STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: UNITED STAFF NURSES UNION, LOCAL 141, affiliated with the UNITED FOOD AND COMMERCIAL WORKERS, AFL-CIO Involving certain employees of: STEVENS MEMORIAL HOSPITAL	CASE 8085-E-89-1368 DECISION 3313 - PECB DIRECTION OF ELECTION

Webster, Mrak and Blumberg, by Mark E. Brennan, Attorney at Law, appeared on behalf of the petitioner.

Marilyn Bulger, Personnel Director, and William W. Treverton, Attorney at Law, appeared on behalf of the employer.

MacDonald, Hoague and Bayless, by Harold H. Green, Attorney at Law, and Kathleen Wareham, Attorney at Law, appeared on behalf of the incumbent intervenor, Washington State Nurses Association.

Gibbs, Douglas, Theiler and Drachler, by Robert H. Gibbs, Attorney at Law, appeared on behalf of intervenor District 1199NW, National Union of Hospital and Health Care Employees, SEIU, AFL-CIO.

United Staff Nurses Union, Local 141, (USNU) affiliated with the United Food and Commercial Workers, AFL-CIO, (UFCW) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission on July 13, 1989, seeking certification under Chapter 41.56 RCW and Chapter 391-25 WAC as exclusive bargaining representative of certain registered nurses employed by Snohomish County Public Hospital District 2, d/b/a Stevens Memorial Hospital. The Washington State Nurses Association (WSNA) was granted intervention in the proceedings,

based on its status as the incumbent exclusive bargaining representative of the petitioned-for employees. District 1199NW, an affiliate of the Service Employees International Union, AFL-CIO, was granted intervention in the proceedings based upon a showing of interest.

A pre-hearing conference was held on September 12, 1989, and a statement of results of pre-hearing conference was issued. The Executive Director has considered the stipulations and positions of the parties, as framed at the pre-hearing conference and in their correspondence, and concludes that the issues framed in the matter can properly be resolved by summary order issued pursuant to WAC 391-08-230.

The instant case is among several representation cases that have been initiated by the USNU with the Commission or with the National Labor Relations Board (NLRB) during the summer and autumn of 1989. The USNU is seeking by those cases to obtain certification as exclusive bargaining representative of registered nurses employed at various public or private hospitals in Washington in bargaining units that have heretofore been represented by the WSNA.

The Purported "No-Raid" Agreement

The WSNA has moved for an indefinite suspension of the proceedings in this case, based on its claim that a "no-raid" agreement exists between it and the United Food and Commercial Workers Union, AFL-CIO, as well as between it and the Service Employees International Union, AFL-CIO. The "letter of understanding" relied upon is dated April 19, 1985 and contains the following that is of interest here:

> SEIU, WSNA and UFCW are committed to respect each others' traditional units and are prepared to jointly do whatever is necessary to preserve the long established rights of our members. To this end all three labor organizations are prepared to actively and

> aggressively involve themselves in coordinated activities whenever and wherever an existing or traditional unit of any of the three organizations is in question. We want to assure our members, as well as notify others in the health care field, that we are fully prepared to deal with these recent changes.
>
> Each of the three labor organizations will continue to respect the independence and individual integrity of the other two labor organizations.

The document contains a list of the "changes" referred to, including "disruptive National Labor Relations Board decisions" affecting health care facilities.

The WSNA has filed suit in federal court, seeking specific enforcement of the purported "no-raid" agreement. The WSNA contends in its federal court lawsuit that the "no-raid" agreement is still in effect, and that the UFCW willfully and in bad faith violated its terms by chartering the USNU to pursue representation petitions in a number of hospitals. The WSNA also contends that the USNU's actions violated the "laboratory conditions" necessary to conduct a fair election.

The USNU contends that the instant petition must be processed without regard to the "no raid" agreement. The USNU notes that it was not chartered nor did it commence operations until July 6, 1989, so that it was not a party to the purported "no-raid" agreement. It also notes that, while the Northwest Region UFCW is a party to the purported "no-raid" agreement, the USNU is not and has not been a member of the Northwest Region UFCW. The USNU also contends that the document in question is a "letter of understanding" rather than a true "no raid" agreement specifying strict adherence to existing union jurisdictional boundaries. The USNU maintains in any case that the document relied upon by the WSNA is terminable at will, because it has no fixed termination date.

Further, the USNU argues that the document must not be given effect by the Commission, because it does not contain any mechanism for expedited resolution of disputes. Finally, the USNU contends that acceptance of the WSNA's argument would effectively deprive employees from making a free choice of their exclusive bargaining representative.

District 1199NW joins the USNU in urging the Commission to disregard the purported "no raid" agreement. District 1199NW maintains that the disputed document is not a true "no raid" agreement, and that it was never a party to the "letter of understanding". District 1199NW notes, further, that the NLRB will only defer true "no raid" disputes for 30 days while the parties attempt to resolve the issue using internal union dispute resolution mechanisms. It contends that the requested indefinite delay would deprive employees of their right to select a bargaining representative.

