

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of
INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, LOCAL 2595,
Involving certain employees of
KING COUNTY.

Case No. 1271-E-77-252

Decision No. 560 PECB

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

APPEARANCES:

Schwepe, Doolittle, Krug, Tausend and Beezer, by Mr. James B. Street,
Attorney at Law, for the petitioner.

Albert G. Ross, Personnel Manager, for King County.

On December 9, 1977, International Association of Fire Fighters, Local 2595, (hereinafter the "petitioner") filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation of certain employees alleged to be employees of King County. A hearing was held on March 28 and April 11, 1978 before Alan R. Krebs, Hearing Officer.

POSITIONS OF THE PARTIES:

The petitioner seeks certification as the exclusive bargaining representative of "all paramedics working in King County emergency medical services programs administered through the Shoreline, Highline and Valley provider groups." During the course of the hearing, the petitioner amended its position so as to indicate that it does not oppose inclusion in the same unit of paramedics working for the "Evergreen" provider group. Throughout the course of the hearing, the petitioner contended that King County alone was the employer of the paramedics. In its brief, the petitioner proposes for the first time:

"Alternatively, if the Commission determines that there is a co-employer relationship between King County and the provider groups and/or the lead agencies, petitioner moves to amend its petition accordingly. If the Commission determines that there is no employer-employee relationship between King County and the King County paramedics, petitioner would contend in the alternative that it is the provider groups and not the lead agencies which are the paramedics' employers."

The provider groups and the lead agencies were never joined as parties to these proceedings.

King County denies that it is the employer of the paramedics, and contends that the individual provider groups are the employers. The County's brief does not address the joint-employer alternative.

BACKGROUND:

In 1973, the King County Council established, by ordinance, a Division of Emergency Medical Services (EMS) within the King County Department of Health and Social Services. EMS was directed to analyze needs and set standards for emergency medical services within the County.

In May, 1975, the King County Council directed, by ordinance, that EMS "develop, implement and administer mobile intensive care paramedical programs in areas where feasible." The program developed by King County EMS was largely patterned after the "Medic I" program then already in operation in the Fire Department of the City of Seattle. Six "Medic I Service Areas" were designated for suburban areas of King County outside of Seattle, and a "provider group" has been created or identified for each of those six areas:

- (1) For the "Shoreline" area to the north of Seattle, a provider group was created by King County Fire Districts 4 and 16 and the City of Lake Forest Park under the provisions of the Interlocal Cooperation Act, Chapter 39.34 RCW.
- (2) For the "Evergreen" area to the northeast of Lake Washington, a provider group was created with a membership which is not precisely disclosed in this record.
- (3) For the "Bellevue" area directly east of Lake Washington, the City of Bellevue provides paramedic services through its Fire Department. (Those paramedics are firefighter/paramedics who are already represented for the purposes of bargaining in the Bellevue Fire Department unit, and the petitioner has not sought to disturb that status in these proceedings.)
- (4) For the "Valley" area to the south of Lake Washington and generally to the east of Interstate Highway 5, a provider group was created by the City of Renton, the City of Kent, the City of Tukwila, King County Public Hospital District No. 1 (d/b/a Valley General Hospital), and King County Fire Districts 20, 25 and 40, under the provisions of RCW 39.34.
- (5) For the "Highline" area to the south of Seattle between Interstate Highway 5 and Puget Sound, a provider group was created by King County Fire Districts 1, 2, 11, 18, 23, 24 and 26 and the Port of Seattle (as the operator of Seattle-Tacoma International Airport), under the provisions of RCW 39.34.

- (6) For the "South" area composed generally of Federal Way and Auburn, a provider group was created with a membership which is not disclosed in this record.

Each of the provider groups has its own internal arrangements for the conduct of its affairs. The Shoreline, Valley and Highline provider groups each have a board of directors. The Shoreline and Valley provider groups have designated one of their member municipal corporations as "lead agency" for administrative purposes, while the Highline provider group itself is identified as the lead agency. The record lacks information as to the internal structure and administrative arrangements in the Evergreen, Bellevue and South provider groups, but indicates that the South provider group was in its formative stages at the time of the hearing.

The Shoreline, Valley and Highline provider groups each enter into a contractual arrangement with King County EMS for the operation of a paramedic unit within their service areas. The paramedics provide emergency care at the scene of various medical emergencies which includes "invasive" drug and resuscitation procedures. The paramedics are dispatched by and work in conjunction with the fire departments within their service areas in a "second response" capacity. Except in Bellevue, where they are part of the fire department itself, it appears that the paramedics respond to major fire alarms for the benefit of fire victims and any firefighters injured at the scene rather than for purposes of fire suppression.

