STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
INTERNATIONAL ASSOCIATION OF ASSOCIATION, LOCAL 3427	)	CASE 9633-E-92-1587
	)	DECISION 4257 - PECB
Involving certain employees of:	)	
	)	
AFFILIATED HEALTH SERVICES.	)	ORDER OF DISMISSAL
	)	

James L. Hill, 7th District Vice President, International Association of Fire Fighters, appeared on behalf of the petitioner.

Davis Wright Tremaine, by Mary E. Drobka and Nicholas D. Hyslop, Attorneys at Law, appeared on behalf of the employer.

On February 12, 1992, the Skagit County Paramedics Association, Local 3427, International Association of Fire Fighters (union), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of Affiliated Health Services (employer). The bargaining unit initially sought by the union was limited to "full-time paramedics, regular part-time paramedics and RN paramedics; excluding on-call paramedics". In response to a routine request from the Commission for a list of the employees involved, the employer asserted that the petitioned-for bargaining unit was inappropriate. A prehearing conference was held on April 1, 1992, and the statement of results of that conference reflects that certain matters were stipulated to by the parties. The composition of the bargaining unit was then the subject of a hearing held on July 16 and 17, 1992, before Hearing Officer Walter M. Stuteville. Both parties filed post-hearing briefs, on September 23, 1992, to complete the record.

BACKGROUND

The employer operates two acute care hospitals and an ambulance service in Skagit County, Washington.[1] United General Hospital is located in Sedro Woolley; Skagit Valley Hospital is located in Mount Vernon. The employer's table of organization indicates that both hospitals and the ambulance service are under the direction of a "joint operating board" which has relationships with two public hospital districts.[2] At the time of the hearing, the employer had approximately 860 employees at its two hospital campuses. The registered nurses and licensed practical nurses working in the employer's hospitals are currently represented in two separate bargaining units, but none of the employer's other employees have organized for the purposes of collective bargaining.

The employer provides "Medic 1" services on an around-the-clock basis. Each of the hospitals is the base for an ambulance staffed by two paramedics. A third ambulance is based in Stanwood, and is staffed with one paramedic employed by this employer.[3]

The employer also provides basic life support services with a fourth ambulance, which is operated on a 12-hour per day basis.

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[1] All of the ambulances are dispatched though a county-wide 9-1-1 dispatch system.

[2] Exhibit 1. The public employers are identified as Public Hospital District 1 and Public Hospital District 304. The docket records of the Public Employment Relations Commission disclose eight previous cases docketed under the name "United General Hospital", and seven previous cases docketed under the name "Skagit Valley Hospital". The record indicates the "affiliation" of the two hospitals was implemented on January 1, 1991.

[3] This unit serves Camano Island and the southern part of Skagit County, which are some distance from either of the employer's hospitals. A private ambulance service in the Stanwood area supplies the staff for the second position on that ambulance.

That unit is rotated between the employer's two hospitals, as a back-up for the paramedic units. It is staffed by one paramedic and one emergency medical technician (EMT).

Altogether, Affiliated Health Services employs 18 paramedics. Sixteen of the paramedics are assigned to 24-hour shifts, rotating between the primary ambulances at the two hospitals and the unit based at Stanwood. The remaining two paramedics are assigned to 12-hour shifts, to staff the back-up ambulance.

A number of the paramedics are educated and licensed as registered nurses; the others are licensed as health care assistants. All of the paramedics are thus authorized and specifically licensed to enable them to work in an emergency room setting, as well as in the operation of an ambulance.

The primary responsibilities of all of the paramedics are: (1) to provide emergency and non-emergency medical service and transportation outside of the hospital facilities, and (2) to work as health care assistants or registered nurses in the hospital emergency rooms (ER). The paramedics work under two separate job descriptions,[4] as follows:

> POSITION TITLE:
> PARAMEDIC, EMERGENCY SERVICES
>
> REPORTS TO:
> SUPERVISOR, EMERGENCY SERVICES
>
> SUMMARY STATEMENT
> Provide both routine and emergent backup care to patients presenting themselves to the Emergency Department. Provide ambulance service according to established policies and procedures and as directed by the Emergency Services Supervisor

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[4] The record indicates this is not unusual in the employer's hospitals. For example, radiological technician IIs have a generic job description, but work under a different job description when performing either in special imaging, the "heart cath lab", MRI, computer tomology or in diagnostic radiology.

