



IN THE MATTER OF ARBITRATION

Between

EVERGREEN COMMUNITY HEALTH)
CARE)

-and-

INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 3611)

OPINION AND AWARD

of

Philip Kienast
June 27, 1998

Re: Interest Dispute
(PERC 12805-I-96-00276)

APPEARANCES

For the Union:

James H. Webster and Lynn D. Weir of Webster, Mrak & Blumberg, attorneys at law

For the Employer:

David Gravrock of Conner, Gravrock & Treverton, attorneys at law

OPINION

This proceeding is in accordance with RCW 41.56.450. A hearing in this matter was held on November 6, 1997 at which the parties stipulated to procedures and facts (see Appendix A).

The record in this matter was closed upon receipt by the Arbitrator of post hearing briefs on June 3, 1998. The only issue in dispute is whether or not Section 2.2 will be the maintenance of membership language proposed by the Employer or the Union shop language proposed by the Union.

Employer Proposal

2.2 All full-time and part-time employees who are members of the Union at the time of the signing of this Agreement, and all full-time and part-time employees who voluntarily join the Union during the term of this Agreement must retain their membership in good standing. Good standing is herein defined as the tendering of Union dues on a timely basis. Employees who fail to comply with this requirement shall be discharged by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union, unless the employee fulfills the membership obligation set forth in this Agreement within that thirty (30) day period. Any employee who is a member of the Union may voluntarily withdraw from the Union by giving written notice to the Union by certified mail within the last fifteen (15) days prior to the expiration date of this Agreement.

Union Proposal

2.2 It shall be a condition of employment that all employees shall become members of the Union within 30 days of employment and remain members in good standing. Timely payment of regular Union dues will constitute membership in good standing for the purpose of this article. Employees who fail to comply with this requirement shall be discharged by the Employer within 30 days after receipt of written notice to the Employer from the Union, unless the employee fulfills the membership obligation set forth in the agreement. Employees with a bona fide religious objection to Union membership and/or association based on the bona fide tenets or teachings of

a church or religious body of which such employee is a member shall not be required to tender those dues or initiation fees to the Union as a condition of employment. Such employee shall pay an amount of money equivalent to regular Union dues and initiation fee to a non-religious charity mutually agreed upon between the public employee and the Union. The employee shall furnish written proof that payment to the agreed non-religious charity has been made. If the employee and the Union cannot agree on the non-religious charity, the Public Employment Relations Commission shall designate the charitable organization. It shall be the obligation of the employee requesting or claiming the religious exemption to show proof to the Union that he/she is eligible for such exemption.

The Union contends the language it proposes is comparable to that found in every collective agreement between IAFF locals and local jurisdictions in Washington. The Employer contends the language it proposes is comparable to the language found in collective agreements between paramedics and health care facilities like Evergreen. Moreover, the Employer argues its proposed language is comparable to that contained in labor agreements it has with five other bargaining units of its employees.

The Union contends that adoption of its proposal will promote the dedicated service of unit members as envisioned by the legislature in passing RCW 41.46.430. It argues the Arbitrator must "be mindful" of this legislative purpose in making his determination.

The Union also contends the "voluntary" approach of the Employer's proposal can destabilize labor relations by permitting "free riders," i.e., those who benefit from representation electing not to pay dues. It argues the clear intent of the legislature was to stabilize employment relations of uniformed personnel.

The Employer contends the Arbitrator must give substantial weight to industry practice and other agreements the Employer maintains with its employees. In this context, the Employer argues its proposal is very comparable and most reasonable.

Analysis and Conclusions

The critical fact in this case is that all 25 paramedics in the bargaining unit are currently members of Local 3611 and under the Employer's proposal "must retain their membership in good standing" during the term of the Agreement. Accordingly, there can be no "free rider" problem. The Union will have financial support from every member it represents for the term of the Agreement. Anyone wishing to withdraw from the Union must give notice 15 days before the Agreement expires. Therefore, the parties will be notified and can negotiate over this issue.

In addition, the Arbitrator finds that the predominant form of union security language in the health care industry is a "maintenance of membership" provision; and, that the predominant form in fire departments is a "union shop" clause. On balance, the Arbitrator gives more weight to health care comparables than those of fire departments because this employer is not a fire department. Labor relations in the fire service developed early and in response to conditions that existed in that service. Labor relations in health care developed more recently and in response to different conditions. The dominant form of union security provision that has emerged from the development of health care labor relations to date is a "maintenance of membership" provision.

In the absence of other persuasive evidence relevant to the expressed intent or factors enunciated in RCW 41.56, this Arbitrator will order the adoption of the Employer's proposal.