King County is the source of one half to two-thirds or more of the funding for the paramedic programs administered by the provider groups. The basic funding is a grant of \$1.50 per year per capita population in the service area. Other special grants have been made available to the provider groups. The contracts between the County and the provider groups cover a broad range of topics, including scope of services, reimbursement procedure, budget, internal control, bonding, recordkeeping, audits, program evaluation, subcontracting, reporting of other income, liability insurance and a hold-harmless clause protecting the County, non-discrimination in employment, conflicts of interest and equipment ownership. The approved budget, a set of paramedic service standards, a set of reporting requirements and monthly invoice forms are attached to the contracts as exhibits. County funds have generally been used by the provider groups for salaries and other operating costs. Local funds have been used generally for capital expenditures so as to avoid the County ownership which would otherwise attach to the asset purchased. The provider group budgets for the use of County funds must be approved by the County, and any deviation from budget of more than 10% must be approved by the County. Correspondence concerning a cost overrun experienced by the Valley provider group indicated that the provider group would be liable for funding of costs incurred in excess of its budgeted amounts.

HIRING AND STAFFING DECISIONS

The County has proposed recruitment and hiring guidelines for paramedics which include minimum qualifications, a suggested job description, examination procedures, a physical agility test and a medical examination with specific blood pressure limitations. The provider groups have made independent determinations as to the number of employees to be used. Shoreline uses only one paramedic per shift working with an "EMT" (emergency medical technician) from one of the member fire departments. Valley originally planned to have 9 paramedics to staff a "modified Detroit schedule" of approximately 2080 hours per work year, but ended up with 6 paramedics and a 56 hour workweek. Highline operates on a 42 hour workweek. Recruitment functions were left to the individual provider groups, and there was some variance among recruitment methods. None of the recruitment procedures were conducted through the normal channels of the King County personnel office. The County had some involvement in the final selection of paramedics, but the paramedics who testified on this topic indicated that they had perceived themselves as being provider group employees at the time they were hired. The County has taken a direct hand in prohibiting provider groups from hiring paramedics away from other provider groups except upon County approval.

TRAINING AND RE-CERTIFICATION

The County obtained funding for paramedic training from a private foundation, and it contracted with Harborview Hospital in Seattle for the training of the newly hired paramedics through the same program used by the Seattle Fire Department. The County reserves a right of approval with respect to any paramedic training at a facility other than Harborview. The "Evergreen" paramedics were trained through other programs, and that fact alone was relied upon by the petitioner as a basis for its initial exclusion of that provider group from its proposed unit of King County paramedics. The Harborview faculty has authority to drop trainees from the training program, and at least two of the original trainees were terminated from employment by Harborview staff. The provider groups were not consulted on the terminations of those dropped from the training program. The County also requires that paramedics attend in-service training sessions and that they pass a biennial examination to re-certify as paramedics.

REPORTING PROCEDURES

The County has established reporting requirements for the paramedic program which include both an incident report to be prepared by the paramedics on each patient treated and a dispatch log prepared by fire department dispatching centers on each incident in which a paramedic unit is or should be dispatched.

The paramedic incident report is identical to the form used in Snohomish County, and statistical reports are tabulated for both counties from these standardized reports. The paramedics also participate in a study being conducted by a physician at Harborview, by completing an additional report in each instance in which "CPR" resuscitation techniques are used.

UNIFORMITY OF SERVICE

The equipment used by the paramedics in the three provider groups originally involved is similar in each case. The techniques used and the standing operating orders are identical, and are also identical to those used by the paramedics in the Seattle Fire Department. The County sets standards for communications, response time and mutual aid agreements for service without regard to political boundaries. Each of the provider groups has its own medical director, but the medical directors meet periodically and it is evident that there is a conscious effort to maintain uniformity of service.

SUPERVISION AND DISCIPLINE

The paramedics work quite independently. Matters such as scheduling have largely been worked out among the paramedics themselves. The paramedic on duty in the Shoreline operation and the paramedic who is riding "in the right front seat" in the Valley and Highline operations make operational decisions in the field whenever a conflict arises between dispatcher orders, etc. There is no day-to-day supervision from King County EMS personnel, and witnesses from the provider groups were quick to assert the supervisory authority of the provider groups with respect to the paramedic personnel. The Valley paramedics have received disciplinary communications from the lead agency of that provider group, and the testimony indicates that one of the command officers of one of the Shoreline group fire districts takes responsibility for supervision of those paramedics. The living arrangements, base facilities and duties at the base facility vary widely among provider groups.

WAGES AND BENEFITS

There is a conflict in testimony as to the role of the County in determination of paramedic wages. On the one hand, there is both written evidence and testimony of a deliberate effort on the part of the County to coordinate wage levels among the provider groups for the purposes of uniformity and/or budget integrity. On the other hand, the coordinator of the Highline program denied the existence of County pressure or control and asserted that the provider group could do whatever it desired with respect to wages. Each provider group has offered its paramedics medical insurance, sick leave and other benefits independent of the other provider groups, and none of the paramedics have been covered by the benefit plans offered to regular employees of King County.

While the County initially prohibited provider groups from covering paramedics under the Law Enforcement and Fire Fighter (LEOFF) retirement system, there was discussion after the enactment of amendments to the state law in 1977 to permit provider groups the option of covering future employees under either the "LEOFF II" pension plan or the Public Employee Retirement System (PERS) plan which now covers all of the paramedics. It may not be possible for the "Valley" provider group to pursue that option, as its lead agency is a public hospital district rather than a fire department.