> and the Emergency Department physician. Rotate as scheduled through the Stanwood-Camano area as a paramedic.
>
> AMBULANCE SERVICE
> 1. Provides ambulance service as directed by Emergency Services Supervisor and Emergency Department physician. ...
> 2. Ensures that ambulances are clean, restocked and have ample gasoline; checks equipment for proper functioning, i.e., radio, O2, suction, etc. ...
> 3. Maintains accurate and complete ambulance records in compliance with state requirements. ...
> 4. Secures necessary signatures on documents, i.e., Medicare forms, permission for passengers, etc. ...
> 5. Accompanies transfers requiring advanced life support. ...
> 6. Counts narcotics at the beginning of each shift with on-coming paramedic. ...
>
> ROUTINE AND BACKUP EMERGENCY DEPARTMENT CARE
> 1. Assists Emergency Department physician with examination and treatment of Emergency Department patients. ...
> 2. Assists physicians with special procedures. ...
> 3. Greets all patients with courtesy and respect. ...
> 4. Maintains accurate and complete records returned from Medical records Department. ...
> 5. Admits patients to designated units. Takes paperwork and reports to patient's nurse with 100% accuracy. ...
> 6. Checks emergency Department to ensure that equipment is complete and in working order. ...

and:

> POSITION TITLE:
> HEALTH CARE ASSISTANT
>
> REPORTS TO:
> DIRECTOR / EMERGENCY SERVICES
>
> ...
>
> SUMMARY STATEMENT
> Paramedics who are not Registered nurses or Licensed Practical Nurses are required as a condition of their employment at Affiliated Health Services, to obtain and maintain Wash-

ington State Certification as a health Care Assistant, Category F. Such certification allows these Paramedics to perform their secondary role as providers of routine and back-up care in the Emergency Department setting.

In addition to the general duties and responsibilities described herein, the Health Care Assistant Category F, under supervision of the Emergency Department Physician and for purposes of Paramedic re-certification, skill maintenance and in the interest of providing optimal patient care, may start intravenous access line and perform oral and nasal-tracheal intubations.

Also, as specified on the accompanying skills list, the Health Care Assistant, category F may perform and or assist with other procedures and administer medications per list as requested by the Emergency Department Physician or Registered Nurse in charge.

SPECIFIC RESPONSIBILITY AND PERFORMANCE STANDARDS

Patient Assessment

1. Following initial triage and assessment by an RN the patient needs are further delineated and met by monitoring of neurological, cardiovascular, pulmonary, GU/GI muscular-skeletal and integumentary status. Health Care Assistants Category F may provide ongoing monitoring of patients during their stay in the Emergency Department. An RN is assigned to provide assessment or patients with life threatening illness or trauma. ...

2. Continues to monitor according to status of patient and/or after any procedures which may adversely affect the patient's health, and reports this information to the RN or Physician. ...

3. Documents all assessment / outcomes on patient's chart and / or flow chart. ...

4. Judges effectiveness of medications administered, procedures, comfort measures and medical treatments and reports finding to Charge RN and physicians. ...

Patient Care

1. Obtains and enters into the computer, all information necessary to provide services and bill for same. ...

2. Maintains accurate and complete records of any involvement with Emergency patients. ...

> 3. Collaborates with nursing staff and physicians in establishing and completing goals for Emergency patients. ...
> 4. When appropriate, transports patients to the floors for continuing care. ...
> 5. Relates to all patients with courtesy and respect. ...
> 6. Assists nursing staff in maintaining order in and re-supplying of the Emergency Department. ...
> 7. Assists Physician with procedures, per skills list, after instruction and training. ...
> 8. Exhibits technical competency and safety with the skills and procedures which are encompassed by this job category, included in skills list and approved by the Department of Patient Care Services and the Emergency Physicians. ...

Thus, the evidence indicates that the petitioned-for employees do, in fact, perform in both capacities:

* While on ambulance calls, the paramedics provide a multitude of different types of medical treatment requiring the exercise of independent judgment and authority. Many of the ambulance calls involve extensive periods of time away from the hospitals.

* When working at the hospitals, the paramedics are either on stand-by, or are assigned to work in the ER. In the ER, the paramedics provide patient care and monitor critical patients in the ER or other sections of the hospital where a patient might be transported for specialized diagnostic or treatment procedures. The paramedics work with physicians, registered nurses and other health care providers, and they follow the employer's performance standards for staff registered nurses.

