STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3524, Complainant,	)	CASE 12472-U-96-2956
vs.	)	DECISION 6008 - PECB
SNOHOMISH COUNTY FIRE DISTRICT 1, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster, Mrak and Blumberg, by Christine M. Mrak, Attorney at Law, appeared on behalf of the union.

Ogden, Murphy and Wallace, by Douglas Albright, Attorney at Law, appeared on behalf of the employer.

On April 29, 1996, International Association of Fire Fighters, Local 3524, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Snohomish County Fire District 1 had violated RCW 41.56.140(1) and (4). An amended complaint was filed on June 28, 1996. The employer filed an answer to the complaint. Hearings scheduled for November 19, 1996, and for January 10 and 13, 1997, were continued at the request of the parties, for settlement discussions. A hearing was held in Kirkland, Washington, on March 6 and 7, 1997, before Examiner William A. Lang.[1] Post-hearing briefs were filed on May 15, 1997.

[1] The union's post-hearing motions: (1) to correct the transcript, and (2) to submit additional excerpts from exhibits as Exhibit 92, are GRANTED by the Examiner.

BACKGROUND

The Respondent

Snohomish County Fire Protection District 1 (Fire District 1) provides fire prevention, fire suppression, and emergency medical technician services in a portion of Snohomish County. Local 1997, of the International Association of Fire Fighters, became exclusive bargaining representative of fire fighters employed by Fire District 1 prior to 1976.[2] Jerry Sheehan was president of that union at all times pertinent to this proceeding.

The Origins of SNOCOM

On September 16, 1971, Fire District 1 entered into an agreement with Snohomish County, the cities of Edmonds, Lynnwood, and Mountlake Terrace, and the towns of Brier and Woodway, to form an emergency communications district known as the Southwest Snohomish County Public Safety Communications Agency (SNOCOM) under Chapter 39.34 RCW (the Interlocal Cooperation Act). SNOCOM was to provide consolidated emergency telephone, radio, alarm communications, and dispatching for the participating local government agencies. One half of the SNOCOM budget is paid by the constituent jurisdictions through a formula based on their populations; the remaining half is paid by the constituent jurisdictions based on their assessed valuations.

SNOCOM is governed by a board consisting of one member appointed by the Board of Snohomish County Commissioners, one member appointed

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[2] Review of the Commission's docket records indicates this bargaining relationship existed prior to May 1, 1976, when Case 275-A-76-19 was docketed for a grievance dispute between those parties.

by Fire District 1, two members appointed by the cities of Edmonds, Mountlake Terrace, and Lynnwood, and one member appointed by the towns of Brier and Woodway. Each board member has equal vote in board decisions.

The SNOCOM board appoints an executive director who is responsible for the administration of the program and operations, in accordance with board policy and directives. The executive director advises the board on budget matters, and functions as the chief financial officer. The SNOCOM board contracts with Snohomish County for use of space, as well as for support services such as payroll, records, purchasing, legal, accounting, and data processing.

The SNOCOM board created a technical advisory committee (TAC) composed of the police and fire chiefs of each constituent jurisdiction, to advise the director on operational and procedural matters.

The original duration of the interlocal agreement was through December 31, 1974, and it was to remain in effect for two-year periods thereafter. Any constituent jurisdiction could terminate its participation by written notice given by July 1 of any year, and effective on December 31 of the same year, unless there was a notice reassigning the responsibilities of SNOCOM to a county-wide agency, if and when established.

Origins of the Medic 7 Program

On November 19, 1980, SNOCOM entered into an Interlocal Agreement with Snohomish County Public Hospital District 2 (Stevens Hospital) to create the Southwest Snohomish County Advanced Life Support Division of SNOCOM, which is generally known as "Medic 7". The Medic 7 program was created in conjunction with (and in support of)

an existing EMT Aid Vehicle Program for the treatment of critical trauma victims, including persons suffering heart attacks, strokes, and serious injuries.[3] The purpose of the Medic 7 program is to furnish paramedics and equipment for medical emergencies in part of Snohomish County.[4] Medic 7 also provided a central supply function for inventory, ordering and distributing medical supplies for itself and other fire districts and departments within SNOCOM.

Stevens Hospital was permitted to appoint a member to the SNOCOM board who would be limited to voting on matters pertaining to the Medic 7 program. Board members representing other agencies which contributed financially or in-kind services to Medic 7 were also permitted to vote on its matters. Medic 7 board members serve as representatives of the legislative bodies of their respective jurisdictions, and they reported back to their principals on policy and cost issues.[5]

Medic 7 has its own budget. The Medic 7 board approved the Medic 7 payroll each month and routinely concerned itself with details of the Medic 7 operation such as overtime, sick leave, and other costs. Virtually all of the funding for the paramedic service came from Fire District 1 and the cities of Edmonds, Lynnwood, and

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[3] The term "EMT" (an abbreviation for "emergency medical technician") refers to a category of persons trained in basic emergency medical services.

[4] The term "paramedic" refers to several classes of advance life support technicians defined in RCW 18.81.200. Such employees have been "uniformed personnel" under RCW 41.56.030(7) and eligible for interest arbitration under RCW 41.56.430 et seq. since at least 1993.

