

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

LOCAL NUMBER 4807, PALM COAST :
PROFESSIONAL FIRE FIGHTERS, :

Petitioner, :

v. :

CITY OF PALM COAST, :

Respondent. :

Case No. RC-2010-049

HEARING OFFICER'S
RECOMMENDED ORDER

Manly C. Bolin, Lake City, representative for petitioner.

Gary M. Glassman, Orlando, attorney for respondent.

CHOPPIN, Hearing Officer.

On July 29, 2010, Local Number 4807, Palm Coast Professional Fire Fighters (Local 4807), filed a representation-certification petition seeking to represent the following bargaining unit of rank-and-file fire suppression personnel employed by the City of Palm Coast (City):

INCLUDED: Firefighter-EMT, firefighter-paramedic, and fire lieutenant.

EXCLUDED: Fire chief, deputy chief, captain, and fire inspector.

The petition was found to be sufficient and was assigned to the undersigned hearing officer. On August 18, the City filed its answer to the petition, contending that the classifications of fire lieutenant and fire marshal should be excluded from the bargaining unit. Local 4807 subsequently clarified that it agrees that the classification of fire marshal should not be included in the bargaining unit. A hearing was set for September 20 and continued to October 22 at the City's request. Accordingly, a

telephone hearing was conducted on October 22 between Palm Coast and Tallahassee. Both parties were allowed to fully participate in the hearing. Both parties filed post-hearing briefs, which I have considered in the preparation of this order. A transcript has not been filed.

STIPULATIONS

1. Local 4807 is an employee organization within the meaning of Section 447.203(11), Florida Statutes (2010).
2. The City is a public employer within the meaning of Section 447.203(2), Florida Statutes (2010).
3. The Commission has jurisdiction of this case.
4. The employees in the classifications of firefighter-EMT and firefighter-paramedic share a community of interest such that they should be included in the same bargaining unit and do not exercise any supervisory authority over each other.
5. The fire chief is a managerial employee excluded from the bargaining unit pursuant to Section 447.203(4)(b), Florida Statutes (2010).
6. The classifications of deputy chief, captain, fire inspector, and fire marshall do not share a community of interest with the classifications of firefighter-EMT and firefighter-paramedic and, therefore, should not be included in the bargaining unit.
7. The fire lieutenants are involved in the hiring process, disciplinary process, and the evaluation process.

FINDINGS OF FACT

Based on the testimony and exhibits, I make the following findings of fact:

1. The City's fire department personnel include the fire chief, the deputy chief, the fire marshall, the fire inspector, three captains, fifteen fire lieutenants, and forty firefighter/EMTs and firefighter/paramedics (hereinafter referred to generically as firefighters). The fire department operates five station houses.

2. The firefighters and the fire lieutenants are required to meet state firefighter minimum standards, to be certified as an EMT or a paramedic, to have a current CPR certification, and to hold a valid driver's license. (Petitioner exhibits 1 and 2; Respondent exhibit 1)

3. The position description for the fire lieutenant classification states that the position is to provide first-line command over an emergency response unit and is accountable for the supervision of the assigned shift and their respective fire house responsibilities and activities. The position description lists the following pertinent duties:

- Supervises, assigns, and evaluates the activities and responsibilities of the assigned fire response unit, e.g., EMT/Paramedic/Engineer Firefighters.
- Supervises response to fire alarms in the City and emergency medical calls; leads the suppression and extinguishing fires; stabilizes patients; leads emergency medical activities and hazardous materials control.

- Ensures all response activities are in compliance with all State Rules and Medical Director's standards for EMT and Paramedic medical care.
- Operates and inspects Fire Department vehicles; operates, utilizes and maintains Fire Department equipment and gear; operates, tests and maintains pumps and hydrants; ensures all proper inspections and maintenance are in compliance with standard codes and regulations.
- Rescues victims from vehicles, drowning, accidents, fire, and other harmful conditions; communicates with dispatch, emergency room physicians and staff, police, fire officers and related personnel for the accurate and efficient dissemination of information.
- Administers Basic Life Support to injured or afflicted persons; stabilizes patients for transport as a team member of an Advanced Life Support Emergency Medical Services Unit; performs Cardiopulmonary Resuscitation (CPR); administers spinal and cervical immobilization; verifies vital signs; evaluates patient status.
- Supervises salvage operations after emergency situation is controlled and/or suppressed.
- Supervises and performs custodial and technical duties at the station, e.g., cleaning and maintaining Fire Station facilities and equipment, inspection of fire equipment for necessary repairs.

Respondent exhibit 1.

4. The uniforms worn by the fire lieutenants and the firefighters are identical except for the epaulets. Both classifications wear red badges, but the fire lieutenants have a bugle on their badge.