POSITIONS OF THE PARTIES

The union initially contended that a bargaining unit consisting only of full-time and regular part-time paramedics was an appropriate unit for the purposes of collective bargaining. It argued that

paramedics perform different duties from other hospital employees, that they work primarily away from the hospitals, and that they have little contact with other employee classifications which might be loosely grouped in a "technical" bargaining unit. Furthermore, it asserted that the paramedics exercise substantially more independent judgment and authority in matters pertaining to patient care than do other technical employees. The union subsequently broadened its requested unit, but only to the extent of including the EMT personnel who work in company with the paramedics.[5]

The employer argues that the appropriate bargaining unit is one consisting of all full-time, part-time and on-call "technical employees" of Affiliated Health Services. The unit which the employer supports would consist of paramedics, physical therapy assistants, surgical technicians, respiratory care practitioners, certified occupational therapy assistants, radiology technologists, level "A" pharmacy assistants, chemical dependency unit counselors, and certain medical records technicians. The employer also contends that the "lead paramedic" should be excluded from the bargaining unit as a supervisor.

DISCUSSION

The Legislature has delegated responsibility to the Public Employment Relations Commission to determine the bargaining unit(s) which are appropriate for the purposes of collective bargaining. RCW 41.56.060. The Commission has described that function in the following terms:

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[5] In a letter dated October 23, 1992, the union agreed to add certain emergency medical technicians to the unit it originally proposed. The union stated that the EMT positions had not existed at the time that the petition in this matter was originally filed.

> ... [T]he purpose [of unit determination] is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain collectively with their employer. 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.

City of Winslow, Decision 3520-A (PECB, 1990). [Emphasis in original.]

In differing with the union about the scope of an appropriate bargaining unit, the employer has seemingly sought a ruling that the unit configuration it prefers is the only appropriate unit. While the difference may be subtle in actual application, it can be noted at the outset that the question before the Executive Director in this case is limited to whether the unit sought by the union is **"an"** appropriate bargaining unit.

Both parties agree that any bargaining unit configuration found to be appropriate in this proceeding should consist of employees from both hospitals. The centralized administration, common employment policies, and the fact that the paramedics' serve both hospitals provides strong support for the parties' agreement on that issue.

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 situation in the instant case is thus distinguished from City of Redmond, Decision 1367-A (PECB, 1982), where the Commission urged a speedy determination of a question concerning representation while reserving other issues for subsequent determination. In Redmond, the scope of the appropriate bargaining unit was stipulated to by the parties, and only a small number of "eligibility" issues remained. Those issues could properly be reserved for rulings made after the determination of

the question concerning representation. In this case, however, the unit proposed by the union is far smaller than the "wall-to-wall technicals" unit which the employer supports, and the scope of the appropriate bargaining unit must be decided in advance of any election or cross-check.

Federal Precedent

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is generally patterned after the National Labor Relations Act (NLRA), which regulates collective bargaining in the private sector. The National Labor Relations Board (NLRB) determines appropriate bargaining units under the NLRA. The Public Employment Relations Commission looks to federal precedent in its interpretation and application of similar state laws,[6] and the Commission's reliance on federal precedent was looked upon with favor by the courts in an earlier case involving this employer. Skagit Valley Hospital v. PERC, 55 Wn.App. 348 (1989). The policies enunciated by the NLRB and the federal courts provide particular guidance for determining the scope of an appropriate bargaining unit in this case, where the employer is in an industry that crosses over between private and public sectors.

Tracing the history of unit determinations in the private sector hospital industry is a tortuous task. Extensive litigation and rulemaking has ensued since the NLRA was amended in 1974, to give the NLRB jurisdiction over private not-for-profit hospitals. In passing those amendments, Congress admonished the NLRB:

> Due consideration should be given ... to preventing proliferation of bargaining units in the health care industry.

Senate Report 777, 93rd Congress, 2d Session 5; House of Representatives Report 1051, 93rd Congress, 2d Session 6-7.

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[6] See, RCW 41.58.010(2); 41.58.050; 41.56.090; 41.59.110.

After years of litigation, the NLRB exercised its rule-making authority to determine that, with only three exceptions,[7] there should be eight bargaining units in any hospital under its jurisdiction, as follows:

Registered nurses
Physicians
Other professional employees
Technical employees
Skilled maintenance workers
Clerical workers
Other non-professional workers
Guards[8]

In a recent case where those rules were challenged, the United States Court of Appeals for the Seventh Circuit described the debate as follows:

> Labor and management are perennially and systemically at odds over the appropriate number of bargaining units.
>
> ...
> In making unit determinations the Board is thus required to strike a balance among competing interests of unions, employees (whose interests are not always identified with those of the union's), employers and the broader public. The statute, though otherwise nondirective, can be read to suggest that the tilt should be in favor of unions and hence toward relatively many rather than relatively few units.
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> ...
> The decision is particularly difficult and delicate in the health care industry because the work force of a hospital (or nursing home or rehabilitation center) tends to be at once small and heterogeneous. It may include physicians,

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7 The three exceptions are: Extraordinary circumstances; cases in which nonconforming units already exist; or cases in which a labor organization seeks to combine two or more of the eight specified units.

