

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS, LOCAL 2916,	)	
	)	
Complainant,	)	CASE 7137-U-87-1455
	)	
vs.	)	DECISION 3482-A - PECB
	)	
SPOKANE COUNTY FIRE DISTRICT 9,	)	
	)	
Respondent.	)	DECISION OF COMMISSION
	)	
	)	

---

Barry E. Ryan, Attorney at Law, appeared on behalf of the union.

Heller, Ehrman, White & McAuliffe, by Otto G. Klein, III, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on a timely petition of Spokane County Fire District 9 for review of a decision issued by Examiner Kenneth J. Latsch.

BACKGROUND

Spokane County Fire District 9 provides fire suppression and emergency medical services in northern Spokane County, Washington. The area served covers approximately 140 square miles, and has approximately 40,000 residents. Services are provided from seven fire stations located throughout the area served. General policy for the fire district is set by an elected Board of Fire Commissioners, all of whom are also volunteer firefighters. Since January 6, 1987, Robert Anderson has been the fire chief.

When Fire District 9 was first created in 1948, it was staffed entirely by volunteer firefighters. Currently, the employer has a force of approximately 100 volunteer firefighters, and six of its

fire stations are manned entirely by volunteer firefighters. The volunteer firefighters receive \$5.00 for each drill they attend. The volunteers also earn "points" for participating in fire suppression and emergency medical service ("EMS") calls, as well as for attending meetings, teaching classes, etc. Accumulated points are redeemed semi-annually for a small monetary reimbursement.<sup>1</sup>

Full-time paid fire fighters (hereinafter "uniformed personnel") were eventually added to the employer's workforce, and the union became the exclusive bargaining representative for the uniformed personnel in the mid-1980's.<sup>2</sup> All of the district's uniformed personnel work out of Station No. 1.

Over the years, the number of uniformed personnel scheduled to work each shift has varied. Currently, they work in three shifts, with a normal shift complement of a captain, paramedic and two fire fighters. The employer now has an established minimum manning of three uniformed personnel. When more than one of the scheduled employees will be absent for a whole shift, the employer schedules a replacement from a "relief list" to cover that absence and to keep the minimum manning at three. Until 1986, volunteer fire-fighters were eligible for inclusion on that relief list. In March, 1986, the employer and union agreed to limit the relief list to uniformed personnel.

---

<sup>1</sup> The fire district budgets a certain pool of funds each year for volunteer compensation. After cash payments for drills have been deducted, the value of each accumulated point is determined by dividing the total earned points into the remaining pool of funds. The value of points therefore varies from time to time, depending on the number of points earned during that period.

<sup>2</sup> During the period relevant to this case, the bargaining unit included 12 full-time fire fighters who are "uniformed personnel" within the meaning of RCW 41.56.030(7). Rick Oliver served as president of the local union.

At times, the employer has a need to cover the temporary absences of its uniformed personnel from Station 1 when they are responding to a call. Volunteers have been used for this "standby" purpose. When so utilized, the volunteers perform all the same functions as the uniformed personnel. In the absence of a sufficient response by volunteers, off-duty uniformed personnel are called out to provide standby coverage.

In November, 1986, the union filed a grievance protesting that one bargaining unit member had been left to respond alone from Station 1 to a call. The union expressed concern about safety and liability problems with such solo responses. While the matter was being processed through the contractual grievance procedure, the parties discussed possible alternatives to correct the situation. The union's proposed solution was to hire four additional full-time fire fighters to augment existing shift strengths. The employer did not agree to the union's proposal, but its responses to the union recognized that volunteers were not always responding when needed at Station 1.

The fire district and union agreed upon a temporary dispatch procedure made effective on January 1, 1987. Under that procedure, if only three uniformed personnel were on duty at Station 1, all three would respond to alarms together; responding with two pieces of equipment. Volunteers were required to stand by at Station 1 when the entire paid crew was committed to a fire outside of Station 1's normal response area, when an aid call resulted in a shift officer remaining at the station alone, or in the event the uniformed personnel crew responded to a request for mutual aid.

#### Negotiations on Standby Procedures

Chief Robert Anderson took command of the department in the first week in January, 1987. Later that month, he asked Station 1 volunteers for ideas on standby manning while the uniformed personnel

were responding to calls. After a couple of months of evaluating the situation, Chief Anderson concluded that the January, 1987, interim procedure was resulting in a greater response than necessary, with resultant wear and tear on equipment.

On April 1, 1987, Chief Anderson wrote a letter to the chairman of the union's grievance committee, James Panknin, proposing the creation of a standby system that, together with volunteers, would utilize uniformed personnel who were willing to carry a pager and respond while off duty. Anderson offered to bargain the implementation of such a system and its impact on the union's members.

