

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION)	
OF FIRE FIGHTERS,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 2002-054
)	
PIKE COUNTY MEMORIAL HOSPITAL,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 2000. This matter arises from the election petition of the International Association of Fire Fighters (hereinafter referred to as the Union) to represent certain employees of Pike County Memorial Hospital (hereinafter referred to as the Hospital). The Union seeks to represent a bargaining unit consisting of all full-time Paramedics and Emergency Medical Technicians (EMTs) of the Hospital's Ambulance Department, excluding the Department Director. A hearing on the matter was held on October 10, 2002, in St. Louis, Missouri. However, due to the amount of evidence presented by the parties at the hearing, the hearing was continued and completed on November 6, 2002. Representatives of the Union and the Hospital appeared at the hearing and presented evidence. The case was heard by State Board of Mediation Chairman John A. Birch, Employee Member Patrick Hickey, and Employer Member Lois Vander Waerdt. At the hearing, the parties were given full opportunity to present evidence and make their

arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Hospital was chartered as a county public hospital. As such, the Hospital is a political subdivision of the State of Missouri. The Hospital is also a 501(c)(3) not-for-profit corporation.

Since the Hospital was established, there has never been any union representation. As such, there is no history of collective bargaining at the Hospital.

The Hospital provides both inpatient and outpatient services. The Hospital's main facility is a three-story building located in Louisiana, Missouri. The Hospital building has 111,000 square feet. The Hospital is licensed by the State of Missouri as a 45-bed acute care facility, but is currently set up with 24 beds. Patients are admitted to the hospital on either an outpatient basis (admitted for less than 24 hours) or an inpatient basis (admitted for greater than 24 hours). The Hospital averages approximately 9 patients per day, and the average length of stay for patients is 2.7 days. However, the daily patient census has fluctuated from 2 to 18 patients.

The Hospital also operates two clinics through which it provides outpatient services. One clinic (the Louisiana Clinic) is located on the third floor of the Hospital building in Louisiana, Missouri. The second clinic (the Bowling Green Clinic) is located in a separate facility in Bowling Green, Missouri. The Bowling Green Clinic is located approximately eleven miles away from the Hospital.

The Hospital also operates an Ambulance service under a license issued to the Hospital. The Ambulance Department is based in the Emergency Department or Emergency Room (ER) on the first floor of the Hospital building in Louisiana, Missouri. The ambulances are housed directly adjacent to the ER in an attached garage port. At the time of the hearing, the Hospital was also constructing a stand-alone ambulance facility in Bowling Green, Missouri.

The Hospital is funded through operational revenues, county sales taxes, and county property taxes. County property tax is assessed and collected for the Hospital. The County property tax levied is twenty-two cents. Fourteen cents is attributable to the Hospital and eight cents is dedicated to the Ambulance service. The property taxes are collected by the County and transferred to a Hospital bank account. Each month, monies from the property tax are allocated to operations for the Ambulance Department by a check issued by the Treasurer of the Hospital Board of Trustees.

Greg Reed is the Administrator and Chief Executive Officer for the Hospital. As such, Mr. Reed is responsible for the overall operations of the Hospital. Linda Black is the Director of Nursing for the Hospital. Ms. Black is responsible for all nursing care provided by the Hospital. Ms. Black reports directly to the Hospital Administrator. Lorraine Harness is the Chief Financial Officer for the Hospital. Her job responsibilities include all financial functions of the Hospital. Ms. Harness also reports directly to the Hospital Administrator.

The Hospital has twenty-three departments. Each department has a Department Director. Some of the Department Directors report directly to Mr. Reed, some report to Ms. Black, and the remainder report to Ms. Harness. Katie Scott is the Director of the

ER. Phillip Brian Renner is the Director of the Ambulance Department. Ms. Scott and Mr. Renner both report to Ms. Black.

After normal operating hours, the House Supervisor is in charge of all areas of the Hospital. The House Supervisor is the Registered Nurse on duty in the ER. The House Supervisor supervises all employees working within the Hospital after normal operating hours. The House Supervisor has the authority to direct and discipline all employees, including Ambulance Department employees. However, a member of the Hospital's Administration team (Mr. Reed, Ms. Black, and Ms. Harness) is on call after normal operating hours. If a situation arises in which the House Supervisor desires direction from a member of the Hospital's Administration team, the House Supervisor contacts the team member on call. During regular business hours, the House Supervisor reports to the Director of the ER.