8 The NLRA would in any case require that guards be kept in bargaining units from other employees.

> registered nurses, psychologists, licensed practical nurses, nurses' aides, lab technicians, orderlies, physical therapists, dieticians, cooks, guards, clerical workers, maintenance workers, guards [sic] and others -- but often only a few of each. If the desirability (from a union standpoint) of homogeneous units is stressed, even a hospital of average size might have ten or twenty or even more units, each with a bare handful of workers.
>
> The cost of the institutions labor relations and the probability of work stoppages would soar.

American Hospital Association v. NLRB, ___ F.2d ___, 133 LRRM 3073 (7th Cir., 1990).

The Supreme Court of the United States would appear to have put the debate to rest when it affirmed the NLRB's rules, in American Hospital Association v. NLRB, ___ U.S. ____, 111 S.Ct. 1539, 137 LRRM 2001 (1991).[9]

The NLRB's rules clearly do not contemplate a separate bargaining unit of "paramedics" or "ambulance personnel", as is sought by the union in this case. Under the NLRB's formula, such personnel would likely be allocated to the "technical" bargaining unit that has been consistently deemed appropriate by the NLRB, and is still so judged under American Hospital.[10] The NLRB has described an identifiable community of interest, as follows:

> The kinds of employees we would include in the technical unit are those whose specialized

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[9] This was an appeal from the decision quoted above. The Supreme Court both affirmed the ability of the NLRB to engage in rule-making on unit determination, and affirmed the Board's specific hospital unit rules.

[10] In an unnumbered footnote in American Hospital, the Supreme Court noted, with approval, an NLRB decision where a unit limited to x-ray technicians was **disapproved** even before the "fragmentation" admonition, with the Board stating: "**... all technical workers should be grouped together**". Woodland Park Hospital, Inc., 205 NLRB 888 (1973).

> training, skills, education, and job requirements establish a community of interest not shared by other service and maintenance employees. This separate community of interest is frequently evidenced by the fact that such employees are certified, registered, or licensed. However, we also find employees may meet such standards without having been certified, registered, or licensed, and if they do, we shall include them in the technical bargaining unit.

St. Catherine's Hospital of Dominican Sisters of Kenosha, 217 NLRB 787 (1975).

Thus, technical units have been found appropriate despite: (1) Employees working in different departments, with virtually no job transfer ability between those departments; (2) limited contact between such departments; and (3) independent specificity of many of the technical positions.

In Nathan and Miriam Barnert d/b/a Barnert Memorial Hospital Medical Center, 217 NLRB 775 (1975), the Board defined "technical employee" as one having specialized post-high school training, skills and education, usually acquired in colleges, technical schools or through special courses. Before being eligible to work, technical employees often serve an internship or externship, and they frequently must be certified, licensed or registered by a governmental entity or a private organization. Their work usually requires the exercise of independent judgment, but they generally serve in a support role in patient care or patient services.

Commission Precedent

While the Commission has found units consisting of "all of the employees of the employer" to be appropriate,[11] the Commission has

[11] E.g., City of Winslow, supra.

also given general affirmation to the propriety of dividing an employer's workforce into two or more bargaining units:

> Units smaller than employer-wide may also be appropriate, especially in larger work forces. The employees in a separate department or division may share a community of interest separate and apart form other employees of the employer, based upon their commonality of function, duties, skills and supervision. Consequently, **departmental (vertical) units have sometimes been found appropriate** when sought by a petitioning union. [Footnote omitted.] Alternately, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, **occupational (horizontal) bargaining units have also been found appropriate**, on occasion, when sought by a petitioning union. ...

City of Centralia, Decision 3495-A (PECB, 1990). [Emphasis by **bold** supplied.]

Thus, the starting point for any unit determination analysis is the unit description sought by the petitioning union.

There have been a number of instances where the bargaining unit configuration sought by a petitioner has been rejected. In City of Vancouver, Decision 3160 (PECB, 1989), the petitioned-for unit would have had the effect of stranding 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 have cut across several of the units detailed in the NLRB's rule, but would still have stranded other "technical" positions, and so was found inappropriate. See, also, Port of Seattle, Decision 890 (PECB, 1980). When confronted with an inappropriate unit that cannot be rehabilitated by a minor adjustment, the Commission must dismiss the representation petition.

