STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 6	)	CASE 15292-E-00-2552
	)	
Involving certain employees of:	)	DECISION 7182 - PECB
	)	
KING COUNTY PUBLIC HOSPITAL DISTRICT 2 d/b/a EVERGREEN	)	ORDER REJECTING PROPOSED STIPULATIONS
	)	

Thomas A. Leahy, Staff Attorney, represented the union.

David A. Gravrock, Labor Relations Consultant, represented the employer.

On July 7, 2000, Service Employees International Union, Local 6 (SEIU), filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The SEIU seeks certification as exclusive bargaining representative of emergency room technicians employed by King County Public Hospital District 2 (Evergreen Hospital). An investigation conference was held on August 15, 2000, by telephone conference call. The parties were asked to submit written statements in support of the stipulations they proposed during the Investigation Conference, and the case is now before the Executive Director for a response to those written statements of position.

The Executive Director has considered the stipulations proposed by the union and employer in light of Commission precedents, and concludes that they must be rejected.

BACKGROUND

The employer provides various medical services in the northeastern portion of King County. Its administration office is located in Kirkland, Washington.

The stipulations proposed by the employer and union during the Investigation Conference were as follows:

1. The parties were willing to have the Commission conduct a "self-determination" election among the emergency room technicians, to determine whether those employees want to be included in an existing bargaining unit of "service" employees at the hospital which is represented by the SEIU; and

2. The parties agree that per diem and temporary employees have no community of interest with, and have historically been excluded under the collective bargaining agreement covering, the "service" unit, and therefore should be excluded from the bargaining unit.

The employer was also requested to supply the hours worked by the per diem and temporary employees in the past four quarters, and it has done so.

DISCUSSION

The Proposed Accretion

Review of the Commission's docket records discloses that collective bargaining relationships have existed between this employer and the SEIU for a very long time. The second case ever docketed by the

Commission (Case 2-E-76-466) was a representation case carried over to the Commission from the Department of Labor and Industries.[1] Following a re-verification of a cross-check result by the Commission in that representation case, the existence of the bargaining relationship covering what is now called the "service" unit was affirmed by the courts. SEIU Local 674 v. King County Public Hospital District 2, WPERR CD-47 (King County Superior Court, 1978), affirmed 24 Wn.App. 64 (Division 1, 1979). Companion cases involved what is now called a "technical" unit now represented by the United Food and Commercial Workers, AFL-CIO.

More recently, the Commission certified other unions for at least three bargaining units,[2] the SEIU has become the successor to one of those organizations,[3] and the SEIU was certified as exclusive bargaining representative of:

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[1] The Department of Labor and Industries administered Chapter 41.56 RCW from the time of its enactment through December 31, 1975. The Public Employment Relations Commission took over administration of the statute as of January 1, 1976, and all pending cases were transferred to the Commission under RCW 41.58.803.

[2] The Commission certified an exclusive bargaining representative for a bargaining unit of licensed practical nurses (in King County Public Hospital District 2, Decision 1098 (PECB, 1981)); for a bargaining unit of registered nurses (in King County Public Hospital District 2, Decision 1390 (PECB, 1982)); and for a bargaining unit of paramedics (in King County Public Hospital District 2, Decision 4991-A (PECB, 1995)).

[3] The decision in Skagit Valley Hospital, et al., Decision 2509-A (PECB, 1987) describes the merger of the Licensed Practical Nurses of Washington State into SEIU Local 6.

> All full-time and regular part-time office-clerical and medical assistant employees employed by the Evergreen Urgent Care Center (presently located at 14243 NE Woodinville-Duvall Road, Woodinville, Washington), a division of King County Hospital District 2; excluding elected officials, officials appointed for a fixed term, the executive head of the bargaining unit, confidential employees, student trainees and all other employees of the employer.

King County Public Hospital District 2, Decision 3013 (PECB, 1988).

Impliedly, the emergency room technicians at the hospital have been left out of all bargaining units throughout that long history.

The employer objects to creation of a separate unit of emergency room technicians, and contends that those employees should be included in either the existing "service" unit represented by the SEIU or the existing "technical" unit represented by the UFCW. The union responded with a suggestion that the Commission conduct an election to determine whether the emergency room technicians desire to be included in the existing SEIU unit, and the employer joined in suggesting that procedure. In a letter dated August 24, 2000, the union requested that a cross-check be conducted, instead of an election, because the union claims to have a showing of interest in excess of 70% of the employees it claims eligible.

The Rights of Employees -

Fundamental to this case and all others processed under Chapter 41.56 RCW are the rights guaranteed to employees by statute:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate

> against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. [1967 ex.s. c 108 § 4.]

When responding to arguments advanced by employers and unions, the Commission and its staff must be constantly vigilant that the rights of the employees involved are also protected.