The following Departments are located on the first floor of the Hospital building: Administration, Laboratory, Business Office, Dietary, Gift Shop, Surgery, Radiology, Maintenance, Housekeeping, Purchasing, ER, and Ambulance. The following Department's are located on the second floor of the Hospital building: Dialysis, Cardiac, Medical Records, Pharmacy, Quality Assurance, Risk Management, Infection Control, and Employee Health. The following Department's are located on the third floor of the Hospital building: Medical/Surgical, Physical Therapy, and the Louisiana Clinic.

Approximately one hundred seventy-five employees, which includes full-time, part-time, and stand-by or PRN employees, staff the Hospital. Eighty of these employees are full-time employees, forty-five are part-time employees, and fifty are PRN employees. Full-time employees are those who are regularly scheduled to work

seventy-two or more hours per two-week pay period. Part-time employees are those who are regularly scheduled to work sixteen or more hours, but fewer than seventy-two hours, per two-week pay period. PRN are not regularly scheduled. Instead, they work only on an as-needed basis. PRN employees have a choice as to whether or not they will accept work when called. Included within the total of one hundred seventy-five employees are thirty-seven Registered Nurses, two full-time Physicians, two Nurse Practitioners, and twenty managers or supervisors.

The Radiology Department is staffed by five employees who are employed directly by the Hospital and five “contract employees” who are employed by two outside companies. The contract employees work regular shifts. One of the contract employees is a Sonography Technician who works five days a week at the Hospital. The other four contract employees are MRI Technicians who work in a mobile MRI unit parked adjacent to the ER. The MRI Technicians work on a rotating three-day per week schedule. Depending on the number of procedures, these MRI Technicians work from eight to eleven hours per day. The private companies that employ the Sonography Technician and the MRI Technicians bill the Hospital based upon the number of hours these individuals work at the Hospital.

Employees within the Ambulance Department, Radiology Department, Laboratory, Medical/Surgical Department, Cardiopulmonary Department, and Maintenance Department take call. All employees on-call must be capable of responding to the Hospital within thirty minutes. If an on-call employee is not within thirty minutes of the Hospital, the employee is provided a sleeping room at the Hospital. Any on-call employee who does not respond to the Hospital within thirty minutes of

being called is subject to discipline. All on-call employees are required to wear a beeper and are paid one dollar per hour for being on-call.

The Ambulance employees supervised by Mr. Renner fall within one of two job classifications: EMT or Paramedic. To be licensed as an EMT in the State of Missouri, an individual has to complete six months of schooling, plus clinical time, and pass a Missouri state examination or national register examination. For an individual to be licensed as a Paramedic in the State of Missouri, an individual must be an EMT, complete two years of schooling or a certificate program, and pass the national register examination. Paramedics are trained in Advanced Cardiac Life Support (ACLS), but EMTs are not ACLS trained.

The human resources functions are the same for all Hospital employees, including the Emergency Medical Technicians (EMTs) and EMT-Paramedics (Paramedics). These functions include the recruiting, hiring, and transferring of employees. All Hospital employees are also subject to the same personnel policies, code of conduct, and grievance procedure.

Employee benefits are the same for all Hospital employees. The EMTs and Paramedics are eligible for Hospital benefits in the same manner as all other Hospital employees.

The Hospital has one cafeteria that also serves as a break room. All Hospital employees, including the EMTs and Paramedics, are permitted to use the cafeteria and receive a ten percent discount on cafeteria meals. All Hospital employees are allowed fifteen-minute break periods and a thirty-minute unpaid meal period.

The Hospital has one gift shop and all Hospital employees, including the EMTs and Paramedics, may purchase items from the gift shop. They receive a ten percent discount on gift shop purchases.

All Hospital employees, including the EMTs and Paramedics, are subject to the same requirements for meeting and seminar attendance, which include mandatory meetings, annual refreshers, and implementation/orientation. All Hospital employees attend the same employee orientation training. Additionally, all Hospital employees attend common Hospital social functions including monthly teas, recognition events, barbecues, and an annual Christmas party.

The Hospital has two time clocks, one located on the first floor and one located on the third floor. Most Hospital employees, including the EMTs and Paramedics, use the time clock on the first floor.

Additionally, the EMTs and Paramedics wear Hospital I.D. Tags. They also wear Hospital shirts.

