STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
DISTRICT 1199 NW / SEIU, AFL-CIO	)	CASE 14480-E-99-2418
Involving certain employees of:	)	DECISION 6687 - PECB
PUBLIC HOSPITAL DISTRICT 2 OF SNOHOMISH COUNTY (STEVENS)	)	DIRECTION OF CROSS-CHECK

Theiler, Douglas, Drachler & McKee, by Paul Drachler, Attorney at Law, appeared on behalf of the petitioner.

Foster, Pepper & Shefelman, by P. Stephen DiJulio, Attorney at Law, appeared on behalf of the employer.

On March 26, 1999, District 1199 NW / SEIU, AFL-CIO (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of Public Hospital District 2 of Snohomish County, d/b/a Stevens Healthcare (employer). A letter was sent to the employer on April 6, 1999, requesting a list of employees under WAC 391-25-130 and supplying a notice for posting under WAC 391-25-140. On April 13, 1999, the parties were notified that an investigation conference was set for April 21, 1999.[1] The employer submitted a list of employees on April 19, 1999. The investigation conference was conducted by Hearing Officer Mark S. Downing. An investigation statement was issued on April 27, 1999,

[1] The same letter denied an employer request, made on April 12, 1999, for extension of the deadline for it to submit a list of employees from April 16 to May 1.

together with a letter and eligibility list in which the Executive Director responded to positions theretofore taken by the parties and requested reaction from the parties.[2] The union and employer each filed supplemental statements of position on May 7, 1999.

Based on the petition and other documents on file, the Executive Director now concludes there are no issues on which a hearing is required prior to the determination of a question concerning representation, and that issuance of a Direction of Cross-Check is warranted under WAC 391-25-390, 391-25-391, and WAC 391-08-230.

BACKGROUND

The Employer and Existing Bargaining Units

The employer is a public entity providing health care services in and around Edmonds, Washington. According to the letter it filed on May 7, 1999, the employer does business generally as "Stevens Healthcare", and it conducts operations under several other names, including "Stevens Hospital", "Hadfield's Pharmacy", "Stevens Behavioral Health", "The Ballinger Clinic", "Family Care of Edmonds Clinic", "Mill Creek Family Practice Clinic", "Birth and Family Clinic (Edmonds)", "Harborpointe [or Harbour Pointe] Family Practice Clinic", and "Paul O'Brien MD Clinic". Affiliated

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[2] This letter ratified the denial of the request for more time to submit the list of employees, although for different reasons than originally stated. It was noted that the union had opposed the employer's request, that the employer had been given the standard period in which to respond, that the employer had not set forth any extraordinary circumstances in support of its request, and that a lack of specific job titles was not a basis for delay, in light of Commission precedent.

organizations include: "Stevens Foundation", "Stevens Auxiliary", "Stevens Health Network", and "Sound Women's Care".

Under a certification issued by the Commission, the petitioner in this case has been the exclusive bargaining representative of the employer's registered nurses since 1990.[3] Those employees were represented by another organization prior to that time.

Service Employees International Union, Local 120, is the exclusive bargaining representative of the employer's housekeeping, nutrition and food service, central service, respiratory care, and pharmacy employees. It appears from the documents on file in this case that there are approximately 115 employees in that bargaining unit.[4]

The Petitioned-for Bargaining Unit

In the case now before the Commission, the petitioner described the unit it claims to be appropriate as:

> All full-time, regular part-time, and per diem employees of the employer whose worksite is the acute care hospital at 21601 - 76th Avenue

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[3] The bargaining unit was described in Stevens Memorial Hospital, Decision 3313-B (PECB, 1990), as follows:

> All full-time, part-time and per diem nurses employed by Stevens Memorial Hospital, excluding nurses employed as supervisors, or in administrative/management positions, and all other employees of the employer.

The tally attached to that certification indicates there were approximately 326 eligible voters in that unit.

[4] A footnote in Stevens Memorial Hospital, Decision 4358 (PECB, 1993) stated, "The origins and duration of this bargaining relationship cannot be determined from the evidence in this record."

