. In order for an affiliation to be accepted, the affiliating labor organization must show that its members were provided with due process during the affiliation process. Due process may be satisfied through a vote of the union’s membership. *Skagit Valley Hospital*, Decision 2509-A (PECB, 1987), *aff’d*, *Skagit Valley Hospital v. PERC*, 55 Wn. App. 348 (1989). An affiliation vote may be overturned due to a lack of “continuity” between the pre- and post- affiliation union, such as a change in the union’s governance structure. *City of Battle Ground*, Decision 11933 (PECB, 2013). If all precedents are met, then this agency will amend any existing certification to reflect the affiliation.

A merger is where one union, such as Local 29, represents two or more bargaining units of employees who are employer by the *same employer* and desire to combine those units into a single bargaining unit of employees. In order for a merger to be valid, the resulting bargaining unit must be appropriate and a majority of employees in both bargaining units must approve the merger through a vote. WAC 391-25-420.

Local 1789 did not file a petition to affiliate with Local 29. Rather, the purpose of Local 29’s petition is to *replace* Local 1789 as the exclusive bargaining representative of the employees.

Additionally, Local 29's petition does not indicate that it is seeking to merge the petitioned-for bargaining unit with any other bargaining unit. Again, the only purpose of the petition is to determine if the employees want Local 29 to replace Local 1789 as the exclusive bargaining representative of the *existing* bargaining unit.

The process being invoked here is commonly referred to as a change of representation petition or "raid." As opposed to the affiliation process, a change of representation petition requires the petitioning labor organization to involve this agency's representation processes. This agency will investigate whether at least 30 percent of the employees support the "raiding" labor organization and, if so, conduct a secret ballot election of all employees to ascertain their desires regarding representation.

Local 29's original filing indicates that it recognized that the bargaining unit of fire fighters at the Spokane Airport would be a separate and distinct bargaining unit from the one that it represents at the City of Spokane. Local 29's filing demonstrates no intent to merge the petitioned-for employees with any other bargaining unit of employees. Furthermore, the employer, Local 1789, and Local 29 have all stipulated that Local 29's petition was timely, that this agency has jurisdiction over this matter, that there are no blocking charges, that the bargaining unit is appropriate, and the eligibility list is correct. The parties also stipulate that Local 29 is a qualified labor organization under the Act.

Because all parties have stipulated to these pertinent issues, including Local 29's qualifications, nothing would preclude this agency from ascertaining the employees' desires through a secret ballot election. While the employer has concerns that the bargaining relationship it enjoyed with Local 1789 will cease to exist, those concerns do not outweigh the employees' right to select their own representative. As such, these concerns provide no basis for blocking Local 29's petition.

The employer's other concerns also do not provide a basis for blocking Local 29's petition. A labor organization may not seek to bargain on behalf of employees it does not represent. *Kitsap Fire District 7*, Decision 7064-A (PECB, 2001). Should Local 29 be certified as the exclusive bargaining representative of the employees, the employer will be obligated to bargaining with

Local 29 about those mandatory subjects of bargaining that apply to the employees in the bargaining unit described in the certification issued by this agency. Local 29 may not seek to bargain with this employer about the other employees that Local 29 represents who are not in this bargaining unit.

FINDINGS OF FACT

1. The Spokane Airport Board (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The International Association of Fire Fighters, Local 1789 (Local 1789), is a labor organization within the meaning of RCW 41.56.030(11).
3. The International Association of Fire Fighters, Local 29 (Local 29), is a labor organization within the meaning of RCW 41.56.030(11).
4. Local 1789 currently represents a bargaining unit of fire fighters employed by the employer is a bargaining unit that is currently described as follows:

All full-time and regular part-time fire fighters of the Spokane Airport Fire Department, excluding supervisors, confidential employees, and all other employees.
5. On February 28, 2014, the Local 29 filed a petition seeking to become the new representative of the fire fighters.
6. During an investigation conference conducted by e-mail, the employer, Local 1789, and Local 29 stipulated to this agency's jurisdiction, Local 1789 and Local 29's qualifications as labor organizations, the timeliness of the petition, the absence of any blocking charges, the appropriateness of the petitioned-for unit, and the eligibility list.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. Based upon Findings of Fact 3, 5 and 6, Local 29 is a labor organization that is qualified to represent the bargaining unit of employees described in Finding of Fact 4.

ORDER

Processing of this matter is REMANDED to the Representation Case Administrator to conduct a representation election for the bargaining unit described in Finding of Fact 4.

ISSUED at Olympia, Washington, this 11th day of June, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order may be appealed by filing timely objections with the Commission under WAC 391-25-590.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

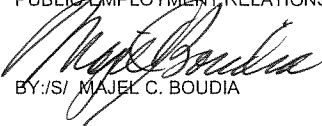
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ MAJEL C. BOUDIA

CASE NUMBER: 26323-E-14-03852 FILED: 02/28/2014 FILED BY: PARTY 2
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