

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, LOCAL 3611) CASE 11484-E-94-1893
Involving certain employees of:)
EVERGREEN HOSPITAL MEDICAL CENTER) DECISION 4991-B - PECB
ORDER DETERMINING
ELIGIBILITY ISSUES

David A. Gravrock, Labor Relations Consultant, appeared on behalf of the employer.

James L. Hill, Vice-President, International Association of Fire Fighters, appeared on behalf of the union.

On December 20, 1994, International Association of Fire Fighters, Local 3611 (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 Evergreen Hospital Medical Center (employer). A direction of cross-check was issued on February 15, 1995,¹ for a bargaining unit described as:

All full-time and regular part-time paramedics employed by Evergreen Hospital Medical Center, excluding confidential employees, supervisors, and all other employees.

A cross-check was conducted and the tally showed that the union had majority support among the employees. An interim certification was issued on March 8, 1995, designating the union as exclusive

¹ Evergreen Hospital Medical Center, Decision 4991 (PECB, 1995). An issue concerning whether the "medical service officer" (MSO) classification should be included in the bargaining unit was reserved for subsequent determination.

bargaining representative.² A hearing on the reserved issue was held on September 19, 1995, before Hearing Officer Paul T. Schwendiman. The parties filed briefs.

BACKGROUND

Evergreen Hospital Medical Center is operated by King County Public Hospital District 2. A five-member board of commissioners hired Chief Executive Officer Andrew Fallet, who oversees five divisions. Betty Halverson heads the Patient Services Division, which includes the Ambulatory Care / Emergency Department headed by Gene Hoefling. The four sections under Hoefling's direction are diagnostic imaging, a surgical center, the Emergency Department and Evergreen Medic One. In each section, physician medical directors are in charge of the medical care and the personnel who provide care. Dr. C. Pilcher is the medical director for the Medic One operation.³

King County provides most, if not all, of the funding for the Evergreen Medic One operation. A Joint Powers Board composed of Hoefling and the chiefs from the four participating ("client") fire departments provides direction and oversight for the Evergreen Medic One operation, processes the Medic One budget, and sends the budget request to King County for final approval and funding.

Evergreen Medic One provides emergency medical care in northeast King County on a 24 hours per day basis, throughout the year:

* Medic 19, based at Redmond Fire Station 19, is a mobile intensive care unit (MICU) truck equipped with advance life support (ALS) equipment and continuously staffed by two paramedics;

² Evergreen Hospital Medical Center, Decision 4991-A (PECB, 1995).

³ The diagnostic imaging, surgical center and Emergency Department staffs also include at least one manager involved in the administration of the section.

* Medic 23, based at Evergreen Hospital Medical Center in Kirkland, is also an MICU/ALS truck continuously staffed by two paramedics;

* Medic 35, based at Woodinville Fire Station 35, is an ALS-equipped emergency medical treatment (EMT) truck continuously staffed by one paramedic and one EMT-trained employee of the Woodinville Fire Department.

The paramedics work 24-hour shifts beginning at 7:00 a.m., on a fixed schedule of two shifts per week separated by 24 hours off duty.⁴ The paramedics are scheduled by seniority, one year in advance. They rotate between Medic 19, Medic 23 and Medic 35 every four months, but do not change their days of work.

There are three "medical service officer" (MSO) positions, which were filled by promotion of three paramedics. Each MSO reports to Hoefling, who now provides administrative supervision of the Medic One operation.⁵ One MSO is assigned to be in charge of the Medic One operation for each shift. The MSO works on a 24-hour shift, but the three rotate their days of work every two months. The daily activities of the MSO follow a complex pattern:

* On Mondays through Fridays, the MSO usually works out of the Medic One headquarters in Redmond from the beginning of the shift at 7:00 a.m. until between 8:00 p.m. and 9:00 p.m.. The MSO then moves to a Bothell fire station until the shift is completed the next morning. The MSO is normally assigned the radio call sign "Medic 77", and normally operates an ALS-equipped utility vehicle.⁶

⁴ E.g., Sunday and Tuesday, Monday and Wednesday, Tuesday and Thursday, or some similar combination of days.

⁵ A program manager was responsible for Medic One administrative functions until 1993. That person worked eight-hour shifts, on Mondays through Fridays. The program manager departed, and that position was eliminated, after the MSO positions were created.

⁶ Unlike the MICU and EMT/ALS trucks, the vehicle used by the MSO is not designed for transporting patients.

Each MSO maintains training as a paramedic,⁷ and they are subject to dispatch for medical emergency and fire calls during these shifts.

* On Saturdays, the MSO is assigned to the Medic 35 unit at Woodinville, and so works as a paramedic for the entire shift.

* On Sundays, one MSO is "on call", based on a three-week rotation among themselves. The "Medic 77" radio call sign is used for the on-call MSO on Sundays, and the MSO is required to fill in on the MICU or EMT/ALS trucks, if needed.

