

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 188, AFL-CIO,

Plaintiff and Appellant,

v.

PUBLIC EMPLOYMENT RELATIONS
BOARD,

Defendant and Respondent;

CITY OF RICHMOND,

Real Party in Interest and
Respondent.

A114959

(Contra Costa County
Super. Ct. No. N05-0232)

**ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on March 18, 2009, be modified as follows:

1. At the end of the second full paragraph on page 22, add as footnote 10 the following new footnote:

¹⁰ Local 188 contends that shift staffing decisions typically precede layoff decisions, arguing that most cities first determine how many fire stations to keep open and how many engine and truck companies to operate and then, on that basis, determine the size of the workforce needed to maintain staffing levels. Local 188 also asserts that the overall size of the workforce may not be directly correlated with shift staffing levels. Local 188's attempt to divorce the staffing decision from the layoff decision is unavailing. The fact remains that in this case there was a direct correlation between the workforce reduction and the reduction in shift staffing, regardless of whether one decision is said to have preceded the other. The decisions were necessarily interdependent. Further, to suggest the City would have to maintain constant shift staffing levels after the layoffs, either by allowing

the remaining firefighters to work overtime or by hiring new firefighters, would render the City's power to lay off firefighters meaningless.

2. In the first full sentence on page 23, delete the word "is" and replace it with "will typically be." The corrected sentence will read:

If there are fewer firefighters and engines in service throughout the City, the primary impact will typically be upon firefighting protection provided to City residents.

3. At the end of the first full paragraph on page 23, add as footnote 11 the following new footnote:

¹¹ Our general observations contrasting equipment staffing with shift staffing should not be construed to imply that one is categorically subject to collective bargaining whereas the other is not. In the case of equipment staffing, the decision may or may not be subject to collective bargaining, depending upon whether it primarily involves firefighter workload and safety or the local public entity's policy of fire prevention. In the case of shift staffing, the decision will typically be exempt from collective bargaining because, as a general matter, such decisions necessarily relate to matters within the managerial prerogative of the local public entity, such as reducing the size of the workforce.

There is no change in the judgment.

The petition for rehearing is denied.

Dated: _____

McGuinness, P.J.