

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
UNITED STAFF NURSES UNION,)
LOCAL 141)
)
Involving certain employees of:)
)
UNITED GENERAL HOSPITAL)
)
)
)
)

CASE 8202-E-89-1386
DECISION 3420 - PECB
DIRECTION OF ELECTION

Webster, Mrak and Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of the petitioner.

Davis, Wright and Jones, by Philip Clements, Attorney at Law, appeared on behalf of the employer.

MacDonald, Hoague and Bayless, by Virginia Faller, Attorney at Law, appeared on behalf of the incumbent intervenor, Washington State Nurses Association.

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

On October 4, 1989, United Staff Nurses Union, Local 141, 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 United General Hospital. Washington State Nurses Association intervened in the proceedings, based on its status as the incumbent exclusive bargaining representative of the employees involved.

A pre-hearing conference was conducted on December 7, 1989, at which time District 1199NW, National Union of Hospital and Health Care Employees, SEIU, AFL-CIO moved for intervention in the proceedings and produced the requisite showing of interest.

A statement of results of pre-hearing conference was issued on December 8, 1989. The Executive Director has considered the stipulations and positions framed by the parties at the pre-hearing conference and in their correspondence, and concludes that the matter can be resolved by summary order issued pursuant to WAC 391-08-230.

The Purported "No-Raid" Agreement

The Washington State Nurses Association (WSNA) has raised an issue concerning a "no-raid agreement" that it claims to exist between it and the United Food and Commercial Workers Union, AFL-CIO, the parent organization of United Staff Nurses Union, Local 141. The WSNA argues that the instant petition is untimely and must be dismissed.

Essentially the same argument was put forth by the WSNA, as a basis for delay or dismissal, in a number of recent representation cases involving public hospital districts. The argument was rejected by the Executive Director as causing an unacceptable delay in the representation process, and that ruling has been affirmed by the Commission in Valley Medical Center, Decision 3312-A (PECB, 1990); Olympic Memorial Hospital, Decision 3317-B (PECB, 1990); Mason General Hospital, Decision 3319-A (PECB, 1990); and Mid-Valley Hospital, Decision 3320-A (PECB, 1990). Analysis of the argument put forth in the instant case discloses that it is identical to that raised in the previous cases, and there is no need to reconsider the reasoning set forth in those decisions. The "no-raid agreement" does not block processing of the instant representation petition.

The Description of the Bargaining Unit

At the outset of the pre-hearing conference, the employer took the position that the separate bargaining unit of registered nurses at

United General Hospital was inappropriate, arguing that the petitioner should have included registered nurses at Skagit Valley Hospital, Whidbey General Hospital and Island Hospital who are part of an alleged multi-employer bargaining unit along with the nurses at United General Hospital. The petitioner continued to assert the propriety of the petitioned-for separate unit, and an issue was thus framed for decision by the Commission. The employer subsequently withdrew its claim of a multi-employer unit, however.

As the employer withdrew its claim of a multi-employer bargaining unit, the petitioner raised an issue concerning the extent of the proposed bargaining unit. Specifically, the petitioner argues that certain "per diem" employees do not have a sufficient employment relationship with the employer to be included in the bargaining unit. Approximately 19 employees out of a proposed bargaining unit of 95 employees would be affected.

In City of Redmond, Decision 1367-A (PECB, 1982), determination of a question concerning representation was substantially delayed for a hearing and decision on the eligibility of something on the order of 25% of the total number of employees involved. In affirming the direction of a cross-check in that matter, the Commission opined that eligibility issues similar to those raised in that case should be held over for resolution in proceedings after the question concerning representation is determined. The admonition in Redmond to get on with the conduct of the election or cross-check is entirely consistent with the structure of Chapter 391-25 WAC, which postpones appeal procedures until after a tally has been issued, and with the Commission's recent order in Olympic Memorial Hospital, Decision 3317-A (PECB, 1989). In the instant case, the dispute concerns the bargaining unit status and voter eligibility of only about 20% of the total number of employees involved in these proceedings. It is concluded that the issue raised by the parties is subject to a post-election determination of the type called for in Redmond.

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

FINDINGS OF FACT

1. Skagit County Public Hospital District 304, d/b/a United General Hospital, provides health care services for residents in and around Sedro-Woolley, 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 United General 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 United General 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. These proceedings concern a bargaining unit historically described as:

All full-time, part-time and per diem registered nurses employed by United General Hospital as registered nurse, staff nurse I, and staff nurse II, excluding head nurses and other supervisors and all other employees.

An issue framed in the matter concerning the bargaining unit status and eligibility of certain employees affects no more than 20% of the total number of employees involved.

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.

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. There is no dispute concerning the inclusion and voter eligibility of at least 80% of the employees within the bargaining unit described by the historical terms used in paragraph 5 of the foregoing findings of fact, and a question concerning representation presently exists under RCW 41.56.060 and 41.56.070 in such unit.
4. Issues concerning the bargaining unit status and voter eligibility of certain employees working less than full-time can be resolved through challenged ballot procedures under RCW 41.56.060 and Chapter 391-25 WAC.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Public Employment Relations Commission among all employees in the bargaining unit described in paragraph 5 of the foregoing findings of fact who are employed on the date of this order and remain so employed on the date of the election, 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 of the National Union of Hospital and Health Care Employees, SEIU, AFL-CIO, or by no exclusive bargaining representative.

DATED at Olympia, Washington, this 8th day of February, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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