> West in Edmonds, excluding physicians, registered nurses, business office clericals, employees currently represented in other bargaining units (custodians, cooks, diet aides, cook's helpers, storeroom clerks, food service helpers, traypassers, central services technicians, certified respiratory therapy technicians, and pharmacy assistants), employees working at the Warren Building (21727 - 76th Avenue West), or the Puget Sound Tumor Institute (21605 - 76th Avenue West), or the Stevens Health Center, the Stevens Professional Center and all other clinics of the employer, as well as casual employees, security personnel, supervisors, managers, and confidential employees.

Between the original and supplemental lists supplied by the employer and lists supplied by the union, more than 560 names have been placed before the Commission in this case.

POSITIONS OF THE PARTIES

The union has filed a substantial showing of interest in support of its petition, and it requests a prompt determination of the question concerning representation by use of the cross-check procedure. While the union contends that certain part-time employees proposed for inclusion by the employer should be excluded as "casual" under standards used by the National Labor Relations Board (NLRB), and that certain employees proposed for exclusion by the employer as "supervisors" should be included in the unit, it would have such determinations made after a cross-check is conducted. In response to the employer's demand for a hearing, the union points out that the statute does not require a ruling that a proposed unit is the "most appropriate unit", and it contends the employer has not taken any position which warrants a hearing.

The employer clearly withholds a stipulation as to the propriety of the bargaining unit proposed by the union, and demands a hearing prior to any determination of the question concerning representation. The employer asserts that units of employees "sharing more direct community of interest than a wall-to-wall unit" could be appropriate here, and it particularly suggests a "separate clerical unit", a "separate technical unit" and a unit of "professional" employees. The employer cites 29 CFR Sec. 103.30, in which the NLRB established appropriate groupings of health care employees, and claims that a variety of concerns support its request for a hearing. The employer also asserts that a hearing on the standard for inclusion of part-time employees is also needed prior to a cross-check.

DISCUSSION

The Appropriate Bargaining Unit

The Executive Director is not persuaded by the employer's arguments concerning the need for a hearing in this case prior to determination of the question concerning representation. While it is clear that the employer desires such a delay, the Executive Director is mindful that delay is a constant basis for criticism of representation case procedures administered by the NLRB, by this agency, and by similar agencies in other states. In creating the Public Employment Relations Commission, the Legislature called for "more uniform and impartial ... efficient and expert" resolution of disputes between labor and management. RCW 41.58.005. In City of Redmond, Decision 1367-A (PECB, 1981),[5] the Commission criticized the Executive Director for unnecessarily holding a hearing in

[5] This case was cited in the April 27, 1999 letter.

advance of a directed cross-check, and strongly endorsed the expeditious determination of questions concerning representation. In light of RCW 41.58.005 and the Redmond precedent, no basis is found for further delay in this case.

Mischaracterization of April 27, 1999 Letter -
The employer's May 7 letter incorrectly characterizes the letter which accompanied the Investigation Statement as a decision that "a 'wall-to-wall' unit of 531 employees ... is an appropriate bargaining unit". While a ruling on the propriety of the proposed bargaining unit is made in this order, on the basis of the parties' responses to the April 27 letter, the April 27 letter merely explained differences between NLRB and Commission procedures, reviewed the processing of this case up to that time, and reviewed eligibility issues which had been debated up to that time.

Paragraph 5 of the April 27 letter proposed certain modifications of the eligibility list based on the positions taken by the parties up to that time, and proposed some ***rebuttable*** presumptions. The attached list divided 562 names into three categories of "Apparently Eligible", "Eligibility in Dispute", and "Apparently Not Eligible".[6] Together, the "Apparently Eligible" and "Eligibility in Dispute" categories consisted of 531 employees who were described as "***arguably eligible***". The parties were notified that the union had a sufficient showing of interest to warrant use of the cross-check procedure in any configuration of lists for the bargaining unit it was seeking, and the parties were asked for their responses.

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[6] The reasons for placement of individuals in this category were detailed, either by reference to the parties' statements or by reference to Commission precedent.

