



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 6, 1998

The Honorable Gonzalo Barrientos  
Chair, Committee of the Whole on Legislative  
and Congressional Redistricting  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Letter Opinion No. 98-102

Re: Whether a municipality and a fire fighters  
association may agree to exclude certain high  
ranking fire fighters from the collective  
bargaining unit (RQ-1176)

Dear Senator Barrientos:

You ask whether a city and a fire fighters association may negotiate to exclude certain high ranking fire fighters from the collective bargaining unit represented by the association. We conclude that because a statute defines those fire fighters entitled to participate in collective bargaining, a city and a fire fighters association may not negotiate to exclude from the collective bargaining unit fire fighters who fall within the statutory definition.

Local Government Code chapter 174 is The Fire and Police Employee Relations Act. Its purpose is to give fire fighters the right to organize for the collective bargaining of compensation, hours, and other conditions of employment, and to settle disputes through mediation and arbitration.<sup>1</sup> In turn, the act prohibits fire fighters from striking.<sup>2</sup> The exclusive bargaining agent for the fire fighters of a department is the association selected by a majority of the fire fighters.<sup>3</sup> The association and the city have a duty to bargain in good faith.<sup>4</sup>

The act defines "fire fighter:"

(2) "fire fighter" means a permanent, paid employee of the fire department of a political subdivision. The term does not include:

(A) the chief of the department; or

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<sup>1</sup>Local Gov't Code § 174.002.

<sup>2</sup>*Id.* § 174.202.

<sup>3</sup>*Id.* § 174.101.

<sup>4</sup>*Id.* § 174.105.

(B) a volunteer fire fighter.<sup>5</sup>

“Fire fighters” as defined in the act have the right to organize and bargain collectively with their employer.<sup>6</sup> Assuming that the high ranking fire fighters about which you ask are permanent, paid employees of the fire department and are not volunteers or the department chief,<sup>7</sup> they are within the statutory definition of fire fighters entitled to participate in collective bargaining. Your question requires us to determine whether the city and the association may negotiate to exclude certain fire fighters from the collective bargaining unit notwithstanding the statutory definition.

We have found no Texas case that has addressed this issue, but an Oklahoma Supreme Court case is directly on point and persuasive. In *Oliver v. City of Tulsa*,<sup>8</sup> the court considered whether Oklahoma’s collective bargaining statute allowed a city and a union to negotiate to exclude certain high ranking fire fighters from the union. The Oklahoma statute, similar to the Texas statute, defined fire fighters as including “the permanent paid members of any fire department” but excluding, among others, the “Chief of the Fire Department.”<sup>9</sup> The Oklahoma statute, again like the Texas statute, gave fire fighters the right to bargain collectively and to be represented by a bargaining agent selected by a majority of the fire fighters.<sup>10</sup> The Oklahoma court held that because the statute defined and determined the make-up of the fire fighters bargaining unit, the make-up of the unit was not a proper subject for negotiation between the city and the union.<sup>11</sup>

We believe that a Texas court would apply the same reasoning. Where a statute defines those entitled to participate in collective bargaining, a city and a fire fighters association may not negotiate to exclude from the association employees that fall within the statutory definition. Consequently, we conclude that a city and a fire fighters association may not negotiate to exclude from a collective bargaining unit certain “high ranking fire fighters” who are within the statutory definition of the term “fire fighters” entitled to participate in collective bargaining.

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<sup>5</sup>*Id.* § 174.003(2).

<sup>6</sup>*Id.* § 174.023.

<sup>7</sup>Your letter states that assistant chiefs and deputy chiefs are the types of “high ranking fire fighters” about which you ask. We do not think that “the chief of the department,” excluded from the definition of fire fighter by subsection (2)(A), includes assistant and deputy chiefs. The phrase “*the* chief” suggests that it means only the sole head of the department, as opposed to assistants and deputies, of which there may be several.

<sup>8</sup>654 P.2d 607 (Okla. 1982).

<sup>9</sup>*Id.* at 610-11.

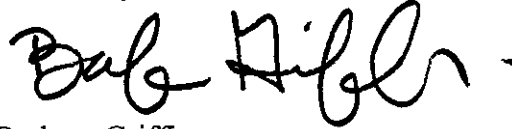
<sup>10</sup>*Id.* at 612.

<sup>11</sup>*Id.*

S U M M A R Y

A city and a fire fighters association may not negotiate to exclude from a collective bargaining unit certain "high ranking fire fighters" who are within the statutory definition of the term "fire fighters" entitled to participate in collective bargaining.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barb Griffin", with a small dash at the end.

Barbara Griffin  
Assistant Attorney General  
Opinion Committee