

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
INTERNATIONAL ASSOCIATION OF	)	
EMTS AND PARAMEDICS	)	CASE 21030-E-07-3256
	)	
Involving certain employees of:	)	DECISION 9789-A - PECB
	)	
SKAGIT COUNTY EMS COMMISSION	)	ORDER DETERMINING
	)	ELIGIBILITY ISSUES
	)	

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*Kenneth C. Balch*, National Representative, joined on the brief by *Linda Ledesma Mouzon*, Regional Counsel, for the union.

*William A. Holstein*, Operations Manager, for the employer.

On April 24, 2007, the International Association of EMTs and Paramedics (union), petitioned to represent a unit of Emergency Medical Technicians (EMTs) employed by the Skagit County EMS Commission (employer). The Commission conducted a cross-check on June 21, 2007. On June 29, 2007, the Commission issued an interim certification certifying the union as the exclusive bargaining representative for a bargaining unit composed of all full-time and regular part-time EMTs of the employer, excluding supervisors, confidential employees and all other employees.<sup>1</sup> The interim certification reserved for subsequent determination the eligibility of seven on-call EMTs for inclusion in the bargaining unit. On August 28, 2007, Hearing Officer Paul T. Schwendiman conducted a hearing. Both parties filed post-hearing briefs.

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<sup>1</sup> *Skagit County EMS Commission, Decision 9789 (PECB, 2007).*

ISSUE PRESENTED

Whether the seven on-call EMTs have worked more than one-sixth of the time normally worked by full-time EMTs during the previous twelve months, based on their combined total of time actually worked as EMTs and time paid when in on-call status.

The Executive Director finds the evidence does not rebut the presumption that all of the on-call EMTs are regular part-time employees eligible for inclusion in the bargaining unit, and includes the on-call EMTs in the bargaining unit composed of all full-time and regular part-time EMTs.

APPLICABLE LEGAL PRINCIPLES

When a representation petition is filed, the Commission decides whether the petitioned-for grouping of employees is an appropriate unit for the purpose of collective bargaining. The Commission considers the following criteria in making its decision:

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. . . .

RCW 41.56.060(1).

The Commission has developed a presumption for inclusion of regular part-time employees in the same bargaining unit with full-time employees performing similar work if they work more than one-sixth

of the time normally worked by full-time employees and remain available for work on the same basis.

WAC 391-35-350 UNIT PLACEMENT OF REGULAR PART-TIME EMPLOYEES -- EXCLUSION OF CASUAL AND TEMPORARY EMPLOYEES.

(1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees. . . .

(2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.

(a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

APPLICATION OF THE STANDARDS

The parties do not dispute that full-time and on-call EMTs have the same duties, skills, and working conditions; history of collective bargaining; extent of organization; and that the desire of the EMTs for union representation was expressed in a cross-check conducted by the Commission. The record confirms that both full-time and on-call EMTs are completely interchangeable. In addition to working their regular 24-hour shifts at a station, full-time EMTs are

occasionally assigned to 12-hour on-call shifts. When on call, both full-time and on-call EMTs receive the same \$3.00 per hour rate of on-call pay, have the same requirement to carry a pager, must be on duty within 30 minutes of receiving a call to duty, and must refrain from alcohol while assigned to the on call shift. Both full-time and on-call EMTs perform exactly the same duties and have the same responsibilities when on duty at the same stations. When on duty at a station, both are subject to a two-minute response time when dispatched to provide emergency medical assistance.

Calculation of the time worked by on-call EMTs to meet the one-sixth test of WAC 391-35-350 properly includes the time that on-call EMTs are paid for standing by to be called to duty at a station, as well as the time paid for actually being on duty at a station. Whether EMTs are working at a station or paid to be on call, on-call EMTs are nevertheless on the employer's payroll and subject to the employer's rules. Although EMTs are paid less when they are on call, they are still employed and constrained by that employment relationship.

