The Firehouse Lawyer

Volume 23, Number 7

August 2025

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Inside this Issue

Minimum and Maximum Ambulance Licenses: What's the Legal Basis for Limiting Competition?

A client recently asked us whether a regional EMS and trauma care council can legally recommend disapproval of a new ALS ambulance license application based solely on the number of existing providers already licensed in that region.

The agency also questioned whether a fire district or RFA, acting under its own statutory authority, could provide ALS transport services even if the regional council and Department of Health deemed additional providers unnecessary.

These are important and timely questions. As more fire agencies begin providing ambulance services under RCW 52.02.020, RCW 52.12.131, and RCW 52.26.040, the potential for conflict between local public agencies and regional planning bodies has increased—particularly when a "lack of need" is cited as a basis to deny or limit licensing.

1. *What do the statutes and regulations actually say?*

   The core planning authority for regional EMS and trauma care councils arises from RCW 70.168.100(1). This statute directs councils to prepare and submit regional plans that, among other things:

   A. "Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and

avoid inefficient duplication and lack of coordination" of services in the region. RCW 70.168.100(1)(h); and

B. "Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region." RCW 70.168.100(1)(g).

The Department of Health has further implemented this authority by regulation. WAC 246-976-960(3)(a)(iii) echoes the statutory language, requiring each regional EMS/TC council to:

"Identify the need for and recommend distribution and level of care (basic, intermediate, or advanced life support) for verified aid and ambulance services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital care services for each response area."

The regulation also requires regional councils to consider a range of operational factors such as geography, topography, population density, and response times. *Id.*

When a new applicant applies for license verification, the regional council must review and make recommendations to DOH regarding that application. See WAC 246-976-960 (3)(b). These recommendations must address:

A. Compliance with department-approved minimum and maximum numbers of trauma services at the level of verification being sought (WAC 246-976-960 (3)(b)(i));

B. Impact on care quality, response times, and service availability;

C. Effect on unserved and underserved areas;

D. Impacts on existing verified services.

2. *Can the Council impose a maximum cap based solely on numbers?*

This is the central legal question—and one where reasonable minds may differ.

The argument in favor of such a cap points directly to the statutory and regulatory emphasis on "need," "availability of resources," and the avoidance of "inefficient duplication." RCW 70.168.100 (1)(h) and WAC 246-976-960 (3)(a)(iii) both authorize councils to examine whether additional services would provide meaningful benefit or merely create redundancy. Under this reading, a regional EMS council could recommend denial of an ALS license if it determines that the area is already adequately served, and that additional licenses would dilute effectiveness, hinder coordination, or waste public and private resources.

The argument against a strict numerical cap, however, starts with the plain language of the rules themselves. Nowhere do the statute or regulation define or authorize a fixed "maximum number" of ambulance services for a region. Rather, they speak of identifying *need* based on data and system performance. In this light, a rigid cap—without individualized analysis of patient outcomes, response times, or underserved areas—might be viewed as arbitrary and inconsistent with the broader statutory objectives of improving care quality and access.

Put simply: "need" is not the same as "numbers." An application may demonstrate need in a specific underserved sub-area, even if the overall region has met its nominal cap. For purposes of this article and in the interest of not "rocking the boat" (at this time), we want our readers to understand that trauma-care councils—and by extension, the DOH—have wide discretion to establish minimums and maximums of needed ambulance licenses.

3. *What about cost to consumers?*

The statute and regulations do not explicitly direct EMS/TC councils to consider price as a factor in reviewing applications. However, public interest in cost efficiency may fall within the broader regulatory goal of avoiding "inefficient duplication." One could reasonably argue that, in some cases, increased competition may drive down costs, while in others, oversaturation may result in unstable funding models and diminished quality.

One thing is certain: private-ambulance companies are charging substantially higher rates for ambulance-transports than public providers.

4. *What if a public agency wants to enter the market?*

Separate and apart from the regional council process, fire protection districts and regional fire authorities (RFAs) possess independent statutory authority to establish and operate ambulance services. *See* RCW 52.12.131 and RCW 52.26.040 (3).

These statutes do not condition ambulance service on regional council approval. However, under RCW 18.73.030 (1), all ambulance services—public or private—must be licensed by DOH, and DOH, in turn, relies on the regional EMS/TC council's recommendations in that licensing process (see WAC 246-976-960(3)(b)).

Accordingly, while a fire district or RFA has the legal authority to establish and operate an ambulance service, it may still face hurdles if the regional council recommends denial of its license application based on "lack of need." This dynamic has caused friction in some regions, where public agencies argue that their statutory mandates and financial models justify a license—even if a private provider is already operating.

5. Key Takeaways

a. EMS/TC councils are legally authorized to recommend denial of ambulance license applications based on documented lack of need, duplication of services, or coordination concerns.

b. There is no express statutory authority to impose hard numerical caps, though DOH has implemented a "minimum and maximum" framework by rule.

c. The "need" analysis must be rooted in data, response times, population, and geography—not simply the number of existing providers.

d. Price competition is not explicitly referenced, but cost efficiency may be a relevant factor in determining duplication.

e. Fire districts and RFAs may operate ambulance services under separate authority, but still must obtain DOH licensure in coordination with regional councils.

This remains a developing area of law and policy, and disputes over "need" and "competition" are likely to continue.

