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, KITTITAS VALLEY COMMUNITY HOSPITAL, Respondents.	)	CASE NOS. 5955-U-85-1108 5956-U-85-1109 5957-U-85-1110 6017-U-85-1125 DECISION NO. 2509 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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 E. 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 similar allegations against Kittitas Valley Community Hospital (Kittitas). A hearing was conducted on the consolidated matters in Bellevue, Washington, on December 20, 1985 and January 23 and 24, 1986, before William A. Lang, examiner. The parties submitted post-hearing briefs.

BACKGROUND

Service Employees International Union (SEIU), Local 6 is a labor organization and a "bargaining representative" within the meaning of RCW 41.56.030(3).

The respondents are public hospital districts organized pursuant to RCW 70.44.003, et seq., and are "public employers" within the meaning of RCW 41.56.030(1).

The Licensed Practical Nurses Association of Washington State (LPNAWS) has acted as a "bargaining representative" within the meaning of RCW 41.56.030(3) in collective bargaining relationships with each of the respondents. The bargaining relationships date from 1968. LPNAWS and each respondent were parties to separate collective bargaining agreements. In the case of Kittitas, the agreement was to expire on June 30, 1985. For the other respondents, the agreements were to expire on December 31, 1985. Each agreement contained provisions for union security and for reopening of negotiations for successor agreements.

In recent years LPNAWS had become concerned that its professional role was being undermined by the demands of administering its economic security (labor relations) program. The union was also worried about the potential loss of members from "raiding" by other labor organizations. Acting on these concerns, the executive board of LPNAWS appointed a "search committee" to investigate the possibility of affiliation with a larger union. After discussions with representatives of five national unions, the committee recommended in a report to the executive board dated February 15, 1985 that the LPNAWS should affiliate with the SEIU. After discussion, the LPNAWS executive board unanimously agreed to seek affiliation with SEIU Local 6 "for the purposes of collective bargaining". The executive board also directed that a committee be formed to develop an affiliation agreement.

In April, 1985, the LPNAWS membership was notified through the LPNAWS newsletter, The LPN Connection, that a resolution on affiliation with SEIU

Local 6 would be voted at the annual LPNAWS convention scheduled to be held in May, 1985.

At the LPNAWS convention, the delegates approved the affiliation proposal by a vote of 70-3. Additionally, they voted to delete collective bargaining functions from the LPNAWS bylaws. The delegates elected LPN members to serve on the various boards of Local 6.

After the convention, during the period between June 17, 1985 and July 3, 1985, the LPNAWS and Local 6 conducted special meetings at 22 sites around the state. Employees represented by LPNAWS were afforded the opportunity to vote at those meetings, by secret ballot, on ratification of the convention actions concerning affiliation of LPNAWS with Local 6. With respect to the four hospitals at issue in this case, the record shows that the vote at the sites involved was as follows:

Skagit: 5 employees voted, with a majority favoring affiliation.[1]

Island: 5-4 in favor of affiliation.

Whidbey: 8-0 in favor of affiliation.

Kittitas: No employees voted.

The overall result for all bargaining units statewide favored affiliation by a vote of 189 to 24.

As a consequence of the overall vote, a formal affiliation agreement was signed on July 11, 1985. LPNAWS was to affiliate with Local 6:

> ...(I)n such a manner that all of its members in collective bargaining units now represented by LPNAWS shall,

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1 The overall vote at the meeting, including ballots cast by employees from other hospitals, was 6-2 in favor of affiliation.

> upon ratification of the convention action, become members of Local 6 effective upon date of ratification and will be assigned to the LPN division which Local 6 agrees to establish within its organizational structure.

The agreement vested "all rights, privileges, benefits, duties and responsibilities" held by the LPNAWS pursuant to bargaining unit certifications and collective bargaining agreements "in Local 6 and ... its LPN Division".

Under the terms of the affiliation agreement, Local 6 agreed to create an LPN division within its organization. It agreed to assign two business agents (at least one of them a licensed practical nurse) to service LPN collective bargaining agreements. Further, Local 6 agreed to assign one additional business agent (also a licensed practical nurse) for the first year of affiliation. Specific provisions were made for employment of certain LPNAWS employees by Local 6 at salaries comparable to those of other Local 6 staff members, including past service credit in the SEIU Affiliates Pension Plan. Local 6 agreed to amend its bylaws to have its executive board include three licensed practical nurses, to have its board of trustees include one licensed practical nurse and to create an "LPN Division Board" composed of eight licensed practical nurses.

Under the terms of the affiliation agreement, LPNAWS was to continue in existence, retaining its assets and complete autonomy to handle professional and educational functions. To finance this autonomy, LPNAWS was to receive $2 per month from Local 6 for each licensed practical nurse who is a member of Local 6. Licensed practical nurses were given dual membership in both Local 6 and LPNAWS.[2] After the transfer of bargaining duties to Local 6, LPNAWS agreed not to engage in collective bargaining activities.

On July 12, 1985, the executive director of LPNAWS notified each of the respondent hospitals, by letter, that LPNAWS members had voted overwhelmingly to ratify its convention action to affiliate with SEIU Local 6. The hos-

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2 LPNAWS members also were and continue to be members of the National Association of Practical Nurses Education Services (NAPNES).

pitals were informed that the "change resulted in passage of the collective bargaining duties to the Service Employees International Union, Local 6". It also advised the hospitals that former LPNAWS staff members were now employed by Local 6.