[5] Minutes of meetings of the Board of Commissioners for Fire District 1 show that minutes of Medic 7 board meetings were reviewed regularly, and that Fire District 1 received status reports on the Medic 7 operation.

Mountlake Terrace. Stevens Hospital provided host facilities and in-kind services for Medic 7, while Medic 7 uses Snohomish County for support services such as payroll.

Medic 7 board created "medical director" and "paramedic coordinator" positions for the new program, and the persons filling those positions were appointed to the TAC. Medic 7 also employs a paramedic manager, who reports to the executive director of SNOCOM and oversees the daily operation of Medic 7. Among 12 paramedics employed by Medic 7, 8 are stationed at Stevens Hospital and operate a medical unit providing coverage 24 hours per day. The four remaining Medic 7 paramedics are housed in a fire station operated by Fire District 1 and operate on 12-hour shifts.

Medic 7 paramedics frequently trained with EMT and fire fighter staffs from Fire District 1 and the other fire departments in the area served. At fire scenes, the Medic 7 paramedics were in charge of medical emergencies, while the fire fighters were responsible for fire suppression. The relationship between the fire fighters and paramedics was cooperative, rather than hierarchical.

The Medic 7 Collective Bargaining Relationship

International Association of Fire Fighters, Local 3524, is the exclusive bargaining representative of all paramedics employed by Medic 7.[6] Michael T. Wilson was president of that union at all times pertinent to this proceeding.

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[6] Notice is taken of the Commission's docket records for Case 7966-E-89-1346, a representation case opened on May 11, 1989 and closed on December 7, 1989, in which a "Medic 7 Paramedics' Association" was certified. Its affiliation with the IAFF is not detailed in this record.

Local 3524 and Medic 7 negotiated a collective bargaining agreement which was effective from January 1, 1994 through December 31, 1996. Director of Fire Services John T. Dolan, of Fire District 1, was a member of the Medic 7 board, and he sat in on the negotiations leading to the collective bargaining agreement between Local 3524 and Medic 7. Dolan and his successor at Fire District 1 regularly sat on both the budget and personnel policy committees for Medic 7, often as committee chairperson.

The Proposed Merger

In a joint meeting held on February 26, 1996, the boards of commissioners of Fire District 1 and Snohomish County Fire Protection District 11 (Fire District 11) entered into a transitional agreement to consolidate fire protection and emergency medical services operations, personnel, administration, and management under a joint board of commissioners. The term of the agreement was for the remainder of 1996, or until three months after notice of termination by either of the participating fire districts.

Chief Chauncey Sauer of Fire District 11 was designated as administrator of the transitional agreement. During the period from its signing to January 1, 1997, Sauer was to develop proposals for consideration of the consolidated board. Among those tasks was an evaluation of the paramedic service prior to July 1, 1996.[7]

The transitional agreement called for joint collective bargaining negotiations with the International Association of Fire Fighters

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[7] Aside from potential savings from consolidation, Fire District 1 thought that emergency medical services could be provided at less cost by a response team consisting of an EMT and paramedic, rather than two paramedics.

locals which represented fire fighters in the districts by March 1, 1996. It also required the fire districts to notify each other of any negotiations with the unions representing their employees.

The Disputed Change

A February 29, 1996 letter sent by Local 3524 to Dolan indicates that union understood Fire District 1 was committed to joint operations with Fire District 11. Wilson cautioned that a withdrawal by Fire District 1 from SNOCOM and Medic 7 could have a devastating impact on the Medic 7 program and on the members of the paramedic bargaining unit. Wilson demanded that Fire District 1 maintain the status quo and bargain any decision concerning its SNOCOM and Medic 7 affiliations, and their effects.

In a March 7, 1996 reply, Dolan stated that Fire District 1 was not the employer of any of the employees in the Medic 7 program. Dolan took the position that Fire District 1 did not have any obligation to bargain its decision or its impact.

On March 25, 1996, Michael A. Duchemin, counsel for the union, sent a letter to Dolan with a legal analysis which concluded that Fire District 1 was a joint employer of the Medic 7 paramedics, because it was represented on both the SNOCOM board and on the Medic 7 board that set wages, hours and working conditions for the employees represented by Local 3524. Duchemin also asserted that the use by Fire District 1 of paramedics from Fire District 11, instead of from Medic 7, was transferring work outside of the bargaining unit. The union renewed its demand to bargain with Local 3524 regarding both any decision by Fire District 1 to withdraw from the Medic 7 program and the impacts of such a decision.

In a March 29, 1996 letter to Duchemin, Douglas E. Albright, counsel for Fire District 1, stated that Fire District 1 had no obligation to bargain with Local 3524. Albright asserted that being represented on the Medic 7 board was insufficient to make Fire District 1 a joint employer.

