

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
SERVICE EMPLOYEES INTERNATIONAL ) CASE 20098-E-06-3124  
UNION, DISTRICT 1199NW )  
 ) DECISION 9350 - PECB  
Involving certain employees of: )  
 )  
KLICKITAT VALLEY PUBLIC HOSPITAL ) DIRECTION OF CROSS-CHECK  
DISTRICT 1 )  
\_\_\_\_\_ )

*Geoff Miller*, Attorney At Law, and *Margaret Cary*,  
Attorney At Law, for the union.

*Foster Pepper PLLC*, by *Julie L. Kebler*, Attorney at Law,  
for the employer.

On January 17, 2006, Service Employees International Union, District 1199NW (union) filed a petition with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of historically-unrepresented employees of Klickitat Valley Public Hospital District 1 d/b/a Klickitat Valley Health Services (employer). An investigation conference was held, and an investigation statement issued on February 17, 2006, framed an issue as to the propriety of the bargaining unit proposed by the union. Hearing Officer Starr Knutson held a hearing on March 28 and 29, 2006. The parties filed briefs to complete the record.

ISSUE

The sole issue to be determined by the Executive Director in this case is: Is the bargaining unit proposed by the union an appropriate bargaining unit for collective bargaining?

Based on the evidence and arguments advanced by the parties, and the record as a whole, the Executive Director rules that the petitioned-for bargaining unit encompassing all nonsupervisory employees of the employer is an appropriate unit for the purposes of collective bargaining. A cross-check is directed.

#### APPLICABLE LEGAL STANDARDS

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060. The Commission applies the community of interest criteria set forth in that statute, as follows:

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 units, 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.*

None of the statutory criteria predominates to the exclusion of others, but they have varying weight depending on the factual settings of particular cases. *City of Centralia*, Decision 2940 (PECB, 1988). In particular, the "history of bargaining" will not be a factor where the employees involved have historically been unrepresented, and the "desires of employees" will be assessed by conducting a unit determination election under WAC 391-25-420 only where two or more otherwise-appropriate unit configurations have been proposed by competing unions. *Clark County*, Decision 290-A (PECB, 1977).

The unit configuration proposed by a petitioning organization is always the starting point for any unit determination analysis. *King County*, Decision 5910-A (PECB, 1997). Any "appropriate" unit configuration can be certified; it is not necessary to find "the most appropriate" unit or the "only appropriate" unit. While a petitioner is not entitled to a presumption that the unit it proposes is appropriate, it is not enough for an employer to suggest another configuration that might be appropriate (or even more appropriate) than the unit sought in a properly supported petition. Indeed, an employer that contests the propriety of a bargaining unit must show that the proposed bargaining unit is *inappropriate*. *City of Winslow*, Decision 3520-A (PECB, 1990).

The Commission has described the purpose of the unit determination process, as: "[T]o group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer." *King County*, Decision 5910-A (PECB, 1997) and cases cited therein. Bargaining units often fall into one of three categories:

- Employer-wide or "wall-to-wall" units encompass all of the nonsupervisory employees OR all of the supervisory employees of a particular employer, and thus draw their community of interest from the extent of organization, i.e., all working for the same employer;
- "Vertical" units encompass all of the nonsupervisory OR all of the supervisory employees in a single branch of the employer's table of organization, and thus draw their community of interest from the working conditions and extent of organization, i.e., all working under the same manager; or
- "Horizontal" units encompass all of the nonsupervisory employees OR all of the supervisory employees in a particular

generic occupational type, and thus draw their community of interest from similarities of duties, skills, and working conditions, i.e., all performing similar work, without regard to the employer's organizational structure.

### ANALYSIS

This case turns on applying such components of the statutory community of interest criteria as are applicable in this particular employment setting. The union seeks a classic "wall-to-wall" unit including all nonsupervisory employees of the employer. The employer objects that various occupational groups within the petitioned-for unit have differing wage rates and work hours; may work in different departments with differing policies; may have duties involving direct patient care, maintenance, dietary, or administrative functions; and may work in differing locations.

#### Duties, Skills and Working Conditions

The petitioned-for unit consists of as few as 120 employees and certainly no more than 150 employees working in a small rural hospital. While those employees perform a wide range of licensed nursing, patient care, ambulance service, laboratory testing, dietary, maintenance, and administrative/clerical functions, they have many similarities. They are all:

- Paid on an hourly basis;
- Subject to the same fringe benefit plans;
- Subject to the same vacation and sick leave plans; and
- Subject to the same personnel manual.

Each employee works a set schedule of hours, even though the number of hours in a particular shift varies and some employees regularly

work holidays while others do not. While overtime work opportunities are much more common in the in-patient areas of the hospital, all of the employees are eligible for overtime.

The fact that the petitioned-for employees work in three separate buildings is not compelling. All three buildings are in close proximity in the relatively small community of Goldendale. The Family Practice Clinic is a very short distance from the main hospital; the Home Health Center is less than a half mile from the main hospital, and many employees walk between those facilities during their work days.

