STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 6, Complainant, vs. SKAGIT VALLEY HOSPITAL, WHIDBEY GENERAL HOSPITAL, ISLAND HOSPITAL, and KITTITAS VALLEY COMMUNITY HOSPITAL, Respondents.	CASE NOS. 5955-U-85-1108 5956-U-85-1109 5957-U-85-1110 6017-U-85-1125 DECISION 2509-A - PECB DECISION OF COMMISSION

Hafer, Price, Rinehart and Schwerin, by Lawrence R. Schwerin, attorney at law, and Tom Nelson, attorney at law, appeared on behalf of the complainant.

Davis, Wright, Todd, Riese and Jones by Mark A. Hutcheson, attorney at law, with Larry E. Halvorson, attorney at law, appeared on behalf of respondents Skagit Valley Hospital, Island Hospital and Whidbey General Hospital.

Lofland and Associates, by Gary D. Lofland, attorney at law, appeared on behalf of respondent Kittitas Valley Hospital.

On August 28, 1985, Service Employees International Union, Local 6 (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission (PERC), alleging that Skagit Valley Hospital (Skagit), Whidbey General Hospital (Whidbey) and Island Hospital (Island) had violated RCW 41.56.140(1) and (4) by refusing to recognize and

bargain with the complainant as a successor union. On October 9, 1985, the same union filed a complaint with PERC containing similar allegations against Kittitas Valley Community Hospital (Kittitas). A hearing was conducted by Examiner William A. Lang on the consolidated matters. The Examiner issued a decision on October 20, 1986, finding violations of the Act. The employers petitioned for review, bringing the matter before the Commission. Briefs were filed in support of and in opposition to the petition for review.[1]

The factual background and other details of this case are fully covered in the Examiner's decision and are not repeated here.

ISSUES AND POSITIONS OF THE PARTIES

The central issue in this case is whether a question of representation exists as a result of the Licensed Practical Nurses Association of Washington State (LPNAWS) affiliating with Service Employees International Union, Local 6 (SEIU).

The respondent hospitals maintain that LPNAWS did not conduct its election on the affiliation question with sufficient "due process" safeguards, thereby depriving members of an adequate opportunity to vote on affiliation. Additionally, the respondents assert that the organizational changes were sufficiently substantial to defeat "continuity of representation" between LPNAWS before the affiliation, and the LPN Division of SEIU Local 6 afterward. According to the employers, this loss of continuity brings about the need for a representation election. SEIU Local 6 agrees with the findings and decision of the Examiner.

---

[1] The Commission previously denied the complainant's motion to strike the appeal brief filed by Kittitas.

DISCUSSION

We have reviewed the decisions cited and have applied the standards set forth in Financial Institutions Employees of America, Local 1182 (FIEA) vs. NLRB, ___ U.S. ___, 106 S.Ct. 1007, 121 LRRM 2741 (1986), and find that no question of representation exists. We therefore affirm the Examiner's conclusion that the employers have violated RCW 41.56.140(1) and (4).

RCW 41.56.140(1) and (4) read:

> 41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> * * *
>
> (4) To refuse to engage in collective bargaining.

In Financial Institutions Employees v. NLRB, supra, the Supreme Court provided direction helpful to the resolution of this case. Reviewing the decisions of the National Labor Relations Board (NLRB) and lower courts, the Supreme Court noted:

> [W]here an independent union decides to affiliate with a national or international organization . . . the Board's practice has been to grant such petitions if the Board found that the affiliation satisfied two conditions. First, that union members have had an adequate opportunity to vote on affiliation. North Electric Co., 165 NLRB 942, 943, 65 LRRM 1379 (1967). The Board

> ordinarily required that the affiliation election be conducted with adequate "due process" safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy, e.g., Newspapers Inc., 210 NLRB 8, 9, 86 LRRM 1123 (1974), enf'd, NLRB v. Newspapers, Inc., 515 F.2d 334, 89 LRRM 2715 (CA 5, 1975). Second, that there was substantial "continuity" between the pre- and post-affiliation union. The focus of this inquiry was whether the affiliation had substantially changed the union; the Board considered such factors as whether the union retained local autonomy and local officers, and continued to follow established procedures. If the organizational changes accompanying affiliation were substantial enough to create a different entity, the affiliation raised a "question concerning representation" which could only be resolved through the Board's election procedure. 1 Morris, supra, at 690; 29 CFR 101.17, 102.60(b) (1985). However, as long as continuity of representation and due process were satisfied, affiliation was considered an internal matter that did not affect the union's status as the employees bargaining representative and the employer was obligated to continue bargaining with the reorganized union. 1 Morris, supra, at 690-691; Universal Tool & Stamping Co., 182 NLRB 254, 259, 74 LRRM 1096 (1970).
>
> ___ U.S. at ___, 121 LRRM at 2745.

