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
	DECISION 4991 - PECB
Involving certain employees of:	
EVERGREEN HOSPITAL MEDICAL CENTER	DIRECTION OF CROSS-CHECK

David A. Gravrock, appeared on behalf of the employer.

James L. Hill, appeared on behalf of the union.

On December 20, 1994, International Association of Fire Fighters, Local 3611, 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. A pre-hearing conference was conducted, by telephone, on February 1, 1995. During the course of the pre-hearing conference, the parties stipulated to the determination of the question concerning representation by a cross-check. The employer reserved a right to challenge the propriety of the petitioned-for separate bargaining unit of paramedics, pending its review of legal precedents on the question of employees subject to interest arbitration being mixed into an existing bargaining unit of professional and technical employees. The employer also contended that three medical service officers were supervisors, and should be excluded from the bargaining unit on that basis.[1] The parties otherwise agreed on the list of employees in the bargaining unit. A statement of results of that conference was issued by the Hearing Officer on the same date,

[1] The parties were advised that the "supervisor" question would be reserved for later determination.

requiring the parties to make any objections known within 10 days thereafter.

On February 9, 1995, the employer filed an objection to the statement of results of the pre-hearing conference. It sought to withdraw from its stipulation for use of the cross-check procedure. The employer stated that, upon further review, it does not agree to the cross-check because it believes "they are inherently unreliable as a determinate of employee desire for representation".

Propriety of the Petitioned-for Bargaining Unit

The union's petition described the bargaining unit it seeks in this proceeding as follows:

> All full-time and regular part-time paramedics of the employer.

The term "paramedic" is understood to be the popular usage to describe persons employed "in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer". Accordingly, the petitioned-for employees are eligible for interest arbitration under RCW 41.56.030(7), as amended by chapter 398, Laws of 1993 (House Bill 1081).

The employer initially objected to a separate bargaining unit of paramedics, arguing that these employees should be placed in an existing bargaining unit of professional and technical employees represented by another union. The petitioner contended that, under authority of Affiliated Health Services, Decision 4257 (PECB, 1993), the paramedics must be placed into a separate bargaining unit because they are now subject to the statutory provisions for resolving bargaining impasses through interest arbitration. The issue which the employer seeks to raise is a question of law, for which summary judgment is appropriate under WAC 391-08-230.

The determination of appropriate bargaining units under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is a matter delegated to the Public Employment Relations Commission by RCW 41.56.060. The Commission's decisions generally recognize "there may be more than one configuration of appropriate bargaining units in any given organization",[2] and that the task is not limited to establishing "the most appropriate" bargaining unit.[3] An exception is made, however, where a proposed bargaining unit would cover employees having widely divergent statutory rights.

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 law enforcement officers employed by King County. One outgrowth of creating the "interest arbitration" procedure was a line of Commission precedents under which bargaining units eligible for interest arbitration have been kept "pure". Thurston County Fire District 9, Decision 461 (PECB, 1978); City of Yakima, Decision 837 (PECB, 1980). Because contract negotiations are conducted on a unit-wide basis, 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.[4]

The Legislature has expanded coverage of the interest arbitration procedure on several occasions since 1973. Paramedics working for

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[2] King County Fire District 39, Decision 2638 (PECB, 1987).

[3] Ben Franklin Transit, Decision 2357-A (PECB, 1986).

[4] Separation is not required by the fact that employees wear para-military uniforms in the course of their work, unless the employees involved meet the definition of "uniformed personnel" found in RCW 41.56.030(7). City of Winslow, Decision 3520-A (PECB, 1990).

public employers other than public hospital districts came under the interest arbitration procedure in 1985.[5] Of interest here, RCW 41.56.030(7) now includes:

> (7)(a) Until July 1, 1995, "uniformed personnel" means: ... **(vi) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.**
>
> (b) Beginning on July 1, 1995, "uniformed personnel" means: ... **(vii) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.** [1993 c 398 §1; 1992 c 36 §2; 1991 c 363 §119; 1989 c 275 §2; 1987 c 135 §2; 1984 c 150 §1; 1975 1st ex.s. c 296 § 15; 1973 c 131 §2; 1967 ex.s. c 108 §3.][6]