5. In two of the stations, the firefighters and the fire lieutenants sleep in the same space. In two new stations, all personnel have separate sleeping cubicles. The firefighters and the fire lieutenants share common showers and bathroom facilities, eat together, participate in the rotation of cooking chores, and clean up together after the meals. Both the fire lieutenants and the firefighters participate in cleaning the station and the apparatus, replacing equipment on the fire trucks, and restocking after an emergency medical services (EMS) run. The fire lieutenants mingle with the firefighters in the station dayrooms.

6. The fire lieutenants give the orders around the station. If a fire lieutenant is absent, any firefighter may be designated to replace the lieutenant. On a fire call, the lieutenant is in charge unless a captain, the deputy chief, or the fire chief arrives at the scene. On an EMS call, the fire lieutenant is in charge of the entire call if the fire lieutenant is a paramedic. If the lieutenant is an EMT, the lieutenant is in charge of the call but a firefighter who is a paramedic is in charge of patient care.

7. Fire lieutenants can give verbal reprimands to a firefighter without prior approval. They are, however, required to inform their superiors of the reprimand after it is given and a captain, the deputy chief, or the fire chief can change the reprimand. For a written reprimand, the fire lieutenants are required to present a write-up of the conduct to the captain who then determines the discipline to be administered. A fire lieutenant can recommend the termination of a firefighter but cannot recommend a suspension.

8. Performance evaluations are utilized to determine the percentage of the annual merit raise to be given to each firefighter. Fire lieutenants evaluate the performance of the firefighters. Those evaluations are passed up the chain of command through the captain to the fire chief. The fire chief has never changed an evaluation but has discussed an evaluation with a fire lieutenant if he felt it was incomplete.

9. The fire chief has final approval of the evaluation and determines the percentage of the raise. A comparison of the overall performance ratings and merit raise percentages in Respondent exhibits 24-27 indicates that the percentage of the raises does not directly correspond to the ratings and is set at the discretion of the fire chief. For example, the firefighter evaluated in exhibit 24 received a rating of 3.31 and a raise of 2.2% while the firefighter evaluated in exhibit 25 received a higher overall rating (3.375) and a lesser raise (1.25%). Similarly, the firefighter evaluated in exhibit 26 received only a 1% raise for achieving a rating of 3.125 while the same raise was given to the firefighter evaluated in exhibit 27 despite the fact that he had a lower rating (2.75) that did not even classify him as meeting standards.

10. In the past, the raises ranged from 0% to 5%. Although the fire chief testified that no raises are currently being given, raises were given as recently as March 2010. See Respondent exhibit 24. After the fire chief's approval, the evaluation is returned to the fire lieutenant to give to the firefighter.

11. Fire lieutenants review and approve the firefighters' daily time entries in the computer system. Their time entries are then forwarded to their captain. Fire lieutenants cannot approve time off for the firefighters. Instead, the fire lieutenants tell their captain about requests for time off. The captain then checks the schedule and approves the request if there is space available to accommodate the request. The captain then instructs the fire lieutenant to enter the time off into the computer system. A fire lieutenant can only call in a firefighter for overtime work if requested by a captain or the fire chief.

12. Applicants for firefighter positions undergo a practical test of firefighting skills and a written exam. Both fire lieutenants and firefighters assist with the practical portion of the hiring tests by setting up stations and grading the applicants' performance. Grading consists of a pass or fail grade and may include comments. Both firefighters and fire lieutenants participate on the interview board that questions the applicants. Civilians also sit on this board.

13. The interviewers ask predetermined questions and note the applicants' responses. In addition, they score the applicants in ten areas, add comments, and give each applicant a numerical grade. The board members' individual scores for each applicant are totaled to reach a collective score that determines whether an applicant has passed or failed the interview process. See Respondent exhibits 2-13. Both the grading sheets and the interview question sheets are then forwarded to the fire chief. The fire chief has made hiring decisions contrary to a hiring committee's recommendation.

14. Both lieutenants and firefighters are members of the policy and procedure committee. Recommendations from the committee go up to the fire chief through the deputy chief.

ANALYSIS

Based on the parties' stipulations, I recommend that the fire chief be excluded from the bargaining unit as a managerial employee. I also recommend that the deputy chief, the captains, the fire inspector, and the fire marshall be excluded from the unit based on the parties' stipulation that these employees lack of community of interest with the firefighters. I infer from that stipulation that none of these employees provide first-line firefighting and emergency medical services on a daily basis. In addition, the City has not disputed Local 4807's claim that the fire marshall works a forty-hour week and performs fire inspections. See Local 4807's Response to Hearing Officer, filed September 7, 2010, and the City's Response to Hearing Officer's Order for Clarification, filed September 9, 2010. The only disputed issue for resolution is whether the fire lieutenants are appropriate for inclusion in a unit composed of the firefighters they supervise.