AWARD

1. The following proposal shall be inserted as Section 2.2 of the parties' Collective Bargaining Agreement:

2.2 All full-time and part-time employees who are members of the Union at the time of the signing of this Agreement, and all full-time and part-time employees who voluntarily join the Union during the term of this Agreement must retain their membership in good standing. Good standing is herein defined as the tendering of Union dues on a timely basis. Employees who fail to comply with this requirement shall be discharged by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union, unless the employee fulfills the membership obligation set forth in this Agreement within that thirty (30) day period. Any employee who is a member of the Union may voluntarily withdraw from the Union by giving written notice to the Union by certified mail within the last fifteen (15) days prior to the expiration date of this Agreement.

Philip Kienast
June 27, 1998
Bothell, Washington

APPENDIX A

STATE OF WASHINGTON

IN INTEREST ARBITRATION
BEFORE PHILIP KIENAST, NEUTRAL ARBITRATOR
(RCW 41.46.450)

EVERGREEN COMMUNITY HEALTH)
CARE,)
Employer,) Case No. 12805-I-96-00276
) (formerly 12623-M-96-4590)
v.) STIPULATION
)
INTERNATIONAL ASSOCIATION)
OF FIRE FIGHTERS LOCAL 3611,)
Union.)

It is hereby stipulated by and between King County Public Hospital District No. 2, d/b/a Evergreen Community Health Care ("the Employer"), and International Association of Fire Fighters, Local 3611 ("the Union"), through their respective representatives, as follows:

1. The Employer is a public employer within the meaning of RCW 41.56.030(1).

2. The Union was certified by the Public Employment Relations Commission ("PERC") as collective bargaining representative of advanced life support technician ("paramedic") employees of the Employer in Spring 1995. The employees in the bargaining unit are "uniformed personnel" within the meaning of RCW 41.56.030(7).

3. The parties conducted negotiations for an initial collective-bargaining agreement and reached agreement on all terms except the Union's proposal ("the Proposal") that

bargaining unit employees be required, as a condition of employment and subject to the requirements of chapter 41.56 RCW, to acquire and maintain membership in good standing in the Union. The parties reached impasse on the Proposal.

4. By letter dated November 20, 1996, a copy of which is attached as Exhibit 1, the Executive Director of PERC certified the Proposal for interest arbitration. Thereafter the parties selected Philip Kienast to serve as Neutral Arbitrator, without partisan panel members, to resolve the parties' impasse over the Proposal.

5. The parties have reached agreement on the constitution of the record and submission of issues to the Arbitrator and wish to set forth that agreement in this Stipulation.

6. The Union submits the following documents for the record, to which the Employer offers no objection:

6.1. The Proposal, a copy of which is attached hereto as Exhibit 2.

6.2. The collective-bargaining agreement that reflects the parties' agreement on all matters other than the Proposal, a copy of which is attached hereto as Exhibit 3.

6.3. Collective-bargaining agreements between the following public employers and unions representing uniformed paramedic employees of such employers:

City of Seattle, City of Spokane, City of Everett, City of Bellingham, City of Bellevue, City of Shoreline, Central Pierce Fire & Rescue (two bargaining units), King County, Snohomish

County Fire District No. 7, Thurston County Fire District No. 3 (Lacey), and Pierce County Fire District No. 16 (Key Peninsula), copies of which are attached hereto as Exhibits 4 through 15.

6.4. Declaration of Steve Palmer, a copy of which is attached hereto as Exhibit 16 (Description of bargaining unit; existence of EMS subsidy by King County for paramedics employed by public employers in King County; Employer's plan to cease active management of Evergreen Hospital by turning over management thereof to non-profit private organization, while continuing to employ paramedics directly; and extent of current voluntary Union membership).

7. The Employer submits the following documents for the record, to which the Union offers no objection:

7.1. Collective-bargaining agreements between the Employer and the unions representing employees other than the paramedics, copies of which are attached hereto as Exhibits 17 through 20.

7.2. Collective-bargaining agreements of all Washington public hospital district employers (excluding the Employer) and unions representing uniformed paramedic employees of such employers: Whidbey General Hospital and Affiliated Health Services (Mount Vernon), copies of which are Exhibits 21 and 22.

7.3. Declaration of Cindy Johnson, a copy of which is attached hereto as Exhibit 23, identifying the bargaining units at Evergreen Hospital Medical Center, the size of those bargaining units, a description of the membership provisions contained

in the Hospital's collective bargaining agreements; a description of the health care industry practice regarding union membership requirements in the Puget Sound area and elsewhere in the State of Washington; identification of all hospital contracts in the State of Washington covering advanced life support technicians and their membership requirements; recent events involving Swedish Hospital Medical Center and discussions with King County officials.

7.4. Summary report of employees employed by the Employer listed by union by job title, a copy of which is attached as Exhibit 24.

8. The parties shall confer with the Arbitrator through their representatives in person or by telephone conference call to review this stipulation, address any additional matters, and fix a date for submission of simultaneous briefs to the neutral Arbitrator.

9. Upon submission of the briefs referred to above, the record shall be complete and the Arbitrator shall issue his award.

DATED: November 6, 1997.

EVERGREEN COMMUNITY HEALTH CARE

By: _____
David Gravrock

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 3611

By: _____
James H. Webster