Panknin responded in a letter dated May 4, 1987, proposing negotiations over a "call-back system for paid fire fighters". On the same date, Anderson sent a letter to the Board of Fire Commissioners, recommending that negotiations begin on the issue.

Chief Anderson testified that, between April 1 and early June of 1987, he had at least a half-dozen meetings with union representatives concerning the standby/call-back procedure. During those meetings, the union sought a two-hour minimum call-back guarantee for those occasions when uniformed personnel responded.<sup>3</sup> The chief expressed concern that such a minimum pay would be too expensive.

On May 9, 1987, local union President Oliver discussed the matter with Anderson and a further meeting was set for May 15. That meeting did not take place.

#### Issuance of Special Order 87-3

On June 4, 1987, Chief Anderson issued "Special Order 87-3", entitled "Response Procedures for Three Person Manning Levels".

---

<sup>3</sup>

The compensation sought by the union was the same as that already specified in the parties' collective bargaining agreement for the call-back of off-duty personnel.

Volunteers were to be called in to stand by at Station 1 whenever only one full-time fire fighter was left.<sup>4</sup> The order made no mention of calling back off-duty uniformed personnel to standby at Station 1.

On June 14, 1987, the union presented a written proposal concerning the call-back of uniformed personnel. The union proposed that call-back be voluntary, that call-backs be subject to the two-hour minimum pay specified in the parties' collective bargaining agreement, and that either party be allowed to cancel the paid call-back system unilaterally. Chief Anderson discussed the union's proposal with the Board of Fire Commissioners, who rejected the proposal because of its cost. Anderson notified the union of the board's reaction in a letter dated July 1, 1987. The chief offered to meet with Oliver, to discuss alternatives.

Anderson and Oliver met later on the matter. Anderson indicated that he thought the Board of Commissioners would accept a one-hour minimum call-back, but Oliver maintained that cost considerations were not a legitimate reason for the employer to refuse the union's approach. Anderson indicated a willingness to discuss other alternatives, but reiterated the employer's position that it would not agree to more than a one-hour minimum for call-back to standby at Station 1. The union submitted no further written proposals regarding call-back.

During or about June, 1987, Fire Chief Anderson sought suggestions from the volunteers as to how a better response might be encouraged when Station 1 volunteers were called out. Volunteers met to discuss the issue in late June, 1987, and subsequently proposed a payment of \$5.00 for each hour spent on standby, as an incentive

---

<sup>4</sup> For fire calls, both pieces of equipment continued to go out, and the standby procedure for volunteers at Station 1 was not changed.

for volunteers to respond. The union was not informed of the volunteers' proposal.

The August 10, 1987 Standby Change

On August 10, 1987, the employer issued new instructions regarding Station 1 standby procedure. Dispatchers were directed to immediately call out the Station 1 volunteers when manning was reduced to only one full-time fire fighter, or when the on-duty crew was assigned to an incident outside Station 1's area. A maximum of two volunteers were to be compensated \$5.00 per hour for each standby call. Thereafter, the employer began compensating volunteers at the \$5.00 per hour rate for standby responses.

On August 16, 1987, the union sent a letter to Anderson, alleging that the employer's unilateral action was an unfair labor practice and demanding to bargain the change in wages, hours or conditions caused by the August 10, 1987 standby procedures.

On October 14, 1987, the union sent Chief Anderson a letter detailing the status of pending grievances and noting that the union was awaiting a counter proposal and/or negotiations to allow for mutual agreement on a call-back system. The union indicated it was planning to file an unfair labor practice complaint against the employer for the use of, and paying for, volunteer firefighters as standby personnel at Station 1. The instant complaint was filed on November 13, 1987.

On November 25, 1987, Chief Anderson issued an order eliminating the \$5.00 per hour compensation for volunteers on standby status. Since that time, volunteers performing standby duty at Station 1 have received points of the type they had traditionally received for performance of their volunteer firefighter duties.

The parties met on a number of occasions after the complaint was filed, but were unable to resolve their differences. While an effort was made to settle the issue, the union contends that such discussions were not negotiations, because Anderson took the position that the fire district could make the unilateral changes at issue and then negotiate only the effects of such changes with the union.

During the period of March, 1988 through January 13, 1989, the union filed other complaints charging the employer with unfair labor practices. This case and three others<sup>5</sup> were ultimately consolidated for hearing.