The Hospital has a single wage system that applies to all Hospital employees, including Ambulance Department personnel. Under the Hospital's wage system, there is a separate ten-step wage scale for each job classification, except Registered Nurse. Each wage scale has a maximum and minimum wage rate. A step on the wage scale coincides with one-year of experience. If the Hospital hired a newly graduated EMT with no previous experience, the EMT would be placed on the wage scale at the minimum rate. If the Hospital hired an EMT with prior experience, the EMT would be placed on the wage scale according to his or her years of experience.

Hospital employees who are exempt employees under the federal Fair Labor Standards Act are paid a salary. Hospital employees who are non-exempt employees under the federal Fair Labor Standards Act are paid by the hour. The Hospital's non-exempt employees are also paid overtime. All Hospital employees are paid on the same pay date every two weeks. All Hospital employees are also paid with a check drawn on a Hospital account.

Employees in the Ambulance Department are paid in the same manner as other Hospital employees. The Hospital's EMTs and Paramedics, except Mr. Renner, are non-exempt employees under the federal Fair Labor Standards Act. They are paid by the hour and are paid overtime. The EMTs and Paramedics are also paid one dollar per hour while on-call. Since the EMTs and Paramedics perform duties in both the Ambulance Department and the ER, they are paid at a higher rate than EMTs and Paramedics at other facilities in nearby counties.

All Hospital employees, including the EMTs and the Paramedics, are subject to an annual performance evaluation conducted by each employee's immediate department supervisor. The performance evaluation generally coincides with an employee's original start date. The employees are evaluated and scored in the following six categories: "Mission & Values," "Customer Relations," "Team Participation," "Attendance & Work Habits," "Essential Job Functions," and "Competencies." Ratings on the evaluations range from 1 to 3 as follows: 1 = Did not meet Standard; 2 = Met Standard; and 3 = Exceeded Standard. The scores in the six categories are averaged on the evaluation Summary Form. There is an area on the bottom of the evaluation Summary Form for comments and an area to indicate whether

or not the employee is eligible for a wage increase. In order to be eligible for an annual wage increase, an employee must achieve an average rating of 2. If the average rating falls below 2, the employee is placed on a performance improvement plan and the employee is not eligible for a wage increase at that time.

The Director of the ER, Katie Scott, and the Director of the Ambulance Department, Phillip Brian Renner, both evaluate the EMTs and Paramedics. Mr. Renner evaluates the EMTs and Paramedics based upon the performance of their ambulance duties. Ms. Scott evaluates the EMTs and Paramedics based upon work performed in the ER. Both employee evaluations are considered in determining whether or not an EMT or Paramedic is eligible for a wage increase.

As the Director of the Hospital's Ambulance Department, Mr. Renner oversees the general day-to-day operations of the Department including scheduling, budgeting, and purchasing. Mr. Renner is a licensed paramedic in Missouri and a critical care paramedic. In addition to performing his managerial duties, Mr. Renner, at times, works as a paramedic on the ambulances and in the ER. At the time of the hearing, the Ambulance Department had sufficient staff such that Mr. Renner was performing primarily managerial duties. At that time, Mr. Renner was working forty-hours per week. However, once the new Bowling Green ambulance facility is completed, Mr. Renner will work regular shifts on the ambulances. Mr. Renner will spend half of his time on the ambulances and half of his time performing managerial duties.

Mr. Renner supervises nine full-time Ambulance employees and seventeen stand-by Ambulance employees (PRNs). The PRNs are not regularly scheduled, but

instead are called in as needed. There are no part-time Ambulance employees. When Mr. Renner is not on duty, the Ambulance employees report to the House Supervisor.

All EMTs and Paramedics, except Mr. Renner, work twelve-hour shifts. The day shift is from 7:00 a.m. to 7:30 p.m. Day-shift employees spend approximately sixty percent of the shift in the ER. The night shift is from 7:00 p.m. until 7:30 a.m. Night-shift employees spend approximately forty percent of the shift in the ER. At approximately 11:00 p.m., depending on call demand, the night shift EMTs and Paramedics are permitted to sleep in rooms on the second floor of the Hospital. The half-hour overlap of shifts allows the ambulance crews an opportunity to inspect the ambulances and equipment at shift change.

The Hospital maintains two ambulances. An ambulance crew is composed of an EMT and a Paramedic. The Ambulance Department has two ambulance crews covering each shift, a primary crew and a back-up crew. The back-up ambulance crew is on-call and is called into the Hospital if the primary crew is out of the county on a transfer, tied-up on call, or there is an immediate second ambulance call.

The Hospital has approximately 1600 ambulance runs per year. At the time of the hearing, the Ambulance Department was averaging five calls per day, which included both patient transfers and emergency calls. An ambulance run averages two hours in duration from departure until the ambulance was outfitted for the next run.

The EMTs and Paramedics perform many of the same job duties within the Ambulance Department. With regard to emergency calls, the EMTs and Paramedics provide emergency medical care to the critically ill and injured and transport the patients to the Hospital. While on an ambulance run, the EMTs and Paramedics are under the

clinical supervision of the ER physician. Upon arriving at the scene, the EMT and Paramedic remove the patient from immediate danger. They determine the nature and extent of the illness or injury and establish the priority of required emergency care. The EMT and Paramedic render such emergency care as opening and maintaining an airway, giving artificial ventilation, performing cardiac resuscitation, controlling hemorrhages, treating shock, immobilizing fractures, bandaging wounds, assisting in childbirth, managing mentally disturbed patients, and initiating care of poison and burn patients. Further, under the direction of the Physician or Registered Nurse, the Paramedic may perform invasive procedures and administer medications. Due to license restrictions, EMTs may not perform invasive procedures or administer medications.

The EMT and Paramedic then place the patient on a stretcher and transport the patient by ambulance making sure that the patient and stretcher are properly secured within the ambulance. Generally, the EMT drives the ambulance and the Paramedic rides in the back of the ambulance with the patient. While enroute to the Hospital, the patient is constantly observed and additional care, including continued emergency care, is administered as warranted. The patient's blood pressure, pulse, and respiration are taken. Diagnostic signs that indicate the need for special professional services are identified and communicated to the ER so that such services may be immediately available upon arrival at the Hospital. Additionally, the EMT and Paramedic report to the ER the number of patients being transported, the nature and extent of their injuries, and the approximate arrival time. Upon arrival at the Hospital, the patient is taken to the ER. The EMT and Paramedic report verbally and in writing to the ER staff their

observations and care of the patient. In the ER, the EMT and Paramedic assist the ER Physician and Registered Nurse with the continued care of the patient. Since the EMT and Paramedic already know the patient's history, they prepare the emergency room record.

In addition to emergency calls, the EMT and Paramedic perform non-emergency patient transfers. Patients are transported by ambulance from the Hospital to another facility.

After each ambulance run, the EMT and Paramedic get the ambulance outfitted for the next run. They replace used linens, blankets, and supplies. They also send supplies to the Operating Room for sterilization. Additionally, they check all equipment on the ambulance. The EMT and Paramedic are also responsible for cleaning the ambulance and, when necessary, decontaminating the ambulance's interior. They also ensure that the ambulance is in proper operating condition by checking the oil, gas, battery, radiator, and tire pressure. Additionally, the EMT and Paramedic are responsible for maintaining the ambulance port in a clean and efficient operating condition.

The EMTs and Paramedics also perform job duties within the ER. The Ambulance Department is based in the ER. The Hospital considers the Ambulance Department to be extension of the ER. The ER is staffed with a Physician, a Registered Nurse, an ER Technician, a Paramedic, and an EMT. While performing duties in the ER, the EMTs and Paramedics are under the clinical supervision of the ER Physician and the ER Registered Nurse (House Supervisor). However, as the Director of the ER, Katie Scott is responsible for the day-to-day operations of the ER and she

has supervisory authority over the EMTs and Paramedics when they are working in the ER.

The same EMTs and Paramedics who work in the ER also work in the Ambulance services. In the ER, the EMTs and Paramedics perform many of the same job duties. When a patient arrives at the ER, the EMTs and Paramedics assist the patient to an examination room. They ensure that the patient is appropriately gowned for examination. The EMT and Paramedic take the patient's vital signs and begin assessment of the patient's condition. If the patient is in acute distress, the EMT or Paramedic would begin initial treatment such as placing the patient on oxygen. If the patient complains of chest pains, the EMT or Paramedics would apply a cardiac monitor and obtain a rhythm strip. The EMT and Paramedic can also use Doppler to assess pulses and circulation. The Paramedics are also qualified to start invasive procedures such as IVs and intubations under the direction of the Physician or Registered Nurse. The Paramedic may also administer medications, including medications by IV, under the supervision of the Physician or RN. In the ER, the EMTs and Paramedics also obtain patient information, complete necessary paperwork, write assignments, document vital signs, and initiate charging procedures for the patient. The EMT and Paramedic also assist in keeping the patient's family members informed of the patient's progress. Additionally, the EMT and Paramedic assist in obtaining the necessary consents for treatment. If the patient has a prior medical record at the Hospital, the EMT or Paramedic calls Health Information Management and has the patient's record delivered to the ER. After normal operating hours, the EMT and Paramedic are responsible for retrieving medical records from Health Information Management and

delivering those records to the ER Physician. The EMTs and Paramedics also assist in maintaining medical records and forms.

If an ER patient is admitted to the Hospital for inpatient care, the EMT or Paramedic transport the patient to the Medical/Surgical floor (third floor) and provide a report to the receiving RN or LPN. They will assist the patient with their attire and put them in bed. When necessary, the EMT or Paramedic will also place the patient on oxygen or a cardiac monitor. On the way from the ER to the Medical/ Surgical floor, the EMT or Paramedic delivers the patient's admitting order and paperwork to Admissions.

If an ER patient is discharged and an EMT or Paramedic is in charge of discharging the patient, the EMT or Paramedic follow-up on the doctor's instructions to make sure the patient understands the instructions. If necessary, the EMT or Paramedic will transport the patient by wheelchair to his or her vehicle or to Admissions. The EMT or Paramedic will complete the necessary paperwork, documenting charges and attaching supply stickers, to ensure that the patient receives the appropriate charges. The EMT or Paramedic will forward the completed paperwork to Admissions.

The EMTs and Paramedics perform other duties around the Hospital. The EMTs and Paramedics are the patient transporters in the hospital. The EMTs and Paramedics respond to medical emergencies (Code Blues) within the Hospital. The EMTs and Paramedics assist with clearing visitors from the Hospital building in the evenings. They also check the doors each night to make sure they are locked and the Hospital is secure.

Given the similarity in qualifications, training, and job duties, there is a great deal of job interchange between the EMTs and Paramedics. Additionally, since the EMTs and Paramedics work together on the ambulances and in the ER, there is daily contact between the EMTs and Paramedics.

Additionally, the evidence presented at the hearing established that the EMTs and Paramedics hold unique positions within the Hospital. The EMTs and Paramedics are the only Hospital employees who provide emergency medical care outside of the Hospital. Furthermore, the EMTs and Paramedics have specialized training and must be licensed by the State of Missouri. The Paramedics are also certified in Advanced Cardiac Life Support (ACLS). Most of the other Hospital employees do not have this specialized training and are not similarly licensed. Therefore, very few Hospital employees are capable of performing the ambulance duties (such as responding on emergency ambulance calls) of the EMTs and Paramedics. Additionally, with the exception of the Registered Nurses, it would be very difficult to cross-train other Hospital employees to perform the ambulance duties of the EMTs and Paramedics.

Generally, the roles of the Hospital's EMTs and Paramedics are different from the roles of EMTs and Paramedics at Ambulance Districts. In an Ambulance District, EMTs and Paramedics are responsible for the patient only while the patient is in the ambulance. After the patient is delivered to the medical facility, the Ambulance District's responsibility ceases. At the Hospital, EMTs and Paramedics perform duties both in the ambulance and the ER.

However, once the Bowling Green ambulance facility is completed, the roles of the EMTs and Paramedics at the Hospital will be changing. Their roles will become

more like those of EMTs and Paramedics at Ambulance Districts. At the time of the hearing, the Hospital was in the process of constructing a stand-alone ambulance facility in Bowling Green, Missouri. This new facility is located approximately eleven miles from the Hospital. The new ambulance facility will be a satellite facility for the Hospital and will be used exclusively for the ambulance. The new ambulance facility will have sleeping quarters and a kitchen. The Hospital will also continue to provide ambulance service from the current facility at the Hospital. Therefore, the Hospital will operate two ambulance facilities. Both ambulance facilities will be staffed twenty-four hours per day, seven days per week. The Hospital will have two ambulance crews on duty at all times. The Hospital plans on rotating the crews. The full-time EMTs and Paramedics will pull one shift per week at each location. The Hospital estimates that it will take twelve full-time ambulance employees, including Mr. Renner, to operate the two facilities. The Hospital plans on utilizing its current EMTs and Paramedics and hiring four additional full-time ambulance employees.