Similarly, where a petitioning union indicates that it does not desire to represent employees who would necessarily be included in an appropriate unit, the Executive Director has no alternative except to dismiss the petition.

Forks, supra, is additionally instructive, because it dealt with an ambulance operation related to an acute care hospital. That employer responded to the representation petition with a proposal to include the ambulance staff in the bargaining unit. It was concluded there that the on-call personnel who staffed the ambulance service were "volunteers", or were associated with two private ambulance organizations, rather than being employees of the hospital. Thus, the employer in Forks did not have sufficient control over the ambulance personnel to engage in meaningful collective bargaining, and did not meet the "right of control" test used in Tacoma School District, Decision 3314-A (PECB, 1990).

Statutory Analysis

In the instant case, the union seeks a unit which is neither "vertical" nor "horizontal" in the usual sense. The petitioned-for unit is limited to the employees working under particular job titles within the jurisdiction of a particular department in the employer's organization. The employer argues for a broad "horizontal" unit, grouping together all technical employees into a unit that cuts across departmental lines.

Duties, Skills and Working Conditions -
The record in this case establishes that the paramedics provide direct patient care, frequently in life-threatening emergency situations. Several facts substantially distinguish this case from the situation that existed in Forks, supra:

* The petitioned-for employees are clearly employees of the public employer. Affiliated Health Services recruits and hires them, and it establishes and pays their wages and benefits. One

half of the budget for the ambulance program is paid through tax levies passed by the voters of the hospital districts.

* The petitioned-for employees generally work full-time, and work sufficient hours to be regarded as "regular" employees with an expectation of continued employment with this employer.[12]

* The relationship with the private firm at Stanwood is not comparable to the situation at Forks. The paramedics working at Stanwood are definitely employees of this employer who merely rotate through that assignment as part of their work schedule. The private ambulance service supplies a co-worker, but there is no indication that it is a co-employer or otherwise exercises rights of control over the paramedics assigned there.

The union asserts that the 24-hour shift worked by most of the petitioned-for employees is a factor which distinguishes them from other employees, and supports creation of a separate bargaining unit. That argument is less than compelling, however, in a hospital setting which functions around-the-clock, and where the traditional 8-hour day is not universally followed.[13]

The union correctly points out that the petitioned-for employees perform much of their work away from the hospitals, and that they exercise substantial independent judgment while on ambulance calls. The evidence establishes, however, that the paramedics are closely tied to the employer's hospitals:

* Medical supervision of the ambulance program is from one of the employer's hospitals, and the departmental supervisor is based at one of the hospitals.

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[12] See, Town of Granite Falls, Decision 2617 (PECB, 1987).

[13] Radiation technologists at the employer's hospitals work 24 hour shifts on weekends. In the hospital industry generally, a bargaining unit of registered nurses may include employees working shifts of 8 hours, 10 hours or 12 hours.

* Except for the one employee working at Stanwood each day, all of the petitioned-for employees are based at the employer's hospitals and use hospital quarters for rest periods during 24-hour work shifts.

* The ambulance vehicles are stocked at the employer's hospitals, with no indication of independence or discretion among the petitioned-for employees.

The union urges that the petitioned-for employees perform much of their in-hospital work with physicians and registered nurses. That fact does not distinguish them, however. The petitioned-for employees are not "professional" employees in the traditional or statutory sense of that term, and their responsibilities do not rise to the level of an independently licensed practitioner, such as a physician or registered nurse. At most, the paramedics and EMTs are "technical" employees as that term is used in NLRB precedents and rules. Other "technical" employees similarly perform treatments and services in response to written or oral orders from physicians, without immediate supervision. Most, if not all, "technical" classifications referred to by the employer in this record must exercise some amount of independent judgment.

The union relies on the certification and continuing education requirements imposed on paramedics under state law, but other "technical" employees have comparable requirements in their areas of specialization. Importantly, all of those same considerations would seem to exist in acute care hospitals under the jurisdiction of the NLRB, but have not been found to be a basis for organizing bargaining units on a title-by-title basis.

The union seeks to focus on the fact that paramedics work away from the hospital a significant part of their work time, but that is not entirely unique. The employer's respiratory therapists occasionally ride on the ambulances along with the paramedics. In dealing with a situation involving an existing unit of emergency medical

technicians who work away from their hospital base as much or even more than do the employees in instant case, the NLRB made the following observations:

> Although [the EMT's] have a separate immediate supervisor and somewhat different working conditions, their interests are too closely linked with those of other hospital employees to justify finding that they constitute a separate appropriate unit, it appearing that EMTs perform medical functions closely integrated with those performed at [the] hospital and frequently in conjunction with other hospital employees .... We conclude that perpetuation of the unit of EMTs which has been represented by the Teamsters and its predecessor would not be warranted.