* The designated MSO will fill in for an absent paramedic on Medic 19, Medic 23 or Medic 35 if no other replacement is available during the shift. The employees who hold the MSO positions also put in overtime shifts on what would otherwise be their days off, working as paramedics to fill in for bargaining unit members who are absent from work.⁸

When operating as Medic 77, the MSO ideally responds to all fire dispatches by the client fire departments and provides medical monitoring of fire fighters at fire scenes. These MSO responses

⁷ The minimum qualifications for paramedics, as specified in their job description, include:

1. Health and physical agility must be of a quality to tolerate strenuous activity necessary to perform all duties related to the MICU. Must be able to lift 150 pounds.
2. Certification as a Paramedic in King County/Washington State required.
3. Certification in Advanced Cardiac Life Support (ACLS) that is current is required.
4. Certification in Prehospital Trauma Life Support (PHTLS) required every three years.
5. Certification in Emergency Vehicle Accident Prevention (EVAP) required every two years.
6. Fulfills requirement of 50 hours of continuing education (CE) per year and completes and submits CE documentation in a timely manner.
7. Fulfills requirements of minimum number of skills (IV's and intubations) per year as mandated by King County EMS.

⁸ From January to August of 1995, MSO's worked over 400 hours of overtime replacing paramedics, in addition to any regular shift time spent filling in for absent paramedics.

avoid taking one of the other Evergreen Medic One trucks out-of-service whenever there is a fire. The MSO also provides initial ALS responses, when it appears that the MSO will be able to provide a quicker response than one of the MICU or EMT/ALS trucks.

Written in 1986 by a team which included one of the employees who was stipulated as eligible for inclusion in the bargaining unit in this proceeding,⁹ and last revised in 1992, the extensive job description for the paramedic classification indicates those employees have divided reporting relationships:

Medical Services Officer for administrative operations; Medical Director for medical care management.

The only other explicit reference to the MSO in the paramedic job description is in a paragraph which calls upon paramedics to immediately inform the MSO "in a personalized problem solving manner" if the employee is unable to complete their responsibilities in a manner consistent with organizational goals.

The much more concise job description for the MSO classification, written in late 1992 and last revised in 1993, specifies:

PURPOSE:

The Medical Service Officers provide supervisory support and facilities planning, problem solving and decision making in Evergreen Medic One. They have a level of authority equal to their responsibilities.

PROCEDURE:

1. Medical Service Officers are responsible to:
 - a. the Program Director for administrative operations.
 - b. the Medical Director for medical care management.
2. Medical Services Officers have the authority to:
 - a. delegate duties and responsibilities.
 - b. enforce policies.

⁹ Les Putman was listed by the parties as a nonsupervisory paramedic in the bargaining unit.

- c. approve routine purchases within budget.
3. Following are the general duties and responsibilities of the Medical Service Officers:
 - a. Maintains certification and responsibilities of a paramedic.
 - b. Has supervisory responsibilities for the paramedics with direction from the Program Director.
 - c. Sets the standard for Evergreen Medic One in their actions and appearance.
 - d. Uses initiative in recommending changes in any areas for the betterment of our organization and our service.
 - f. Other duties as assigned.
4. The specific areas of responsibility of the Medical Service Officers are listed on the attachment titled, "Areas of Responsibility".
5. Meetings that Medical Service Officers and other members of the Management Team attend are listed in an attachment titled, "Meetings".

Each MSO is assigned one of three areas of administrative tasks described in a document attached to the MSO job description.

Administrative/Personnel -

MSO James Duren is responsible for scheduling, public relations (subtitled "riders"), policies and procedures, development of hiring and promotional procedures, orientation of new hires, and dealing with paramedic students. Duren was formerly responsible for budget tracking, but that is now a task under the "materials/facilities" heading, below.

Duren routinely adjusts the year-long paramedic schedule for the regular rotations among units that occur every four months. He fills in the schedule for vacations and other scheduled time-off, either by finding a paramedic or MSO willing to work on their day off or by working the time himself. He also enters data regarding scheduling and continuing education in a computer.

Duren is responsible for public education and public awareness of the Evergreen Medic One program. He oversees paramedic students, emergency medical technicians and students, health care profession-

als, journalists and others who are allowed, at times, to ride with the paramedics in the Medic One trucks.

Duren works with paramedics and the others in the MSO class to draft policies and procedures, as necessary. The drafts are reviewed by a committee composed of Hoefling and three or four paramedics. After review and possible amendment, the policies and procedure drafts are approved by Hoefling.

Duren works with the employer's Human Resource Department on structuring recruitments and advertising for vacant positions. After applicants are received, he administers a written test and a physical agility test, each of which was developed by paramedics.

