

JAN. 1995

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1 PELRB No. 6

STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In the Matter of	)	
	)	
Local 2059, Santa Fe Firefighters	)	
Association	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. CP 56-93 (M)
	)	
City of Santa Fe	)	
	)	
Public Employer.	)	
	)	
	)	

DECISION AND ORDER

Pursuant to the authority of the Public Employee Labor Relations Board (PELRB or Board) under the Public Employee Bargaining Act of 1992 (PEBA or Act), NMSA 1978, §§10-7D-1 to 10-7D-26, (Repl. Pamp. 1992), and in accordance with PELRB rules and regulations, 4 N.M.Reg.No. 6, 475 (Mar. 31, 1993), the petition for certification in Case No. CP 56-93(M) was investigated pursuant to PELRB Rule 2.

As a result of that investigation the parties to the proceeding were directed to a hearing for development of a record concerning the appropriateness of the petitioned-for bargaining unit. The administrative judge (AJ) issued a recommended decision on December 10, 1994, finding that an appropriate unit includes the position of fire captain but excludes the position of battalion chief.

Neither party filed a request for review of the recommended decision; however, Rule 2.15(c) requires the Board to review any recommended disposition regarding the scope of a bargaining unit.

Having conducted our review, we adopt the AJ's findings of fact and conclusions of law.<sup>1</sup> Specifically, the inclusion of fire captain in the petitioned-for unit is appropriate based on the facts and circumstances of this representation proceeding. As we noted previously, "we recognize the fact-specific nature of appropriate unit determinations and acknowledge that these determinations must be made on a case-by-case basis."<sup>2</sup>

We note that each party presented a number of decisions in representation matters from other labor boards. Given the fact-specific nature of representation proceedings, each party's reliance upon such decisions needs to be buttressed with (1) the specific wording from the labor law of the jurisdiction from which the decision issued, (2) how that wording is similar or dissimilar to comparable wording in the Act, and (3) justification why the PELRB should find such decisions persuasive in the circumstances of the instant proceeding.

Furthermore, decisions from other jurisdictions are not a substitute for addressing and satisfying the Act §13.A. requirements for determining an appropriate bargaining unit--whether the positions sought for inclusion "form a clear and identifiable community of interest in employment terms and conditions and related personnel matters among the public employees involved" and other enumerated essential factors.

In sum, we incorporate the recommended decision in our final action and include it with our **DECISION AND ORDER**.

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<sup>1</sup>The Board's decision to adopt the recommended decision is unanimous; however, Member Keaton agrees with the decision to include captains only because the public employer did not request a review of it. He objects to the hearing officer's reliance on or reference to any bargaining unit which is grandfathered pursuant to the Act's § 26.C. as rationale, justification or precedent for the conclusion in the instant case. The job title "captain" implies supervisory responsibilities and duties in the fire department.

Member Loy disagrees with Member Keaton because the history of bargaining units for firefighters in cities across the country is to exclude only the chief and his or her designee. Other positions are not supervisory given that job content rather than job titles are determinative of supervisory status.

<sup>2</sup>*Belen Consolidated Schools*, 1 PELRB No. 2, 7 (May 1994).

ORDER

A secret ballot election(s) shall be conducted among employees in the bargaining unit defined below at an appropriate time(s) and place(s) to be determined by the Director and issued in a Notice of Election.

In accord with the Act and Rules, eligible employees in the unit set forth below shall be given an opportunity to vote between representation by the Santa Fe Firefighters Association and "No Representation."

Firefighter trainee, fire inspector trainee, firefighter I, firefighter II, firefighter III, firefighter engineer, fire inspector, paramedic I, paramedic II, and fire captain, but excluding Battalion Chief, all other officers and employees of the department.

By direction of the Board.

*Patrick J. Halter*

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Patrick J. Halter  
Director, PELRB

Issued: January 19, 1995  
Albuquerque, New Mexico

STATE OF NEW MEXICO  
BEFORE THE PUBLIC EMPLOYEE LABOR  
RELATIONS BOARD

Santa Fe Firefighters Association, Local 2059

Petitioner  
PELRB Case No. CP56-93(M)

And

City of Santa Fe, A Municipal Public Employer

Recommended Decision  
and Direction of Election

Upon a petition duly filed under the provisions of the New Mexico Public Employee Bargaining Act (NMSA 1978) on September 30, 1994, a hearing was held before the undersigned as Administrative Law Judge for the New Mexico Public Employees Labor Relations Board. After due notice, all parties were given the opportunity to and did appear, present evidence, examine and cross-examine witnesses and submit briefs in support of their respective positions.