On May 6, 1996, Fire District 1 gave notice that it was withdrawing from the Addendum Agreement for the Medic 7 Program, effective December 31, 1996. That notice was given in a letter from Charles E. Graham, the chairperson of the Fire District 1 board, to Tina Roberts, the chairperson of the Medic 7 board.[8]

On June 20, 1996, Attorney Clark B. Snure advised Chief Sauer that the consolidation of Fire District 11 and Fire District 1 operations was authorized by Chapter 39.34 RCW. The consolidation did not proceed as originally contemplated, however. As late as August 21, 1996, Chief Sauer advised the joint board that Fire District 1 had not signed the consolidation agreement, because the unions were demanding to bargain the decision. Chief Sauer said he would recommend removal of Fire District 11 from the joint venture, if the union issue could not be resolved by August 27, 1996.

On August 25, 1996, IAFF, Local 1997, notified Fire District 1 that it wanted to bargain any merger decision and the impacts of such a decision. Local 1997 also voiced support for the Medic 7 program as an effective service, and asked Fire District 1 to respond to a recent letter in which the City of Lynnwood had requested public discussion on the merger.[9]

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[8] Roberts was the mayor of Lynwood at the time.

[9] The outcome of any such bargaining is not detailed in this record, and no complaint by Local 1997 is before the Examiner in this proceeding.

On August 26, 1996, Chief Sauer reiterated his position that prolonged negotiations between Fire District 1 and a union had delayed the hiring and placement of paramedics. Sauer outlined options, and recommended that the districts consolidate managements. In closing, Sauer complained that he could not manage a union-controlled system.

In a joint meeting held on September 10, 1996, the boards of commissioners of Fire District 1 and Fire District 11 executed an "Agreement for the Consolidation of District Operations". That document created a joint board of directors consisting of five members from Fire District 1 and three members from Fire District 11. The joint board was to administer consolidated operations providing fire protection services and medical emergency responses. The separate boards were to continue performing certain responsibilities, such as setting the budgets and tax levies for the individual fire districts, processing and payment of individual expenses, administration of existing collective bargaining agreements,[10] maintenance and repair of individual facilities and equipment, and negotiation and performance of contracts. Each district was to remain responsible for the financial operation of its own fire department. The chief was to be responsible for preparing draft budgets for the fire districts individually, as well as the budget for the consolidated operation. The cost of the consolidated operation was to be prorated between the districts. Except for a secretary at Fire District 1, all administrative personnel were to become employees of Fire District 11. The term of the consolidation agreement was for five years from January 1, 1997.

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[10] The consolidated board was to be responsible for the negotiation and administration of the collective bargaining agreements for both districts.

In a September 25, 1996 letter to Mayor Roberts of Lynnwood, Chief Sauer stated that Fire District 11 was willing to contract for Medic 7 services for 1997 at the rate of $200,000. The same letter mentioned that Fire District 11 would be in contact with the City of Edmonds regarding the "Esperance area"[11].

On November 15, 1996, Chief Bob Meador of the Lynnwood Fire Department asked Fire District 1 to reconsider its decision to withdraw from Medic 7. He also complained that his earlier request for a public meeting had been ignored.

On December 2, 1996, Fire District 1 entered into an agreement with the Medic 7 board for paramedic services for calendar year 1997, for the sum of $205,023. The amount set forth in that agreement represented about one half of contribution formerly made by Fire District 1 to the Medic 7 program. That agreement also provided for the hiring of any Fire District 1 employees displaced by the agreement. At its December 12, 1996 meeting, the Medic 7 Board adopted a service fee for all areas served that was fair and proportionate, based on a common formula.

Advertisements were placed in major newspapers in the Pacific Northwest and California, announcing vacancies for three to six paramedic/firefighter positions with Fire District 1 and Fire District 11. In addition, Fire District 1 and Fire District 11 urged the remaining participants in Medic 7 to withdraw from the "two paramedic response team" model and convert to the less costly "one paramedic and one EMT" model used by Fire District 11.

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[11] Fire District 1 had signed an agreement with the City of Edmonds in 1995, calling for Edmonds to provide fire and medical emergency protection to an unincorporated area known as the "Esperance Area".

POSITIONS OF THE PARTIES

IAFF, Local 3524, argues that Fire District 1 is an employer (or a joint employer) of the paramedics in the Medic 7 program, because it was actively involved in establishing the wages, hours and working conditions of Medic 7 employees, and was a main financial contributor to the Medic 7 operation. The union contends that the withdrawal of Fire District 1 from Medic 7 has adversely affected the bargaining unit it represents, and that both the decision to withdraw and the effects of that decision are mandatory subjects of collective bargaining.

Fire District 1 argues that it is neither the employer nor a joint employer of the Medic 7 employees. It contends it has no "right to control" the wages, hours and working conditions of Medic 7 employees, and that its influence does not amount to a veto or final say over such matters. Fire District 1 claims the right to withdraw from Medic 7 as a management prerogative. It also contends the union seeks inappropriate remedies, and that the complaint should be dismissed as failing to name necessary parties.

DISCUSSION

Precedent on Multi-Employer Units Inapposite

The Examiner deems it appropriate to begin the analysis of this case with what it is not. There is a body of private sector precedent concerning situations where employers seek to withdraw from multi-employer coalitions created for the purposes of collective bargaining, and undertake an obligation to bargain separately with the union(s) that represented the employees as part

of the multi-employer unit. That precedent is inapposite here, however:

- Fire District 1 has, in effect, contracted for advanced life support (paramedic) services through the mechanism of an interlocal agreement authorized by statute. Those services were different from (i.e., above and beyond) the services traditionally provided by Fire District 1.