Availability of Summary Judgment -

The employer correctly cites Affiliated Health Services, Decision 4257 (PECB, 1992), as stating:

> A stipulation or ruling on the scope of the appropriate bargaining unit is a condition precedent to the determination of any question concerning representation ...

The employer overstates the breadth of that precedent, however, in asserting that a hearing is required in this case because it refuses to stipulate the propriety of the petitioned-for unit.

The determination of appropriate bargaining units under the Public Employees' Collective Bargaining Act is a function delegated by the Legislature to the Public Employment Relations Commission:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. ...

Notwithstanding the reference to a "hearing" in that statute, no hearing is necessary under RCW 34.05.416 and the Commission's rules and precedents, where there are no contested issues warranting an evidentiary process. WAC 391-08-230 provides:

> SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. ...

That rule was the basis for issuance of a Direction of Election in City of Long Beach, Decision 1051 (PECB, 1980), where an employer participated in the preliminary processing of a representation petition, but withheld stipulation without advancing any arguments that warranted a hearing. Even under Affiliated Health, supra, a "ruling" on the propriety of the petitioned-for bargaining unit is a valid alternative to a "stipulation". The summary judgment procedure clearly provides a vehicle for issuance of such a "ruling" in the absence of a stipulation.

"Other Units Could Be Appropriate" -

It is well established that the starting point for any unit determination analysis is the configuration sought by the petitioning union. King County, Decision 5910-A (PECB, 1997); South Central School District, Decision 5670-A (PECB, 1997); Okanogan School District, Decision 5394-A (PECB, 1997); City of Auburn, Decision 5775 (PECB, 1996); Reardan-Edwall School District, Decision 5549 (PECB, 1996); Puget Sound Educational Service District, Decision 5126 (PECB, 1995); Spokane County, Decision 5019 (PECB, 1995); King County, Decision 5018 (PECB, 1995); City of Marysville, Decision 4854 (PECB, 1994); Lewis County, Decision 4852 (PECB, 1994); Affiliated Health Services, supra.

The "appropriate bargaining unit" arguments in the employer's letter of May 7, 1999 begin with:

> Stevens Hospital recognizes that [C]hapter 41.56 RCW does not require determination of

> the "most" appropriate bargaining unit. City of Winslow, Decision 3520-A (PECB, 1990).

However, the employer merely goes on to argue that unit configurations other than that proposed by the union are ***also appropriate***, or even ***more appropriate***. An argument similar to that being made by the employer in this case was rejected in Seattle Housing Authority, Decision 4385 (PECB, 1993), as follows:

> The commonality between the "vertical" and "horizontal" unit structures described by the Commission in Centralia is that the unit is **sought by a petitioning union**, and that is the starting point for any unit determination. Nevertheless, the employer argues in this case for a unit configuration that is the "most appropriate", or at least "more appropriate", than the unit sought by the union.
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> ...
> The question before the Executive Director in this case is limited to whether the petitioned-for unit is "**an**" appropriate unit. City of Centralia, supra. The step-by-step application of the statutory unit determination criteria has not produced *distinctions sufficient to support a conclusion that the bargaining unit configuration sought by the petitioning union is inappropriate.*

[Emphasis by **bold** in original; emphasis by *italics* supplied; references are to City of Centralia, Decision 3495-A (PECB, 1990).]

It is simply not enough for an employer to offer alternatives on the broad range of "appropriate" unit configurations. The following quotation from Marysville, supra, points to a need for a ***credible claim that the petitioned-for unit is inappropriate***:

> [P]etitioned-for bargaining units have been rejected as inappropriate. In City of Vancou-

> ver, Decision 3160 (PECB, 1989), the petitioned-for unit **would have stranded certain employees in units too small for them to ever implement their statutory bargaining rights, and was therefore deemed inappropriate.** Likewise, in Forks Community Hospital, Decision 4187 (PECB, 1992), a proposed clerical/service/maintenance/technical unit in a relatively small facility **would still have stranded other "technical" positions, and so was found inappropriate.** In Port of Seattle, Decision 890 (PECB, 1980), a petitioned-for unit was rejected because it **would have artificially divided the employer's office-clerical workforce into two or more separate bargaining units.** When confronted with an inappropriate unit that cannot be rehabilitated by a minor adjustment, the Commission must dismiss the petition.