The employer cites *Community Transit*, Decision 8734 (PECB, 2004), for the proposition that the fact of employees sharing similar personnel policies, work rules, disciplinary procedures, leave policies, and medical benefits does not necessarily require a conclusion that the employees have an exclusive community of interest. The driver of the analysis in that case, and in other unit determination cases cited here, was the unit proposed by the petitioning organization. Even in true "severance" situations,<sup>1</sup> the petitioner need not prove that the existing unit is "inappropriate" to prevail. The "wall-to-wall" unit proposed by the union is the only unit configuration to be evaluated here.

The employer invokes the "duties" and "skills" terms of the statute in pointing out that the billing clerks, maintenance mechanics, and surgical technicians cannot fill in for, or transfer to, the

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<sup>1</sup> This excludes division of bargaining units that are inappropriate under WAC 391-35-300 (by mixing school certificated employees with classified employees), WAC 391-35-310 (by mixing "uniformed" personnel and employees not eligible for interest arbitration), or WAC 391-35-340 (by mixing "supervisors" with nonsupervisory employees).

registered nurse positions in the petitioned-for unit. Inclusion in a wall-to-wall bargaining unit does not negate training and licensure requirements associated with having qualified personnel perform particular functions,<sup>2</sup> nor does a diversity of skills preclude putting all of those employees being in a single grouping (bargaining unit) for the purposes of negotiating with their common employer on their wages, hours and working conditions. All of the petitioned-for employees are engaged directly or indirectly in providing health care services to the public in Klickitat County. The unit proposed in this case is aptly likened to the integrated workforce preserved from severance in *Yelm School District*, Decision 704-A (PECB, 1980).

#### History of Bargaining

There is no history of bargaining for the petitioned-for employees.

#### Extent of Organization

A unit that includes all of the nonsupervisory employees of the employer is "inherently an appropriate unit for the purposes of collective bargaining, because all such employees clearly share a community of interest in dealing with their common employer." *City of Winslow*, Decision 3520 (PECB, 1990), citing *Federal Way Water and Sewer District*, Decision 3228 (PECB, 1989). Even though the National Labor Relations Board (NLRB) has outlined "presumptively appropriate" bargaining units for acute care hospitals, as described in *Forks Community Hospital*, Decision 4187 (PECB, 1992),

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<sup>2</sup> The employer initially sought exclusion of employees engaged in operation of an ambulance service, but they are "emergency medical technicians" who do not qualify for interest arbitration. The union has stipulated that any employees who qualify in the future as "advanced life support technicians" (so as to be "uniformed personnel" under RCW 41.56.030(7)) would properly be excluded from this bargaining unit under WAC 391-35-310.

those rules are not legally binding on this Commission and their application would Balkanize this employer's workforce without any basis to believe such a fragmented structure would contribute to sound labor-management relations in this small community.

#### Desires of the Employees

The employer-wide unit proposed by the union is an appropriate bargaining unit under the other statutory criteria, and there is no pending petition seeking any different unit configuration. There is no reason to conduct a unit determination election here.<sup>3</sup>

#### CONCLUSION

A bargaining unit of all nonsupervisory employees of Klickitat Valley Health Services is an appropriate bargaining unit for collective bargaining.

#### REMAND FOR FURTHER PROCEEDINGS

RCW 41.56.060 authorizes the Commission to determine questions concerning representation by a "cross-check" of union authorization cards against employer payroll records, and WAC 391-25-391 and 391-25-440 implement that discretionary authority. The union has supplied a showing of interest in this case that indicates it has the "substantial majority" required by WAC 391-25-391. Therefore, a cross-check is being directed and the case will be returned to the Representation Coordinator for the conduct of that procedure.

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<sup>3</sup> The union will, of course, be at risk that differences of opinion within the wall-to-wall bargaining unit could lead some employees to withdraw their support for the union, which could eventually lead to a certification of "No Representation" for the bargaining unit.

FINDINGS OF FACT

1. Klickitat Valley Public Hospital District 1 is a public employer within the meaning of RCW 41.56.030(1).
2. Service Employees International Union, District 1199NW, a bargaining representative within the meaning of RCW 41.56.030(3), filed a timely and properly supported petition for investigation of a question concerning representation, involving employees of Klickitat Valley Public Hospital District 1.
3. The employer has approximately 130 employees working in seven departments.
4. All of the employees in the proposed bargaining unit share similar working conditions in regard to proximate work locations, interaction of personnel across department lines, fringe benefits, vacation benefits, and personnel policies.
5. The employees at issue in this proceeding have no history of collective bargaining.
6. The proposed wall-to-wall bargaining unit will neither fragment the employer's workforce, nor strand employees in groups too small to exercise their statutory bargaining rights.
7. The union has provided a showing of interest indicating that it has the support of substantial majority of the employees.

CONCLUSIONS OF LAW

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



2. A bargaining unit encompassing all non-supervisory employees of the employer, excluding confidential employees, supervisors, employees eligible for interest arbitration, and contracted employees, is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.
  
3. A question concerning representation presently exists under RCW 41.56.060 and .070 in the appropriate bargaining unit described in paragraph 2 of these conclusions of law.

DIRECTION OF CROSS-CHECK

A cross-check of records shall be made under the direction of the Public Employment Relations Commission, to determine whether a majority of the employees in the bargaining unit described in paragraph 2 of the foregoing conclusions of law have authorized Service Employees International Union, District 1199NW, to represent them for the purposes of collective bargaining.

Issued at Olympia, Washington, on the 12<sup>th</sup> day of June, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

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