Authority to Determine Bargaining Units -

The Legislature has delegated that task of determining appropriate bargaining units to the Commission, in RCW 41.56.060. The starting point for any unit determination is the unit sought by the organization that files a petition for investigation of question concerning representation. The task of the Commission is to find "an appropriate unit", not necessarily "the most appropriate unit". At the same time, substantial care is warranted, because bargaining unit configurations often outlast the individuals who participate in their creation.

Unit determination is not a mandatory subject of collective bargaining. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981), Employers and labor organizations may agree on unit issues, but such agreements do not indicate that the unit configuration they agree upon is or will continue to be appropriate. Neither employers nor labor organizations have the ability to bind the Commission by their agreements or desires.

As also stated in City of Richland, supra, the general rule is:

> Absent a change of circumstances warranting a change of the unit status of individuals or

> classifications, the unit status of those previously included in or excluded from an appropriate bargaining unit by agreement of the parties or by certification will not be disturbed.

Accretions of employees to existing units are inherently an exception to the general rule, because they deprive the affected employees of their right to a voice and vote in the selection of their exclusive bargaining representative. Accordingly, accretions are difficult to justify whenever unrepresented positions have existed for a long time outside of the existing bargaining unit.

Application of Unit Determination Standards -
In this case, it appears that the petitioned-for employees have existed for some time without any union representation. The decision in City of Auburn, Decision 5775 (PECB, 1996), includes:

> [N]either the petitioner, the employer nor [an intervening union] has a right to dictate the choice of bargaining representative for the employees at issue in this proceeding. The employer's arguments favoring accretion of the petitioned-for positions to [an existing unit] in this case are essentially the same as those which were advanced and rejected in City of Vancouver, Decision 3160 (PECB, 1989), where historically unrepresented employees were given the opportunity to vote on representation. **No provision within Chapter 41.56 RCW provides a reward in heaven for employers who manage to preserve one or more pockets of unrepresented employees within their workforces, and the specter of "skimming" issues should fuel employer concerns about excessive fragmentation of units.** The comeuppance for employers that do manage to have pockets of unrepresented employees tends to occur when the employees in one or more such stranded groups exercise their statutory right to organize for the purposes of collective bargaining.

[Emphasis by **bold** supplied.]

See, also, Port of Seattle, Decision 6672 (PECB, 1999) and Port of Vancouver, Decision 6979 (PECB, 2000). The employer's objections in this case to the creation of an additional bargaining unit are not a basis to deprive the emergency room technicians of their right to select their bargaining representative. Additionally, the employer's arguments raise a colorable claim that the emergency room technicians could properly have been included in the so-called "technical" unit when it was first organized, and the availability of two or more appropriate units also precludes any accretion. The stipulation proposed by the parties on the unit placement of the emergency room technicians must be rejected.

The "Accretion Election" Procedure -

The election procedure suggested by the parties has been considered and rejected in the past:

> There is a seductive appeal to a procedure by which historically unrepresented employees vote separately on representation in an existing bargaining unit. Given the presumption of continuing majority status that is accorded to an incumbent exclusive bargaining representative within its existing unit, an affirmative vote of the employees in the historically separate group would provide basis for mathematically reasoning that:
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> | | | | | |
> |---|---|---|---|---|
> | Majority of historical unit | + | Majority of historically unrepresented | = | Majority of combined unit |
>
> Such a procedure leads to a logical trap, however, if the employee vote strands them as an inappropriate fragmentation of an otherwise appropriate unit. Contrary to the union's contention that this is an open question under Washington law, Commission decisions have rejected proposals that the employees in part of an appropriate bargaining unit vote separately on a question concerning representation: City of Seattle, Decision 1229-A (PECB, 1982); City of Tacoma, Decision 1908 (PECB, 1984); Tumwater School District, Decision 2043

(PECB, 1982); City of Vancouver, Decision 3939 et seq. (PECB, 1991); City of Bremerton, Decision 3367 (PECB, 1989).

Seattle School District, Decision 4868 (PECB, 1994).

There is no evident reason to reconsider those precedents in this case. The proposed stipulation on methodology must be rejected.

The Exclusion of "Per Diem" and "Temporary" Employees

The employer initiated the argument that "per diem" and "temporary" employees do not share a community of interest with the regularly-scheduled employees performing similar work. The union has joined in a proposed stipulation that all "per diem" and "temporary" should be excluded from the bargaining unit categorically, citing a bargaining history which has excluded them.

Standards for Unit Placement of Part-time Employees -
Both the terminology used by the parties and their proposed result do not comport with Commission precedent.