On August 1, 1985, Local 6 notified each hospital that, under the affiliation and collective bargaining agreements, licensed practical nurses would pay specified amounts as dues to Local 6. Local 6 requested that the dues be remitted to its Seattle office.

On August 6, 1985, Local 6 advised each hospital that it wished to open negotiations on a successor contract. It also requested information relating to name, address, rate of pay and job description for each employee in the bargaining unit and copies of all insurance plans and their costs.

Over the next month, Skagit, Whidbey and Island, in similarly worded letters, acknowledged the requests made by Local 6 but refused to recognize, negotiate with, remit membership dues to or supply information to Local 6.

Kittitas opened negotiations with Local 6. After one session on July 3, 1985, at which Kittitas tentatively agreed to recognize Local 6 as the exclusive bargaining representative of its licensed practical nurses, the hospital informed Local 6 on August 7, 1985 that it would no longer meet with Local 6 until questions regarding representation were answered. On September 5, 1985, Local 6 advised the hospital that "in the interest of harmony", it would respond to the questions raised. On October 1, 1985, Kittitas informed Local 6 that it would not bargain with Local 6 until there was a "valid secret ballot election".

On August 13, 1985, a business representative of Local 6 attempted to meet with licensed practical nurses in the cafeteria at Skagit Valley Hospital, but the administrator was not available to give permission and the meeting did not take place.

On August 29, 1985, the personnel director at Whidbey General Hospital denied the Local 6 business representative access to the cafeteria to meet with licensed practical nurses.

DISCUSSION

Local 6 has filed "refusal to bargain" unfair labor practice charges as a result of the employer conduct noted above. The refusals by the employers to carry on with the historical bargaining relationships are fairly obvious. The cases turn, however, on the question of whether the hospitals have a duty to recognize and bargain with SEIU Local 6 as a successor union to LPNAWS.

Public Employment Relations Commission precedent on affiliation questions is limited to Pierce County, Decision 2209 (PECB, 1985). That case involved the merger of one local union into another local of the same international union. PERC inquired there into whether there were adequate procedural safeguards in the conduct of the affiliation vote and whether the successor union had changed sufficiently as to raise a question concerning representation.

The federal policy on such matters was stated by the Supreme Court of the United States in its February 26, 1986 decision in Financial Institutions Employees v. NLRB, 106 S. Ct. 1007 (1986) affirming and remanding 740 F.2d 1483 (9th Cir, 1984). In that unanimous decision, the Court recognized a long-standing federal policy to avoid unnecessary intrusion into internal union affairs, to give meaning to rights of employees to select their representatives without interference. Accordingly, it upheld the making of only a limited inquiry into the due process aspects of affiliation transactions and the continuity of representation.

Due Process of Affiliation

Both the complainant and the respondents acknowledge that the National Labor Relations Board (NLRB) has required that affiliation elections be conducted

with adequate "due process" safeguards, including notice of the election to all members, an adequate opportunity to discuss the elections and reasonable precautions to maintain ballot secrecy. Financial Institution Employees, supra. Local 6 argues, generally, that the affiliation procedures were fair and sufficient. The respondents, on the other hand, argue that the affiliation procedures were flawed. Specifically, the employers argue that the low voter turnout indicates a lack of sufficient notice, that the procedure was deficient because separate ballots were not conducted at each hospital, and that the vote did not meet minimum standards of secrecy.

Sufficiency of Notice -
The LPNAWS conducted two separate election processes on the question of its affiliation with SEIU Local 6. The first election was conducted at the annual convention of the organization, in accordance with the LPNAWS bylaws. The second election, held beyond the requirements of the LPNAWS bylaws, submitted a question of ratification of the convention action to bargaining unit members. The record gives the overall impression that the members of LPNAWS were kept fully informed of the progress of the affiliation question.

The January, 1985 issue of The LPN Connection, which is the official publication of the LPNAWS mailed to each member, reported the need for affiliation and the executive board's action to investigate the matter. The members of the LPNAWS were thus informed from the very beginning that the executive board was contemplating affiliation.

Although the general membership may not have been made aware of the contents of the search committee report simultaneous with its February 15, 1985 delivery to the LPNAWS executive board, LPNAWS district presidents and bargaining unit chairpersons were invited to a special meeting held on February 22, 1985 to discuss affiliation with SEIU Local 6.[3] At the same time, those district and bargaining unit officials were advised that repre-

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3 The LPNAWS bylaws require that notice of proposed amendments be given to district presidents at least 45 days prior to the convention meeting. The record thus indicates this requirement was met.

sentatives from LPNAWS would be available to discuss affiliation at district meetings.

The April issue of The LPN Connection contained the "official call" to the May, 1985 annual convention. That edition of the newsletter detailed the need of LPNAWS to affiliate with a larger union to protect itself against raids, the need for financial support and expertise, and the need to create more time for professional matters. Also included in the April issue of The LPN Connection was a copy of the terms of the proposed affiliation agreement (including the level of higher dues), several pages of questions which had been asked at district and bargaining unit meetings together with responses, and a copy of the proposed resolution supporting affiliation.

The affiliation question was discussed and voted at the LPNAWS convention. The record establishes that a bylaw requirement for a 2/3 vote of the delegates present and voting was met in connection with the amendments adopted at the convention. The actual percentage favoring affiliation was 95.89%.