It would appear that the duties performed by the EMTs and Paramedics at the Bowling Green ambulance facility will be substantially similar to the duties performed by EMTs and Paramedics at Ambulance Districts. Since the Bowling Green ambulance facility will be a stand-alone facility located eleven miles from the Hospital, the EMTs and Paramedics at that facility will not be available to perform duties in the ER or the Hospital.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all full-time Paramedics and EMTs of the Hospital's Ambulance Department, excluding the

Department Director. The Hospital contends that the petitioned for bargaining unit is inappropriate as an attempt to "cherry-pick" a small group of employees to create a bargaining unit which will lead to over-fragmentation of the Hospital's workforce. The Hospital proposes a hospital-wide bargaining unit that includes the five contract employees in the Radiology Department.

To support its proposed hospital-wide unit, the Hospital presented a considerable amount of testimony concerning the contact and interchange among the employees in the Hospital's twenty-three Departments. The Board finds that this testimony overstated the amount of contact and interchange among the employees. The Board also finds that much of the testimony given was largely irrelevant. This was particularly true with regard to the contact and interchange between employees in the clinical and non-clinical Departments. Therefore, the Board discounted the Hospital's evidence concerning the contact and interchange among employees.

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 2000 which provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 2000 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest" nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the

Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

Additionally, in making a determination concerning appropriate bargaining unit, there is no requirement that the unit be the most appropriate or the best unit. *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990). The only requirement is that the unit be appropriate. *Id.* Furthermore, because of the Board's concern with over-fragmentation of a bargaining unit, the Board has consistently held that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. *Sheet Metal Workers*

International Association Local No. 2 v. Central Missouri State University, Public Case No. 83-001 (SBM 1983). As the petitioning party, the Union has the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D. 1998).

An analysis of the factors in this case demonstrates that the full-time Paramedics and EMTs share a clear and identifiable community of interest and therefore, constitute an appropriate bargaining unit. Furthermore, the evidence shows that the EMTs and Paramedics hold unique positions within the Hospital. The manner in which the earnings of the EMTs and Paramedics are determined is the same. The EMTs and Paramedics are paid under the same Hospital pay plan. The EMTs and Paramedics, except for Mr. Renner, are non-exempt employees under the federal Fair Labor Standards Act. They are paid by the hour and receive overtime.

The EMTs and Paramedics have the same employee benefits, hours of work, and conditions of employment. The full-time EMTs and Paramedics receive the same employee benefits. They are also subject to the same personnel policies, code of conduct, and grievance procedure. The EMTs and Paramedics are permitted to use the Hospital cafeteria and gift shop. They receive a ten percent discount on cafeteria meals and gift shop purchases. The EMTs and Paramedics use the same time clock. Additionally, the EMTs and Paramedics wear Hospital I.D. Tags and Hospital shirts. They are subject to the same requirements for meeting and seminar attendance. They may also attend common Hospital social functions such as monthly teas, recognition events, barbecues, and an annual Christmas party. The EMTs and Paramedics, except

Mr. Renner, work twelve-hour shifts. They are also allowed fifteen-minute break periods and a thirty-minute unpaid meal period.

The EMTs and Paramedics perform many of the same job duties. They provide emergency medical care both inside and outside the Hospital. The EMT and Paramedic render such emergency care as opening and maintaining airways, giving artificial ventilation, performing cardiac resuscitation, controlling hemorrhages, treating shock, immobilizing fractures, bandaging wounds, assisting in childbirth, managing mentally disturbed patients, and initiating care of poison and burn patients. In the ER, the EMTs and Paramedics assist patients to the examination room and ensure that they are appropriately gowned for examination. They take the patient's vital signs and begin assessment of the patient's condition. If a patient is in acute distress, the EMT or Paramedic will begin initial treatment such as placing the patient on oxygen. If a patient complains of chest pains, the EMT or Paramedic will apply a cardiac monitor and obtain a rhythm strip. They can also Doppler to assess pulses and circulation. The EMTs and Paramedics also perform duties around the Hospital such as transporting patients, maintaining medical records, and making sure the Hospital's doors are secure at night. They are also required to maintain the ambulances and the garage port.