The employer's full-time EMTs regularly work one or two 24-hour shifts per week and average approximately 2080 hours per year. All on-call EMTs are required to work a minimum of five 12-hour shifts per month standing by for duty. Most stand by for more than five shifts per month. One on-call EMT has worked as many as 22 shifts in one month. The total hours of work compensated for each of the seven EMTs in question ranges from a low of 1000 hours to a high in excess of 2000 hours for the previous twelve months. All seven of the on-call EMTs in question work in excess of one-sixth of the time normally worked by full-time EMTs. The record reflects that all seven on-call EMTs remain available for work on this basis,

thus, all are presumed to be regular part-time employees and are included in the bargaining unit.

Beyond the fact that all of the on-call EMTs work more than one-sixth of the time normally worked by full-time EMTs, their expectancy of an ongoing employment relationship is further supported by the following facts:

- The hiring procedure for on-call EMTs and full-time EMTs is identical.
- On-call EMTs maintain the same state certifications and have the same qualifications as full-time EMTs.
- On-call EMTs are fully interchangeable with full-time EMTs.
- On-call EMTs must be available for assignment to at least five 12-hour on-call shifts every month.
- On-call EMTs must indicate their availability by the 16<sup>th</sup> of every month so that their monthly schedule can be posted on the first day of the following month.
- If an on-call EMT is not going to be available, the employee is required to request a leave of absence, specifying the reason for the leave. The on-call EMT is expected to be available for a minimum of five shifts per month after expiration of the approved absence.
- On-call EMTs are routinely offered jobs as full-time EMTs based on seniority.

FINDINGS OF FACT

1. Skagit County EMS Commission is a public employer within the meaning of RCW 41.56.030(1).
2. The International Association of EMTs and Paramedics, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the employer.
3. On June 29, 2007, the Public Employment Relations Commission issued an interim certification certifying the International Association of EMTs and Paramedics as the exclusive bargaining representative for a bargaining unit composed of all full-time and regular part-time EMTs of Skagit County EMS Commission, excluding supervisors, confidential employees and all other employees.
4. The interim certification reserved for subsequent determination the eligibility of seven on-call EMTs: Jerry Gardner, Heidi Lyons, Melody Strauss, Ryan Willis, Cris Chapman, Rob Toth, and Paul Wagner, for inclusion in the bargaining unit.
5. All seven on-call EMTs in question worked more than one-sixth of the time worked by full-time EMT employees in the previous 12-month period.
6. Full-time and on-call EMTs have the same duties, skills, and working conditions.
7. The hiring procedure for on-call EMTs and full-time EMTs is identical.

8. On-call EMTs maintain the same state certifications and have the same qualifications as full-time EMTs.
9. On-call EMTs are fully interchangeable with full-time EMTs.
10. On-call EMTs must be available for assignment to at least five 12-hour on-call shifts per month.
11. On-call EMTs must indicate their availability by the 16<sup>th</sup> of each month so that their monthly schedule can be posted on the first day of the following month.
12. If an on-call EMT is not going to be available, the employee is required to request a leave of absence, specifying the reason for the leave. The on-call EMT is expected to be available for a minimum of five shifts per month after expiration of the approved absence.
13. On-call EMTs are routinely offered jobs as full-time EMTs based on seniority.
14. All seven on-call EMTs in question have a reasonable expectancy of an ongoing employment relationship.

#### 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. On-call EMTs Jerry Gardner, Heidi Lyons, Melody Strauss, Ryan Willis, Cris Chapman, Rob Toth, and Paul Wagner are regular part-time employees under RCW 41.56.060(1) and WAC 391-35-350

and are included in the bargaining unit described in Finding of Fact 3.

ORDER DETERMINING ELIGIBILITY ISSUES

On-call EMTs Jerry Gardner, Heidi Lyons, Melody Strauss, Ryan Willis, Cris Chapman, Rob Toth, and Paul Wagner shall be included in the bargaining unit involved in this proceeding.

Issued at Olympia, Washington, this 31<sup>st</sup> day of January, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.