The election conducted following the convention exceeded the requirements of both the LPNAWS bylaws and NLRB precedent. In Aurelia Osborne Fox Memorial Hospital, 247 NLRB 356 (1980), the Board upheld the validity of an affiliation accomplished solely by convention action, without a membership vote.

Respondents contend, based on the low voter turnout in the ratification election, that there was inadequate notice. The examiner disagrees. The record is more than sufficient. Notice of the ratification vote was given in the May, 1985 post-convention issue of The LPN Connection. The newsletter also informed the members that:

> The final decision will be made by individual vote of bargaining unit members who will cast ballots at special meetings held in convenient locations throughout the state. These ballots will be counted on-site and a running tally will be kept as the units vote. Determination by the final tally is expected to be completed by July.

On June 3, 1985, all bargaining unit members were invited, by individual letters mailed to their homes, to attend one of 22 "specifically called meetings" listed on the back of the letter "to help decide whether or not to ratify the action of the delegates at the 1985 convention regarding affiliation with SEIU Local 6". The employees were notified that representatives of Local 6 and LPNAWS were to be present to discuss affiliation. The members were also informed that "ballots would be counted at the end of each individual meeting and a tally of all eligible ballots would decide the issue". Non-members were encouraged to attend.

On June 4, 1985, unit chairpersons were supplied with posters to place on hospital bulletin boards to inform employees of the date, time and place of the meeting and election for their unit. The posters contained large, bold print headlining:

"SPECIAL NOTICE, LPNA SEIU AFFILIATION RATIFICATION MEETING"

They invited members and non-members to attend and vote. Unit chairpersons were also asked to find at least two persons to tally the vote, and to make efforts to "get those in their hospitals out to vote" at one of the meetings in their area.

About three days prior to the meetings, paid advertisements were placed in newspapers in the Whidbey Island, Anacortes, Ellensburg and Seattle areas. Those advertisements gave notice of the dates, times and places of the affiliation votes. The ads also encouraged non-members to attend.

Lists of eligible voters were prepared for each site from information received from the employers.

The voting was conducted by secret ballot. Those voting were asked to sign the voter list and a separate list. They were allowed to read the affiliation agreement and discuss it prior to voting. The ballot offered a "YES" or "NO" vote on: "to ratify the LPNAWS convention action to affiliate with

SEIU, Local 6". At the end of each meeting, the ballot box was opened and the observers tallied the vote.

Based on this substantial effort to involve members and non-members in the affiliation vote process, the examiner concludes that the record evidences adequate notice of the affiliation.

Opportunity of Discuss -
With the advance notice, beginning with the January, 1985 issue of The LPN Connection that the LPNAWS executive board was considering affiliation, the membership had more than sufficient opportunity to discuss both the idea of affiliation and the specifics of the proposal to affiliate with Local 6. Special district meetings were scheduled to discuss the affiliation. Affiliation discussions also took place at regular district meetings wherein delegates to the May, 1985 convention were elected. There is additional evidence of bargaining unit meetings to explore affiliation. At the convention, delegates had a full discussion of affiliation prior to the vote. The record, with respect to the information given delegates and members prior to the convention and with respect to the scheduling of speakers for questions and answers at district meetings and at the convention, fully supports this conclusion.

After the convention, bargaining unit members received notice of an additional opportunity to discuss the effects of the affiliation. That information was made available to employees by individual letters, by posters at their work place and by newspaper advertisements.

Contrary to respondent's contention that the poor voter turnout belies the claimed effort, the examiner takes official notice that union meetings are usually not well attended. In the case at hand, the members were solicited to vote on ratification of a convention action as to which there had evidently been little controversy and an overwhelming vote favoring affiliation. This kind of vote is not, as respondent's urge, similar to a representation election conducted by the Commission, nor was it intended as a substitute for

such. The record in this case shows adequate notice of the meetings and of the opportunity for discussion of the issue at those meetings. In the context of the opportunities for discussion at the district meetings leading up to the convention and at the convention itself, it is concluded that there was ample opportunity for discussion of the affiliation issue.

The respondents have failed to produce any evidence showing that the affiliation vote did not reflect the view of a large majority of the employees concerned. Evidence that six members in one hospital voted against ratification and evidence that none voted in another hospital is of little import when the overall vote at convention was 70-3 and the ratification vote was 189-24.[4] The overwhelming votes at the convention and for ratification of the convention action are not evidence that opposition was silenced. In fact, no one in any bargaining unit is shown to have come forward to oppose the results. The examiner must, therefore, conclude that the LPNAWS decision to affiliate enjoyed the overwhelming support of its members.

Ballot Secrecy -

The record indicates that the delegates at the convention and the unit members at the 22 meeting sites all voted by secret ballot. The respondents do not challenge the convention vote, but contend that the ratification vote was flawed because in several instances tally sheets breached ballot secrecy.

The record shows that individual tally sheets were kept at each voting site. Ballot boxes were opened prior to the election to show that they were empty, then locked. After voting was completed at each site, the ballots were

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4 The respondent's arguments in this regard confuse the organization-wide ratification of the convention action with unit-by-unit representation elections. The record shows no requirement or intent to condition ratification of the affiliation by elections at each hospital. Many of the 39 units were grouped together at 22 sites. Taken on a unit-by-unit basis, the vote favored ratification at Skagit, Whidbey and Island. Moreover, at Kittitas, where none of the employees voted, the employer initially recognized Local 6 as the successor union without an election. Only later did Kittitas rescind this recognition by raising questions and refusing to bargain.

counted and tallied. The names on the attendance and tally sheets did not breach secrecy any more than do signatures on the poll books at a civil election. Obviously, where only one employee voted or where the vote was unanimous (as it was in a number of instances) the way in which a particular employee had voted would also be determined. But that would be true in any unanimous election, including an election conducted by PERC under traditional "laboratory conditions". This would not compromise the ballot or impugn its integrity.