- Rather than one union negotiating with multiple employers about the employees performing similar work in an industry or a geographic area, the Medic 7 employees obtained separate representation and signed a separate contract with the Medic 7 board. There is no indication in this record of joint negotiations between Local 1997 and Local 3524.

- Fire District 1 participated in the management of the separate enterprise, but maintained its own management affairs separately. Fire District 1 had a presence in the collective bargaining which occurred at Medic 7, but that bargaining was never merged with the collective bargaining relationship and process which continued to exist at Fire District 1.

- Fire District 1 later withdrew from its agreement with one set of public agencies for the Medic 7 service, and entered into a different (and apparently less costly) arrangement with another public agency.

The issue, then, is whether Fire District 1 owes the union representing the Medic 7 employees an obligation to bargain its decision to withdraw from one interlocal agreement and enter into another agreement for a less costly service.

Unit Work as a Mandatory Subject of Bargaining

The preservation of bargaining unit work has been found to be a mandatory subject of bargaining in a number of cases decided by the National Labor Relations Board (NLRB) and the federal courts.[12] In Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964), cited with favor by the Supreme Court of the State of Washington in IAFF, Local 1052 v. PERC (City of Richland), 113 Wn.2d 197 (1989), the Supreme Court of the United States held that an employer's decision to contract out bargaining unit work is a "mandatory" subject of bargaining. In a concurring opinion, Justice Stewart emphasized that the case dealt with the security of one's employment or, in fact, whether there was to be any employment at all. Contrasting with the recognition of work assignments as a mandatory subject, Justice Stewart listed several matters at the heart of entrepreneurial control as "permissive" subjects of bargaining bearing little relation to working conditions: Decisions on types or volumes of advertising, product design, commitment of investment capital, and the basic scope of the enterprise.

The Fibreboard principles have been reiterated in numerous Commission decisions over the years.[13] For example:

- In South Kitsap School District, Decision 472 (PECB, 1978), the employer's unilateral action of distributing the work of

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12 Decisions construing the federal law are persuasive in interpreting similar provisions of Chapter 41.56 RCW. Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1984); City of Bellevue v. IAFF, Local 1604, 119 Wn.2d 373 (1992).

13 The term "skimming" has been used in Commission decisions to describe transfers of bargaining unit work to other employees of the same employer. The term "contracting" has been used to describe an employer's transfer of bargaining unit work to employees of another employer.

its paraprofessionals (aides) to its teachers and other employees outside of the bargaining unit was found to have been "skimming" in violation of RCW 41.56.140(4), because there was an obligation to bargain the removal of the work from the bargaining unit which had included the aides.

- In City of Vancouver, Decision 808 (PECB, 1980), an employer's unilateral "contracting" with a private company to take over operation of a waste water treatment plant displaced 18 city employees, and was found to have violated RCW 41.56.140(4).

- City of Kennewick, Decision 482-B (PECB, 1980) stands for the proposition that a decision to contract is a mandatory subject of bargaining even if a position is vacant at the time its work is contracted out, because the bargaining unit has a legitimate interest in preserving entry-level jobs.

- Even if the work involved is new work, a duty to bargain will exist because of the union's legitimate interest in expanding the opportunities of the bargaining unit to perform work of the same or closely-related type. Community Transit, Decision 3069 (PECB, 1988).

A pair of cases involving the same employer, union and employees demonstrates the distinction drawn by Justice Stewart in his opinion in Fibreboard, supra. In City of Kelso, Decision 2120-A (PECB, 1985)[Kelso I], the employer was found to have committed an unfair labor practice by unilaterally "contracting" its fire suppression and prevention services to a neighboring fire district, while continuing to collect taxes and have ultimate responsibility for the work historically performed by bargaining unit employees. An opposite conclusion was reached, however, in City of Kelso, Decision 2633-A (PECB, 1988)[Kelso II], after the employer made an

entrepreneurial decision to annex the city to the neighboring fire district and thereby give up both the authority to collect taxes and the ultimate responsibility for the fire protection function.

In Pierce County Fire District 9, Decision 4547 (PECB, 1993), the employer entered into an interlocal agreement for another employer to furnish a "medical service officer" to oversee the delivery of emergency medical care by its employees. The union filed an unfair labor practice complaint charging that the employer was contracting out work that should be performed by bargaining unit employees, but the case was dismissed when that union did not carry its burden to prove that the supervisory position had been or should be bargaining unit work.

It is clear that employees in the bargaining unit represented by Local 3524, were faced with the loss of jobs and/or work opportunities when Fire District 1 withdrew from the Medic 7 program. Moreover, it is clear that paramedic work historically performed in the area served by Fire District 1 was transferred to employees in the operation conducted jointly by Fire District 1 and Fire District 11. The analysis cannot end there, however.

Is Fire District 1 an Employer of Medic 7 Personnel?