After hearing all the evidence, and giving careful consideration to that evidence, the entire record in this proceeding, and the briefs and arguments of the parties, the undersigned Administrative Law Judge finds:

The parties stipulated that the City of Santa Fe is a municipality or municipal employer within the meaning

of the State of New Mexico Public Employee Bargaining Act and that the Santa Fe Firefighters Association, Local 2059 is a labor organization within the meaning of the same Act. It was therefore also stipulated that the New Mexico Public Employees Labor Relations Board has jurisdiction in this matter.

The petition filed by the Santa Fe Firefighters Association, Local 2059, (hereinafter referred to as Petitioner), petitions for the right to represent a unit of employees of the City of Santa Fe Fire Department, (hereinafter referred to as Santa Fe or fire department) in the following classifications: Firefighter trainee, Fire Inspector trainee, Firefighter I, Firefighter II, Firefighter III, Firefighter Engineer, Fire Inspector, Paramedic I, Paramedic II, Fire Training Officer, Fire Captain and Battalion Chief.

There are approximately 82 employees in this proposed bargaining unit. Early in the hearing the Petitioner in effect, amended the petition to withdraw the Fire Training Officer from the proposed unit.

City of Santa Fe objects to the inclusion in any bargaining unit found to be appropriate, of the

classifications of Fire Captain; 12 employees, and the Battalion Chief; 3 employees, on the grounds that they are supervisors within the meaning of the Act and must be excluded. Therefore, and on the basis of the positions of the parties, the issue in dispute concerns the unit placement of the Fire Captains and the Battalion Chiefs.

Santa Fe Fire Department is organized in the following manner. The fire chief is at the top of the organization and reports directly to the city manager. The chief has overall responsibility for the operation and administration of the department. There are three divisions under the command of the Fire Chief. There is a fire prevention division under the command of the deputy fire chief who also serves as second in command of the overall department and division director for prevention. There is a training division with a division chief who oversees the department's training programs and an emergency services division with a chief who oversees that division. Within the emergency services division there are three (3) battalion chiefs and each of those chiefs manages a shift of firefighters. Reporting to the battalion chiefs, are twelve (12) captains who are assigned to the four (4) fire stations

Within each of the fire stations are the captains, firefighters, engineers and paramedics assigned to each station.

The training officer is within the training division and is responsible for the department's training and promotional programs. The training officer also helps in the development of promotional exams and administers and grades those exams. In the fire prevention division there are a number of inspectors who report to the division director who is also the fire chief.

There are four (4) fire stations located throughout the City of Santa Fe and they are situated about three (3) miles in distance from one another.

A captain is on duty at each of the fire stations 24 hours a day, seven days a week. The captains sleep and eat at the station with their firefighter crews, usually consisting of four (4) and sometimes five (5) personnel in total.

The record is clear that fire captains do not have independent authority to hire, fire, lay-offs, suspend, recall, promote, demote or relieve employees from duty. Nor do they have authority to effectively recommend any of these personnel actions. They also have no function in the

grievance process of the Santa Fe Fire Department. All grievances must be submitted to the personnel director and captains are not given any authority to resolve a grievance of a department employee even in the first step of that process. The captains have no authority to reward employees, to authorize overtime, to authorize a shift exchange or to requisition supplies even for emergency repairs other than routine station supplies within the department. In the matter of discipline, the captains have authority to issue an oral reprimand only. No other disciplinary authority is vested in them. In the matter of personnel actions, the captains do participate with their firefighter crews in writing what are known as the performance and development plan. This, however, is done in consultation with the employee and is prepared in accordance with personnel guides which appear to be very standardized. The captains responsibility is quite limited to making suggestions for the employee to achieve his or her goal. The captain has no authority to mandate any of the recommendations which may be made. These plans are prepared annually and a captain may even be required to fill out the form with an employee with whom he had no work experience all or part of



the previous year. There are within the department, what are called personnel action request forms for promotions, transfers, hiring and dismissals. They are initiated by personnel and directed to the battalion chief. The evidence reflects that the captains are not involved in this personnel action.