The NLRB does not require adherence in internal union elections to the same strict standards as it requires for representation elections. Bear Archery, 223 NLRB 1169 (1976). The examiner concludes on this record that the union took reasonable steps to assure a fair vote on the ratification of the LPNAWS convention action to affiliate with Local 6.

Breach of Fiduciary Obligations -

The respondents allege that the LPNAWS staff misrepresented material facts and failed to seek legal advice prior to the affiliation, because of personal financial gain that they would receive as individuals from affiliation. The respondents also argue that the search committee's recommendation to affiliate with SEIU (and not Local 6 of SEIU) was ignored.[5]

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5 This subject is considered here in the context of the "due process" inquiry called for by PERC and NLRA precedent in affiliation situations. A search of the docket records of the Commission fails to disclose any representation case filed by disgruntled employees formerly represented by LPNAWS. Nor is there record of any "breach of duty of fair representation" or other unfair labor practice charges initiated by bargaining unit employees against LPNAWS, Local 6 or any of the officers or employees involved. The standing of the employer(s) to file any such unfair labor practice charges must be seriously questioned in light of Spokane County Health District, Decision 2445-A (PECB, October 3, 1986), where the Commission affirmed dismissal of unfair labor practice charges in which an employer sought to assert rights of employees under a "civil service" system. See also: Brooks v. LRB, 348 U.S. 96 (1954), wherein the court did not allow employer to rely on employees' rights in refusing to bargain.

The respondents' insinuations exaggerate the record. The affiliation agreement at issue in this case was patterned after similar agreements between licensed practical nurse organizations and the SEIU in Massachusetts and New York. That current staff is hired by the successor union is common practice in merger and affiliation situations. Continuity of representation is a legitimate business concern of the successor union when it hires the staff of its predecessor.

The fact that former LPNAWS staff members thereafter received the same salaries and benefits, including pension credit for past service,[6] as are given to staff of Local 6 is logical, customary and perhaps even required by law.[7] That the salary and benefits were higher is not surprising. LPNAWS was a small, independent organization whose finances could not afford either higher salaries or a pension plan. The fact that the executive staff was hired and received past pension credit was publicized in newsletters calling the delegates to the convention and was specified in the proposed affiliation document. Contrary to what the respondents' arguments would imply, these matters were in the open and were available for discussion.

The respondents' claim that the prospect of financial gain caused the LPNAWS staff to refrain from seeking legal advice on affiliation is not supported. McGarvie served as resource to the search committee. But the search committee itself was appointed and controlled by the LPNAWS executive board, who are elected by the membership and are entrusted with policy decision-making for the organization. The search committee was authorized by the executive board to seek legal advice. Apparently, the officers did not find legal advice needed because the executive board could have either required the committee to consult attorneys when the committee made its report or could have consulted attorneys themselves. There is no evidence or argument that

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6 In this case, between 3 and 17 years.

7 The record discloses that at least the clerical staff of Local 6 is represented for the purposes of collective bargaining by another labor organization, such that an employee transferred into that bargaining unit would be entitled to the rights and benefits of that contract.

those officers received financial gain. Furthermore, the respondent's brief admits substantial advantage from the affiliation. They do not argue that the LPNAWS made a "bad deal".

The argument that two members of the search committee benefited from affiliation, and that they changed the recommendation to affiliate with SEIU to Local 6, is barely worthy of comment. Although the record shows that two members of the search committee were later hired by Local 6 as business representatives, the connection is remote. The search committee was asked to investigate three unions; they, in fact, interviewed five unions. The representatives of Local 6 that were interviewed included a representative from the SEIU international union. It is clear from the report of the search committee that the recommendation was to affiliate with Local 6. At any rate, the committee merely reported their recommendation to the executive board. The affiliation with Local 6 was approved by the executive board and by the convention. After the convention voted to affiliate with Local 6, the president announced to the convention delegates that Local 6 was taking applications for the two business representative positions called for by the affiliation agreement, where credentials as a licensed practical nurses were to be required. Four persons applied; one was not physically qualified; another later withdrew. The two that were selected had prior experience as representatives in the LPNAWS collective bargaining program.

The examiner has carefully considered the allegations because the breach of fiduciary obligation is a matter of serious concern. There is simply no evidence short of insinuation that there was such a breach.

Continuity of Representation

The employers contend that the affiliation of the LPNAWS with SEIU Local 6 has resulted in a sufficient loss of identity to the exclusive bargaining representative to raise a question of representation, so that there is no obligation on the employers to bargain until an election is conducted by the Commission. On the specific facts here present, the respondents argue that

the affiliation transaction was more like a sale of bargaining rights from one organization to another. Using criteria from a number of federal precedents, the respondents urge comprehensive comparisons between the pre- and post-affiliation organizations. Thus, by numerical analysis,[8] they argue that the 1500 member LPNAWS has lost its identity and voice through merger into the 5000 member Local 6 and 850,000 member Service Employees International Union. Respondents contend the change in officers, constitution and bylaws[9] has made substantial inroads in local autonomy effectively removing the LPN voice and authority to make decisions on important matters such as strikes, dues, and contract negotiations. Respondents also contend that, through the amendment of its bylaws to delete its labor relations function, the LPNAWS abandoned its certification prior to affiliation, the effect of which would be to leave the employees without any representation.