Both parties have correctly placed their focus in this controversy on whether Fire District 1 is an employer, as defined in Chapter 41.56 RCW, of the Medic 7 employees represented by Local 3524. If Fire District 1 is an employer, then it would have had a duty to bargain with Local 3524 about the loss of work opportunities for its paramedic employees; if Fire District 1 is merely contracting with an entity which is the sole employer of the paramedics, then it had no duty to bargain with Local 3524 about its decision to

terminate an arms-length business relationship.[14] Both sides of this question have been extensively argued, with both parties anchoring their contentions on the same Commission precedents. This case is, however, one for which there is no precedent exactly on point.

The record suggests that Fire District 1 did not provide emergency medical services at the "paramedic" level prior to the creation of the Medic 7 program. Under the precedents described above, and particularly under Community Transit, it is theoretically possible that a duty to bargain existed between Fire District 1 and IAFF, Local 1997, when Fire District 1 contracted with Stevens Hospital and other SNOCOM participants to launch a paramedic service with employees that could have been an expansion of the bargaining unit represented by Local 1997. That evidently did not occur in 1980, and the statute of limitations established by RCW 41.56.160 has long-since cut off the opportunity for Local 1997 to complain about the creation of the Medic 7 program.

The record more firmly establishes that Medic 7 was treated as a separate employer when the paramedics employed by Medic 7 selected an exclusive bargaining representative. The collective bargaining agreement dated December 16, 1993, covering the 1994-1996 period, lists the employer as "Southwest Snohomish County Public Safety Communications Agency Medic Seven" in Article I, and was signed by the "Medic 7 Board Chairman". Significantly, it does not mention Fire District 1 in either of those areas critical to the formation of a contract.

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[14] Local 3524 could still have a right to bargain with the Medic 7 Board concerning the retrenchment of operations, as would be the case for any union representing employees of an employer whose operations are severely curtailed for reasons beyond the control of the employer.

Fire District 1 had a presence in the collective bargaining with IAFF, Local 3524, but only as a member of the Medic 7 Board which oversees the negotiations and retains final approval of any agreements reached. Medic 7 hired a professional labor relations consultant, and the board member's role on the negotiation team was to advise the other team members on the policies and parameters established by the Medic 7 Board.

The union maintains that Fire District 1's participation is substantial because it and two other public agencies are the main financial contributors to Medic 7 and are extensively involved in the management of its operation through its membership on the budget and personnel committees. Fire District 1 counters that it is only one of seven governmental bodies that fund and participate in the governance of Medic 7. The main characteristic of an employer is its ability to control the terms of employment, as distinguished from merely having influence to affect those terms.

In North Mason School District, Decision 2428-A (PECB, 1986), where the Commission was confronted with conflicting employer contentions regarding the right of control: In a proceeding before the NLRB, a private bus company contracting with a school district claimed that the school district was the employer, and obtained a dismissal from the NLRB on that basis; when the same union filed a petition with the Commission soon thereafter, the school district argued that the private firm was the employer. Adding to the unique circumstances in which the jurisdictional question in that case was examined, both the school district and the private firm refused to participate in the hearing in the case before the Commission. The Commission refused to consider the question of whether the bus company was an employer, but it did determine that the school district retained sufficient control over the terms and conditions of employment to be an employer. While that decision holds that

the degree of control exercised over the employee's terms and condition of employment is an attribute of being an employer, the facts of North Mason weaken its application to this controversy. It is clear, however, that Fire District 1 does not have a unilateral power to veto management decisions of the type that was identified in North Mason, supra.

The union claims Fire District 1 has an extensive say in Medic 7 affairs, by virtue of its significant monetary contribution. Fire District 1 argues that its payments are not an appropriate basis to find it an employer, and it describes itself as a "purchaser of services". In Kent School District, Decision 2215 (PECB, 1985), an educational service district which granted funds for head start programs operated by its constituent school districts did not have an employer relationship to personnel hired for the programs at the local level. The source of funds does not equate with the right of control, when determining who is the employer. Many positions and programs at the local level are funded by the federal and/or state governments, but remain local employees for the purposes of collective bargaining even where the grantor imposes some general rules governing pay, benefits and utilization of the employees.[15]

The union claims that the role of Fire District 1 is more closely identified with that of a "joint employer". The Commission and courts have dealt with joint employers in a number of cases:

- In Zylstra v. Piva, 85 Wn.2d 743 (1975), the Supreme Court of the State of Washington found that Pierce County and the Superior Court for Pierce County each controlled some aspects of the employment relationship for persons working in a juvenile facility. Because the superior court was not a

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[15] See, Education Service District 114, Decision 4361-A (PECB, 1994).

public employer under Chapter 41.56 RCW at that time, the collective bargaining process was limited to the wages and wage-related benefits controlled by Pierce County.

- In City of Lacey, Decision 396 (PECB, 1978) a joint animal control commission established by various cities and Thurston County was found to be a joint employer with City of Lacey. Under that arrangement, a joint commission with representation from each constituent governmental body had the final say over the size of the workforce, layoffs, facilities, and policy. The City of Lacey had been a founding member of the cooperative effort, it served as the "host" entity for payroll and other purposes, and had an active role in the day-to-day supervision of the employees.

- In Kitsap Peninsula Skills Center, Decision 838-A (PECB, 1981), the union which represented employees of the host school district sought intervention and sought to prevent creation of a separate bargaining unit at an occupational skills center created by the host district and several other school districts. The operation was financed and controlled through a governing council, on which each participating school district had representation. The motion to intervene as "incumbent" was denied, which necessarily indicates no collective bargaining relationship or duty to bargain existed in that situation. The joint board, rather than the host school district, was found to be the employer in Kitsap, because the written agreement of the participating school districts vested the authority in the joint council, and not the host school district.[16] In Kitsap, the participation of

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[16] Consistent with the admonition of the Supreme Court of the State of Washington in State ex rel. Bain v. Clallam

each school district was necessary for effective collective bargaining, because each school district retained a veto over any decisions. The facts in this record show that Fire District 1 does not have a veto over collective bargaining affairs at Medic 7, so it is certainly less of an employer than any of the participating school districts in Kitsap.

- Sno-Isle Vocational Skills Center, Decision 841 (PECB, 1978) presented a situation generally similar to Kitsap. The union interprets Sno-Isle as finding that each of the school districts were employers, but that is in error. The administrative council of the Sno-Isle Vocational Skill Center was found to be the employer (rather than the host district) because the written agreement of the participating school districts called for decisions made by majority vote of the council to be automatically ratified and implemented by the school board of host district. Fire District 1 correctly reasons that if the host district was not an employer in Sno-Isle, then Fire District 1 is certainly not an employer of Medic 7 employees based on: (1) being only one of seven public agencies, (2) having no power to veto decisions of the Medic 7 board, and (3) not in the capacity of host.

- In Kennewick School District, Decision 2008 (PECB, 1988) the evidence showed that the employees at an occupational skills center that was the subject of a representation petition and intervention motion similar to those before the Commission in Kitsap and Sno-Isle were actually integrated into the work-

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County, 77 Wn.2d 542 (1970), the written word was taken as a persuasive guide to the administration of public business, even where practice and the recollection of the school superintendents serving on the center's board were at variance with the written agreement.

force of the host district. Although a governance council was in existence, it operated only in an advisory capacity and the contract among the participating school districts vested authority in the host district. There is clearly no evidence that Fire District 1 is in such a predominant role in the Medic 7 situation.

- In Tacoma School District, Decision 3314-A (PECB, 1990), the Commission found the contracting public employer was not a joint employer of employees providing transportation services through a private bus company. The school district solicited bids for the service and did not retain sufficient control over working conditions to effectively bargain with the union. The Commission considered the school district a purchaser of services, rather than an employer, because it retained very little supervisory responsibilities over employees and was only concerned with overall quality of services.[17]

Applied to the facts of the case now before the Examiner, the foregoing precedents support a conclusion that Fire District 1 is not an employer or joint employer of the Medic 7 personnel. Those decisions are not entirely instructive, however, because none of them expressly examined the question of a public agency withdrawing from a joint operation.

The record here describes more than a mere "purchaser of services" situation of the type described in Tacoma, because Fire District 1 was clearly among the founding partners in SNOCOM and Medic 7. At the same time, the founding documents contained provisions for any

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[17] The Tacoma case points out a weakness inherent in being an employee of (or a union representing the employees of) a secondary supplier, where the primary producer can change suppliers at will or at contract termination.

participating public body to discontinue their participation in the cooperative venture, so they would be free to continue or abandon what was left of the operation after one of the founding members backed away from it. Thus, even the role of Fire District 1 as a founding member of Medic 7 does not indicate sufficient control to characterize it as an employer. Fire District 1 was only one of seven participating entities, and did not have a veto power by either the terms of the interlocal agreement or de facto.

It is clear that Fire District 1 did not go out of the business of providing paramedic services. Instead, Fire District 1 entered into a different arrangement with Fire District 11 to provide those services at a lower cost. The union contends Fire District 1 has complete control over its decision to withdraw from Medic 7 and, in effect, to transfer work to Fire District 11. The union has demanded to bargain over the decision made by Fire District 1, but the decision to withdraw from Medic 7 in favor of a joint venture with Fire District 11 is the type of entrepreneurial decision envisioned by Justice Stewart in Fibreboard.[18] Fire District 1 correctly argues that it never exercised or retained any unilateral control over wages and working conditions of Medic 7 personnel and, therefore, was not in a position to bargain with Local 3524.

Even if examined from a "retrenchment" perspective limited to the withdrawal from Medic 7, the precedents do not support the union. In First National Maintenance Corporation v. NLRB, 452 U.S. 666 (1981), the Supreme Court held that a housekeeping and maintenance

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[18] Updating Justice Stewart's reasoning to current events, a desire to market a 3-engine widebody aircraft could have been among the motivating factors behind the decision of the Boeing Company to merge with McDonnell-Douglas. Such corporate-level merger and growth decisions exceed the bounds of collective bargaining.

contractor who supplied a contract-for-labor workforce at a nursing home had no duty to bargain with the union representing its employees concerning a decision to terminate its contract with the nursing home. In that case, as in this controversy, the sole motivation was to reduce economic costs. The contractor in First National stood in the shoes occupied by the Medic 7 Board here; Fire District 1 stands in the shoes occupied by the nursing home in First National, but there was no mention whatever of a duty to bargain between the union and the nursing home.