In the operation of the fire station, the captains share in the cooking duties with the firefighters and also participate with the firefighters in housekeeping and routine maintenance.

The evidence describes different kinds of calls that a station crew may give response to. There are fire calls where just the engine responds and medical calls where response to the call is made by ambulance. There are times, therefore, when the captain may not be on the engine when responding to a fire call and in those circumstances the engineer will make the initial decisions on what to do at the fire scene. In the event that the captain is on the fire engine when it responds to a fire call, the captain along with the other firefighters on the truck, will go in and start fighting the fire. The engineer is left to tend and operate the fire engine. There are also

times when the captain may be away from the station for extended periods. In that event some other member of the station crew who remained will be acting station commander. A captain may be in overall command of a fire scene if he is the first officer to arrive but only until an officer with a higher rank appears on the scene. In those cases where the captain is the first officer to arrive on the scene, decisions made by the captain are not based upon his independent judgment but are rather based on directions found in the department Manual of Standard Operating Policies and Procedures. Moreover, if the captain is present during the response to an emergency medical scene, the lead paramedic or paramedic is in charge of patient care, not the captain.

The Santa Fe fire department Policies and Procedures Manual is a very complete, thorough and standardized manual for direction of employees in most all of their activities as employees of the department. The Policies and Procedure Manual is all inclusive to the extent that it directs when snow is to be removed; when the station lawns are to be cut; how community chow (meals) are to be facilitated; specific directions on personal telephone calls; how the bunk room will be organized, even to the

extent of the bedspread to be used and the occupants of beds, use of beds and quarters; parking of personal vehicles at the station; when and with whom to submit vacation requests, including captains; how shift exchanges may be accomplished; cleanliness and personal appearance; established grooming standards and many more very detailed policies and procedures governing the day to day activities of department employees. The record is quite complete that little or nothing in either emergency or non-emergency situations is left to the exercise of independent judgment and discretion by captains and the firefighter crews. The Policies and Procedure Manual is so all inclusive, so complete and detailed with instruction, it would appear that there is little or no discretionary authority left for captains to exercise independent judgments in the administration or operations of the fire stations.

The fire captains share the same working conditions, the same pay plan (except for rank differential), the same benefit package covering health insurance coverage and retirement as the firefighters, paramedics and engineers. Moreover, the captains are paid time and a half for overtime worked and are treated as non-

exempt employees under the Federal Fair Labor Standards Act for pay purposes. This same compensation plan applies to fire department employees alike from firefighter trainee to captain.

The record is quite clear that captains do not see themselves as supervisors of the firefighters with whom they work but rather as a lead person with limited authority. Nor does the record show that firefighters view the captains as supervisors.

For the reasons as described and upon the entire record of the case including the testimony of witnesses, the documents submitted as part of the evidence including the department Policies and Procedures Manual, I find that captains are not supervisors within the meaning of Section 10-7D-4 of the New Mexico Public Employee Bargaining Act but rather are lead employees whose duties are substantially similar to those of their subordinates who participate in peer review or occasional employee evaluation programs. I make this finding in recognition that the job description of captains describes the captains as having supervisory duties. However, it is the actual performance of duties not their description which is the true test of their status. In this regard I find that captains do not have

the authority to exercise the independent judgment and discretion to discipline employees or effectively recommend discipline as contemplated by the statute. Moreover, their duties in directing the work of other employees is routine and largely established by the detailed provisions of the department Policies and Procedures Manual and the exercises in training and regularly scheduled drills formulated and mandated by the department training division.

Both parties have submitted very persuasive and well organized briefs with citations of authority to support their respective positions.

I have reviewed this research carefully and conclude that in the case of captains the following are the most persuasive. City of Davenport v Public Employment Relations Board v Davenport Association of Professional Firefighters, Supreme Court of Iowa, No. 59399, 264 NW 2d 324 March 11, 1978. Firefighters of Brattleboro, Vermont v Brattleboro Fire Department, Supreme Court of Vermont, Nos. 238-78, 284-78, May 13, 1980; State of Florida Public Employees Relations Commission, Seminole Fire and Rescue Association Local 2896, IAFF v Pinellas County Fire Control Authority and Seminole

Volunteer Fire Department, Inc., Joint Employers v  
Seminole Fire Department Employees Association, Case Nos.  
RC83-018, RC83-004.