The union argues that the affiliation procedure resulted in a sufficient continuity of the bargaining representative to make the affiliation an internal union matter. The union resists detailed analysis of the situation, contending that such a process would violate the long-standing policy of judicial restraint in interfering with union self-government.[10] In the alternative, Local 6 urges a policy which would eliminate the "continuity" standard in favor of simply examining whether the affiliation reflected the true desires of the membership. Under the latter view, no question concerning representation would arise if the change of representatives occurred with adequate safeguards. Local 6 argues that the respondents' licensed practical nurses supported affiliation, because they neither complained of nor took any action opposed to it.

The status of exclusive bargaining representative is a special one created and governed by statute. In its more important aspects the relationship of

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8 Sun Oil, 576 F.2d 553 (3rd Cir. 1978).

9 NLRB v. Bernard Gloeckler NorthEast Co., 540 F.2d 197 (3rd Cir. 1976); United Association v. Local 334, 452 US 615 (1981).

10 Financial Institution Employees, supra.

the exclusive bargaining representative to the employer is unique and evolving. Under Borg Warner, 356 U.S. 342 (1958), the Supreme Court delineated areas of responsibilities which labor and management have to each other and those which are exclusively reserved to those parties separately. The latter have been the subjects of recent Commission decisions. In City of Yakima, Decision 2387-B (PECB, 1986), the right of an employer to appoint its manager and control its internal structure was affirmed. On the other hand, in Spokane County Health District, supra, the employer had no standing to assert rights of employees as against their union.

The Supreme Court did not specifically address in Financial Institution Employees, supra, the issue of whether "continuity of representation" determinations exceeded the NLRB statutory authority. While suggesting that such determinations may be within board authority, the court would not permit

> an employer to invoke a perceived procedural defect to cease bargaining even though the union succeeds the organization the employee chose, the employees made no effort to decertify the union and the employer presents no evidence to challenge the union's majority status.

In the case at hand, the employers have repudiated their collective bargaining relationships and refused to bargain because the exclusive bargaining representative has changed its internal structure to affiliate with a larger organization. This action would seem to violate two fundamental principles in labor relations. First, it destabilizes the collective bargaining relationship; secondly, it interferes in the internal affairs of a union to choose its own representatives, in violation of judicial restraint in these matters. Setting aside arguments based on policy and legal precedent, the examiner will first consider the question of whether, on the facts of this case, there is a continuity of representation.

The Form of the Transaction -

The respondents characterization of the affiliation of the LPNAWS with Local 6 as a "sale" of bargaining rights is not persuasive. This argument is based on the allegation, discussed above, that certain officers and employees were

motivated by financial benefit, in breach of their fiduciary obligations. As the examiner finds no merit to the employer's insinuations concerning financial benefit to LPNAWS leaders, the examiner is not persuaded that there was the element of "consideration" required to view the transaction as a "sale".

The LPNAWS continues to exist as an autonomous professional organization with its own bylaws and officers, albeit with its labor relations functions dissolved. The respondents attack that arrangement, arguing that an affiliation neither creates a new organization nor results in the dissolution of an already existing one. Financial Institution Employees, supra. These arguments based on the form of the affiliation are also not persuasive. That the disputed transaction does not fit definitions used in precedents does not alter the reality that LPNAWS was a multifunctional organization to begin with. It designed an arrangement suitable to its needs. Under the former arrangement, the LPNAWS convention elected its officers to set policy over both the professional and labor relations aspects of LPNAWS activities. The affiliation of LPNAWS with Local 6 split those responsibilities between ongoing professional activities under the existing LPNAWS board and ongoing labor relations activities under a new board. In any event, both boards are elected by the LPNAWS convention. The members have dual membership in both organizations. Part of the dues are earmarked for professional concerns administered by LPNAWS which, although affiliated, maintains its own offices (in the Local 6 building) and autonomy for those purposes. The remainder of the dues support the labor relations functions administered through the LPN division within Local 6. It is only the labor relations aspect which comes under the purview of PERC. The changes have not been sufficiently dramatic to raise a question concerning representation. Further, it is abundantly clear that there was never any intent to abandon the labor relations activity, as the respondents claim was done. If anything, the record fairly indicates that the employees were seeking improved collective bargaining, not a move to unrepresented status. The respondents' arguments take on the appearance of opportunism, seeking in the words of the Supreme Court to "invoke a procedural defect to cease bargaining".

The LPN Division -

The LPN division of Local 6 was specifically established to service the 35 or so bargaining units formerly represented by LPNAWS, and it provides a continuity of structural separation of representation to employees heretofore represented by LPNAWS. Labor relations policy and decisions are controlled by the board of directors of the division, who are elected by delegates to the LPNAWS convention, thereby retaining control by the membership.

