STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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.

This case comes before the Commission on a timely appeal filed by the Klickitat Valley Public Hospital District 1 (employer), seeking review and reversal of the Findings of Fact, Conclusions of Law, and Order Directing Cross-Check issued by Executive Director Marvin L. Schurke.[1] Service Employees International Union, District 1199NW (union) supports the Executive Director's decision.

ISSUES PRESENTED

1. Did the Executive Director commit reversible error in finding the petitioned-for "employer-wide" bargaining unit appropriate for purposes of collective bargaining?

2. If the bargaining unit is appropriate, did the Executive Director commit reversible error in directing a cross-check?

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[1] *Klickitat Valley Public Hospital*, Decision 9350 (PECB, 2006).

We affirm the Executive Director's Findings of Fact and Conclusions of Law that the petitioned-for bargaining unit is appropriate, and we affirm the Executive Director's direction of cross-check.

ANALYSIS

ISSUE 1 - Is the Petitioned-for Unit Appropriate?

The Executive Director's decision cites and discusses the appropriate statutes and Commission precedents with respect to unit determination proceedings, and we incorporate that discussion by reference. The employer's argument focuses on the Executive Director's application of those statutes and precedents including the Executive Director's finding and conclusion that the petitioned-for "wall-to-wall" bargaining unit configuration is "inherently appropriate."

When applying the unit determination criteria found in RCW 41.56.060, this Commission has consistently held that none of the criteria predominates to the exclusion of others, and the criteria may be weighted differently depending on the factual setting of a particular case. *See City of Centralia*, Decision 2940 (PECB, 1988). The burden is on the employer to demonstrate that the propriety of the petitioned-for unit is inappropriate for a representation petition to be dismissed. It is not enough for an employer to show that a different unit might be appropriate, or even more appropriate.

In *City of Winslow*, Decision 3520-A (PECB, 1990), this Commission affirmed an Executive Director's decision finding an employer-wide bargaining unit appropriate. In analyzing the statutory unit determination criteria found in RCW 41.56.060, the Commission noted:

> The statute does not require determination of the "most" appropriate bargaining unit. It is only necessary that the petitioned-for unit be an appropriate unit. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination.

The Commission then found that when ruling upon the propriety of bargaining units for smaller workforces, employer-wide units have "generally been viewed as presumptively appropriate." *City of Winslow*, Decision 3520-A. The only exception to that presumption is where we would mix "uniformed employees" under RCW 41.56.030(7) with non-uniformed personnel. In this case, the petitioned-for unit does not mix such personnel.[2]

Application of Standard

Unit determination proceedings are decided on a case-by-case basis, and the results in one proceeding may not necessarily be applicable to the next case.[3] Here, the Executive Director examined the RCW 41.56.060 criteria, including an analysis of the "duties, skills, and working conditions of the petitioned-for employees, and the

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[2] The union's representation petition initially sought to represent paramedics who are life support technicians eligible for interest arbitration under RCW 41.56.030-(7)(h). Had the union continued to pursue those employees' inclusion with the petitioned-for unit, the unit would have been inappropriate. Those employees are now the subject of a different representation proceeding, 20541-E-06-3168, and any reference to those employees in this record have no bearing on the outcome of this decision.

[3] We recently noted in *University of Washington*, Decision 8878-A (PSRA, 2006), that different bargaining unit configurations are possible once a union ceases to represent certain employees. If a new petition is filed to represent a different configuration of employees, the previous certification does not provide presumptive proof that the newly petitioned-for unit is inappropriate.

extent of organization within the employer's workplace concluded that the petitioned-for unit was appropriate. While we recognize that some of the duties of the employees differ, we cannot say that the Executive Director's application of the law was in error. Simply put, the similarities of the duties, skills, and working conditions do not demonstrate that the petitioned-for unit is inappropriate.

Additionally, the Executive Director took into account the size of the employer's workforce and the ability of the employees to collectively bargain with their employer if the workforce is excessively fragmented. Although the employer correctly notes that the size of an employer's workforce is not explicitly part of the RCW 41.56.060 criteria, the size of the workforce does become a factor when examining the extent of organization within an employer's workforce.

The employer cites *Community Transit*, Decision 8734-A (PECB, 2005), as standing for the proposition that the RCW 41.56.060 criteria is the "driver" in unit determination proceedings. This presumption is only partially correct.[4] While it is true that statutory criteria is applied collectively to discern whether the petitioned-for employees have a "community of interest" to indicate that those employees will be able to bargain effectively with their employer, the starting point for any unit determination proceeding is the petitioned-for unit itself, and the statutory criteria is then applied to determine the appropriateness of that unit. If the bargaining unit stands appropriate on its own merits, it is appropriate. The employer's reading of RCW 41.56.060 would have

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[4] Ironically, the employer in Community Transit argued just the opposite of this employer, namely that the petitioned-for employees in that case shared a community of interest with a larger group of unrepresented clerical staff.

this Commission predetermine all appropriate bargaining units of an employer's workforce once a representation petition is filed.

Conclusion

Substantial evidence supports the Executive Director's decision that the petitioned-for bargaining unit is appropriate.

ISSUE 2 - Was the Direction of Cross-Check Appropriate?

The direction of cross-check under WAC 391-25-391 is a discretionary function delegated to the Executive Director to perform under the standards set forth in WAC 391-25-410. WAC 391-25-410(2) provides a mechanism for employees to revoke the authorization contained in the individual card, and states:

> 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. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

The employer now argues that, when this Commission receives a request to withdraw an authorization card from an employee in a cross-check situation, absent an investigation to determine whether the requesting employee was coerced into initially signing the authorization card is an abuse of discretion. We disagree.

If an employee feels as if he or she has been coerced into signing an authorization card by a bargaining representative, that employee is free to file an unfair labor practice complaint under Chapter 391-45 WAC alleging that the employee's Chapter 41.56 RCW protected rights were violated. If the Executive Director determines that the complaint states a cause of action, the Executive Director may suspend the representation proceedings until the unfair labor

practice complaint is resolved. WAC 391-25-370; *see also State - Ecology*, Decision 9034-B (PSRA, 2005). Employers are also permitted to file election objections under WAC 391-25-590, if the employer claims specific conduct improperly affected the results of the election. No such complaint has been filed in this case. The direction of cross-check was an appropriate exercise of direction.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Direction of Cross-Check are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Direction of Cross-Check of the Commission.

Issued at Olympia, Washington, the 13th day of December, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner