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OFFICE OF
LABOR RELATIONS

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August 31, 2004

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Bargaining Unit Determination For Fire Battalion Chief Classification

LOCATION/COUNCIL DISTRICT: Citywide

RECOMMENDATION: It is recommended that the City Council adopt the attached resolution affirming the current assignment of Fire Battalion Chief to the Management Unit and denying the request for separate bargaining unit. The City has by practice modified units by negotiations. An advisory arbitration decision recommended that the unit be created, however staff does not agree with that conclusion on the basis that a single small classification unit is an inappropriate unit in the City.

CONTACT PERSON: Dee Contreras, Director of Labor Relations, 808-5424

FOR COUNCIL MEETING OF: September 14, 2004 (afternoon)

SUMMARY: The Fire Battalion Chief classification is currently included in the unrepresented management unit and the employees have petitioned to be represented in a separate unit composed solely of that classification. The City has and continues to object to the creation of a single unit class as it would be seen as a precedent for splitting not only management but other represented units into smaller classification divisions and proliferate the number of bargaining units in the City.

COMMITTEE/COMMISSION ACTION: None

BACKGROUND INFORMATION: The Battalion Chiefs filed a petition to be represented by the International Brotherhood of Teamsters Local 228 on October 11, 2002. The City determined that there were sufficient signatures to proceed, however reserved the question of appropriate bargaining unit. After discussions with Local 228, an advisory arbitration to review the issue was agreed to, with the final resolution deferred to the City Council pursuant to the impasse procedures of the City Employer-Employee Relations Policy (EERP). The arbitrator found that while not required the unit was appropriate and likely would not impact other units, therefore recommending the creation of the separate BC unit. A copy of the decision is attached. Staff does not agree with that conclusion and impact as indicated here.

The impact of creating this unit alone is a proliferation which will create a workload issue for labor relations. In addition, any other proliferation will increase the number of Agreements for the operating and support departments to deal with, create additional pressures for unit specific operating policies rather than more generic terms, and increase the cost of doing business due to these additional operating burdens.

There is no evidence that the concerns of Battalion Chiefs cannot be met within the context of the larger management unit and many of their issues have been addressed over time by the department and the City. With the change in leadership in the Fire Department, some of the employees have sought to stop this petition from proceeding but the union has asserted its right to move ahead. While the City respects their right to do so, we do not agree regarding the impact of this small unit on the City. The creation of such a small unit, indeed smaller than any within the City, would be damaging to our ability to contain the growth of such split off units over time. The Council has previously refused to create such units when employees were seeking support to break off from their larger unit, and we urge that you do so today.

This case must be distinguished from the situation in which employees are moved from one unit into another existing unit as that is not what is sought here. It must also be distinguished from what was previously a separate represented police management unit as peace officers are expressly authorized under the Meyers-Milias-Brown Act (MMBA), which governs local agency public employee labor relations, to be represented by an organization which solely represents peace officers. Though the Labor Code authorizes fire fighters to join an organization of their choosing they are not authorized a separate unit under the MMBA.

In summary, this issue presents a fundamental question of how small a bargaining unit can be and still reasonably allow that employer to manage its labor relations program effectively. That some employees prefer a different path or other representation is not the standard. The community of interest of managers is clearly stronger than both manager and administrative staff, for example; and the community of interest in one classification cannot be the test used, as that would mean a separate unit for every class in the City of which there are hundreds.


FINANCIAL CONSIDERATIONS: There are no financial considerations if the unit is not adopted.

ENVIRONMENTAL CONSIDERATIONS: Not applicable

POLICY CONSIDERATIONS: This recommendation is consistent with the City desire to maintain an effective and efficient labor relations program and to avoid the proliferation of bargaining units in the City.

ESBD CONSIDERATIONS: Not applicable

Respectfully Submitted,



DEE CONTRERAS
Director of Labor Relations

Recommendation Approved:



KEN NISHIMOTO
Deputy City Manager

Recommendation Approved:



ROBERT P. THOMAS
City Manager

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RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION DENYING THE PETITION TO CREATE A SEPARATE BARGAINING UNIT FOR FIRE BATTALION CHIEF AND REAFFIRMING THE PLACEMENT OF FIRE BATTALION CHIEF IN THE MANAGEMENT UNIT

WHEREAS, the City of Sacramento Employer-Employee Relations Policy has identified and created the appropriate units for representation within the City; and

WHEREAS, the Teamsters Local 228 filed a petition on behalf of the Fire Battalion Chiefs to be the exclusive recognized organization to represent them pursuant to the Meyers-Milias-Brown Act, and to create a new bargaining unit composed solely of Fire Battalion Chiefs; and

WHEREAS, when the City of Sacramento and the Teamster Local 228 did not reach agreement on an appropriate bargaining unit, they agreed to submit the bargaining unit question for advisory review and then to the City Council for action; and