Bargaining Table Personnel -

The respondents contend that affiliation changed the representation of the licensed practical nurses, substituting 10 business agents for the one who serviced the bargaining units in the past, and thereby greatly reducing continuity. This analysis is factually inaccurate. Prior to the affiliation, Sharron Farrell was the assistant executive director of LPNAWS. Farrell negotiated and administered virtually all of the collective bargaining contracts. The executive director of LPNAWS helped out with three or four of the units. After affiliation, Farrell was retained by Local 6 as coordinator of the LPN division, and was personally responsible for 14 or 15 contracts. Local 6 hired two additional business representatives to assist Farrell. As noted above, the affiliation agreement called for hiring of licensed practical nurses for those positions, applications for the two positions were solicited at the LPNAWS convention, and the two individuals selected had been leaders in LPNAWS activities. Those new business representatives are being trained by other Local 6 business agents, including Doug Kilgore, who was an LPNAWS business representative until laid off in 1982. In all, seven out of the ten representatives employed by Local 6 are not assigned LPN units.

Bargaining Unit Authority -

The affiliation has not changed bargaining unit control over their affairs. Each unit in the LPN division of Local 6 retains authority to determine proposed amendments to their contract. Each unit continues to select among its members those who will sit at the bargaining table with the business representative. After negotiations are completed, the unit alone continues

to decide to ratify or reject changes negotiated in the agreement. Only bargaining unit members would vote on whether to strike.[11]

In Aurelia Osborne Fox Memorial Hospital, supra, the NLRB dealt with the affiliation of the LPN association in New York with the SEIU. The NLRB determined that continuity existed, based on findings that the LPN association was chartered as a separate local of the SEIU (retaining its officers, property, dues, staff and control over negotiations), and that the SEIU had expressly waived Article VIII Section 1(f) of its constitution (which gave the SEIU president authority to negotiate contracts for its locals). The respondents argue here that the LPNAWS affiliation with Local 6 has major differences because Article VIII was not waived, because the division is represented by new officers and because LPNAWS no longer controls its dues. The differences must be evaluated in light of the importance of giving effect to the employees' desires. In Quemetco, 226 NLRB 1398 (1976), the Board upheld the merger of an independent union with the Teamsters Union where the transaction resulted in a complete loss of identity of the certified union (i.e., the substitution of a new and different union with its own constitution, bylaws, officers and dues structure), transmittal of all dues to the Teamsters local, and a complete change of representatives, including shop stewards. In spite of the virtually complete lack of "continuity" the NLRB reversed its administrative law judge's determination as a "meaningless technicality which totally ignores the desires of the employees". On review of the record in the instant case, the examiner finds substantially greater evidence of continuity of representation than was deemed sufficient by the NLRB in Quemetco.

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11 The bylaws of Local 6 make bargaining unit authorization of a strike subject to review by the president of Local 6 and by the international union for legality. The potential for denial of strike sanction may reduce independence formerly enjoyed by these bargaining units, although the point may be academic in light of RCW 41.56.120, which does not grant a right to strike to public employees, and the common law of this state.

Summary -

Under WAC 391-25-170, an employer may petition for a representation election if it can show by affidavits and other documentation that a good faith doubt exists concerning the representation of its employees. City of Tukwila, Decision 2434 (PECB, 1986). See also: U.S. Gypsum Co., 157 NLRB 652 (1966). The employer has not done so here, nor is there indication in the record of schism or a repudiation of existing contracts by the successor union. The examiner finds that no question concerning representation is raised.[12]

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12 While the facts of the instant case are found to support "continuity of representation", it is the view of the examiner, after an analysis of federal precedent such as Noesting Pin, 270 NLRB 132 (1984) and Quemetco, supra, that the concept has no basis in law. Normally an employer has no legitimate interest in who the employees select as their representative. It seems incongruous, to say the least, that whenever a union makes an internal decision to affiliate with another union (assuming due process in the vote) that it would cast its majority support in doubt. But this is precisely the underlying premise of the "continuity of representation" doctrine. Such a premise is, on its face, illogical, especially on the record of this case where the vote was overwhelmingly in support of the change.

The mischief of the doctrine is readily apparent from precedent such as American Bridge v. NLRB, 457 F.2d 600 (3rd Cir. 1972); Gloeckler, supra; and Sun Oil, supra, where the 3rd circuit has enlarged the inquiry into comparisons of bylaws, loss of autonomy and changes in officers. These decisions prevent the affiliations of small unions into large internationals whenever new officers assume power, dues change or contract negotiation and administration or decisions on strikes have been transferred to the larger union. Because of a "diminution of bargaining unit member rights" that court would permit an employer's refusal to bargain and repudiation of contracts, even though the dilution of rights upon affiliation is immaterial to the continuity of representation. The court has expanded the continuity of representation to include a "change in the fulcrum of union control" thereby preventing almost any affiliations. See, also, Union Affiliations and Collective Bargaining, 128 U.PA.L.Rev. 430 (1979) for an analysis of these cases. Such a result appears to serve only the employer's interest in maintaining bargaining advantage over small and relatively powerless unaffiliated locals.

There is further difficulty with the doctrine aside from its confusing and inconsistent precedent, as it invites opportunity to disrupt the collective bargaining relationship by repudiating the contract even though there is no evidence of a lack of majority support and, at the same time, it involves the employer (and the examiner) in scrutinizing the internal structure of the union. In the case at issue, one of the employers, in accord with federal precedent, solicited

FINDINGS OF FACT

1. Skagit Valley Hospital, Whidbey General Hospital, Island Hospital and Kittitas Valley Community Hospital are "public employers" within the meaning of RCW 41.56.030(1).

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internal union information even after a bargaining session in which the employer had tentatively agreed to amend the contract substituting "SEIU Local 6" for "LPNAWS". Pertinent parts of that letter are reproduced as follows:

> At this time, we would ask that we cease any further meetings between the SEIU, LPNAWS, and KVCH until questions concerning the following representation issues are resolved:
> 1. Continuity of leadership.
> 2. Continuity of representatives.
> 3. Autonomy of the previous unit within the new local.
> 4. Are the two unions of equal size and representation?
> 5. Did the union accept the liabilities of the old organization?
> 6. The current circumstances of the LPNAWS.
> 6. (sic) Further clarification regarding the circumstances and fairness of the vote of our nine LPN's at KVCH and whether and how the statewide vote can bind individual units.

The affect of this inquiry is that it places the employer in the role of a "watchdog" over whether or not a union "qualifies" as a representative of its employees. Accordingly, the employer may refuse to bargain and repudiate the contract with its employees as it dons the robes of an "inspector general", paternalisticly protecting the rights of employees while making the employees' representative "jump through the hoops". The employer, as the new guardian of employee rights, may never be quite satisfied with the successor's union's responses and, as its answer is pondered, so lingers the employer's obligations as well. More astonishing, this self-serving transaction is possible under the precedent even though, as is the case here, no employee has raised any question or challenge regarding the affiliation. In the absence of such a complaint, the examiner is at a loss to understand the necessity for the inquiry into internal union matters.

Should it come to a choice between the two partly inconsistent tasks of guaranteeing free choice of representatives and promoting stable collective bargaining relationships, the law should favor a rebuttable presumption that affiliation raises no question concerning representation and that the employer must continue to be bound by its contract and to recognize the successor union as the freely chosen representative of its employees. Thus, unless there is a competing union (causing confusion as to who represents the employee) or a bona fide employee challenge raising questions of due process, the affiliation of one union with another should not raise a question concerning representation.

2. The Service Employees International Union, Local 6 is a "bargaining representative" within the meaning of RCW 41.56.030(3).

3. Prior to July 11, 1985, the Licensed Practical Nurses Association of Washington State was a "bargaining representative" within the meaning of RCW 41.56.030(3) which was the exclusive bargaining representative of licensed practical nurses in the employ of each respondent hospital.

4. LPNAWS and each respondent except Kittitas Valley Community Hospital were parties to a collective bargaining agreement which was to expire on December 31, 1985. Those agreements contained similarly worded openers for the negotiation of successor contracts and also contained maintenance of membership and due deduction clauses.

5. LPNAWS and Kittitas Valley Community Hospital were parties to a collective bargaining agreement which was to expire on June 30, 1985. That agreement contained reopener language and union security provisions.

6. Because of costs of administering its labor relations program and competition from other labor organizations, the LPNAWS decided to affiliate with Local 6.

7. Pursuant to its constitution and by-laws, the LPNAWS notified its members through its official publication, The LPN Connection, in April, 1985, that a resolution to affiliate with Local 6 would be voted at its convention in May, 1985. The resolution was approved by the delegates to the convention by a secret ballot vote of 70-3.

8. After the convention, the LPNAWS notified its members through the May, 1985, issue of The LPN Connection that the convention had approved the affiliation and that LPNs represented in bargaining units would have an opportunity to vote on affiliation.

9. On June 3, 1985, bargaining unit members were notified of election sites where they could discuss and vote on affiliation. On June 4, 1985, unit chairpersons were also notified of the election sites and given posters to further advise LPNs employed by the respondent hospitals of the coming ratification election. Paid advertisements giving notice of the time and place of the elections were placed in various local newspapers.

10. During the period June 17, 1985 to July 3, 1985, the LPNAWS and Local 6 conducted election meetings at 22 sites. Lists of eligible voters were prepared and observers assigned. The secret ballot vote of the LPNs ratified the convention action to affiliate by a vote of 189-24.

11. The LPNAWS and Local 6 signed an affiliation agreement which transferred the collective bargaining functions of LPNAWS to the newly created LPN division with Local 6. Local 6 agreed to hire LPNAWS staff as business representatives at the same salary and benefits of Local 6 staff, including past service pension credit. LPNAWS was to retain autonomy within Local 6 to conduct its professional and educational functions. LPNs were given dual membership in Local 6 and LPNAWS.

12. Local 6 amended its bylaws to include three LPNs on its executive board, one LPN on its board of trustees and to create an LPN division with a governing board of eight LPNs. LPNAWS elected these LPNs to serve on the various positions at its May, 1985 convention.

13. The local bargaining units at each respondent hospital retained control over proposing and ratifying changes in its collective bargaining agreements.

14. On July 12, 1985, LPNAWS notified respondents of the affiliation and advised that its staff was now employed by Local 6.

15. On August 6, 1985, Local 6 gave each of the respondents written notice

that it wished to open negotiations on successor contracts, and requested information relating to bargaining.

16. In similarly worded responses, Island Hospital, Skagit Valley Hospital and Whidbey General Hospital refused to recognize, negotiate with, or send membership dues or information to Local 6. Kittitas Valley Community Hospital opened negotiations on July 3, 1985 with Local 6. After one session at which it tentatively agreed to recognize Local 6, it thereupon changed its mind and refused further dealings with Local 6.

17. Business representatives were denied access to meet with LPNs at Skagit Valley Hospital on August 13, 1985 and at Whidbey General Hospital on August 29, 1985.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.

2. Local 6, Service Employees International Union, has become the successor to LPNAWS' rights and obligations, including status as exclusive bargaining representatives of licensed practical nurses employed at each of the respondent hospitals under RCW 41.56.080, and status as the union party to the collective bargaining agreement.

3. Respondent hospitals have committed unfair labor practice in violation of RCW 41.56.140(4) by their refusals to remit dues, recognize and bargain with Local 6 as the successor union.

4. Respondent Skagit Valley Hospital and Whidbey General Hospital have committed unfair labor practices in violation of RCW 41.56.140(1) and (4), by denying access to its premises to representatives of Local 6 as a successor union.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to RCW 41.56.160, it is ordered that each of the respondent hospitals shall immediately:

1. Cease and desist from refusing to recognize and bargain with SEIU Local 6 as the exclusive bargaining representative of its licensed practical nurse employees heretofore represented by the Licensed Practical Nurses Association of Washington State.

2. Take the following action to remedy the unfair labor practices:

   A. Recognize and, upon request, bargain with Local 6 as exclusive bargaining representative of LPNs with respect to all wages, hours and working conditions and provide requested information in preparation for bargaining.

   B. Collect and remit specified dues to Local 6 as the successor union in the amount outstanding since receiving notice of affiliation.

   C. Permit representatives of Local 6 reasonable access to its premises to meet LPNs as exclusive representative.

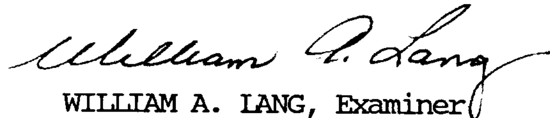
   D. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the district court be and remain posted for sixty (60) days. Reasonable steps shall be taken by the district court to ensure that said notices are not removed, altered, defaced, or covered by other material.

   E. Notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date

of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

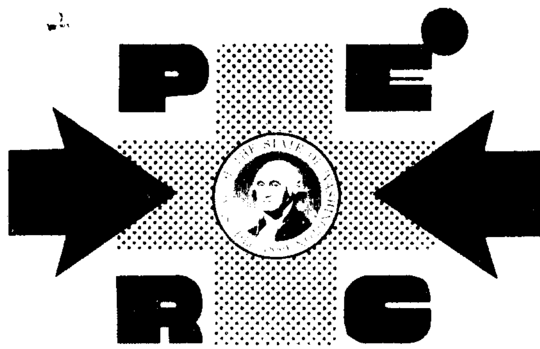
DATED at Olympia, Washington, this 20th day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

This Order may be appealed
by filing a petition for review
with the Commission pursuant
to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

APPENDIX A

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to recognize the collective bargaining agreement with Local 6 or otherwise refuse to bargain collectively with that organization concerning the wages, hours, and working conditions of LPN employees.

WE WILL remit dues payable under said agreements.

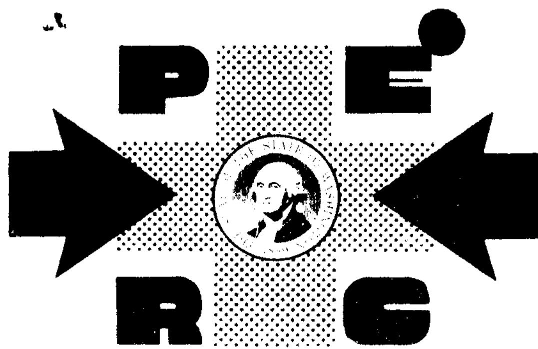
SKAGIT VALLEY HOSPITAL

BY: ______________________________
AUTHORIZED REPRESENTATIVE

DATED: ____________________

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.



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WHIDBEY GENERAL HOSPITAL

BY: ______________________________
AUTHORIZED REPRESENTATIVE

DATED: ____________________

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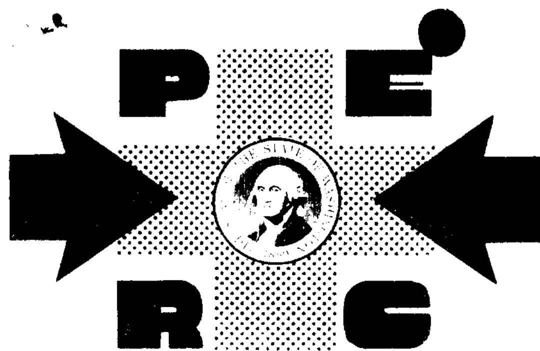

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WE WILL remit dues payable under said agreements.

ISLAND HOSPITAL

BY: ______________________________
AUTHORIZED REPRESENTATIVE

DATED: ____________________

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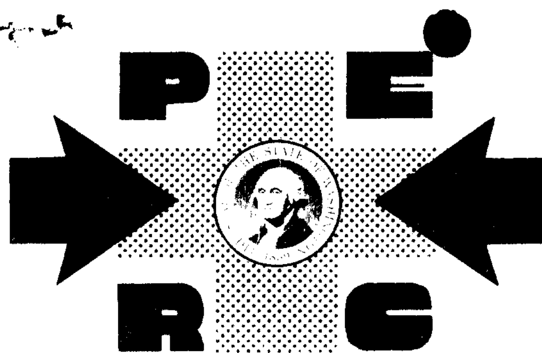

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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WE WILL NOT refuse to recognize the collective bargaining agreement with Local 6 or otherwise refuse to bargain collectively with that organization concerning the wages, hours, and working conditions of LPN employees.

WE WILL remit dues payable under said agreements.

KITTITAS VALLEY COMMUNITY HOSPITAL

BY: ______________________________
AUTHORIZED REPRESENTATIVE

DATED: ____________________

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

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