Based on the foregoing analysis, the Examiner concludes that the financial support and participation of Fire District 1 in managing the Medic 7 operation is insufficient to make Fire District 1 an employer of the Medic 7 employees. Accordingly, Fire District 1 did not owe the union a duty to bargain either its decision to withdraw from the Medic 7 program or the effects of that decision.

Public Policy Argument

The union suggests that permitting Fire District 1 to escape liability in this case would encourage other public employers to enter into similar arrangements to avoid their responsibilities under Chapter 41.56 RCW. This Examiner sees little likelihood of such a result, which is premised entirely upon speculation. Under the cited precedents, whatever body(-ies) that exercise(s) the right of control would have bargaining obligations. Moreover, taking the facts of this case to their next logical step, the paramedics hired by Fire District 1 and Fire District 11 for their joint operation may well be properly included in the bargaining unit represented by IAFF, Local 1997, and/or a bargaining unit existing at Fire District 11 and/or a bargaining unit existing or

created at the joint operation, and would then be employees of the primary provider of services.[19]

FINDINGS OF FACT

1. Snohomish County Fire Protection District 1 (Fire District 1) a public employer within the meaning and coverage of Chapter 41.56 RCW, has traditionally provided fire and emergency medical technician services in Snohomish County. The fire fighters employed by Fire District 1 are represented for the purposes of collective bargaining by Local 1997 of the International Association of Fire Fighters.

2. By an agreement entered into on September 16, 1971, Snohomish County, Fire District 1, the City of Edmonds, the City of Lynnwood, the City of Mountlake Terrace, the Town of Brier and the Town of Woodway created an operation known as the South-west Snohomish County Public Safety Communications Agency (SNOCOM) in accordance with the provisions of Chapter 39.34 RCW (Interlocal Cooperation Act). SNOCOM originally provided consolidated telephone, radio and alarm communications and dispatching for the participating agencies.

3. SNOCOM is governed by a board consisting of one member appointed by the Board of Snohomish County Commissioners, one member appointed by Fire District 1, two members appointed by the cities of Edmonds, Mountlake Terrace and Lynnwood, and one

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[19] Taking the preceding footnote a step farther: As a primary producer, Boeing could decide to open its own engine plant, instead of buying engines from General Electric or Pratt & Whitney. If the employees of that operation organized for the purposes of collective bargaining, the employer could well have a bargaining obligation under Fibreboard if it were to resume buying engines from secondary suppliers.

member from the towns of Brier and Woodway. Each board member has equal vote in Board decisions.

4. The SNOCOM Board appoints an executive director who is responsible for the administration of the program and operations in accordance with board policy and directives. The executive director advises the board on budget matters and functions as the chief financial officer. SNOCOM's budget is financed by a formula based on the populations and assessed valuations of the participating jurisdictions. SNOCOM contracts with Snohomish County for use of space, and for support services such as payroll, records, purchasing , legal, accounting, and data processing. The SNOCOM Board also created a technical advisory committee composed of the police and fire chiefs of the participating jurisdictions, to advise the director on operational and procedural matters.

5. By an agreement entered into on November 19, 1980, SNOCOM and Snohomish County Public Hospital District 2 (Stevens Hospital) created the Southwest Snohomish County Advanced Life Support Division of SNOCOM in accordance with the Interlocal Cooperation Act. This division of SNOCOM was called "Medic 7". The Medic 7 program operated in conjunction with and as a supplement to an existing Emergency Medical Technician Aid Vehicle Program to provide services at the "paramedic" level for the treatment of critical trauma victims, including persons suffering heart attacks, strokes, and serious injuries. Stevens Hospital provided host facilities and in-kind services for the Medic 7 program, and was permitted to appoint a member to the SNOCOM Board who would be limited to voting on matters concerning Medic 7. Other SNOCOM Board members representing agencies which contributed financially, or in-kind services, were also permitted to vote on Medic 7 matters, and consti-

tuted the balance of the Medic 7 Board. Virtually all of the funding for Medic 7 came from Fire District 1, the City of Edmonds, the City of Lynnwood and the City of Mountlake Terrace.

6. Medic 7 has its own budget. The Medic 7 Board approves the payroll for Medic 7 each month, and has been routinely concerned with details of Medic 7 operation such as overtime, sick leave, and other costs. Medic 7 uses the services of Snohomish County for payroll and benefits administration.

7. Medic 7 Board members represent the legislative bodies of their respective employers and, as such, report back to their principals on policy and costs. The Board of Commissioners for Fire District 1 regularly reviewed the minutes of Medic 7 Board meetings and received status reports on the Medic 7 operation, but took no other role in the administration of the Medic 7 program.

8. Medic 7 Board created positions of medical director and paramedic coordinator for the new program. The medical director and paramedic coordinator was appointed to the SNOCOM TAC. Medic 7 employs a paramedic manager who reports to the director of SNOCOM, and oversees the daily Medic 7 operations.