The viability and applicability of the NLRB's "continuity" requirement, as explained in the preceding quotation, is intensely debated by the parties in the instant case.

Although the Supreme Court expressly declined to directly rule on the continuity requirement in FIEA, supra, Local 6 points to language in the decision suggesting that continuity is an issue only to the extent there is evidence that the union lacks

majority support. For example, the Supreme Court states, ___ U.S. ___, 121 LRRM at 2646 (emphasis added):

> . . . a new affiliation may substantially change a certified union's relationship with the employees it represents. These changed circumstances may in turn raise a "question of representation," if it is unclear whether a majority of employees continue to support the reorganized union.

There are other parts of the FIEA opinion, however, which suggest that the "continuity" inquiry exists separate and apart from a "majority support" issue. We conclude that the Supreme Court's opinion is, at best, ambiguous in this regard.

We support the Supreme Court's observation, ___ U.S. at ___, 121 LRRM at 2746, that a decision:

> . . . must take into account that "[t]he industrial stability sought by the Act would unnecessarily be disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship." (Citation omitted).

Moreover, the Court reminds us of Congressional policy (which our Legislature has incorporated into our statutes) against outside interference into union decision-making and affairs. RCW 41.56.140(2).

Balanced against the policy of protecting union internal affairs, however, is the fact that, as the Court observed, ___ U.S. ___, 121 LRRM at 2748, an affiliation raising a question of representation may undermine "the Board's own election and certification procedures, (citation omitted)". We believe the continuity issue is relevant to the extent that displacement of

a certified exclusive bargaining representative by a wholly separate and distinct entity would undermine our own authority to certify bargaining representatives under RCW 41.56.070 and .080. Thus, in an appropriate case, the "continuity" criterion would allow us to balance the policy against interference in union affairs with our interest in preserving the integrity of the statutorily-sanctioned representation case process. Even then, we believe that our "hands off" policy with respect to internal union affairs, considered together with the general policy of promoting stability in the workplace compels us to treat the "continuity" issue with a great deal of caution. As the FIEA Court suggested, union reorganization may range from very minor changes to ones that are extremely significant. We will not be inclined to overturn a purported union affiliation because of lack of "continuity" unless the organizational change has been so extensive that a certified bargaining representative has been displaced by a wholly different organization, or unless other, more traditional evidence exists that the successor organization lacks majority support.

Due Process Safeguards

The respondents claim that the result of the voting - 189 favoring affiliation and 24 against out of 1,500 to 1,700 represented workers - demonstrates a lack of support for affiliation, and they call into question the sufficiency of notice and opportunity to discuss and vote on the issue. The Commission is persuaded otherwise. The many mailed, posted and newspaper notices that informed representatives and members of the convention action and pending employee vote, extending voting to non-members, and establishing 22 locations for discussion and voting, adequately met the required "due process" requirements of notice, opportunity to discuss and opportunity to vote. The actual number of people voting does not defeat these

efforts. As stated in North Electric Co., 165 NLRB 942, at 943 (1967):

> The decision by the Independent to Affiliate with the Petitioner was as democratic as possible and the fact that many employees chose not to attend the meeting in question cannot be considered significant.

While we certainly do not treat the fact of low voter turnout in this election lightly, we find it very significant that not a shred of evidence has been introduced which suggests any employee dissatisfaction with the balloting process and union safeguards attached to it. No employee has stepped forward to raise a question of representation, and not a single employee, out of the 1800 employees affected, testified that the notice, discussion or balloting process were possibly flawed, or that there is any dissatisfaction with the outcome.

The respondents' assertion that Aurelia Osborn Fox Memorial Hospital, 247 NLRB 356 (1980) required that elections be conducted on an individual bargaining unit basis is a misreading of that case. In fact, the NLRB stated in Fox that, "an affiliation vote is basically an international union matter".

The respondents challenge the affiliation based on an alleged lack of approval by the LPNAWS Economic Security Standing Committee. We do not find the alleged lack of approval to be fatal to meeting the voting requirements for affiliation. The record clearly shows that this committee was not a vital and active body within LPNAWS.

Continuity of Representation Issues

The respondents' major focus is on the differences between LPNAWS and its post-affiliation identity as the LPN Division of

SEIU Local 6. While the examples given to illustrate the "discontinuity" of representation are many in number, they can be assigned to three basic categories: 1) changes in officers and staff, 2) loss of autonomy, and 3) organizational and administrative differences.

Changes in Officers and Staff -

Considerations assigned to this category all basically assert that the officers and representatives of the LPN Division of SEIU Local 6 are much different that they were at LPNAWS. Part of the charge related to individuals who no longer have any role in the combined organization and part to those who have different roles in the LPN Division. The items identified by the employers are:

- The officers of the LPNAWS and Local 6 are not same.
- Only one-fourth of the LPNAWS staff was employed on a regular basis by Local 6.
- McGarvie, who served as executive director of the LPNAWS for 17 years, continued in this capacity with the LPNAWS following the affiliation, thus depriving the membership of her leadership in collective bargaining affairs.
- Under the LPNAWS, McGarvie decided whether to arbitrate grievances.
- The key person responsible for the collective bargaining function changed as a result of the affiliation.
- The LPNAWS had an executive board which consisted of six directors, none of whom serve in Local 6.
- The LPNAWS had an executive committee consisting of five members, only one of whom serves in any capacity with Local 6.
- Local 6 did not hire all former LPNAWS staff as business representatives.

Our review of the changes in officers and staff does not produce a picture of great differences. The LPN Division of Local 6 has an executive board made up of the same individuals who were executive board members for LPNAWS. The Division's executive board operates and decides issues in much the same way following affiliation as before. While the board does not consider bargaining issues to any great extent, neither did it do so prior to the affiliation.

Among the paid staff, most of the differences noted are the result of retirements and new hirings. Bossen, who had been part-time Treasurer for LPNAWS, has had no connection with Local 6, but several other LPNAWS leaders can be accounted for. McGarvie, who had been LPNAWS Executive Director, has retired since the affiliation. Farrel, who was LPNAWS Assistant Executive Director, is now the Coordinator of the LPN Division for Local 6. Kasserman, who was LPNAWS Office Manager, worked for Local 6 for six months following the affiliation and then retired. Mitchell and Riley, who had been active in LPNAWS, were hired after the affiliation as business agents for Local 6 assigned to the LPN Division. In addition, other Local 6 business agents have lent assistance, for training purposes, to LPN Division negotiations and contract administration.

The Commission finds that the concerns raised by the respondents do not accurately describe the limited degree of change that actually resulted from the affiliation. LPNAWS officers and personnel are, in fact, very well represented among the staff of the LPN Division of SEIU Local 6.

Loss of Autonomy -

Considerations assigned to this category all basically assert that the LPN Division and its members have a greatly reduced

ability to make independent decisions. The items identified by the employers are:

- The LPNAWS did not maintain its autonomy as a labor organization following the affiliation. Rather, the LPNAWS continued as a separate and autonomous professional organization.

- The Constitution and Bylaws of the LPNAWS and Local 6 and the Service Employees International Union are significantly different and thus the rights and obligations of the members have changed dramatically as a result of the affiliation.

- The president of SEIU has authority to negotiate contracts for Local 6, thus taking away the right previously enjoyed by members of the LPNAWS to negotiate their own contracts.

- There is no economic security program or committee following affiliation.

- Under the LPNAWS, McGarvie decided whether grievances would be arbitrated whereas, under Local 6, the Executive Board makes such decisions.

- There is no structural separation for employees formerly represented by LPNAWS and decisions affecting licensed practical nurses are not controlled by the Board of Directors of the LPN Division of Local 6.

- Bargaining decisions made by the LPN Division can be overridden by the SEIU International.