Under the 1993 amendments to the statute,[7] the petitioned-for paramedics come under both the interest arbitration procedure and the Commission precedents requiring separate units. Affiliated Health Service, supra, cited by the union, establishes the legal principle that it would not be appropriate to mix these employees into an existing bargaining unit of employees who are not eligible

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[5] See RCW 41.56.495, which was repealed by 1993 c 398.

[6] Chapter 18.71 RCW regulates the practice of medicine, including "paramedics". RCW 18.71.200(1), (2) and (3), describe "physician's trained mobile intravenous therapy technician", "physician's trained mobile airway management technician" and "physician's trained mobile intensive care paramedic", respectively. 1993 c 398 §6 repealed RCW 41.56.495, which had covered "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".

[7] RCW 41.56.030 was amended three times during the 1993 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

for interest arbitration. Thus, the employer's "unit" argument is legally unfounded and subject to summary dismissal.

The Cross-Check

The employer's objection to the cross-check procedure is based only on a general preference that a question concerning representation be resolved by a secret ballot election among the eligible voters. It did not advance any specific impediments to use of the cross-check procedure in this case.

The selection of a method for determining a question concerning representation is a matter delegated by the Legislature to the Commission. RCW 41.56.060. The Commission has adopted WAC 391-25-391, which specifies the circumstances under which a cross-check of employment records may be ordered. The rule provides:

> WAC 391-25-391 SPECIAL PROVISION--PUBLIC EMPLOYEES. Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that such organization has been authorized by a substantial majority of the employees to act as their representative for the purposes of collective bargaining, and the executive director finds that the conduct of an election would unnecessarily and unduly delay the determination of the question concerning representation with little likelihood of altering the outcome, the executive director may issue a direction of cross-check. The direction of cross-check and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590. [Statutory Authority: RCW ... 41.56.040, 41.58.050, ... 80-14-046 (Order 80-5), §391-25-391, filed 9/30/80, effective 11/1/80.]

Although cross-checks have been authorized by the statute since its inception in 1967, and the Commission's rules on cross-checks have

been in place for more than a dozen years, employers continue to oppose their use based on a general preference for elections. In City of Redmond, Decision 1367-A (PECB, 1982), the Commission endorsed a "70%" test for the "substantial majority" warranting a cross-check.[8] Employer objections on various grounds were rejected in a trilogy of cases decided by the Commission in 1990. Port of Pasco, Decision 3398-A (PECB, 1990); City of Centralia, Decision 3495-A (PECB, 1990); City of Winslow, Decision 3520-A (PECB, 1990). Clearly, an employer's general preference is not a basis to deny use of the cross-check procedure. Pike Place Market, Decision 3989 (PECB, 1992).

Examination of the petition and pre-hearing statement in this case indicates that the union has submitted the kind of substantial showing of interest required by WAC 391-25-391, and that the three positions challenged as supervisory are not sufficient to warrant a delay of the cross-check in a bargaining unit of 21 employees.

DIRECTION OF CROSS-CHECK

1. A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the appropriate 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.

    to determine whether a majority of the employees in that bargaining unit have authorized International Association of Fire Fighters, Local 3611, to represent them for purposes of collective bargaining.

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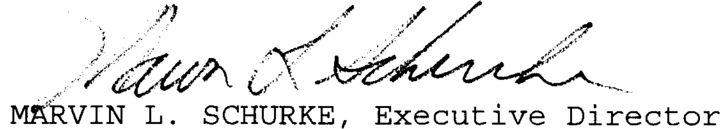
[8] The same case endorsed delay of eligibility determinations until after a cross-check, to avoid undue delay.

2. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees on the eligibility list stipulated by the parties.

Issued at Olympia, Washington, on the 16th day of February, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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