North Memorial Medical Center, 224 NLRB 28 (1976).

To the extent that the union is suggesting that the petitioned-for employees are subject to only limited supervision while away from the hospital, it is inferred that many other "technical" employees perform their duties outside of the view of either supervisors or the physicians who ordered the patient treatment being administered. The distinction claimed by the union is not compelling.

The petitioned-for employees spend a substantial portion of their work time in the employer's hospitals, interacting with other employees and providing direct patient care. When doing so, they work under the job description of either a registered nurse or a health care assistant. As such, they are one of the several specialized groups of employees who provide care in specific instances, and on particular patients. That integration distinguishes the petitioned-for employees from others who provide ambulance services. Fire departments and other emergency medical service providers may well initiate on-site care and transport patients, but the entire responsibility is usually transferred to employees of a hospital at or shortly after arrival at such a facility. Even the ambulance personnel in Forks, supra, only

occasionally stayed with a patient in the hospital emergency room. The petitioned-for employees in this case are fully available for work in the hospitals between emergency calls, however, and are so assigned with some frequency.

A recurrent concern in unit determination cases is that "work jurisdiction" claims flow from certification of an exclusive bargaining representative for a bargaining unit.[14] In the process of performing their responsibilities, the petitioned-for employees work with licensed practical nurses and many other "technical" classifications throughout the employer's hospitals. This occurs in the hospital emergency rooms, while they are assisting in heart attack "codes" elsewhere in the hospitals, and when they accompany patients to other specialty departments.[15] The paramedics are thus performing functions which arguably overlap with those of registered nurses, licensed practical nurses, nursing assistants, and orderlies. Were the petitioned-for unit to be created, the employer could be faced with a legacy of "work jurisdiction" claims by the unions representing its nurses, because of the in-hospital work being performed by the petitioned-for employees. Alternately, those organizations might seek to have the petitioned-for employees included in their units as "dual status" employees under Longview School District, Decision 3109 (PECB, 1989).

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[14] South Kitsap School District, Decision 473 (PECB, 1978), was the Commission's lead case on an employer's duty to bargain prior to transferring ("skimming") bargaining unit work to employees outside of the bargaining unit. Unfair labor practice violations have been found in numerous subsequent cases where employers ignored or obliterated the "work jurisdiction" lines between bargaining units.

[15] For example, after having transported a patient to a radiology department where a technical employee will perform services, the paramedic stays with the patient to continuously monitor their condition and to treat any emergency situation which might arise.

The skills and training of the paramedics are parallel to the skills and training of other "technical" employees, such as respiratory care practitioners, radiology technologists, surgical technicians, certified occupational therapy assistants, level "A" pharmacy assistants, emergency medical technicians, and physical therapy assistants. All of those employee classifications are involved in patient care within a sharply focused, specialized practice. All such technical employees commonly function under either specific or standing orders from a licensed medical provider, such as a physician, registered nurse or pharmacist. From examination of their job descriptions, and from the testimony of employees in various classifications, it is apparent that many of the "technical" employees generally work alone, or that they work only with physicians or registered nurses. As observed in the cited federal precedents, it is the nature of acute care hospitals that there are many different "technical" classifications, often with only small numbers of employees in each distinct specialty.

Many of the employer's "technical" employees must interact with one another in the process of providing care for the same patients in the hospitals. The petitioned-for employees will interact with radiology technicians in relation to patients sent to the radiology department or the catheterization lab, with radiation therapists in relation to patients sent to radiation therapy, with surgical technicians in relation to patients sent to surgery, and with respiratory care practitioners in relation to patients referred for such care.

The petitioned-for employees share benefits, employer-wide personnel practices, and an employer-wide salary plan in common with other "technical" employees of this employer. The employees working in the ambulance service are subject to a supplemental personnel policy which covers issues unique to them, but other

"technical" occupations also work under supplemental personnel rules.[16]

It is sufficient, for the purposes of this decision, to conclude that the employer has numerous other employees who share a substantial community of interest with the petitioned-for employees. All of those employees are among the types which the NLRB would place in a single unit of "technical" employees, and federal precedent rejects creation of separate units based on differences of titles, specific duties, skills and working conditions.[17]

Extent of Organization -
The "extent of organization" aspect of the statutory unit determination criteria compares the unit sought in a particular case to the whole of the employer's workforce. This particularly comes into operation where sheer numbers (i.e., the size and complexity of the employer's workforce or operations) would frustrate attempts to organize an "all employees" unit, a "vertical" unit, or a "horizontal" unit. Smaller divisions may thus be necessary, to enable employees to implement their statutory bargaining rights:

> The principal purpose of the Act was and is to protect workers who want to organize for collective bargaining.