The employer in this case takes no position with regard to the "no-raid" issue, believing it is a matter which must properly be resolved among the labor organizations involved.

Section 11052.1 of the NLRB's Case Handling Manual sets forth the NLRB procedure where a delay of representation proceedings is sought because of a claimed "no-raid" pact. The NLRB's procedures permit deferral of representation proceedings involving AFL-CIO affiliates for up to 30 days, while the parties attempt to resolve their "jurisdictional" dispute under the terms of Article XX of the AFL-CIO Constitution.[1] In situations involving organizations that are not AFL-CIO affiliates, the NLRB's procedures permit a similar deferral for up to 30 days "in cases where it appears that their operation holds similar promise of resolving representation disputes among the parties to the agreement".

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[1] Under established AFL-CIO procedures, the losing party is required to withdraw its representation petition.

The cases currently pending before the Commission are not the first in which a "no-raid" agreement has been advanced in opposition to a representation case, but they do present the first occasion for the Commission to rule formally on the subject. In South Columbia Basin Irrigation District, Case 4467-E-83-825, guidance for an administrative delay was drawn from the NLRB's procedure. The dispute in South Columbia involved two local organizations affiliated with the AFL-CIO, and the "no-raid" question was promptly processed under the internal procedures of that organization, with the result that the petitioner withdrew the petition.

In a subsequent case, South Columbia Basin Irrigation District, Decision 2894 (PECB, 1988), the same petitioner initiated representation proceedings before the Commission for the same unit, and the claimed-incumbent was again granted a delay to pursue internal AFL-CIO procedures. The Commission later resumed the processing of the case in the absence of a timely withdrawal, consistent with the NLRB's procedure.[2]

In the instant case, the purported "no-raid" agreement between the WSNA and the UFCW lacks important elements that were present in the South Columbia cases and appear to be required by the NLRB's policy as conditions precedent to delay of representation proceedings. Most important, there is no procedure within the document for a prompt determination of disputes arising between the parties. Since the WSNA is not affiliated with the AFL-CIO, the internal procedures of that organization for the determination of "jurisdictional" disputes cannot be imputed to the situation at hand.

The lawsuit initiated by the WSNA in federal court does not satisfy a requirement for "procedures for prompt determination", as federal

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[2] Evidence taken at hearing in that case led to a decision that the claimed-incumbent was not actually the incumbent exclusive bargaining representative, and was not entitled to a place on the representation election ballot.

court procedure provides little hope of the issue being determined within "30 days" or any other reasonably predictable time in the near future. The parties were about to embark on "discovery" under the Federal Rules of Civil Procedure, and there are indications that a trial date in federal court is much more than 30 days away.

Even if the federal court case were to get to trial in a timely manner, the prevailing federal precedent in the 9th Circuit is Local 1547, International Brotherhood of Electrical Workers v. Local 959, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, 507 F.2d 872 (9th Circuit, 1974), where the court denied specific enforcement to a "no-raid" agreement on the basis that such agreements are contrary to the public policy of employee free choice that is stated in Section 7 of the National Labor Relations Act (NLRA).

Like Section 7 of the NLRA, RCW 41.56.040 assures public employees the right to select representatives of their own choosing. For the reasons indicated, the motion of the WSNA for delay of these proceedings is denied.

Unit and Eligibility Matters

The employer operates a large and complex institution, using a mix of full-time, part-time and per diem employees. The core of the petitioned-for bargaining unit is not in dispute, and is agreed by the parties to be described as follows:

> All full-time, part-time, and per diem nurses employed as registered nurses by the employer, excluding supervisory and administrative/ management positions and all other employees.

The employer agreed at the pre-hearing conference to provide a new list of the employees fitting within that unit description, and its proposed exclusions. The labor organizations agreed to clarify

their positions on "eligibility" issues within six days after being provided with the employer's new list. The USNU and District 1199NW have filed statements of position in response to those arrangements. Nothing further has been received from the WSNA. The eligibility issues thus framed are as follows:

1. Assistant Unit Managers - The WSNA believes that the classification (a total of 14 positions, according to the employer's September 14, 1989 list) should be included in the bargaining unit. The other parties would stipulate exclusion of the positions from the unit.

2. Clinical Nurse Specialists - The WSNA believes that the classification (3 positions, according to the employer's September 14, 1989 list) should be included in the bargaining unit. The other parties would stipulate exclusion of the positions from the unit.

3. Instructors - The WSNA believes that the classification (4 positions on the employer's September 14, 1989 list) should be included in the bargaining unit. The other parties would stipulate exclusion of the positions from the unit.

4. Quality Assurance - The WSNA believes that the classification (no employees on the employer's September 14, 1989 list) should be included in the bargaining unit. District 1199NW agreed with the WSNA at the pre-hearing conference, but did not speak to the issue in its response following the pre-hearing conference. The employer and USNU would stipulate exclusion of the class from the unit.