On May 1, 1990, Examiner Latsch dismissed three of the four complaints,<sup>6</sup> but found merit in the union's complaint challenging the standby dispatch procedure and volunteer compensation. The Examiner concluded that, by issuing its new standby procedure on August 10, 1987, and by compensating volunteers thereafter at the rate of \$5.00 per hour for time spent on standby, the employer had engaged in "skimming" bargaining unit work without giving notice to or bargaining with the union. The Examiner thus concluded that the employer had committed unfair labor practices within the meaning of RCW 41.56.140(4) and (1).

The employer has petitioned for review of the Examiner's decision on the standby issue, thus bringing the matter before the full Commission.

---

<sup>5</sup> Case 7301-U-88-1507, filed in March, 1988, alleged a refusal to bargain on new computer-oriented duties; Case 7605-U-88-1599, filed in September, 1988, alleged unlawful retaliation; and Case 7767-U-89-1646, filed in January, 1989, alleged skimming of bargaining unit work by assignment of fire fighter work to mechanics.

<sup>6</sup> The union did not petition for review of the complaints dismissed by the Examiner.

POSITIONS OF THE PARTIES

The employer takes issue with the Examiner's decision on a number of grounds:

First, the employer contends that the Examiner erred in his factual findings that: (a) The employer did not have a consistent and longstanding practice of using volunteers -- not bargaining unit members -- to stand by at Station 1; (b) volunteers had never previously been "paid" for standby duty; (c) the union made the "initial request to negotiate about the subject"; (d) the union was not informed of the discussions with the volunteers over the assignment of standby work; and (e) the standby assignment occurred only after the union attempted to negotiate a call-back and standby system whereby bargaining unit employees would receive overtime pay for such time worked.

Second, the employer asserts that the Examiner erred, as a matter of law, when he: (a) Analyzed the case as one of "skimming" bargaining unit work; (b) failed to apply or erroneously applied prior Commission precedent; (c) concluded that the union had not waived its right to bargain the standby assignment to volunteers, by failing to pursue the bargaining process; (d) concluded that the employer had a practice of assigning the same work to both bargaining unit members and other personnel; and (e) that all such work must be offered to the bargaining unit.

The union agrees with the Examiner's decision, and asks that it be affirmed by the Commission.

DISCUSSION"Skimming" of Bargaining Unit Work

Long-standing Commission precedent indicates that an employer has a duty to give notice to and bargain, upon request, with the



exclusive bargaining representative of its employees prior to transferring bargaining unit work to persons outside of the bargaining unit. South Kitsap School District, Decision 472 (PECB, 1978). A transfer or removal of bargaining unit work can arise from "contracting out", whereby an employer enters into a business arrangement to have the work performed by employees of a third party, or from a "skimming", whereby an employer has the work performed by its own employees who are either unrepresented or members of a different bargaining unit.

The Examiner correctly described our precedent, and he properly analyzed this as a "skimming" case. The Examiner also correctly noted that the union, as the complaining party, has the burden of proof in cases where alleged "skimming" has taken place. City of Bellevue, Decision 3007 (PECB, 1988); Yelm School District, Decision 2543 (PECB, 1986).

Here, "skimming" is alleged to have occurred as the result of two unilateral actions. First, the fire district changed the frequency with which volunteers would be called out to stand by at Station 1. Second, the fire district changed the method of payment for volunteer firefighters responding to standby calls. As we read the record, we find no unfair labor practice as to the first of those changes. The second, however, should have been bargained.

#### Changes in Standby Dispatch Procedure

The employer has occasional need of additional fire fighting personnel to cover two types of absences of uniformed personnel from Station 1. The first type occurs when a bargaining unit member will be absent from work for one or more shifts and a replacement is needed to fill that absence for the full shift.<sup>7</sup>

---

<sup>7</sup> Although this "relief" work was offered in the past to volunteers outside of the bargaining unit, such call-backs have been solely bargaining unit work since 1986.

The second, which is at issue in this case, is a short-notice call for personnel to stand by at Station 1 for less than a full shift, while the on-duty crew of uniformed personnel is dispatched to various alarm responses.

A key element in the proof of a "skimming" violation is establishing that the work at issue was bargaining unit work. In this case, the Examiner acknowledged the existence of evidence in the record that the employer had once used volunteers in a standby capacity. In his judgment, the record did not indicate a consistent or long-established practice in that regard. The employer strenuously disputes the Examiner's view of the facts.

Although dispatch procedures have varied as to when volunteers would be called out for standby duty at Station 1, credible evidence indicates that volunteers have been used to stand by at Station 1 for a number of years. In fact, the record is persuasive that the employer has always turned first to volunteers for temporary standby at Station 1 before any uniformed personnel are called back to duty.