Regular part-time employees have been included in bargaining units in numerous decisions. See, Columbia School District et al., Decision 1189-A (EDUC, 1981); Tacoma School District, Decision 655 (EDUC, 1979). Employees who perform work of the type performed by other bargaining unit employees on a recurring basis are deemed to have a substantial and ongoing interest in the wages, hours, and working conditions in the bargaining unit, and a community of interest with full-time employees performing similar work. Those precedents are consistent with the National Labor Relations Board (NLRB) precedents concerning inclusion of part-time employees in bargaining units. See, Farmers Insurance Group, 143 NLRB 240, 244-245 (1963). Persons employed without benefit of a fixed work schedule have nevertheless been included in bargaining units as "regular part-time" employees, where there has been a showing of

repeated work assignments within a specified time period (e.g., a week, month, quarter, year or other appropriate time period) and the employees have a reasonable expectancy of continued employment on a similar basis. Tacoma, supra. The Commission explicitly rejected the policy by which the Department of Labor & Industries had categorically excluded "on call" employees from bargaining units under the statute. Mount Vernon School District, Decision 2273-A (PECB, 1986).

Casual employees have been excluded from bargaining units in numerous decisions. See, Everett School District Decision 268 (EDUC, 1977); Tacoma School District, supra; Columbia School District et al., supra. Also consistent with NLRB precedent, the exclusion of casual employees deems such person to have had a series of separate and terminated employment relationships with the employer, so that they lack a substantial and ongoing interest in the wages, hours and working conditions in the bargaining unit.

From time to time, the Commission has found it necessary to reject unit configurations created by agreement or consent of parties, particularly where those unit configurations give rise to (or are likely to give rise to) a legacy of work jurisdiction disputes:

- In City of Seattle, Decision 781 (PECB, 1979), an independent union filed a representation petition seeking to organize a bargaining unit limited to part-time employees. In rejecting that unit configuration on grounds that it would give rise to a potential for work jurisdiction conflicts, exclusions of part-time employees agreed upon by that employer with other unions representing its full-time employees were invalidated, and the part-time employees were included in the same bargaining units with full-time employees performing similar work.

- In Skagit County, Decision 3828 (PECB, 1991), a union filed a representation petition seeking to organize a unit limited to part-time employees that it had formerly represented, but had agreed to exclude from its existing bargaining unit. That petition was dismissed, and the agreement made 10 years earlier was invalidated, so that those part-time employees were restored to the bargaining unit from which they had been excluded.

In both of those cases, the alternative to rejection of a separate unit would have been to deprive the employees at issue of their statutory collective bargaining rights under Chapter 41.56 RCW.

Application of Precedent on Part-time Employees -
The employer has provided work hours for 10 employees that it would have excluded as "per diem" or "temporary". Analysis of that data yields the following results:

Employee Name	Work Period	Weeks Worked	Hours Worked	%%%
Bandarra	8/6/99-8/5/00	52.1	79.25	3.8%
Barry	1/31/00-8/5/00	26.7	530.50	49.7%
Beckham	5/8/00-8/5/00	12.7	149.00	29.3%
Johnson	8/6/99-8/5/00	52.1	304.50	14.6%
Kelly	8/6/99-8/5/00	52.1	68.00	3.3%
Newton	8/6/99-8/5/00	52.1	388.25	18.6%
Reisenberg	8/6/99-8/5/00	52.1	166.00	8.0%
Shaughnessy	3/1/00-8/5/00	22.4	71.00	7.9%
Wascher	10/6/99-8/5/00	43.4	591.50	34.1%
Winston	1/10/00-8/5/00	29.7	76.50	6.4%

Thus, it appears that Barry, Beckham, Newton and Wascher would qualify as "regular part-time" employees under the one-sixth of full-time (16.67%) standard applied by the Commission in a number of employment settings. Moreover, the 10 employees taken together have put in 2425 work hours in the one-year period, which equates to more than one full-time position. The proposed stipulation to

categorically exclude what the parties have termed "per diem" and "temporary" employees must be rejected.

NOW, THEREFORE, it is

ORDERED

1. The proposed stipulation by which the employer and SEIU would place the petitioned-for employees in an existing bargaining unit is REJECTED as contrary to Commission policy and precedent.

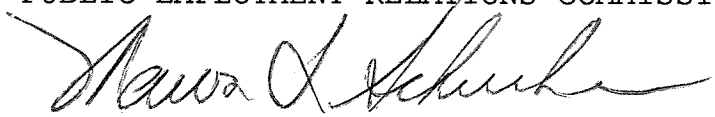
2. The proposed stipulation by which the employer and SEIU would limit the voting rights of the the petitioned-for employees to an accretion election is REJECTED as contrary to Commission policy and precedent.

3. The proposed stipulation by which the employer and SEIU would categorially exclude what they term as "per diem" and "temporary" employees is REJECTED as contrary to Commission policy and precedent.

4. This matter is remanded to Representation Coordinator Sally Iverson for further proceedings under Chapter 391-25 WAC.

Issued at Olympia, Washington, on the 21st day of September, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director