NLRB v. Res-Care, Inc. d/b/a Hillview Health Care Center, 705 F.2d 1469 (1983).

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[16] Examples are the Special Imaging Department and the Respiratory Therapy Department, which have their own specific policies.

[17] It is not necessary to rule here on all of the positions which the employer desires to characterize as "technical". Some of those employees are not at all involved in direct patient care. Instead, persons working in job titles such as "coder/abstractor", "coder/ screener", "coding clerk" and "medical records specialist" all use their specialized training in support of the physicians or registered nurses who do the bulk of patient charting.

It is clear that the union has sought only a very small portion of the employer's overall workforce and, further, that the union even seeks to organize only a small portion of the employer's unrepresented employees.

It is difficult to rationalize the petitioned-for unit as a "vertical" unit within the Emergency Department at the affiliated hospitals. The department staff clearly includes registered nurses and licensed practical nurses who are already organized into their own bargaining units, and could not be included in a departmental unit on the basis of the union's petition. It is true that the ambulance employees are the only unrepresented "technical" employees in the emergency department, but headlong pursuit of that approach would lead to organizing on a title-by-title basis that has been rejected by the NLRB and the federal courts.

It is also difficult to rationalize the petitioned-for unit as a "horizontal" unit encompassing all of the ambulance service employees. The petitioned-for employees appear to be the largest single group among the "technical" employees with which they interact,[18] and they constitute nearly 30% of such a unit. None of the employees in such a unit are currently represented for the purposes of collective bargaining.[19]

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[18] The approximate count is: Occupational Therapy = 2; Pharmacy = 11, Surgery = 4, Respiratory = 22, Radiology = 27, Physical Therapy = 3, Counselor = 5, Radiation Therapy = 3, Ambulance service = 32. The record indicates the employer rosters 10 on-call EMTs, but there was no testimony as to how many hours they work individually or as an average.

[19] The employer's licensed practical nurses are already organized, and seemingly fall under the "non-conforming units already exist" exception within the NLRB rules.

History of Bargaining -
This aspect of the statutory unit determination criteria is of substantial importance in cases where a "severance" of employees from a larger bargaining unit is proposed, but has little applicability in a situation such as this, where neither the petitioned-for employees nor any of the other "technical" employees have ever been organized for collective bargaining.

Desires of the Employees -
RCW 41.56.040 protects the rights of employee choice in the selection of an exclusive bargaining representative. Where application of other unit determination criteria indicates that any of two or more different unit configurations could be appropriate, the Commission assesses the "desires of employees" on the unit determination issue, by conducting a unit determination election. The employees involved are thus given an opportunity to express their desires on their unit placement under the protection of a secret ballot, and there is no need for employees to give sworn testimony or be subjected to cross-examination on such a sensitive issue. The unit determination election procedure is inapplicable, however, unless all of the choices submitted to the employees are otherwise appropriate under RCW 41.56.060. Clark County, Decision 290-A (PECB, 1977).

Non-availability of Interest Arbitration -
In 1973, the Legislature established an "interest arbitration" procedure to resolve contract negotiations disputes between public employers and certain classes of public employees. As first enacted, the definition of "uniformed personnel" was limited to fire fighters, law enforcement officers employed by the largest cities in the state, and to deputy sheriffs employed by King County. Contract negotiations are conventionally conducted on a unit-wide basis, and one outgrowth of the creation of the "interest arbitration" procedure was a line of Commission precedents under which bargaining units eligible for interest arbitration have been

kept "pure". Thus, the Commission has repeatedly held that employees who are not eligible for "interest arbitration" should not be mixed in the same bargaining units with employees who are eligible for that procedure. Thurston County Fire District 9, Decision 461 (PECB, 1978); City of Yakima, Decision 837 (PECB, 1980). Those unit determination precedents are not based on the wearing of uniforms or the performing of law enforcement functions. The separation is not required, unless the employees involved meet the definition of "uniformed personnel" found in RCW 41.56.030(7), or are otherwise eligible for "interest arbitration". City of Winslow, supra.