A number of witnesses testified that the district has historically used volunteer firefighters to cover temporary absences at Station 1 on a "standby" basis when its uniformed personnel are away from the station responding to a call. Over the years, a variety of code systems has been used to alert volunteer that they are needed for standby. All the systems utilized a code yellow which indicated that volunteers were needed to come in to Station 1 and standby there.

Specific and detailed testimony was given by Greg Anderson, who was a volunteer firefighter for the employer from June, 1980 until August, 1988, and is now a member of the bargaining unit. Mr. Anderson testified that:

(1) When he first became a volunteer, the district had a two-code system to call out volunteers. A "code yellow" meant volunteers were needed to go to the station and stand-by. A "code red" meant volunteers were needed to go to the station and take equipment to a fire call.

(2) When paramedic services were added by the fire district in 1981, the district began to respond on all EMS calls with both a fire fighter and paramedic. This procedure left a captain alone at the station, so volunteers were called out to stand by there.

(3) Sometime in the mid-1980's, after the district had begun having four-man shifts of uniformed personnel, it tried using a red/yellow/green code system. While that system was in effect (and even after the "green" code was eliminated), "code yellow" continued to mean that volunteers were called in to stand by at Station 1.

(4) Around 1986, dispatchers stopped calling volunteers to stand by when the uniformed personnel were responding to fire calls within the Station 1 area. Volunteers were only required to come in on standby when the squad or engine was sent to an outlying area, or when just one person was left at Station 1.

Greg Anderson's description was lent credence by the testimony of Deputy Chief Joseph Green, who began working for the fire district in 1982. Green testified that there has never been a time in his memory when volunteers were not used to stand by at Station 1.

District memos provide corroboration that volunteers were being called out to stand by at Station 1. In 1986, Acting Chief Guy Ealey directed dispatchers to call out volunteers to standby at Station 1 when on-duty staff were responding to multiple station fire responses outside the normal Station 1 response area. Under the agreed procedure implemented on January 1, 1987, the volunteers were also to be called out for standby at Station 1 under certain circumstances.

Union President Rick Oliver conceded that volunteers have been called out in the past, but contended that they were called to respond to actual calls; not to standby at the station. It may well be true that when called out to report to Station 1, volunteers usually ended up taking equipment on calls, but we find the record persuasive that, at times, they also just remained at Station 1 to cover the absence of the uniformed personnel.

The Commission does not readily overturn the factual conclusions of our Examiners, but the Commission has an advantage in this case which the Examiner did not enjoy. With the consolidation of four unfair labor practice cases, the Examiner was confronted with a voluminous record and numerous factual issues. The Commission, on the other hand, has been able to focus on just that part of the record that relates to Case 7137-U-87-1455.

The Examiner could, perhaps, have made a credibility judgment to discredit the testimony of employer witnesses, but there is no indication he did so. Instead it appears that the employer's varying practices regarding when volunteers were called to stand by at Station 1 led the Examiner to his finding that there was no established practice of using volunteers in a standby capacity.<sup>8</sup>

In the Commission's view, the critical question is "Who was initially relied upon to cover the temporary absences of uniformed personnel at Station 1 when coverage was deemed necessary?" The employer presented credible evidence that volunteers have been used to stand by at Station 1 for a number of years, and that it has always turned first to volunteers before any uniformed personnel

---

<sup>8</sup> At times in the district's history, dispatchers have apparently been instructed to call volunteers for standby as soon as the entire Station 1 crew was absent or only one crew member remained. During other periods in its history, volunteers were not called in immediately. Instead, dispatchers waited to see how long the uniformed personnel crew was going to be tied up elsewhere.

are called back to duty. Special Order 87-3 and the August 10, 1987 procedure changed dispatch instructions as to how quickly volunteers would be toned-out for standby at Station 1, but they did not change the employer's practice of calling volunteers first when the need for temporary coverage arose.

Historically, the district has changed its practice of how soon volunteers are called out for standby at Station 1 without bargaining with the union. Changing the frequency with which volunteers were called out for standby duty did not diminish work opportunities for the bargaining unit, because volunteer firefighters had always been offered those standby opportunities first. Since we conclude that volunteer firefighters were traditionally the first to be called out, we find no unfair labor practice resulted from the employer's change of dispatch procedure for standby at Station 1.

#### Change of Compensation for Volunteers on Standby

Although volunteers were turned to first for temporary standby at Station 1, the record indicates that such standby work was also performed at times by members of the bargaining unit. Standby work by uniformed personnel at Station 1 was not a frequent occurrence, but one of the employer's own witnesses described the procedure by which off-duty uniformed personnel were called back to stand by at Station 1:

Q. Should there be a call that draws either the squad or the engine company out and a need for standby should arise and the volunteers fail to appear, who do you call?