This case is clearly distinguishable from Affiliated Health, supra, where the petitioner was seeking a unit limited to ambulance personnel and the employer directly attacked the propriety of that unit as an inappropriate fragmentation of its "technical" staff, and a hearing was warranted because of that arguable impropriety.

The NLRB Formula -

The employer cites cases where the Commission has cited or been influenced by the NLRB's rule defining health care bargaining units, but its reliance on the NLRB rule is selective almost to the point of being misleading. The full text of the NLRB rule is as follows:

> Subpart C—Appropriate Bargaining Units
>
> Sec. 103.30 *Appropriate Bargaining units in the health care industry.*—(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there

are existing non-conforming units, **the following shall be appropriate units,** and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, **except that, if sought by labor organizations, various combinations of units may also be appropriate:**

(1) All registered nurses.

(2) All physicians.

(3) All professionals except for registered nurses and physicians.

(4) All technical employees.

(5) All skilled maintenance employees.

(6) All business office clerical employees.

(7) All guards.

(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. *Provided That* a unit of five or fewer employees shall constitute an extraordinary circumstance.

(b) Where extraordinary circumstances exist, the Board shall determine appropriate units by adjudication.

(c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

...

(f) For purposes of this rule, the term:

(1) "Hospital" is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 139x(e), as revised 1988);

> (2) "Acute care hospital" is defined as: either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days. Average length of stay shall be determined by reference to the most recent twelve month period preceding receipt of a representation petition for which data is readily available. The term "acute care hospital" shall include those hospitals operating as acute care facilities even if those hospitals provide such services as, for example, long term care, outpatient care, psychiatric care, or rehabilitative care, but shall exclude facilities that are primarily nursing homes, primarily psychiatric hospitals, or primarily rehabilitation hospitals. Where, after issuance of a subpoena, an employer does not produce records sufficient for the Board to determine the facts, the Board may presume the employer is an acute care hospital.
>
> ...
>
> (5) A "non-conforming unit" is defined as a unit other than those described in paragraphs (a) (1) through (8) of this section **or a combination among those eight units.**

[Emphasis by **bold** supplied.]

The employer relies heavily on the clause in subsection (c) which reads "only units which comport, insofar as practicable, with the appropriate units set forth in (a)", but it then ignores the clauses in subsections (a) and (f)(5) which make "combination" units appropriate. The employer's May 7 letter states:

> In the prehearing conference, the union has acknowledged that it seeks to organize employees in classifications that would be identified under categories 3, 4, 5, 6 and 8, above. Only registered nurses, physicians and guards are sought to be excluded from the proposed unit.

That appears to be precisely the type of "combination" of units permitted by the "**if sought by labor organizations, various combinations of units may also be appropriate**" language of Section 103(a). Thus, the petitioned-for unit in this case is within the range approved as "appropriate" by the NLRB rule, when read in its entirety. Rather than being a basis for finding fault with a unit that combines "categories 3, 4, 5, 6 and 8", the NLRB rule discredits the employer's demand for a hearing in this case.

Conformity to Commission Practice -

The language used by the union to describe the bargaining unit in its petition suggests a familiarity with NLRB practice and, at the same time, unfamiliarity with Commission practice. Some language adjustments are needed to conform it with Commission practices:

- The Commission's jurisdiction in this case arises out of the fact that the employer is a municipal corporation of the state of Washington, and is thus a public employer covered by Chapter 41.56 RCW. While most public entities routinely use their official names (e.g., "Snohomish County"; "City of Edmonds") in their daily affairs, public hospital districts seem to prefer trade names that conceal their status as public entities (e.g., "Stevens Healthcare") or even contra-indicate public ownership (e.g., "Samaritan Hospital" in Moses Lake, Washington, which is actually operated by a public hospital district notwithstanding the religious connotations of the name under which it does business). Imprecise usage became a source of problems in a public hospital district,[7] and it is now the policy of this office to use the official names of public entities in agency records and decisions.