I also take administrative notice of the fact that the cities of Albuquerque, New Mexico and Carlsbad, New Mexico include the position of fire captain in bargaining units which those cities have established for bargaining relations with their fire department employees. The Petitioner has also submitted numerous examples of cities wherein fire captains as well as battalion chiefs have been included in bargaining units. I recognize that a number of these bargaining units were not established by the procedures of this or other statutes. They are significant however in that they dispel the expressed fears of the Santa Fe chief that inclusion of fire captains would adversely affect morale and discipline within the ranks of the firefighters. Santa Fe has also cited a number of cases with contrary findings. In my opinion, however, those cases are distinguishable and it would serve no defining purpose to include further a long list of case citations in this opinion and recommended decision which show determinations both for and against inclusion. Within the paramilitary structure of the Sante Fe Fire Department, the captains do

not exercise supervisory authority sufficient to create conflict of interest or to destroy strong community of interest shared with rank and file firefighters in performing firefighting and other emergency duties.

The battalion chiefs on the other hand present a different issue based on evidence of substantially different duties and authority. The fire department table of organization shows the battalion chiefs as part of the administrative staff of the department. They are shift commanders with responsibility for the conduct of an entire shift of the four (4) department fire stations. Battalion chiefs exercise actual administrative and disciplinary authority over the department fire fighters. A battalion chief has the primary and initial responsibility for fire station manning. A battalion chief can put a firefighter on administrative leave and send him home in the event a firefighter is unable to perform his duties. He can suspend a firefighter for reasons of disciplinary offense and replace that employee with another. The battalion chief has authority over and directs the job duties of the captains. The battalion chief visits the fire stations under his command at least once daily and is provided a department

vehicle for that purpose. He also has direct radio and telephone communication with each fire station. The battalion chief can authorize overtime where necessary and can call firefighters to duty when adequate staffing requires this action. The battalion chief performs evaluations on captains and evaluates the four (4) captains under his command constantly and on a daily basis. The battalion chief is not paid for overtime, wears a different uniform than the firefighters under his command and is often the officer in charge of both fire and emergency scenes. It has been urged by the petitioner that the battalion chief is also not a supervisor within the meaning of the Act as described in Section 10-7D-4 thereof. The evidence however shows otherwise. I find that the battalion chiefs are clearly supervisors within the Act and cannot, therefore, be included in an appropriate bargaining unit with other non-supervisory employees.

The evidence and entire record in the case shows that the battalion chief devotes a substantial amount of work time to supervisory duties and customarily and regularly directs the work of two or more other employees. The battalion chief also has the authority in the interest of the employer to discipline other employees or to

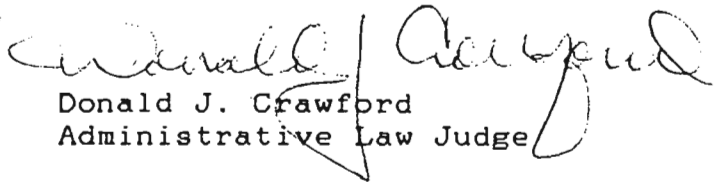


effectively recommend such actions. Firefighters Local 1052 v PERC. Washington Court of Appeals, Division III, June 16, 1981. A finding of non-supervisory status of the battalion chief would establish a ratio of employees to supervisors not in the best interest of the department and not within the statutory scheme of the Act.

Upon finding that the job classification of fire captain is not a supervisor within the meaning of the Act and that the job classification of battalion chief is a supervisor, I hereby recommend that the Board (The New Mexico Public Employee Labor Relations Board) enter an Order directing an election among the employees of the Santa Fe Fire Department in the following unit of employees:

Firefighter trainee, Fire inspector trainee, Firefighter I, Firefighter II, Firefighter III, Firefighter Engineer, Fire Inspector, Paramedic I, Paramedic II and Fire Captain, but excluding Battalion Chief, all other officers and employees of the department.

Dated this 10<sup>th</sup> day of December, 1994

  
Donald J. Crawford  
Administrative Law Judge