Duren sits on oral interview committees composed of an officer from one of the client fire departments, one or two paramedics, and someone from the Human Resources Department. Each committee member individually scores the individual applicants. Duren adds up the scores to rank the applicants. The highest-ranked applicants are referred to Dr. Corpus, who controls the King County paramedic program at Harborview Hospital in Seattle.

More applicants are recommended to Dr. Corpus than there are spaces to fill at Medic One, and Dr. Corpus allows some (but not all) of the recommended applicants to begin training. Completion of the year-long paramedic training program is required to be certified as a King County and Medic One paramedic, even if the applicant is a qualified paramedic elsewhere. Duren monitors the progress of the Medic One trainees throughout the training program.¹⁰

An individual sponsored by the employer may expect to go to work at Evergreen Medic One upon completion of the training program, but

¹⁰ Trainees in the University of Washington / Harborview paramedic program are not Medic One employees during their training, but are paid a stipend by the employer.

the employer reserves the right to not hire a paramedic after the required training.¹¹ If a trainee is hired, Duren puts the new employee through the Evergreen Medic One orientation program and makes sure the employee also receives the mandated new employee hospital orientation class.

Materials/Facilities -

MSO Phil Grieb has responsibility for supplies, equipment (subtitled as "communications", "computer", "vehicles", "medical", "uniforms" and "maps"), facilities (subtitled as "buildings" and "grounds"), and budget tracking.

Grieb has authority to make maintenance and equipment purchases up to \$1,000 or \$1,500, but must obtain approval from Hoefling for higher amounts. Paramedics and other employees have also taken on administrative duties related to equipment and supplies, including designing three new MICU trucks. The actual ordering of supplies is delegated to a paramedic.

The MSOs, the paramedics and other employees all work on budget proposals which are submitted for approval by Hoefling and the employer's board of directors. A paramedic prepares the budget in a different form for review by the Joint Powers Board.

Medical Education / Quality Assurance -

MSO Patrick Randel is responsible for MICU Operations (subtitled as "policies & procedures", "medical operations" and "quality assurance"), fire departments (subtitled "EMT-P unit"), dispatch (subtitled "run cards" and "protocols"), training (subtitled "paramedics", "fire departments" and "conference development"), safety, and MCI Operations.

¹¹ The employer invests more than \$50,000 per paramedic during the year-long training period, and so has a strong incentive to hire a successful paramedic if an opening exists when the individual completes the year-long training program.

Randel is responsible for the day-to-day operation of the two MICU trucks, and has quarterly meetings concerning the Medic 35 unit operated in conjunction with the Woodinville Fire Department. He makes sure the paramedics' tuberculosis tests are updated, and that hepatitis masks are properly fitted. Randel, who has 10 years of dispatching experience, developed and oversees the mass casualty incident (MCI) program and coordinates with area dispatchers.

Randel supervises the Medic One training function and Medical Education Coordinating Officer Andre May, who is not a paramedic. Randel reviews the training records of the paramedics, to make sure they are receiving continuing education and other training. May provides EMT training to fire department employees in accordance with training standards and classes specified for all King County EMT personnel. May schedules the training and budgets the Medic One training function one year in advance, and also plans an annual emergency medical treatment training conference.

POSITIONS OF THE PARTIES

The union contends that all three of the medical service officers should be included in the paramedic bargaining unit.

The employer contends that all three of the medical service officers should be excluded from the paramedic bargaining unit, as supervisors.

DISCUSSION

Applicable Legal Principles

Supervisors are employees within the meaning and coverage of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). As such, supervisors are entitled to organize and be represented for the purposes of collective bargaining. Under RCW 41.56.060, supervisors will normally be excluded from the bargaining units containing their rank-and-file subordinates, in order to avoid the potential for conflicts of interest that would otherwise arise between factions within a mixed 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).

The indicia of supervisory status found in Section 2(11) of the National Labor Relations Act (NLRA) have been used for determining who is a "supervisor" under Chapter 41.56 RCW. Thus, the impact of an individual's actual authority to hire, discharge, discipline, lay off, transfer, assign, promote, adjust grievances and direct the work of other employees is well known to the Commission and its staff. Renton School District, Decision 3287 (PECB, 1989).

The Commission noted in Morton General Hospital, Decision 3521-B (PECB, 1991), that while Chapter 41.56 RCW does not contain a definition of supervisor, such cases can also properly be analyzed using the definition found in RCW 41.59.020(4)(d):

(d) ... [S]upervisor ... means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

In Morton, the Commission went on to observe:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship.

Such questions are determined on the basis of actual authority over subordinates.