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[7] See, Kennewick General Hospital, Decision 4815-B (PECB, 1996).

- Long-standing Commission precedents distinguish "regular part-time" employees from "casual" employees. Those in the former category are included in bargaining units together with full-time employees performing similar work, while those in the latter category are excluded from bargaining units. Employees can attain "regular part-time" status by working either scheduled hours or "on call" hours which are sufficient to indicate their ongoing interest in the affairs of a bargaining unit. Although the term "per diem" was accepted in stipulated unit descriptions in the past,[8] it is now the policy of this office to avoid use of that potentially-ambiguous term in directing elections or cross-checks.

- Like private enterprises, public employers occasionally build new facilities, change their addresses or rename their facilities (e.g., this employer formerly operated its acute care hospital under the name "Stevens ***Memorial*** Hospital). Rather than creating a potential need for an amended certification (or even a decision resolving a substantive dispute) at some future time, it is the policy of this office to avoid the use of details such as building names and street addresses in unit descriptions.

- Existing bargaining units can change through unit clarification proceedings under Chapter 391-35 WAC or as the result of agreements between the parties to the particular bargaining relationship, and can even disappear upon exercise by employees of their statutory right to decertify their exclusive bargaining representative under RCW 41.56.070. Additionally, the borders between bargaining units are the front lines in

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[8] The examples include the unit description covering this employer's registered nurses, as quoted above.

disputes over "skimming of unit work".[9] It is thus the policy of this office to avoid describing bargaining units by reference to other bargaining units.

- Job titles can be changed at the whim of the parties. Rather than creating a potential need for an amended certification (or even a decision resolving a substantive dispute) at some future time, it is the policy of this office to avoid the use of specific job titles (and to prefer generic terms) in unit descriptions.[10]

- RCW 41.56.030(2)(a) and (b) require exclusion of "elected" officials and certain "appointed" officials. Although those terms are undoubtedly unfamiliar, or even inapposite, in practice before the NLRB they are routinely used by the Commission in descriptions of bargaining units.

- Commission precedent developed in light of the unanimous decision of the Supreme Court of the State of Washington in Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977) does not recognize an exclusion of "managerial" employees, as a class, from collective bargaining rights under Chapter 41.56 RCW. Accordingly, a wholesale exclusion of such a class is inappropriate in a unit description under Chapter 41.56 RCW.

The unit description proposed by the union in this case is adjusted accordingly.

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[9] See, South Kitsap School District, Decision 472 (PECB, 1978) and cases applying that precedent.

[10] See, King County, Decision 5820 (PECB, 1997); Snohomish County Fire District 1-11, Decision 6045 (PECB, 1997); City of Milton, Decision 5808-B (PECB, 1995).

The Eligibility List

Although more than 560 names have been before the Commission in connection with this case, that total has been pared down as a result of the exchange of correspondence:

- Errors Corrected - The employer's May 7 letter acknowledged the propriety of deleting a "Mr. Agency" entry; the union has not objected to addition of Sonya Ruiz, whose name was erroneously omitted from the initial list.

- Quits - The employer's May 7 letter confirmed the propriety of deleting the names of several individuals who were named on its initial list, but whose employment has terminated: Rhonda Hummel, Jan Jordan, Candie Leonard, E. Letson, Suzanna Litus, Lorraine Steinert, Timothy Tran, and David Webster.

- New Hires - The employer proposed adding several newly-hired employees to its initial list. Yamilla Buitrago is listed in the "Eligibility in Dispute" category, based on the union's claim that she is employed in the bargaining unit represented by SEIU Local 120. Kassahun Gebramariam, Alfia Leonov, B. Alicia Montgomery, Carrie Nelson, Ann Polin, and L. Cameron Smith are listed in the "Apparently Eligible" category, in the absence of any objection from the union.