In summary, the respondents claim that officials of SEIU Local 6 and the SEIU International Union have decision-making and override authority that was exclusively internal within LPNAWS.

Our review of the record discloses that the autonomy question breaks down into the two areas that defined LPNAWS purpose: collective bargaining, and advancement of the profession

(including education). A conscious decision was made during the affiliation process to have Local 6 assume responsibility for bargaining while retaining educational and professional advancement functions in the post-affiliation LPN Division. There is substantial documentation in the record, starting with the affiliation document itself, showing that the LPN Division is designed to be highly autonomous within Local 6. The LPN Division Executive Board sets policy and direction for the LPN Division. All of the assets, funds, furniture and equipment of LPNAWS is retained by the LPN Division. The argument that there is a "potential" for domination of the educational and professional advancement functions by Local 6 is neither well-founded nor persuasive. Operating from their perspective outside of the organization, the employers have not presented any reason (other than speculation) as to why Local 6 would not allow the LPN Division to act autonomously or identified any action the LPN Division might reasonably take that Local 6 would find offensive and act to change.

Contrary to the respondents' view, the post-affiliation structure appears to allow the LPN Division to operate autonomously while allowing the division some say in how Local 6 is run. While no pre-affiliation Local 6 officers sit on the LPN Division Executive Board, LPN Division members do sit on Local 6's eighteen-member Executive Board and one LPN Division member sits on Local 6's six-member Board of Trustees.

The area of greatest change occasioned by the affiliation is the transfer of bargaining responsibility from LPNAWS to Local 6. Employees of Local 6 now handle contract negotiations and grievance hearings for the LPN Division, but this change is not as great as it might at first appear. The authority to accept or reject what has been negotiated has been retained by the LPN Division members. Further, the chief business agent assigned

by Local 6 to the LPN Division is the former LPNAWS Assistant Executive Director and chief negotiator, and two other business agents assigned to the LPN Division are former LPNAWS leaders.

Organizational and Administrative Differences -
Considerations assigned to this category all point to differences in the ways the affairs of the organization are handled, resulting in changes that affect the membership. The items identified by the employers are:

- The total membership of the LPNAWS before the affiliation was approximately 1,500 - 1,700. In comparison, Local 6's pre-affiliation membership exceeded 5,000 and SEIU's membership exceeded 850,000.
- There were nine classes of membership under the LPNAWS Bylaws, which no longer exist as a result of the affiliation.
- Membership dues increased by one or two dollars per month as a result of the affiliation.
- The LPNAWS was divided into four sections, which included hospital, institutional, long-term care, and office nurses. Local 6, on the other hand, recognizes no such sections.
- The "counsel" form of administering collective bargaining agreements under the LPNAWS is nonexistent as a result of the affiliation.
- The LPNAWS had no non-health care members prior to the affiliation. Local 6, on the other hand, had only 200 LPN members prior to the affiliation, and had no bargaining units which consisted exclusively of LPNs.
- The LPNAWS had only two representatives negotiating and administering collective bargaining agreements, whereas Local 6 has ten such business representatives on its staff. In addition, representatives from the International occasionally serve as chief spokesman for Local 6 in contract negotiations.

The concerns which the respondents seek to raise in this area are matters of internal union affairs which have no legitimate place in proceedings before the Commission. Such matters are properly raised, if at all, by local union members under the constitution and by-laws and internal procedures of the union.

Conclusions

In affirming the Examiner's decision, the Commission notes that the LPNAWS sought out affiliation with a larger labor organization because of a loss of membership to other, larger unions. The concerns which led to the decision and the object of securing the strength and viability of the organization were both lawful. The affiliation was properly accomplished.

NOW, THEREFORE, It is

ORDERED

1. The findings of fact, conclusions of law and order issued by Examiner William A. Lang are affirmed and adopted as the findings of fact, conclusions of law and order of the Commission.

2. Each of the respondents shall notify the Executive Director of the Public Employment Relations Commission, within thirty (30) days following the date of this order, as to what steps it has taken to comply herewith and

shall, at the same time, provide a signed copy of the notice required.

Issued at Olympia, Washington, this 18th day of June, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARK C. ENDRESEN, Commissioner

JOSEPH F. QUINN, Commissioner