Lead workers and working foremen are commonly left in units where the evidence demonstrates they do not possess independent authority to direct work activities and do not exercise independent judgment in fundamental personnel matters. Whitman County, Decision 1967 (PECB, 1983). Where a claimed "supervisor" and bargaining unit employees share substantially similar duties and working conditions, there is reduced potential for the types of conflicts of interest of concern in Richland, supra. Routine or clerical duties in the administration of an employer's personnel policies do not warrant an exclusion from a rank-and-file bargaining unit.

In evaluating the propriety of bargaining units under RCW 41.56-.060, the parties and the Commission must also be mindful of the long-term impacts of a bargaining unit description. Where an exclusive bargaining representative is in place, it acquires an ability to protect the scope of work historically associated with or properly accreted to that bargaining unit. Numerous decisions beginning with South Kitsap School District, Decision 472 (PECB, 1978) have found employers guilty of unfair labor practices under RCW 41.56.140(4) for "skimming" or "contracting out" of bargaining unit work without having first exhausted their bargaining obligations under RCW 41.56.030(4). Thus, decisions dating back to at least City of Seattle, Decision 781 (PECB, 1979) have rejected unit configurations which would fore-ordain jurisdictional disputes between two or more separate bargaining units within the same occupational grouping.

Application of Precedent

The sole question in this case is whether the MSO has sufficient independent decisionmaking authority in important personnel-related areas to warrant a conclusion that there is a potential for conflicts of interest within the paramedic bargaining unit. There is no claim that they are excludable as "confidential employees" under RCW 41.56.030(2), nor would the record support such a claim.

Similarity of MSO and Paramedic Duties -

The employer argues that more than 95% of the MSO work time is spent performing supervisory duties, but the record does not support that claim. In fact, the extent of integration of MSO and paramedic duties mitigates the potential for conflicts of interest within the paramedics bargaining unit under Richland, supra, and the possibility of a separate MSO bargaining unit presents substantial cause for concern under South Kitsap, supra.

The employer's argument is based on an Evergreen Medic One Census Report for the period from January through August of 1995 (Exhibit 6), which shows that Medic 77 made only 183 of 3371 ALS responses in that period. Those statistics ignore other statistical data and the complex work routine described above. While the 183 responses attributed to Medic 77 constitute only 5.4286% of the 3371 total, that figure would not include Saturday responses by Medic 35 with an MSO working as the paramedic or any other responses where an MSO was filling in for an absent paramedic. Further, the overtime work of the MSO class during the same reporting period was substantial, averaging nearly two 24-hour shifts per month.

Apart from the inaccuracy of a focus on "Medic 77", the employer's statistics disregard the fundamental nature of paramedic work. The census report shows that most of the time worked by either an MSO or a paramedic is spent standing by for dispatch: The busiest of the employer's trucks, Medic 23, was actually out on ALS-related

calls for less than 20% of the hours in the January - August period.¹² Using similar calculations, Medic 35 was the least busy unit, providing ALS service less than 6% of the time in the period. This is a common circumstance in emergency service operations, where positions are staffed and employees are paid for their ready availability, not just for their actual activity time.

While the census report showed that Medic 77 covered an average of 0.48 "ALS responses" per day, Duren testified that Medic 77 covers an average of 2 "calls" per night from the Bothell fire station. On close examination, they appear to be dealing with different criteria: The total fire responses for the four client fire departments are not calculated as part of the census report,¹³ but the testimony indicates that the designated MSO responds to fire dispatches. Thus, the number of "calls" answered by an MSO will necessarily be higher than the number of "ALS responses".¹⁴

The reference in paragraph 3.a. of the MSO job description to "certification and responsibilities of a paramedic" ties their daily activities directly back to the much more detailed job description for the non-supervisory paramedics:

The Paramedic is required to respond to emergency calls and provide efficient and immediate medical

¹² During the 5,832 hours in the January - August period (243 days X 24 hours), Medic 23 was out of service (from dispatch to return to standby) for a total of 1059.47 hours, or 18.16% of the total hours in the period (1059.47 hours / 5832 hours).

¹³ The fire responses made by the Medic 35 are part of the census report. That unit made 63 fire responses and 382 ALS responses in the January through August period.

¹⁴ If one assumes the proportion of fire calls to ALS responses is uniform throughout the Medic One service area, one can infer more than two dispatches per day. The ratio of 63 fire to 382 ALS for Medic 35 compares with 556 (est.) fire to 3371 ALS for Medic One. Adding 556 fire + 183 Medic 77 = 739 for the 283 day period, which would be an average of 2.61 dispatches per day.

care to critically ill and injured persons. The Paramedic must determine the nature and extent of the illness, provide required emergency care and transport to the appropriate medical facility. Effective and respectful communications are required.