- Casual Employees - The employer's May 7, 1999 letter acknowledged the propriety of deleting the following individuals who had been listed as part-time employees on the employer's initial list: Edwina Baxter, Mary Jane Betts, Jennifer Caravallo, Mara Conklin, Lynn Connway, Kristine Gauntt, Alvin Goo, William Guse, Susan Kane, Stephanie Kelly, Dawn McLellan, Jeffrey Muehling, Carla Phillips, Marilyn Philpott, Kathryn

Quick, Maxine Rais, Joel Rhyner, Barbara Schustek, Colleen Sullivan, Elizabeth Thomas, Sharon Thorp, and Karen Trujillo. Their exclusion was proposed in the April 27, 1999 letter, on the basis that they had not averaged sufficient work hours over the last four calendar quarters to qualify under the most inclusive threshold heretofore used by the Commission for "regular part-time" status.[11]

- Part-time Employees - Certain other part-time employees named on the employer's initial list averaged more than 44 hours per quarter over the last four calendar quarters, but are listed in the "Eligibility in Dispute" category because the union continues to claim that some or all of them should be excluded under a "52 hours worked in latest calendar quarter" test propounded by the NLRB.[12] They are: Joel Bingaman, Sidney Curran, Rose Deangelo, Maryann Deiparine, Anna Friedel, Bettye Hensel, Mary Lou Hernandez, Seonaid Jones, Robert Jue, Nola Kundu, Alice Linskey, Jamie Smith-Morris, and Donna Welch.

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[11] Numerous Commission precedents have excluded "casual" employees who have so little work in a bargaining unit as to cast doubt on their interest in the ongoing affairs of that unit. A "11 work shifts per quarter" test was applied in King County, Decision 1675 (PECB, 1983). The smallest number of hours for any employee on the employer's initial list was a 4-hour entry for one employee. A (rebuttable) inference was made that 4 hours is the practical minimum for work shifts in this unit. Hence, 44 hours per quarter was suggested as the lowest figure for which an employee was "***arguably eligible***" in this proceeding.

[12] The employer's argument that a hearing should be held on their eligibility prior to the determination of any question concerning representation is discredited by its failure to address or distinguish the citation of City of Redmond, supra, in the April 27, 1999 letter, or to set forth any extraordinary circumstances.

- Supervisor/Lead Issues - In addition to the employees claimed eligible by the employer, the April 27, 1999 letter identified certain employees who are claimed eligible by the union, but are proposed for exclusion by the employer as supervisors. They are: Ron Bieneman, Dave Brown, Jill Browning, Pat Clark, Leonard Ho, Mick Hodge, Thomas Miller, Terry Offenbacker, Kim Parkhill, Denise Robertson, and Russ Warrington. Neither party has indicated any change of position as to those employees, and they are listed in the "Eligibility in Dispute" category.[13]

With adjustment for the statements filed by the parties on May 7, 1999, there are 531 employees ***arguably eligible*** for inclusion in the petitioned-for bargaining unit.

The Propriety of a Cross-Check

The determination of questions concerning representation is also a function delegated by the Legislature to the Commission. RCW 41.56.050 uses the mandatory term "shall" in directing that disputes concerning the selection of a bargaining representative be submitted to the Commission. RCW 41.56.060 then sets forth optional methods, as follows:

> RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. ... The commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election

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[13] The employer neither asserts a need to have these eligibility issues resolved before the determination of the question concerning representation, nor distinguishes them from the disputed part-time employees.

> specifically therefor. [1975 1st ex.s. c 296 § 17; 1967 ex.s. c 108 § 6.]

Employers often resist the "cross-check" procedure adopted by the Commission as an alternative to conducting an election, but the Commission has consistently refused to erase that alternative from the statute:

> WAC 391-25-390 PROCEEDINGS BEFORE THE EXECUTIVE DIRECTOR. (1) **The executive director may proceed forthwith upon the record,** after submission of briefs or after hearing, as may be appropriate.
>
> (a) **The executive director shall determine whether a question concerning representation exists, and shall** issue a direction of election, dismiss the petition **or make other disposition of the matter.**
>
> (b) Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election.
>
> (2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.
>
> (3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.
>
> (4) Unless appealed to the commission under WAC 391-25-660, an order issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; ....]