The EMTs and Paramedics have similar qualifications, skills and training. To be licensed as an EMT in the State of Missouri, an individual has to complete six months of schooling, plus clinical time, and pass a Missouri state examination or a national register examination. For an individual to be licensed as a Paramedic in the State of Missouri, an individual must be an EMT, complete two years of schooling or a certificate program, and pass the national register examination. Paramedics are also trained in

Advanced Cardiac Life Support (ACLS). However, EMTs are not ACLS trained. As for job skills, Paramedics are qualified to start invasive procedures such as IVs and intubations under the direction of the Physician or Registered Nurse. The Paramedic may also administer medications, including medications by IV, under the supervision of the Physician or Registered Nurse. The EMTs may not perform invasive procedures or administer medications.

Furthermore, there appears to be frequent contact and interchange between the EMTs and Paramedics. Since the EMTs and Paramedics work together on the ambulances and in the ER, there is daily contact between the EMTs and Paramedics. Additionally, given the similarity in the qualifications, training, and job duties of the EMTs and Paramedics, there is a great deal of job interchange between them. EMT/Paramedic certified bargaining units are not uncommon in the state of Missouri.

The EMTs and Paramedics work in close proximity with each other. The Hospital's Ambulance Department is based in the ER. The EMTs and Paramedics work together on the ambulances and in the ER. They also use the same sleeping accommodations on the second floor of the Hospital. They also use the same time clock, cafeteria, and gift shop. The EMTs and Paramedics will also be the only Hospital employees stationed at the Bowling Green ambulance facility.

There is continuity or integration of the duties assigned to the EMTs and Paramedics and the Hospital's processes. The EMTs and Paramedics are the only Hospital employees who provide emergency medical care outside the Hospital. However, the EMTs and Paramedics also perform those same duties within the Hospital's ER. When the EMT and Paramedic deliver an emergency patient to the ER,

they assist the ER staff with the continued care of the patient. If the patient is admitted, the EMT or Paramedic will transport the patient to the Medical/Surgical floor and assist the patient to bed. The EMTs and Paramedics also assist in maintaining Hospital medical records and forms. They also perform duties around the Hospital such as transporting patients.

The EMTs and Paramedics have common supervision. The EMTs and Paramedics are supervised by the Director of the Ambulance Department, Phillip Brian Renner, and the Director of the ER, Katie Scott. After normal operating hours, the EMTs and Paramedics are supervised by the House Supervisor. While on ambulance runs, the EMTs and Paramedics are under the clinical supervision of the ER Physician. Lastly, while performing medical duties in the ER, the EMTs and Paramedics are under the clinical supervision of the ER Physician and the ER Registered Nurse.

The EMTs and Paramedics share the same relationship to the Hospital's administrative organization. The EMTs and Paramedics perform many of the same duties utilizing the same equipment. They perform duties in the Ambulance Department, ER, and Hospital. The EMTs and Paramedics have the same employee benefits and working conditions. Additionally, the EMTs and Paramedics, except for Mr. Renner, are paid by the hour and receive overtime.

Additionally, there has never been any union representation at the Hospital. As such, the Hospital has no history of collective bargaining.

The EMTs and Paramedics also hold unique positions within the Hospital. The EMTs and Paramedics are the only Hospital employees who provide emergency medical care outside of the Hospital. The EMTs and Paramedics have specialized

training and must be licensed by the State of Missouri. The Paramedics are also certified in Advanced Cardiac Life Support (ACLS). Most other Hospital employees do not have this specialized training and are not similarly licensed. Therefore, very few Hospital employees are capable of performing the ambulance duties (such as responding on emergency ambulance calls) of the EMTs and Paramedics. Additionally, with the exception of the Registered Nurses, it would be very difficult to cross-train other Hospital employees to perform the ambulance duties of the EMTs and Paramedics.

Furthermore, once the Bowling Green ambulance facility is completed, the roles of the EMTs and Paramedics will be changing. It would appear that the duties performed by the EMTs and Paramedics at the Bowling Green ambulance facility will be substantially similar to the duties performed by EMTs and Paramedics at Ambulance Districts. Since the Bowling Green ambulance facility will be a stand-alone facility located eleven miles from the Hospital, the EMTs and Paramedics at that facility will not be available to perform duties in the ER or the Hospital.