PRIMARY RESPONSIBILITIES:

Technical:

1. Patient Care
 - a. Assess patient's condition and need for treatment by acquiring history and performing physical examination.
 - b. Communicates effectively with partner regarding patient condition, treatment and disposition.
 - c. Relates patient's history, physical, and recommended treatment to base hospital physician by radio or telephone and receives permission for treatment (except Plan A's) and disposition.
 - d. Communicates to the patient and family the condition and recommended treatment.
 - e. Institutes appropriate treatment according to observations and base hospital emergency department physician's instructions. (Plan A's don't require physician contact before treatment.)
 - f. Consults with patient's physician when applicable.
 - g. Modifies patient treatment as patient's condition changes and as directed by base hospital physician.
 - h. Responds to patient and family needs in a timely and courteous manner.
 - i. Complies with ACLS and PHTLS standards as dictated by King County EMS protocols.
 - j. Complies with Evergreen Medic One QA Plan Standards of Care.
 - k. Communicates in a professional manner with hospital staff regarding patient history, physical, assessment, treatment and response to treatment.
 - l. Understands and follows Emergency Department and Direct Admit procedures.
 - m. Completes Medical Incident Report Form (MIRF) according to Evergreen Medic One QA Plan Standards of Documentation, and leaves a readable copy at the destination hospital.
 - n. Complies with laws as they relate to patient treatment protocols.
 - o. Understands and follows laws regarding living wills and terminal patient policies.
 - p. Complies with medical standards as new protocols are developed.
2. Field Operations
 - a. Responds to Medic Unit and on the call in a timely manner.

- b. Understands and complies with radio communications, dispatch standards and protocols.
 - c. Follows procedure for proper phone etiquette.
3. Vehicle and Equipment Responsibilities
- a. Completes daily vehicle checks and fills out (officer and driver) checklist.
 - b. Reports any maintenance or repair needs and arranges for repairs with mechanic. Accomplishes repairs within shift if possible.
 - c. Restocks supplies and equipment at specified levels.
 - d. Responsible for retrieval of equipment. Equipment within response area should be retrieved within the shift by crew. Equipment left outside the response area should be reported and retrieved by others.
 - e. Washes vehicles exterior and cleans interior daily and additionally as needed during the shift.
 - f. Understands and uses proper care and maintenance of all field equipment.
4. Living Quarters Responsibilities
- a. Completes daily and weekly responsibilities in quarters and vehicle bay.
 - b. Completes entries into daily log book including listing quarters activities completed and other pertinent information the incoming shift needs to know.
5. Participates in Public Relations activities and EMS agency functions.
6. Participates in CCA/Trauma reviews when case involved is reviewed.
7. Assists in Emergency Department when extreme conditions when requested and it doesn't interfere with basic organizational responsibilities.
8. Responds to code 199 calls at Evergreen Medical Center when it doesn't interfere with a current call.
9. Responds to legal needs and requirements such as witness statements and court appearances regarding patients involved with.
10. Personal Appearance and Uniform Requirement
- a. Must look neat, clean and professional at all times.
 - b. Paramedics are required to wear the uniform as outlined in the uniform policy.
11. Other duties as assigned.

Behavioral Standards

1. Establishes and maintains an atmosphere of trust and honesty.

- a. Displays additive behavior using good problem solving techniques including 1:1 contact and correct use of confrontational skills. Validates information.
 - b. Always maintains confidentiality as defined by the parties involved.
2. Maintains effective follow through of assigned responsibilities.
 - a. Completes assignments within a time frame designated so that no other process is delayed.
 - b. Completes responsibilities when requested and as a result does not require supervisory intervention to complete tasks.
 - c. Completes responsibilities in a manner consistent with organizational goals and when unable to be consistent, immediately informs the MSO in a personalized problem solving manner.
 - d. Works independently with general direction.
 3. Consistent and timely confrontation of issues.
 - a. Sends messages that convey personal feelings, needs, wants, goals and problems so that the receiver is able to understand the message clearly.
 - b. Confronts issues as soon as possible so that the problem solving is kept at the least complex level.
 - c. Addresses in a respectful manner another's behavior which has caused discomfort.

At the bottom line, the record shows the paramedic and MSO jobs are very similar in their basic function of standing by to provide the quickest possible response to medical and fire calls in northeast King County.¹⁵ Other duties performed while waiting for dispatch are secondary functions of the positions.

Scope of Supervisory Authority -

Even if one accepts that an MSO responds to only about half as many dispatches as the least-busy paramedic, that does not prove that the remainder of the time worked by the MSO is spent on duties

¹⁵ MSO Duren testified, "The brain starts dying in two to four minutes". While the figures contained in the census report may be subject to differing interpretations, the record shows that the primary duty of an MSO is to provide quick responses or to cover fire calls that would otherwise cause one of the other Medic One trucks to be available for a quick response.

which warrant separation under Richland, supra. There still needs to be a showing that the MSO exercises independent judgment on behalf of the employer in fundamental personnel matters altering or affecting the employment relationship. Whitman County, supra. The MSO job must also be considered in light of the role and authority of the medical director over the paramedics. The divided reporting relationships of the paramedics inherently limit the scope of authority left to an MSO or Hoefling. Moreover, the MSO job description does not specifically authorize exercise of independent authority in a preponderance of the types of personnel matters listed in the traditional definitions of "supervisor".