WAC 391-25-391 SPECIAL PROVISION--PUBLIC EMPLOYEES. (1) Where **only one organization is seeking certification** as the representative of unrepresented employees, and the **showing of interest submitted in support of the petition indicates that the organization has been authorized by in excess of seventy percent of the employees** to act as their representative for the purposes of collective bargaining, the **executive director may issue a direction of cross-check.**

(2) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.060. 98-14-112, § 391-25-391, filed 7/1/98, effective 8/1/98; ....]

WAC 391-25-410 CROSS-CHECK OF RECORDS. (1) **Where a cross-check of records is to be conducted** to determine a question concerning representation, **the organization shall furnish to the agency original or legible copies of individual cards or letters signed and dated by employees** in the bargaining unit within ninety days prior to the filing of the petition and indicating that the employees authorize the named organization to represent them for the purposes of collective bargaining, or shall furnish to the agency membership records maintained by the organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing.

(2) The agency shall honor a valid revocation of authorization contained in an individual card or letter signed by the employee and furnished to the agency by the employee.

(3) **The employer shall make available to the agency original or legible copies of employment records maintained as a part of its**

> **business records containing the names and signatures of the employees** in the bargaining unit.
>
> (4) Prior to the commencement of the cross-check, the organization may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election. Any such requests shall be honored.
>
> (5) Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year thereafter.
>
> (6) **All cross-checks shall be by actual comparison of records furnished by the parties.** The agency shall not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. Upon the conclusion of the comparison of records, the agency officer conducting the cross-check shall prepare and furnish to the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined and the number of employee records counted as valid evidence of representation. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.060. 98-14-112, § 391-25-410, filed 7/1/98, effective 8/1/98; ....]

[Emphasis by **bold** supplied in all sections.]

As was indicated in the April 27, 1999 letter, the union supplied a showing of interest indicating that it has the support of more than 70% of the ***arguably eligible*** employees in the petitioned-for bargaining unit. That situation has not changed as the result of intervening events.

The normal procedure for conducting cross-checks in units smaller than the one involved in this case is for the employer to send

copies of relevant employment records to the Commission by mail or telefacsimile, and for the Commission staff to preserve the confidentiality of the comparison of employer and union records by conducting that examination within the confines of the Commission's Olympia office. The Commission staff has also conducted cross-checks on employer premises, where appropriate private space is provided for the examination of the records. Given the large number of employees in this bargaining unit, the Executive Director deems it appropriate to specifically offer the on-site alternative as a means of reducing delay and burdens for the parties, subject to the employer providing satisfactory arrangements.

FINDINGS OF FACT

1. Public Hospital District 2 of Snohomish County is a municipal corporation of the state of Washington, and is a public employer covered by Chapter 41.56 RCW. The employer does business as "Stevens Healthcare" and under other names.

2. District 1199 NW / SEIU, AFL-CIO, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a petition with the Commission under Chapter 41.56 RCW and Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of Public Hospital District 2 of Snohomish County. District 1199 NW furnished a showing of interest indicating that it has the support of more than 70 percent of the employees in the bargaining unit it seeks to represent.

3. The employer has declined to stipulate that the bargaining unit sought by District 1199 NW in this proceeding is an appropriate bargaining unit under RCW 41.56.060.

4. The employer acknowledged, during the course of an Investigation Conference in this matter, that the bargaining unit sought by District 1199 NW in this proceeding could be an appropriate bargaining unit under RCW 41.56.060.

5. The employer has acknowledged that the bargaining unit proposed by District 1199 NW in this proceeding combines all of its unrepresented employees in "all professionals except for registered nurses and physicians", "all technical employees", "all skilled maintenance employees" and "all nonprofessional employees ..." categories designated as appropriate bargaining units separately or in combination under rules published by the National Labor Relations at 29 CFR Sec. 103.30(a). The only exclusions from the "all nonprofessional employees ..." category are housekeeping, nutrition and food service, central service, respiratory care, and pharmacy employees who have a separate history of bargaining under Chapter 41.56 RCW with Service Employees International Union, Local 120, as their exclusive bargaining representative.