WHEREAS, the advisory review recommended creation of the Fire Battalion Chief Unit; however the City staff continue to disagree with and reject this proliferation of units, and to reiterate that the Fire Battalion Chiefs are an essential member of the Fire Department management team and appropriately designated in the Management Unit; and

WHEREAS, the proposed Fire Battalion Chief Unit is a single-classification, narrowly defined unit and community of interest which is not consistent with the City's labor relations policy and overall labor commitments;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO, that the petition of behalf of the Fire Battalion Chiefs for a separate bargaining unit is denied for the reasons set forth in the staff report, and the Fire Battalion Chief classification shall remain in the Management Unit.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____ (4)

IN ADVISORY ARBITRATION PROCEEDINGS
PURSUANT TO
AN AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 288,

Union,

and

CITY OF SACRAMENTO,

Employer.

Re: Battalion Chief Representation

ADVISORY
OPINION and DECISION

of

JOHN KAGEL

Arbitrator

April 12, 2004

Palo Alto, California

APPEARANCES:

For the Union: David A. Rosenfeld, Weinberg, Roger & Rosenfeld, Oakland

For the Employer: Richard C. Bolanos, Liebert Cassidy Whitmore, San Francisco

ISSUE:

This proceeding is an advisory arbitration to review a unit request by Teamsters Local, 288 to represent a bargaining unit of Fire Battalion Chiefs (BC's). The issue is whether or not that would be an appropriate unit in the City of Sacramento.

RECEIVED

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LABOR RELATIONS

BACKGROUND:

Battalion Chiefs:

The Union does not represent any City employees. There are currently six BC's, five of whom work out of fire houses in charge of seven to ten fire companies (Tr. 14), the sixth in an anti-terrorism role funded by the Federal Government. (Tr. 27) Three of the five in fire houses are on duty at all times.

BC's are promoted after examination from Fire Captain. (Tr. 22-23) Above them are Assistant Chiefs. There are approximately nine Assistant Chiefs (Tr. 11) who are promoted from the BC position, one of whom is in one fire house on each shift. (Tr. 15-16)

BC's also act as temporary Assistant Chiefs when such vacancies need to be filled. (Tr. 16)

The functions of BC's were described as follows:

"Q. [by Mr. Bolanos, City Counsel] Okay. Just for the record, so it is clear and complete, could you describe, just in summary form, what you understand to be the function and role of Battalion Chief with respect to the management function of the Department?

A. [Deputy Chief Cherry] Sure, first and foremost the Battalion Chief is a manager there.

Their responsibilities include, but are not limited to, training, coaching, care of the facilities, care of the equipment, responding to citizens' complaints, investigating misbehavior or those kinds of things in the firehouse and responding to all of - a variety of different kinds of emergencies.

Q. And so there's -- if I could categorize it as the administrative side and the emergency response side?

A. Correct.

Q. And based on your experience in the Department, how would you allocate the percentage of time a Battalion -- a typical Battalion Chief would assign time to those two areas?

A. Ballpark figure, emergency response is 15 to 20 percent, and 80 percent other --

Q. Okay.

A. -- which includes those things I talked.

Q. 80 percent being the administrative duties and responsibilities --

A. Correct.

Q. -- being a manager?

A. Right.

ARBITRATOR KAGEL: Even in a fire they are managing and allocating resources to deal with the fire.

THE WITNESS: Correct. When I say 'emergency response,' I mean we turn on the red lights and sirens going to an emergency, a rescue, fire, drowning or whatever the case may be. Clearly it's not holding hoses, but an emergency response of any kind -- command function and supervisory function, oversight at an emergency scene of all kinds." (Tr. 89-90, *see also* Jt. Exs. 4-5)

BC's also interact, at least to some degree, with other City Managers. (Tr. 19-

21)

Bargaining Units:

BC's are currently considered as unrepresented managerial employees. (Jt. Ex. 3, Tr. 7) Salaries for those employees are set unilaterally by the City and specific issues

concerning compensation are also set by the City as, for example, providing uniform allowances and holiday pay comparable to Fire Fighters for BC's.

The City has no specific procedure for creating a bargaining unit from unrepresented Managers, although the Managers were once represented by a union. (Tr. 36) There is a bargaining unit in the Fire Department which include as the top-ranked positions Fire Captains, Fire Prevention Inspectors and Fire Investigators. (Tr. 5-6)

According to Dee Contreras, the City's Director of Labor Relations, the principal objection to a BC bargaining unit is that not only would it be a bargaining unit of six employees but would represent a proliferation of potential units beyond the existing 12 units (Tr. 33) where managerial groups in each department could demand that they are entitled to their own units causing undue burden on City labor relations requiring meet and confer negotiations which each of them.