Hiring -

Only one MSO out of the three has any significant role in the hiring of paramedics, but some of those functions (e.g., opening recruitments, computing scores and ranking candidates) are merely clerical in nature. Paramedics wrote the exams administered to applicants for paramedic positions, and one or two paramedics normally sit on the interview committee along with representatives from the client fire departments. Duren sits on the interview committee, but has no more voting power than any other committee member. The practice of recommending more candidates than are needed indicates an expectancy that some of those recommended will wash out during the training program directed by Dr. Corpus and others outside of Evergreen Medic One. The record does not establish any involvement of an MSO in the final hiring decision that is delayed while the individual is in training for at least a year. Thus, the evidence does not support a conclusion that the MSO even makes an "effective recommendation" on hiring.

Assignment -

The highly structured year-long work schedule for the paramedics leaves little discretionary authority for an MSO or Hoefling to exercise during the year. At most, an MSO finds a paramedic or MSO to work on an overtime basis to cover the shift of an absent

paramedic. If an off-duty paramedic or MSO is not available, the MSO must fill in for the shift as a paramedic. There is no reference to mandatory overtime, or to independent decisionmaking by an MSO about whether to fill the shift of an absent employee.

The distribution of emergency calls among the Medic One units is done by dispatchers who are not employed by this employer.

Promotions and Transfers -

The opportunities for promotions and transfers are inherently limited in this small and specialized operation. MSO positions appear to be the only promotional opportunity which would provide a pay increase for paramedics, and there is no indication of turnover since the three incumbents of the MSO class were promoted. A "lead paramedic" designation does not provide a pay increase, but puts a person so designated in line for extra pay when assigned as an "acting MSO". When all three members of the MSO class interviewed candidates for "lead paramedic", Hoefling rejected their recommendation on one of the candidates.

Layoffs and Recalls -

Evergreen Medic One has had no occasion to lay off any paramedic, and there is no indication that the individuals in the MSO positions would have any role in determining whether a layoff or a recall should be implemented. The involvement of the Joint Powers Board and of King County appears to make such issues remote from the role of the MSO classification.

Suspensions, Discipline and Discharge -

Performance evaluations of the paramedics are conducted every two years. At the time of the hearing, the last performance evaluation had consisted of an evaluation by the medical director, a self-evaluation by the paramedic, and a peer review. The most detailed technical portion of the paramedic job description concerns patient care in the field. Other medically-related duties of the paramed-

ics include participation in CCA/trauma reviews, assisting in the hospital emergency department under extreme conditions, and responding to "Code 199" calls at the hospital. These are subject to the supervision of the medical director, just as each MSO is responsible to the medical director for medical care management and related patient care.

There was testimony at the hearing that the members of the MSO class were going to review the performance of paramedics in the near future, based on the paramedic job description. It must be remembered, however, that any authority exercised by an MSO over a paramedic is limited to the administrative aspects of the job, such as radio communications, dispatch standards and protocols, phone etiquette, daily vehicle checks, washing and cleaning vehicles, daily responsibilities in quarters and vehicle bays, public relations, and presenting a neat and clean appearance.¹⁶ Testimony of Duren described the evaluations and the development of the evaluation form at Evergreen Medic One:

Q. [By Mr. Gravrock] How are the employees, and by that I mean the paramedics, evaluated at Evergreen Hospital within the paramedic unit?

A. [By Mr. Duren] We have -- before we came, the manager, the paramedic manager evaluated the paramedics, and the medical director has evaluated paramedics. **We made an attempt to do an evaluation process two years ago with the medical directors, peer evaluation and self evaluation.** That became a logistical nightmare.

Currently, we're in the process of developing a new evaluation process for the paramedics. It would be the medical directors and the MSOs evaluating the day-to-day -- or how the paramedics drive or, you know -- I guess I'm trying to say is, we'll evaluate the paramedics on their

¹⁶ A paramedic's duty to respond "to legal needs and requirements such as witness statements and court appearances regarding patients involved with" may be either administrative or medical in nature, depending on the situation. However, determining the proper response to "legal" needs may be outside the normal responsibility of either an MSO or the medical director, and may require the advice of an attorney.

job description instead of breaking it down to every aspect. It's just probably fair to say the job description.