6. The employer has asserted that bargaining unit configurations other than that sought by District 1199 NW in this proceeding could be appropriate, or could be more appropriate, under RCW 41.56.060, but it has not provided any arguable basis for a ruling that the bargaining unit sought by District 1199 NW in this proceeding is inappropriate under RCW 41.56.060.

7. As the result of the Investigation Conference and correspondence exchanged up to this time, 31 names initially listed by the employer as employees eligible for inclusion in the bargaining unit sought by District 1199 NW have been stricken from the list by stipulation of the parties.

8. As the result of the Investigation Conference and correspondence exchanged up to this time, issues have been framed as to the eligibility of 27 employees for inclusion in the bargaining unit sought by District 1199 NW.

9. As the result of the Investigation Conference and correspondence exchanged up to this time, 504 employees have been identified who are apparently eligible for inclusion in the bargaining unit sought by District 1199 NW.

10. The 531 employees described in paragraphs 8 and 9 of these Findings of Fact constitute all of the employees arguably eligible for inclusion in the bargaining unit sought by District 1199 NW in this proceeding.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

2. No arguable issues of fact or law are raised by the employer in this proceeding with respect to the propriety of the bargaining unit sought by District 1199 NW under RCW 41.56.060 and Commission precedent, so that a summary judgment is appropriate, under WAC 391-08-230, as to the propriety of the petitioned-for bargaining unit.

3. Under RCW 41.56.060 and Commission practices and precedent, an appropriate bargaining unit consisting of the employees District 1199 NW seeks to represent in this proceeding is described as:

> All full-time and regular part-time professional, technical, skilled maintenance and non-professional employees of Public Hospital District 2 of Snohomish County, excluding: Officials elected by popular vote; officials appointed to office for a fixed term of office; confidential employees; supervisors; casual employees; registered nurses; physicians; office-clerical employees in the business office; security personnel; housekeeping, nutrition and food service, central service, respiratory care and pharmacy employees; and employees working exclusively in clinics operated by the employer outside of its acute care hospital,

4. A question concerning representation presently exists under RCW 41.56.060 and 41.56.070 in the bargaining unit described in paragraph 3 of these Conclusions of Law, and determination by a cross-check is appropriate under WAC 391-25-391.

5. The employees described in paragraph 8 of the foregoing Findings of Fact, shall be treated as "challenged" for the purposes of the cross-check conducted in this matter, and their eligibility for inclusion in the bargaining unit shall be determined in supplemental proceedings.

DIRECTION OF CROSS-CHECK

1. A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described in paragraph 3 of the foregoing Findings of Fact, to determine whether a majority of the employees in that bargaining unit have authorized District 1199 NW / SEIU, AFL-CIO to represent them for purposes of collective bargaining.

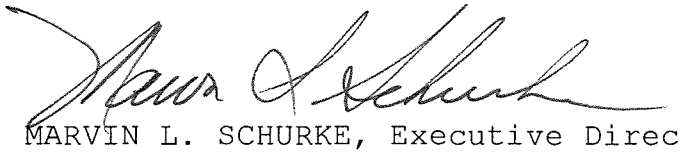
2. Within seven days following the date of this order, Public Hospital District 2 of Snohomish County shall either:

a. Supply the Commission staff with copies of documents from its employment records which bear the signatures of the employees described in paragraphs 8, 9 and 10 of the foregoing Findings of Fact; or

b. Make arrangements satisfactory to the Commission staff for the prompt conduct of the cross-check by examination, on its premises, of employment records which bear the signatures of the employees described in paragraphs 8, 9 and 10 of the foregoing Findings of Fact.

Issued at Olympia, Washington, on the 14th day of May, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed to the Commission by filing objections under WAC 391-25-590.