"... I think th[at] from my perspective the biggest issue is -- well, from the City's perspective there is no way a single classification, you know, of six incumbents is an appropriate unit.

It opens the door for -- you know, for a crisis in terms of trying to deal with the unrepresented management units because every unhappy group and anybody who is dealt with, for example, engineers ... we would have 25 management bargaining units in the City and it would be unbelievably insane to try to be dealing with all of that. ...

"I think opposition relates to the size of the unit as single unit with a half dozen people in it as opposed to, you know, a broader definition in terms of managers and management.

"That's my concern." (Tr. 52, 78)

POSITION OF THE PARTIES:

Position of the Union:

That Labor Code Section 1960 *et seq.* provides that Fire Fighters have a statutory right to a separate bargaining unit; that those provisions require that if a group of Fire Fighters want a unit they are entitled to it; that putting BC's in a different unit obstructs their right to have their own organization represent them; that the City's issue concerning proliferation is a non-issue in that it is not a lawful reason to deny representation simply because state law requires a meet and confer obligation; that classifications have moved in and out of units continuously; that the City has not been presented with a petition to create a separate unit other than this one in recent memory; that Fire Fighters have traditionally had separate bargaining units; that other Managers have nothing in common with BC's so that a BC unit is an appropriate one; that there is a legitimate need for a BC unit which the City cannot deny on the basis that it does not want to meet and confer; that the Government Code provision cited by the City do to apply for it deals specifically with State employees which has a separate unit of Fire Fighters.

Position of the Employer:

That there is no legal entitlement that BC's have a separate bargaining unit; that the Meyers-Milias-Brown Act supersedes Labor Code Section 1960; that this matter is not about rights of representation but simply an issue of appropriate bargaining unit; that an Agency's organizational pattern and structure dealing with bargaining units is a

relevant starting point for determining whether the unit would be appropriate; that the reasons the City has put forth have been well accepted and in fact codified in the law such as Government Code Section 3521, the appropriate bargaining criteria for State employees, including potential proliferation of bargaining units which would result in fragmentation of the Employer's organizational units; that bargaining units in the City include a wide range of occupational positions; that the diversity of occupational positions have not in any way undercut, undermined or frustrated the ability of employees to effectively meet and confer; that the strong community of interest within the fire fighting service is one of five factors for the Employer to consider under the Government code; that potential proliferation is a valid concern and that there has been no proliferation to date does not provide evidence that that will not happen for to allow this bargaining unit would establish a precedent; that whatever grievances BC's may have (Tr. 53-56) would not be something that would typically be addressed in the meet and confer process.

DISCUSSION:

Labor Code Section 1960 reads:

“Neither the State nor any county, political subdivision, incorporated city, town, nor any other municipal corporation shall prohibit, deny or obstruct the right of firefighters to join any bona fide labor organization of their own choice.”

Labor Code Section 1962 reads:

“Employees [employees of fire departments of cities, Labor Code Section 1961] shall have the right to self-organization, to form, join, or assist labor organizations, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such governing body, through such an organization, but shall not have the right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties.”

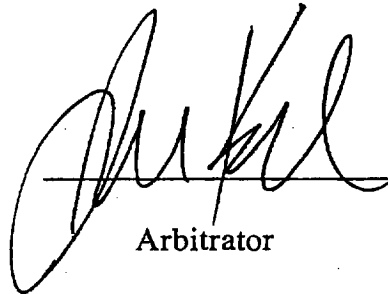
While the Meyers-Milias-Brown Act (Government Code Section 3500 *et seq.*) has similar effect as these provisions in allowing City employees to organize and collectively deal with their Employer, the Labor Code provisions are significant in that they apply specifically to the Fire Service. As the Union points out, traditionally bargaining units of Fire Service employees are confined to Fire Department employees, as is the case in the City. Neighboring Sacramento Metro Fire District has a bargaining unit of Battalion Chiefs. (Tr. 69) The right of “self-organization” provided for in Section 1962 would be thwarted if the City was entitled to deny a bargaining unit for BC’s, particularly when they are now not represented at all and there is no other petition for a bargaining unit which would include BC’s.

Moreover, there was no showing that any other Managerial group has the support of specific legislation which Fire Service employees, including BC’s, have. That legislation reflects a public policy that fire employees are entitled to representation which in this case means a bargaining unit as the vehicle for such representation. While bargaining unit proliferation could create practical difficulties for the City, given the specific statutory basis for Fire Service units applicable here, the fragmentation

argument raised by the City is entitled to greater weight with respect to unit applications by other small groups of Managers. In this respect, the City's reference to the criteria for State employee bargaining units, while, as it states, is instructive, it is more instructive where there is no specific statute guaranteeing self-organization to a particular group of employees as here.

ADVISORY DECISION:

The Battalion Chiefs petition for their own bargaining unit represented by the Union should be granted.



Arbitrator