The record demonstrates that the fire lieutenants possess a community of interest with the firefighters. The Commission recognizes that firefighters of all ranks share a community of interest based on their common mission to protect life and property in fire combat and rescue operations – a mission that exposes them to high risk of personal

injury. See Central Florida Professional Fire Fighters Association, Local 2057, IAFF v. Orange County Fire Department, 8 FPER ¶ 13089 (1982). In this case, the community of interest between the fire lieutenants and their subordinates is strengthened by the fact that they share the same quarters and chores and wear virtually identical uniforms. The central issue, then, is whether the fire lieutenants have supervisory duties of such significance as to override this community of interest. See Florida State Lodge, Fraternal Order of Police v. Village of Tequesta, 14 FPER ¶ 19111 (1988).

The Commission recognizes that a conflict of interest exists when supervisory employees exercise effective authority in personnel matters in the areas of hiring, firing, evaluations, promotions, scheduling, the resolution of grievances, or discipline. See Hallandale Professional Fire Fighters, Local 2238 v. City of Hallandale, 11 FPER ¶ 16071 (1985), aff'd, 478 So. 2d 63 (Fla. 4th DCA 1986).

As my findings reflect, the fire lieutenants exercise no authority in the areas of firing, promotions, scheduling, and the resolution of grievances. Their involvement in the hiring process is restricted to participation on a hiring committee that also includes firefighters and citizens. Moreover, the fire chief who exercises the ultimate authority to hire new employees has made hiring decisions contrary to a hiring committee's recommendation. Therefore, I conclude that the fire lieutenants do not exercise effective authority to hire their subordinates.

The record and my findings reflect that the fire lieutenants perform evaluations of the firefighters that to some degree determine the amount of merit raise given to each firefighter. The potential supervisory conflict flowing from the lieutenants' role in preparing evaluations is, however, diminished by the fact that their ratings are subject to review by two levels of supervision above them. More significantly, it is apparent that the amount of a firefighter's merit raise is not strictly determined by the rating given in his or her evaluation, but also involves the fire chief's exercise of discretion. As my findings reflect, a firefighter who was rated as meeting performance standards was given the same percentage of raise as one rated as needing improvement, and a firefighter was given a higher percentage raise than the raise given to another firefighter who achieved a higher rating. Given these circumstances, I conclude that the fire lieutenants do not exercise effective authority to evaluate their subordinates in a manner that affects their wages or other terms and conditions of employment.

I turn next to the fire lieutenants' role in the disciplinary process. The lieutenants can administer only a verbal reprimand without the prior approval of their supervisors. Further, even that limited discipline must be reported to their supervisors and is subject to change. The fire lieutenants can initiate other discipline by making recommendations, but there is no evidence that these recommendations rise to the level of the effective exercise of authority to discipline their subordinates.

On balance, I conclude that the fire lieutenants' limited role in the hiring, disciplinary, and evaluation processes does not outweigh their community of interest with the firefighters. Thus, I find that a bargaining unit including both firefighters and fire lieutenants is appropriate.

CONCLUSIONS OF LAW

1. Local 4807 is an employee organization within the meaning of Section 447.203(11), Florida Statutes.
2. The City is a public employer within the meaning of Section 447.203(2), Florida Statutes.
3. The fire lieutenants do not have a supervisory conflict of interest that outweighs the community of interest they share with the firefighters.
4. The classification of fire chief should be excluded from the unit as a managerial employee.
5. The classifications of deputy chief, captain, fire inspector, and fire marshall are properly excluded from the bargaining unit because they lack a community of interest with bargaining unit members.
6. The following unit is appropriate for the purposes of collective bargaining:
INCLUDED: Firefighter-EMT, firefighter-paramedic, and fire lieutenant.
EXCLUDED: Fire chief, deputy chief, captain, fire inspector, and fire marshall.

RECOMMENDATION

I recommend that the Commission adopt this recommended order and direct that a secret ballot election be held as soon as is practicable in the unit described above.

Any party may file exceptions to my recommended order, but exceptions must be received by the Commission within **fifteen** days from the date of this order. See Fla. Admin. Code Rule 28-106.217(1). The Commission may not change the findings of fact in this order without first reviewing an official transcript of the hearing. Any party who desires the Commission to review the transcript must file one with the Commission by the date exceptions are due. An extension of time for filing exceptions will not be granted unless good cause is shown.

ISSUED and SUBMITTED to the Public Employees Relations Commission in accordance with Florida Administrative Code Rule 28-106.216 and SERVED on all parties this 2d day of December, 2010.


SUZANNE M. CHOPPIN
Hearing Officer

SMC/bjk

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