9. Medic 7 employs 12 paramedics, 8 of which are stationed at Stevens Hospital and operate a medical unit 24 hours per day. The remaining 4 paramedics are housed in Fire District 1 station work on 12-hour shifts. Medic 7 paramedics frequently train and work with personnel from Fire District 1 and other fire departments. At fire scenes, the paramedics are in charge of any medical emergencies and fire fighters are responsible for fire suppression services, so that the

relationship between the fire fighters and paramedics are cooperative rather than supervisory. Medic 7 also provided a central supply function for inventory, ordering and distributing medical supplies for itself and the fire departments within SNOCOM.

10. International Association of Fire Fighters, Local 3524, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all paramedics employed by Medic 7. At all times pertinent Michael T. Wilson was president of the union. The union negotiated a labor agreement with Medic 7 effective January 1, 1994 through December 31, 1996. John T. Dolan, who was the director of fire services for Fire District 1, was a member of the Medic 7 Board and was a member of the team which negotiated on behalf of the Medic 7 Board for the collective bargain agreements with Local 3524. Dolan and his successor regularly sat on both the Medic 7 budget committee and personnel policy committee, often as chair.

11. On February 26, 1996, Fire District 1 entered into a transitional agreement with Snohomish County Fire District 11 (Fire District 11), to consolidate fire protection and emergency medical services, operations, personnel, administration and management under a joint board of commissioners. One of the issues to be considered between that date and July of 1996 was the operations and costs of paramedic services.

12. On February 29, 1996, Local 3524 wrote a letter to Fire District 1, noting the agreement for joint operations with Fire District 11 and that a withdrawal of Fire District 1 from SNOCOM and Medic 7 could have a devastating impact on the operation of Medic 7 and members of the bargaining unit.

Local 3524 demanded that Fire District 1 bargain any such decision and effects, while the district maintained the status quo.

13. On March 7, 1996, Fire District 1 replied to Local 3524 by stating that it was not the employer of any of the Medic 7 employees, and therefore did not have any obligation to bargain its decision or its impact with Local 3524. Fire District 1 maintained that position continuously thereafter.

14. On May 6, 1996, Fire District 1 gave written notice to the Medic 7 Board that it was withdrawing from the Medic 7 program, effective December 31, 1997.

15. On September 10, 1996, Fire District 1 and Fire District 11 executed an Agreement for the Consolidation of District Operations, providing for a joint board of directors (consisting of all five commissioners from Fire District 1 and three commissioners from Fire District 11) to administer joint operations providing fire protection services and medical emergency responses. Certain operations remained the responsibility of the individual boards, including setting individual fire district budgets and tax levies, processing and payment of individual expenses, administration of existing collective bargaining agreements, maintenance and repair of individual facilities and equipment, and negotiation and performance of individual district contracts. Each district remained responsible for the financial operation of its own fire department. The chief was to be responsible for preparing the drafts of each individual budget and the consolidated budget. The cost of the consolidated operation budget would be prorated between the districts. The term of the consolidation agreement was for five years from January 1, 1997.

16. On December 2, 1996, Fire District 1 entered into an agreement with the Medic 7 Board to provide paramedic services to the district for calendar year 1997 for the sum of $205,023. That amount represented about one-half of the amount formerly contributed by Fire District 1 to the Medic 7 budget.

17. During December 1996, a job announcement placed in newspapers in the Pacific Northwest and California sought applicants for three to six paramedic / fire fighter positions with Fire District 1 and/or Fire District 11. In addition, Fire District 1 urged the remaining participants of Medic 7 to convert from the "two paramedics" response utilized by Medic 7 to a less costly "one paramedic / fire fighter and one EMT / fire fighter" model utilized by Fire District 11.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Based on the written agreement for its creation under the Interlocal Cooperation Act, the majority vote standard utilized by its board in managing day-to-day operations, and its separate budgeting process, the Medic 7 Board is the employer of paramedics in the bargaining unit represented by International Association of Fire Fighters, Local 3524.

3. Based on its limited participation as one of several public employers who joined together to create the Medic 7 program under the Interlocal Cooperation Act, the limitation of its monetary contribution to Medic 7 by an established formula, and the clearly-delineated procedure for any participant in the Medic 7 program to terminate its participation without

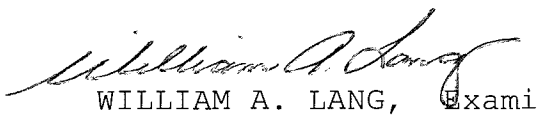
necessarily causing the complete termination of the joint venture, Fire District 1 is neither an employer nor a joint employer of paramedics in the bargaining unit represented by International Association of Fire Fighters, Local 3524, so that Fire District 1 was under no obligation to bargain with Local 3524 concerning its decisions: (1) to join together with Fire District 11 for consolidated operations, or (2) to withdraw from the Medic 7 program, or the effects of those decisions, and so has not committed any unfair labor practice under RCW 41.56.140.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Dated in Olympia, Washington, this 19th day of August, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.