...  
A. After five minutes, you tone them out again. ... You pretty much give up after a couple times actually.

Q. But if you need standby, who do you then have to go to if the volunteers do not respond?

A. ... Generally speaking, on aid calls for this type of call, if we don't get any volunteers, we don't get anybody, period.

In situations where we will get a structural-related fire or something that's going to be more entailed, a longer period of time, there hasn't been any hesitation on the part of any of the duty chiefs to call up and say, "Hey, call in some people if you don't have standbys."

Q. What do you mean, people?

A. Paid fire fighters.

Q. So, there is a provision available whereby if the volunteers should not respond to a standby call when there is a prolonged incident, that you call back in the paid people on a call-back?

A. Correct. ...

Testimony of Greg Anderson. Tr. 659:10-25; 660:1-25.<sup>9</sup>

Thus, if volunteers failed to respond, and the duty chief felt it important to have personnel available at Station 1, then uniformed personnel were called in for what necessarily gives rise to a claim of "unit work".<sup>10</sup>

---

<sup>9</sup> When called back, uniformed personnel have been paid the contractual callback minimum, *i.e.*, two hours, at the overtime rate.

<sup>10</sup> Since this case involves work already being performed at times by members of the bargaining unit, we need not decide whether Community Transit, Decision 3069 (PECB, 1968) was correctly decided. There, an Examiner found a bargaining obligation when a bus transportation operator added new routes, because the type of work involved "could have been" performed by bargaining unit members; they had not already been doing so.

Chief Anderson recognized that Special Order 87-3 was going to result in more frequent standby calls at a time when volunteers would have less incentive to respond. Even before that order was issued, the employer had been experiencing a problem with poor volunteer response at certain times of day. Volunteers now expressed a concern that if they responded to more standby calls after the special order, the number of points being earned would increase and the value of each earned point would diminish.

In order to increase the incentives for volunteers to respond, and to decrease the employer's need to call-back uniformed personnel at a two hour overtime minimum, the employer changed standby compensation from the existing point system to an hourly rate of \$5.00. Volunteers had previously received \$5.00 for each drill attended, but that monetary compensation was apparently not an hourly rate.<sup>11</sup>

Chief Anderson testified he did not see how this change affected the bargaining unit. He may have genuinely believed there would be no impact. Nevertheless, the new method of remuneration was specifically designed to "sweeten the pot" and increase the frequency with which volunteers would respond to standby calls. But for that change in practice, the standby work would have fallen to bargaining unit members. Thus, we find the change in compensation diverted work away from that workforce and resulted in a skimming of bargaining unit work.

In Clover Park School District, Decision 2560-B (PECB, 1988), the Commission described several factors PERC it considers in evaluating whether a duty to bargain exists concerning a transfer of work. Those factors include:

---

<sup>11</sup> The Examiner described the record as indicating that the employer had never before "paid" volunteers specifically for standby duty. What he appears to have meant is that there had never before been an hourly payment for such work.

- (1) The employer's previously established operating practice as to the work in question, i.e., had non-bargaining unit personnel performed such work before;
- (2) Did the transfer of work involve a significant detriment to bargaining unit members (as by changing conditions of employment or significantly impairing job tenure or reasonably anticipated work opportunities);
- (3) Was the employer's motivation solely economic;
- (4) Had there been an opportunity to bargain generally about the changes in existing practices; and
- (5) Was the work fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions.

Comparison of each of those factors against the facts of this case supports the conclusion that a violation should be found.

Deviation from Past Practice -

The long established practice of the fire district was to pay volunteers through the point system for Station 1 standby work, and to call in off-duty uniformed personnel at their contractual call-back rate when there was an insufficient response by volunteers. The \$5.00 hourly rate adopted in August, 1987, changed that compensation practice in a manner that affected the call-back opportunities of off-duty uniformed personnel.

Detriment to Bargaining Unit Members -

No uniformed personnel were laid off or lost any scheduled work hours because of the change in volunteer compensation. They did not even experience an actual decline in call-back work. Nevertheless, we find a significant detriment because increasing the monetary incentive for volunteers to respond for standby duty reduced the likelihood that uniformed personnel would need to be called back. This resulted in a significant impairment to



realization of the contractual right of the uniformed personnel to a two-hour overtime minimum.<sup>12</sup>