- ...
- Q. And so in the -- in your evaluation of an individual as an MSO -- you're coming to a conclusion in that evaluation as to whether they're performing their job consistently with the job description that we've got here in evidence, is that correct?
- A. It is to the aspect of our -- the scope of our ability. I can't -- I'm not evaluating them on medical judgment. I'm evaluating them on their ability to drive the Medic Unit, make sure they're uniformed, they're in their uniforms.
- Q. How often do you evaluate employees?
- A. Were supposed to do it every two years.
- Q. Every two years?
- A. Yes. I believe that's it. I don't know. I believe it's every two years.
- ...
- Q. Do you have specific evaluation forms that you use?
- A. The hospital has evaluation forms. I don't know where we are on the hospital aspect so basically we've looked at different things. So we've kind of come up with a form of our own, I guess, to evaluate the paramedics on.

Tr. 78-81 [emphasis by **bold** supplied].

The most that can be said is that Grieb and Randel have provided input (along with other paramedics) to Duren for development of a new evaluation form that might be utilized rather than a hospital form. No MSO has evaluated paramedics, and the future process remains too speculative to warrant a conclusion that the medical service officers will have supervisory authority in that process.

The record does not establish that any MSO has authority to impose discipline upon a paramedic. Responding to questions limited to dealing with an employee who might be under the influence of alcohol, Duren testified as follows:

I have the authority to release [an employee] -- basically for the good of the organization and

patient care, I would remove that person off the truck and step in and fill that position. **I don't have the authority to say go home.**

Tr. 64 [emphasis by **bold** supplied].

...
I **don't know** [if I have the authority to recommend discipline]. I'd have to look at the policy and procedures from the hospital district. **I don't know if I have authority to do that.**

Tr. 66 [emphasis by **bold** supplied].

Director Hoefling testified as to his expectation of what the MSO should do if a paramedic came to work inebriated:

At any sign of alcohol on any duty paramedic's breath, my expectation would be that the MSO would immediately remove that person from duty **pending disciplinary action**. And replace that, you know, fill that duty shift either themselves or ultimately bring a replacement person on so that we could continue our mission.

Tr. 120 [emphasis by **bold** supplied].

The record does not establish that any MSO has disciplined any employee in the past. Given the employer's substantial investment of money and time in the training needed to bring a new employee on board, and the ongoing involvement of the medical director and Hoefling, it certainly cannot be inferred that an MSO would have independent authority to discipline or discharge a paramedic.

Adjusting Grievances -

The management of Evergreen Medic One indicates a strong interest in having problems with client fire departments resolved at the lowest level, and resolution of such disputes 24 hours a day (rather than only during the regular business day), appears to have been a paramount reason for creating the MSO classification. This customer relations activity does not, however, equate with the adjustment of "grievances" referred to in the definitions of "supervisor" found in the NLRA and Chapter 41.59 RCW. The same principles apply to MSO facilitation of problem solving between the

paramedics staffing the Medic 19 and Medic 23 units. An MSO does not have authority to change the pay or benefits of any paramedic, or to act on behalf of the employer in resolving other disputes between paramedics and the employer.

Administrative Duties

It is clear that the employees in the MSO classification receive higher pay than the paramedics, and that their benefits differ from those provided to the paramedics, but that does not necessarily imply that the differences are on account of authority over other employees. In this case, it is clear that a number of program management functions (*i.e.*, administrative tasks not associated with employee supervision) have been delegated to the MSO class.

MSO Grieb has no employees permanently assigned to assist him with his materials and facilities responsibilities, and he performs his administrative tasks while standing by for dispatch on ALS responses or fire calls. He is assisted by Steve Palmer, a paramedic who is interested in assuring that supplies are available for Medic One to perform its mission, who helps Grieb while standing by for dispatch on ALS responses. Another paramedic, Kelly Dunn, advises Grieb when medical equipment or pagers are needed. Grieb has no special personnel authority over Palmer, Dunn or other employees as a result of these practices.

MSO Randel performs his responsibilities concerning MICU operations, the EMT-paramedic unit, dispatch, training, safety and multiple casualty incident operations while standing by for ALS responses and fire calls. Even if he exercises some supervisory authority over Medical Education Coordinating Officer Andre May, it is clear that May is not a paramedic and is not in the paramedic collective bargaining unit. Moreover, May schedules and teaches classes under the direction of Dr. Corpus, the medical director of Seattle Medic One and director of Harborview Hospital-King County

EMT training, who controls the emergency medical treatment training requirements for all King County Medic One operations.