DISCUSSION:

Taking the petitioner's last position first, the question is whether an amendment should be allowed under WAC 391-21-108 to convert this into proceedings concerning employees of the provider groups and/or lead agencies. Only the Shoreline, Highline and Valley provider groups were given notice of these proceedings, and that only as a courtesy since none of them were named in the petition as employers. None of the provider groups intervened formally. An employer who is to be obligated to bargain under a certification of representatives is entitled to notice and an opportunity to be heard. An opportunity for intervention in proceedings involving alleged employees of another employer does not suffice to protect the rights of the provider groups here.

The "joint employer" alternative proposed by the petitioner has some appeal, but must be rejected at this time. The National Labor Relations Board (NLRB), with the approval of the United States Supreme Court, has often held that nominally separate entities may be considered a single joint employer where they comprise an integrated enterprise. See: Local 1264 v. Broadcast Service of Mobile, 379 U.S. 812 (1965), and citations therein. The NLRB makes a finding of joint employer status where each of the two entities involved shares a sufficient degree of control over the operations and labor relations of the enterprise. This agency has also found joint employer relationships to exist. See: City of Lacey, Decision 396 (PECB, 1978) and Thurston County Fire District #9, Decision 461 (PECB, 1978). On the other hand, grant arrangements are common in the public sector under which one branch of government may accomplish its desired purposes by becoming a source of funding (with strings attached) to lower levels of government. The federal revenue sharing and CETA programs are prime examples, and there are numerous parallels to be drawn between the King County paramedics situation and the delivery of basic education by this State through local school districts. Federally funded CETA employees are routinely included in appropriate local government bargaining units. City of Kelso, Decision 501 (PECB, 1978). For the same reasons as indicated above, any determination made on this record that King County was a joint employer with the provider groups and/or lead agencies would be procedurally irregular. Additionally, both the petitioner and the County have expressed some preference for a horizontal unit including all paramedics in the County-

funded program. The evidence in this record relates primarily to the vertical relationships between the County and the individual provider groups and/or lead agencies, and there is a dearth of evidence concerning any joint employer relationships directly between the provider groups and/or lead agencies.

The record does not support the petitioner's theory that King County alone is the employer of the paramedics. There has been some discussion of reorganization of the entire system of delivery of paramedic services, so that King County and the paramedics themselves do sometimes appear to be the only stable ingredients in this complicated situation. Except for the City of Bellevue, the provider groups do seem to exist only for the purpose of administering this paramedic program. However, the evidence does not establish that the provider groups are merely agents of King County in the administration of this program. They exist pursuant to agreements authorized by statute, they raise and administer local revenues used in the paramedic program, they compensate their own board members and officers out of local funds, and they are at least the nominal employers of the paramedics for purposes of tax withholding and workmen's compensation.

The problems of lack of notice are such as to indicate that the only appropriate condition for the grant of the petitioner's motions to amend under WAC 391-21-108 would be a complete rehearing of the case. Even the possibility of provider group stipulation to the record already made would not cure the existing gap in the record as to the direct relationships between provider groups and the internal arrangements in the Evergreen, Bellevue and South provider groups. Furthermore, amendment at this time and scheduling of further hearing would delay the petitioner's opportunity to appeal the rejection here of its principal theory. Under these circumstances, I have determined to dismiss the petition. I do so with the expectation that new proceedings in pursuit of the joint employer theory or the separate employer's theory, or both, may be commenced simultaneous to the pursuit of any appeals from this decision.

FINDINGS OF FACT

1. King County is a county of the State of Washington and is a public employer within the meaning of RCW 41.56.030.
2. International Association of Fire Fighters Local 2595 is a bargaining representative within the meaning of RCW 41.56.030.
3. King County contracts with six "provider groups" for the administration and operation of an emergency medical service "paramedic" program within six designated

areas within King County. King County provides one half to two-thirds of the funding for the operations of the paramedic program and sets certain standards for the operation of the program.

4. The "Shoreline", "Highline" and "Valley" provider groups exist pursuant to RCW 39.34. The record is insufficient to base finding as to the exact nature or composition of the "Evergreen", "Bellevue" and "South" provider groups. The provider groups are both nominally and substantively employers of the paramedics employed in the paramedic program funded in part by King County. The provider groups have not been joined as parties to these proceedings.

CONCLUSIONS OF LAW

1. King County is not the sole employer of paramedics working in the King County emergency medical services programs administered through the Shoreline, Highline, Valley and Evergreen provider groups.
2. A determination cannot be made in these proceedings concerning the exact nature of any joint or separate bargaining relationships between King County and/or the various provider groups identified in finding of fact paragraph 4 absent notice to and provision of an opportunity for hearing to each such provider group.
3. No question concerning representation presently exists in this matter.

ORDER

The petition for investigation of a question concerning representation filed in the above entitled matter is dismissed.

DATED at Olympia, Washington this 21st day of December, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By: Marvin L. Schurke

MARVIN L. SCHURKE, Executive Director