We recognize that paid call-back/overtime hours worked by the uniformed personnel have increased since the change was put into effect.<sup>13</sup> That does not disprove the foregoing conclusion. The employer's evidence was total call-back/overtime hours; how much of that work resulted from standby work at Station 1 was not separately documented. Chief Anderson discontinued the increased standby compensation after only three and one-half months. But for the increased compensation provided to volunteers in that period, the number of call-back hours worked by the bargaining unit might have been even greater. Thus, it can reasonably be inferred that the bargaining unit lost additional call-back opportunities at Station 1 they might otherwise have had.<sup>14</sup>

Once the union proves that a change in practice occurred that can reasonably be inferred to have reduced bargaining unit work, we

---

<sup>12</sup> The situation was different in Clark County Fire District No. 6, Decision 3428 (1990). There, the union alleged that unilateral implementation of "ride out" procedures (detailing when volunteer fire fighters could ride with paid fire fighters and perform station maintenance) constituted unlawful "skimming". That allegation was rejected, in part, because the union's speculation of possible staff reductions in the event of a levy failure was held to be "unfounded anticipatory action" that did not suffice to justify a finding of skimming. In contrast, there is a reasonable basis to conclude here that the increased compensation for the volunteers will likely reduce future call-back opportunities for the uniformed personnel.

<sup>13</sup> The number of callback/holdover hours worked by members of the bargaining unit has doubled each year since 1986. Exhibits 29 and 59.

<sup>14</sup> The courts have upheld such reasonable inferences. See, e.g., Amcaar Div. v. NLRB, 596 F.2d 1344, 1349 (8th Cir. 1979) [NLRB could infer that a subcontracting arrangement resulted in a loss of reasonably expected work opportunities for men on layoff in the bargaining unit].

view the obligation as shifting to the employer to demonstrate that the change did not have a significant impact. In this case, the employer's evidence fell short.

The employer clearly went beyond making adjustments which merely preserved the relative work opportunities of the volunteers and uniformed personnel. This was not an increase of the pool of money into which points were divided to adjust for inflation, or even to preserve the per-point value against erosion due to the greater overall frequency of call-outs of volunteers. Under such circumstances, a bargaining obligation might not have arisen.

The Employer's Motivation -

The employer's motivation was, in large part, economic. It was cheaper to increase the pay of volunteers to \$5.00 per hour than to pay uniformed personnel the contractually-required minimum of two hours for a call-back. The employer's own act of withdrawing the \$5.00 per hour method of compensation contradicts any suggestion of an emergency or a business necessity for that change.

Opportunity for Bargaining -

The parties had recently been involved in negotiations on the call-back minimum, and the union did have an opportunity to bargain about Fire Chief Anderson's proposal for a two pronged standby/call-back procedure. The union was not given notice, however, of the plan to increase the compensation of volunteers for standby duty. Had the union been given notice of the planned change in compensation of its competitors for the work, the parties may well have been able to reach agreement on the two-pronged approach the chief himself preferred, or on some other basis. That is all the more reason to require that the union be given notice and an opportunity to bargain the employer's proposed change in volunteer compensation.

Fundamental Nature of the Work -

As to the last of the Clover Park factors, we note that even the employer concedes the work involved was not fundamentally different from regular bargaining unit work in terms of the duties performed, skills required or working conditions.

The employer correctly notes that the wages, hours and working conditions of employees outside of the bargaining unit are not subject to bargaining by the union. Mount Vernon School District, Decision 2707 (EDUC, 1987). It need not bargain with the union over the precise amount of increased compensation to be offered the volunteers. The employer will need, however, to be mindful of the potential for "skimming" problems between two groups within its organization that have similar, and even overlapping, functions.<sup>15</sup> We hold that the employer was required to provide notice to the union, and to bargain upon request, over its decision to increase volunteer incentives in a manner likely to reduce work opportunities for bargaining unit employees.

Conclusion

The record in this case indicates that, in June and August of 1987, the employer changed the frequency with which volunteer firefighters were called out for standby duty at Station 1, but that it did not thereby alter the established practice of first turning to volunteers for standby duty. Although members of the bargaining unit had also performed standby work, the changed frequency of calling out volunteers did not inherently diminish the work opportunities that had previously existed for the bargaining unit.

---

<sup>15</sup>

The Executive Director and Commission have sought to avoid the potential for such "border skirmishes" in structuring bargaining units. For example, in City of Seattle, Decision 781 (PECB, 1979), a separate unit of part-time employees was found inappropriate due to the potential for work jurisdiction disputes with full-time employees doing similar work.

Thus, we find no unfair labor practice with regard to that disputed change.