The Legislature has expanded the coverage of the "interest arbitration" procedure on several occasions since 1973. Of interest here, Chapter 41.56 RCW now includes:

> RCW 41.56.495 ADVANCED LIFE SUPPORT TECHNICIANS--APPLICATION OF RCW 41.56.430 THROUGH 41.56.490. In addition to the classes of employees listed in RCW 41.56.030(6), the provisions of RCW 41.56.430 through 41.56.490 shall also be applicable to the several classes of advanced life support technicians that are defined under RCW 18.71.200, who are employed by public employers, **other than public hospital districts.**

[1985 c 150 §1. Emphasis by **bold** supplied.]

The paramedics who were the subject of the union's original petition would appear to qualify under RCW 18.71.200, but would nevertheless be excluded from "interest arbitration" by the last clause of RCW 41.56.495. Should the latter statute be changed in the future, this entire dispute would need to be revisited. In the meantime, the special treatment given to some paramedics for unit determination purposes is not available in this case.

Conclusions -
The bargaining unit configuration sought by the union in this case flies in the face of federal precedents which are applicable to other employers engaged within the state of Washington in the same industry as Affiliated Health Services. Their ambulance duties notwithstanding, the employees which the union seeks to represent are "technical" employees who spend a substantial part of their work time performing patient care services within the hospitals operated by the employer. They share a community of interest with other "technical" employees of the employer, so that the creation of a separate unit limited to the employees engaged in operation of ambulance services would not be appropriate.

Claimed "Supervisor" Exclusion

Unlike the situation under the NLRA, supervisors are "public employees" under Chapter 41.56 RCW, and have collective bargaining rights. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). The Commission has generally used its unit determination authority under RCW 41.56.060 to exclude supervisors from the bargaining units which encompass the employees they supervise, in order to prevent or minimize conflicts of interest within the bargaining unit. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). In this case, however, the conclusion that the petitioned-for unit is itself inappropriate makes it unnecessary to determine the "supervisor" claim advanced by the employer.[20]

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[20] A record has been made here on whether the lead paramedic is a "supervisor" under Commission precedent. If the union were to make a timely motion to amend its petition to seek a broader unit in this case, that record would be the basis for a ruling on this issue. Should the union seek a broader unit in a new petition filed in the future, it may be desirable for the parties to stipulate the use of the record made on the supervisor issue here, in the absence of changed circumstances.

FINDINGS OF FACT

1. Affiliated Health Services operates two acute care hospitals as a joint operating board for two public hospital districts. Skagit Valley Hospital is located in Mount Vernon, Washington; United General Hospital is located in Sedro Woolley, Washington. As such, it is a "public employer" within the meaning of RCW 41.56.030(1).

2. Skagit Valley Paramedics Association, International Association of Fire Fighters, Local 3427, a "bargaining representative" within the meaning of RCW 41.56.030(3), has filed a petition for investigation of a question concerning representation, seeking certification, as amended, as exclusive bargaining representative of a unit of full-time and regular part-time paramedics and emergency medical technicians employed by Affiliated Health Services.

3. At the time of the hearing in this matter, Affiliated Health Services had existing collective bargaining relationships covering separate bargaining units of its registered nurses and licensed practical nurses. The remainder of the employer's workforce was not represented for purposes of collective bargaining.

4. In the health care industry, a variety of "technical" positions are filled by employees who have a specialized, post-high school education, who usually serve an internship or externship, and who often are licensed, certified or registered. Such employees function in a specialized, discrete area of expertise, under the direct or indirect supervision of an independently licensed health care practitioner, such as a physician, registered nurse or pharmacist.

5. The employees sought by the union in this case staff ambulances based at both of the hospitals operated by the employer, as well as an ambulance based at the southern boundary of the county. The ambulance program is funded one-half by Affiliated Health Services and one-half by special tax levies approved by voters of the two public hospital districts.

6. The employees sought by the union in this case provide emergency medical treatment and transportation in response to emergency calls dispatched from a 9-1-1 communications center.

7. When not engaged in responses to emergency calls, the employees sought by the union in this case are subject to assignment, and are in fact assigned, to work as health care assistants in the employer's hospitals. When so assigned, the petitioned-for employees perform patient care functions closely integrated with the work of other technical and professional employees throughout the employer's hospitals.

8. The petitioned-for employees are subject to the same wage system, benefits and other employment policies as other "technical" employees of the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The duties, skills, working conditions, and extent of organization among employees of this employer fail to distinguish the petitioned-for employees as having a community of interest separate and apart from the other "technical" employees of the employer, as defined in paragraph 4 of the foregoing Findings of Fact, and the petitioned-for employees are so closely

integrated with other "technical" employees that the petitioned-for unit is not an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 21st day of December, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).