Based upon the foregoing, a bargaining unit consisting of all full-time Paramedics and EMTs of the Hospital's Ambulance Department, excluding the Department Director, is an appropriate unit. Furthermore, the EMTs and Paramedics hold unique positions within the Hospital and separate representation is necessary to protect their right to effective bargaining.

Furthermore, the Board is unconvinced by the Hospital's argument that allowing the full-time EMTs and Paramedics to have their own bargaining unit will lead to a proliferation of bargaining units which will seriously impact the Hospital's ability to operate and remain financially viable. In this case, the Board found that EMTs and

Paramedics hold unique positions within the Hospital that warrant separate representation. It is highly unlikely that every group of employees within the Hospital hold such unique positions that they will also require separate representation. Therefore, the Board's decision will not lead to a proliferation of bargaining units. Furthermore, no Hospital employees have ever been represented by a union. The Hospital has no experience with the meet and confer provisions of the Missouri Public Sector Labor Law. Based upon this inexperience, the Board finds the Hospital's argument unconvincing.

Additionally, the Board's decision in *Communications Workers of America v. Pike County Memorial Hospital*, Public Case No. 76-009 (SBM 1976) is distinguishable from the present case. In the *Communications Workers* case the union petitioned for essentially a hospital-wide unit, but excluded the Business Office clerical employees because they were not interested in union representation. Based upon the record, the Board found that the Business Office clerical employees had the same community of interest as other employees the union included in its proposed unit. The Board denied the union's request to exclude the Business Office clerical employees on the basis of no expressed interest in unionization. The issue of whether or not Ambulance Department employees constituted an appropriate bargaining unit was not discussed in the *Communications Workers* case. Additionally, the Union in the present case petitioned for a Department-wide unit, not a Hospital-wide unit. The present case is distinguishable from the *Communications Workers* case.

The Board also finds that the National Labor Relations Board's regulations and cases concerning appropriate bargaining units for acute care hospitals do not support

the Hospital's position in this case. The NLRB regulation concerning appropriate bargaining units for acute care hospitals, 29 C.F.R. Section 103.30, sets forth eight appropriate units. However, if a labor organization seeks a broader unit, various combinations of units may be appropriate. *Id.* See 1 Patrick Hardin & John E. Higgins, Jr., *The Developing Labor Law* 632-633 (4th ed. 2001) for a discussion concerning the application of the NLRB regulation. In this case, the Hospital desires one Hospital-wide unit. The Hospital's position appears contrary to the NLRB regulation. Furthermore, as the Hospital acknowledges, NLRB regulations and cases are not binding on the Board. See, *Parkway School District v. Parkway Association of Education Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d 63, 69 (Mo. banc 1991).

Finally, the Hospital included in its proposed hospital-wide bargaining unit the five contract employees in the Radiology Department. However, the five contract employees are employed by private companies and should not be included in a bargaining unit of public employees. The Public Sector Labor Law provides "a procedure for communications between the organization selected by public employees and their employer...." *State ex rel. Missey v. City of Cabool*, 441 S.W.2d 35, 41 (Mo. 1969); Compare also, *Golden Valley Memorial Hospital District v. Missouri State Board of Mediation*, 559 S.W.2d 581, 583 (Mo. App. 1977) ("The statute [Section 105.510] does not define the word employee; however, the term employee cannot be literally read to include every person on the payroll of a public body."). In contrast, the right of collective bargaining is guaranteed to the employees of private industry by Article I, Section 29 of the Constitution of Missouri (1945). Clearly, the contract employees are employees of private industry and should not be included in a bargaining unit of public

employees. Therefore, the bargaining unit proposed by the Hospital is not an appropriate unit.

Based upon the foregoing, a bargaining unit consisting of all full-time Paramedics and EMTs of the Hospital's Ambulance Department, excluding the Department Director, is an appropriate unit.

ORDER

The State Board of Mediation finds that a unit consisting of all full-time Paramedics and EMTs of the Hospital's Ambulance Department, excluding the Department Director, is an appropriate unit. An election is ordered therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have the International Association of Fire Fighters as their exclusive bargaining representative.

The Hospital shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 30th day of April, 2003.

STATE BOARD OF MEDIATION

(SEAL)

John A. Birch, Chairman

Patrick Hickey, Employee Member

Lois Vander Waerd, Employer Member