The record further indicates that, in August of 1987, the employer changed the compensation paid to volunteer firefighters who responded for standby duty at Station 1. This change was designed to increase the likelihood that a sufficient volunteer response would occur, and thereby reduce the need for call-back of uniformed personnel under the terms of the collective bargaining agreement. The employer changed its established practice concerning the method and amount of compensation of the volunteers without giving notice to the union of the planned change, and without giving the union an opportunity to bargain over the decision to offer incentives designed to reduce the work opportunities of bargaining unit members. Thus, we find an unfair labor practice was committed within the meaning of RCW 41.56.140(1) and (4), with respect to the change of compensation for volunteers.

The Examiner's decision is reversed in part and affirmed in part.

AMENDED SEPARATE FINDINGS OF FACT FOR CASE 7137-U-87-1455

1. Spokane County Fire Protection District 9 provides fire suppression and emergency medical services to residents in the northern portion of Spokane County, Washington, and is a "public employer" within the meaning of RCW 41.56.030(1). General policy for the fire district is set by an elected Board of Fire Commissioners. Fire Chief Robert Anderson is responsible for daily supervision of fire district activities. Two deputy chiefs assist Anderson in his duties. The fire district operates seven fire stations in addition to its headquarters building, a repair shop, and a storage yard where surplus and specialized equipment are kept.

2. International Association of Fire Fighters, Local 2916, a "bargaining representative" within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of a bargaining unit of 12 fire fighters employed by Spokane County Fire Protection District 9 who are "uniformed personnel" within the meaning of RCW 41.56.030(7). At all times pertinent to these proceedings, Rick Oliver served as local union president. All of the "uniformed personnel" work out of Fire Station 1.
3. In addition to its workforce of uniformed personnel, Spokane County Fire District 9 has approximately 100 volunteer firefighters who are trained in fire suppression and emergency medical techniques. Those volunteers staff the six stations operated by the fire district other than Station 1, and they supplement the uniformed personnel at Station 1. The volunteers receive \$5.00 for each training drill they attend, and they also earn "points" for participating in fire suppression and emergency medical calls. The "points" can be redeemed semi-annually for a small monetary reimbursement.
4. The employer has had a long-standing practice of first calling in volunteers to stand by at Station 1 when coverage is desired while the on-duty uniformed personnel are dispatched on various emergency responses. In the absence of a sufficient response by volunteers, the practice had been to call in off-duty uniformed personnel, who were then compensated under call-back provisions contained in the collective bargaining agreement between the parties.
5. In September, 1986, the employer modified its emergency response procedures because of uncertain volunteer participation. During the processing of a grievance concerning "one person" emergency responses, the employer and union discussed possible alternatives for insufficient staffing. The union

proposed hiring additional personnel, but the employer opposed such an approach.

6. In January, 1987, the employer initiated a temporary dispatching system to alleviate the emergency response problem. Fire Chief Robert Anderson took command of the department at approximately the same time, and he took steps to investigate the situation, including solicitation of ideas from the union.
7. On April 1, 1987, Anderson sent a letter to James Panknin, chairman of the union's grievance committee, reiterating the employer's opposition to hiring additional fire fighters to resolve the problem of insufficient staffing on emergency responses. Anderson proposed the creation of a standby system utilizing volunteers and professional fire fighters who would be willing to carry a pager while off-duty. Anderson acknowledged that the issue would have to be negotiated.
8. On May 4, 1987, Panknin sent a letter to Anderson, proposing negotiations over a call-back system for paid fire fighters. On the same date, Anderson sent a letter to the Board of Fire Commissioners, recommending that negotiations begin on the standby issue.
9. The parties discussed the standby issue on May 8, 1987, but did not resolve the matter.
10. On June 4, 1987, Anderson issued "Special Order 87-3", implementing a system whereby volunteers would be required to standby at Fire Station 1 whenever the on-duty uniformed personnel crew at that station was reduced to one person due to emergency responses by the remaining on-duty uniformed personnel.

11. On June 14, 1987, the union presented a proposal calling for call-back of bargaining unit members. The proposal specified that call-back was voluntary, and that the plan could be canceled by either party at any time.
12. On July 17, 1987, Anderson sent Oliver a letter, stating that the Board of Fire Commissioners had reviewed the union's proposal concerning call-back, but rejected it because of its cost. The parties discussed the standby / call-back issue in a subsequent meeting, but the matter was not resolved.
13. During the spring or early summer of 1987, Fire Chief Anderson solicited suggestions from the volunteer firefighters as to how a better volunteer response might be encouraged when volunteers were called out for standby duty at Station 1. The volunteers suggested that compensation be provided to volunteers at a rate of \$5.00 per hour for time spent on standby duty.
14. The union was not informed of the volunteers' proposal concerning compensation for standby duty, or that the employer was considering the implementation of incentives to increase volunteer responses for standby duty.
15. On August 10, 1987, the employer issued a new standby procedure calling for the use of volunteer personnel who were to be compensated at a rate of \$5.00 per hour for time spent on standby duty. The increase of compensation for volunteers was intended to improve the response by volunteers, and to reduce the likelihood that off-duty uniformed personnel would have to be called back to work for standby duty at Station 1.
16. On August 16, 1987, Oliver sent a letter to Anderson, demanding bargaining on changes in wages, hours and working condi-

tions caused by the new procedure calling for compensated standby by volunteers.