5. Miscellaneous Issues - The three labor organizations additionally raised questions, for various reasons, as to the eligibility of approximately 18 other persons whose names appeared on the employee lists in this proceeding.

In City of Redmond, Decision 1367-A (PECB, 1982), the Commission stated its policy favoring the expedited processing of representation cases, and admonished its staff to proceed with determining questions concerning representation while, whenever possible, reserving limited unit and eligibility issues for subsequent proceedings. In Redmond, determination of a question concerning representation for 21 undisputed employees (75% of the petitioned-for unit) had been held up due to hearing and decision procedures on the status of 7 alleged supervisors. To the extent that there are disputes here concerning the inclusion of fringe groups, and/or the exclusion of "supervisors", and/or employees whose status may be otherwise in question, such issues appear to affect only approximately 11.3% of the total number of employees at issue in this proceeding. It is thus concluded that the issues raised by the parties are subject to post-election determinations of the type called for in Redmond.

The eligibility cut-off date for the election directed herein will be the date of this order, consistent with WAC 391-25-390, and the employer will be asked to provide the Commission and all participating labor organizations with an updated list of employees. Any disputes concerning eligibility arising from that updated list will be also handled by challenged ballot procedures.

FINDINGS OF FACT

1. Snohomish County Public Hospital District 2, d/b/a Stevens Memorial Hospital, provides health care services in and around Edmonds, Washington, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. United Staff Nurses Union, Local 141, chartered by the United Food and Commercial Workers International Union, AFL-CIO, a "bargaining representative" within the meaning of RCW 41.56-

.030(3), has filed a timely and properly supported petition seeking investigation of a question concerning representation among certain employees of Stevens Memorial Hospital employed as registered nurses.

3. Washington State Nurses Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), has been granted intervention in the proceedings as the incumbent exclusive bargaining representative of a bargaining unit of registered nurses employed by Stevens Memorial Hospital.

4. District 1199NW, National Union of Hospital and Health Care Employees, SEIU, AFL-CIO, a "bargaining representative" within the meaning of RCW 41.56.030(3), has made a timely and properly supported motion for intervention in the instant representation proceedings.

5. At a pre-hearing conference conducted on September 12, 1989, the parties stipulated that an appropriate bargaining unit can be described generally as:

> All full-time, part-time, and per diem nurses employed as registered nurses by the employer, excluding supervisory and administrative/ management positions and all other employees.

The parties framed limited issues concerning the inclusion of positions titled: "Assistant Unit Manager", "Clinical Nurse Specialist", "Instructor" and "Quality Assurance" in the bargaining unit.

6. An affiliate of the United Food and Commercial Workers Union, AFL-CIO, an affiliate of the Service Employees International Union, AFL-CIO, and the Washington State Nurses Association are parties to a "letter of understanding" dated April 19, 1985. Such document pre-dates the existence of USNU Local

141, and pre-dates the affiliation of District 1199NW with the Service Employees International Union. The "letter of understanding" does not contain internal procedures for the timely resolution of "jurisdictional" disputes.

7. The number of employees whose eligibility remains at issue in this proceeding is small in relations to the total number of employees involved.

CONCLUSIONS OF LAW

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

2. The "letter of understanding" referred to in paragraph 6 of the foregoing findings of fact does not warrant imposition of an indefinite delay in the processing of this representation proceeding under RCW 41.56.060 and 41.56.070, as such an action would unnecessarily delay the exercise of employee rights under RCW 41.56.040 to select an exclusive bargaining representative.

3. The bargaining unit generally described in paragraph 5 of the foregoing findings of fact is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation presently exists in such unit.

4. The right, under RCW 41.56.040, of the majority of the employees involved to select an exclusive bargaining representative will be implemented by expedited proceedings pursuant to RCW 41.56.060 and 41.56.070.

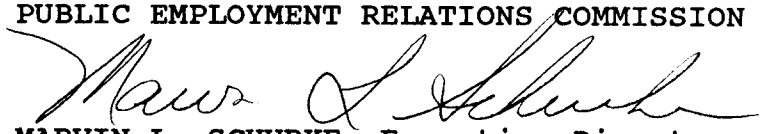
DIRECTION OF ELECTION

1. An election by secret ballot shall be conducted by the Public Employment Relations Commission among all full-time, part-time and per diem registered nurses employed by Stevens Memorial Hospital who are employed on the date of this order and remain so employed on the date of the election; excluding nurses employed as supervisors, or in administrative/management positions, and all other employees of the employer, for the purpose of determining whether a majority of those employees desire to be represented for the purposes of collective bargaining by United Staff Nurses Union, Local 141; by the Washington State Nurses Association; by District 1199NW, National Union of Hospital and Health Care Employees, SEIU, AFL-CIO; or by no exclusive bargaining representative.

2. Remaining issues concerning the eligibility of public employees for inclusion in the aforesaid bargaining unit shall be resolved through challenged ballot procedures.

DATED at Olympia, Washington, this 16th day of October, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed
by filing objections
pursuant to WAC 391-25-590.