MSO Duren is involved in personnel administration at Evergreen Medic One, but he also performs his administrative responsibilities while standing by for ALS responses and fire calls. Duren had some involvement with the scheduling personnel before the MSO positions were created, and continued his involvement with that task since becoming an MSO, but any scheduling problems that cannot be settled by mutual consent among the paramedics and Duren are resolved by Hoefling. The fixed annual nature of the schedule has severely limited any exercise of discretion in the past, reducing Duren's role to a ministerial or clerical function:

- Q. [By Hearing Officer Schwendiman] About how much of your (24-hour work) day is used in scheduling personnel?
- A. I would say at least a couple of hours. I log everything in the computer so I can run reports. I keep track of overtime usage. I keep track of days. I keep track of vacation schedules. So that's when I talk about scheduling and personnel issues that's what I do. Keep track of CE hours.
- Q. **How much of the time do you really need to actually schedule personnel** as, let's say X person is going to work on this schedule versus Y person?
- A. **The way I have it now it's just the touch of a button. It's the -- it's the rearranging of the schedules to meet the paramedics' individual needs.** They'll get -- they'll ask me if they can move from station to station, or they have a special need that they work on a project down at Medic 19 or Medic 23. So I'm moving them on the schedule, the hard copy, moving them from station to station to whatever need they have. So I try to accommodate their wishes to work at certain stations for whatever reasons so we can keep a happy person.

Tr. 163-164 [emphasis by **bold** supplied].

Routine input of data into a computer and pushing a button to respond to agreed-upon changes of assignment require little or no independent judgment, and are not controversial activities. Any paramedic who is dissatisfied with the schedule developed by Duren and his computer may request Director Hoefling to change the schedule. Duren's past duties are not sufficient to create a potential conflict of interest. Since employee work hours could be a subject for collective bargaining between the employer and union, Duren's authority and role in the future is certainly speculative.

Conclusions

Where an issue is raised concerning the proposed exclusion of public employees from collective bargaining rights, the burden of proof rests upon the party proposing the exclusion. The employer has failed to make a record that the employees in the MSO classification have independent authority to make meaningful changes in subordinates' employment relationships. There is no inherent conflict of interest between the MSO and the paramedic on a shift. Each MSO is important to the smooth functioning of Medic One, but they are lead workers rather than supervisors who must be excluded from the paramedic collective bargaining unit.

FINDINGS OF FACT

1. Evergreen Hospital Medical Center, operated by King County Public Hospital District 2, is a public employer within the meaning of RCW 41.56.030(1). Among other services, the employer operates Evergreen Medic One, which provides emergency medical care and fire fighter rehabilitation at fire scenes in northeast King County. The employer directly operates, or participates in the operation of, three trucks which are staffed by at least one paramedic, and which are equipped for advance life support (ALS) medical care.

2. International Association of Fire Fighters, Local 3611 (union) a bargaining representative within the meaning of RCW 41.56-.030(3), has filed a timely and properly supported petition for investigation of a question concerning representation, and has been given interim certification as exclusive bargaining representative of paramedics employed in the Evergreen Medic One operation. An issue was reserved concerning the eligibility of three employees in the "medical service officer" (MSO) classification for inclusion in that unit.
3. Each MSO is a certified paramedic, and must maintain the same qualifications as any paramedic employee. Like paramedics, the primary duty of an MSO is to respond to emergency calls and to provide efficient and immediate medical care to critically ill and injured persons, including ALS services. Both paramedics and medical service officers are responsible to the Evergreen Medic One medical director for patient care. Each MSO performs administrative duties while standing by for emergency calls.
4. One MSO is scheduled to be "in charge" of the Evergreen Medic One operation for each shift. At most times, the MSO operates an ALS-equipped utility vehicle, and responds to emergency calls that would otherwise be assigned to members of the paramedic bargaining unit. On Saturdays, the MSO in charge is assigned to an ALS truck to perform work that is assigned to members of the bargaining unit during the remainder of the week. At other times, the MSO in charge of a shift will work as a paramedic on one of the ALS trucks, to fill a vacancy created by the absence of a bargaining unit member. In addition, the employees in the MSO classification work extra shifts as paramedics, on what would otherwise be their days off.

5. The medical service officers do not independently hire, assign, promote, transfer, lay off, recall, suspend, discipline, or discharge other employees, and they do not adjust the grievances of other employees or make effective recommendations on such matters, so as to create an inherent conflict of interest with other employees.
6. Given the employer's practices calling for the scheduling of the medical service officers to perform as paramedics on a regular basis, and the substantial overtime work performed by the members of the disputed class as paramedics, either the exclusion of the medical service officers from the paramedics bargaining unit or the potential creation of a separate bargaining unit of medical service officers would likely lead to work jurisdiction conflicts between the two bargaining units.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The employees in the medical service officer classification are public employees within the meaning of RCW 41.56.030(2), whose duties, skills and working conditions do not include independent supervisory authority sufficient to warrant their exclusion, under RCW 41.56.060, from the bargaining unit of paramedics in this proceeding.

ORDER

1. Employees of the Evergreen Medical Center classified as "medical service officers" are included in the existing

bargaining unit of paramedics for which an interim certification has been issued in this proceeding as Evergreen Hospital Medical Center, Decision 4991-A (PECB, 1995).

2. The interim certification will stand as the final certification in the instant representation matter.

DATED at Olympia, Washington, this 10th day of May, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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