17. On October 14, 1987, Oliver sent a letter to Anderson in which several unresolved grievances were discussed. The letter also mentioned the district's continued use of volunteers in paid standby duty status.
18. On November 13, 1987, the union filed the complaint charging unfair labor practices in Case 7137-U-87-1455, challenging the use of volunteer personnel on a compensated basis for standby duty.
19. On November 25, 1987, Anderson issued an order rescinding the compensation for the volunteers on standby duty. Volunteers were thereafter awarded "points" for standby duty in the same manner that service points were earned for other duties.
20. The parties met on several subsequent occasions but were unable to resolve their differences concerning the standby issue.

AMENDED SEPARATE CONCLUSIONS OF LAW FOR CASE 7137-U-87-1455

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By changing dispatch practices in a manner which continued its practice of relying first on volunteers called out for standby duty at Station 1, Spokane County Fire Protection District 9 has not changed the wages, hours or working conditions of employees represented by International Association of Fire Fighters, Local 2916, and has not created an obligation to bargain collectively under RCW 41.56.030(4), so that such



actions did not constitute an unfair labor practice within the meaning of RCW 41.56.140(4) or (1).

3. By unilaterally changing the method and amount of compensation of volunteers in a manner designed to provide an incentive for volunteers to respond to calls for standby duty at Station 1, Spokane County Fire Protection District 9 has reduced work opportunities for members of the bargaining unit work without giving notice to or bargaining with International Association of Fire Fighters, Local 2916, and therefore committed an unfair labor practice within the meaning of RCW 41.56.140(4) and (1).

AMENDED ORDER FOR CASE 7137-U-87-1455

Pursuant to RCW 41.56.160, it is ordered that Spokane County Fire Protection District 9, its officers and agents shall immediately:

1. Cease and desist from:
  - (a) Failing to give notice to International Association of Fire Fighters, Local 2916, prior to implementing incentives for volunteer firefighters that have the effect of reducing the call-back opportunities for off-duty uniformed personnel for standby at Station 1.
  - (b) Refusing to negotiate in good faith, upon request, with International Association of Fire Fighters, Local 2916, concerning the transfer of bargaining unit work to persons outside of the bargaining unit.

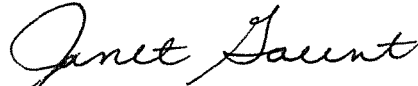
2. Take the following affirmative actions to remedy the unfair labor practice and effectuate the purposes of Chapter 41.56 RCW:

- (a) Give notice to International Association of Fire Fighters, Local 2916, prior to any change of incentives to volunteer firefighters that have the effect of reducing the work opportunities of bargaining unit members.
- (b) Upon request, bargain in good faith with International Association of Fire Fighters, Local 2916, concerning any transfer of bargaining unit work to persons outside of the bargaining unit.
- (c) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
- (d) Notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.
- (e) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time

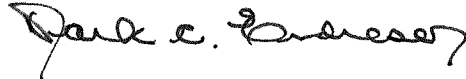
provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, the 26th day of March, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

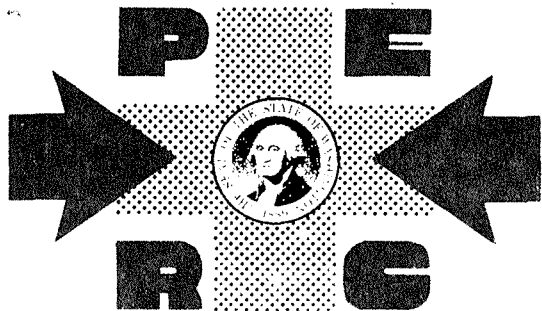


JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner

Commissioner Dustin C. McCreary did not take part in the consideration or decision of this case.



# PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

# NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW), AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT implement changes of compensation for volunteer firefighters that are designed to or have the effect of diminishing work opportunities of bargaining unit employees without first giving notice to International Association of Fire Fighters, Local 2916, and providing the opportunity to negotiate about the matter.

DATED: \_\_\_\_\_

SPOKANE COUNTY FIRE PROTECTION DISTRICT 9

BY: \_\_\_\_\_  
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.