Agencies considering entry into the EMS transport field should engage early with their regional EMS/TC council, prepare data-supported license applications, and understand both the legal framework and the practical politics of prehospital care planning.

Interest Arbitration Award Explains Comparable Jurisdiction Rules in Detail

In a recent (2024) interest arbitration decision, Teamsters Local 117 v. City of Federal Way, PERC No. 139010-I-24,[1] the arbitrator rejected a union's effort to peg 2022 wages to higher-paying jurisdictions—offering some needed clarity (and restraint) on how comparable jurisdictions should be selected under RCW 41.56.465.

The decision is especially instructive for fire departments entering uniformed-personnel negotiations, including battalion chiefs and EMS command officers, where comparability disputes often shape the entire outcome.

Context and Certified Issues

The City of Federal Way and Teamsters Local 117 had previously agreed on a number of wage-related terms for Police Commanders but reached impasse over (1) the wage increase for 2022 and (2) the list of appropriate comparable jurisdictions.

The union sought a 13% increase in 2022, comprised of a 9% market adjustment and a 4% COLA. The City offered 4%. That may not sound exciting, but the core of the award is about *comparables*, not numbers.

The Fight Over Comparables

The arbitrator (Audrey B. Eide) walked through a well-organized statutory framework under RCW 41.56.465,[2] which—among other factors—requires comparison with "wages, hours, and working conditions of like personnel of like employers of similar size on the west coast of the United States."

The parties agreed on three comparables: Auburn, Olympia, and Lakewood. The City proposed two more: Marysville and Lacey. The Union proposed Kent and Renton.

This is where it gets interesting. The arbitrator reaffirmed the longstanding 50%/150% test: jurisdictions with populations, assessed values, and sales tax[3] revenues between 50% of and 150% of the employer's are presumptively

[1] https://decisions.perc.wa.gov/waperc/interest-arbitrations/en/521654/1/document.do

[2] https://app.leg.wa.gov/RCW/default.aspx?cite=41.56.465

[3] Although sales-tax revenues would likely not be considered in non-city public agencies (because non-city agencies generally do not collect sales taxes, as do cities), this particular case involved the consideration of sale-tax revenue in the comparables analysis.

appropriate comparators. The arbitrator *declined* to stretch the boundary to 200%, which some advocates have pushed in the past. The union's proposed comparables, Kent and Renton, exceeded 150% in both assessed value and sales tax revenue—making them too "big" under the usual metrics, even if they were geographically and operationally aligned as members of the Valley Team.

In contrast, the City's comparables *were* within the numerical boundaries—but the arbitrator rejected those too, noting that a list of five jurisdictions all smaller than the employer was just as unbalanced as one that skewed too large.
The result? The arbitrator used only the three agreed-upon comparables, explicitly stating that this is *not* a permanent list for future negotiations but a "good example" of the low-end range.

Outcome and Takeaways

Despite the unbalanced list, the arbitrator awarded a 7% wage increase for 2022—higher than the City's 4% offer but lower than the Union's 13% proposal. The arbitrator considered high inflation (CPI-W at 9.5% in 2022), retention issues, and the unusual "me too" historical practice of applying rank-and-file raises to command staff. But the lack of a balanced comparator list pulled down the final award.

For fire departments, this decision reinforces three important principles:

1. Stick to the 50/150 rule unless there's a compelling reason otherwise. Arguments to stretch to 200% comparables will likely be rejected unless supported by past practice or regional necessity.
2. Geographic and operational affiliation are relevant, but not dispositive. Just because jurisdictions are part of the same response team does not mean they're proper economic comparables.
3. Unbalanced lists are just as problematic as inflated ones. A list of all smaller jurisdictions creates the same distortion as cherry-picking the biggest cities in the region.

Agencies preparing for interest arbitration should build their comparables around objective financial metrics, supported by charts, population tables, and historical bargaining positions. Although arbitrators have discretion, this award makes clear that the "comparable jurisdictions" inquiry is still rooted in math—not just maps.

We will continue monitoring PERC interest arbitration awards for evolving interpretations of the "like personnel/like size" standard under RCW 41.56.465.

DISCRIMINATION IN THE PROMOTIONAL PROCESS: ANIMUS VERSUS OBJECTIVITY

The Washington Public Employment Relations Commission (PERC) recently (2024) issued Decision 13810[4] in what was essentially a textbook dispute over the limits of management discretion in promotional decisions. The union (IAFF Local 452) claimed that Clark County Fire District 6 had passed over Employee A for promotion to Battalion Chief because of his extensive union activity. But the Commission

[4] https://decisions.perc.wa.gov/waperc/decisions/en/item/521310/index.do?q=%22unfair+labor+practice%22+AND+%22paid+family+and+medical+leave%22+

dismissed the complaint, finding no evidence that union animus motivated the decision.

A Battle Over the "Rule of Three"

Employee A had ranked number one on the eligibility list under the district's "rule of three" system—essentially a process where the top three scoring candidates advance to a final interview before the Chiefs. Despite that ranking, the district promoted another candidate—Employee B, a captain—who scored lower overall but reportedly interviewed better.

The district's management team cited Employee B's better preparation and performance in the Chief's interview, not Employee A's union leadership, as the rationale for the selection. The Commission accepted this explanation.

The Union's Animus Claim Falls Short

The union's theory hinged on alleged hostility[5] toward Employee A due to his role as Local 452 President, his union leadership on the state level, and his involvement in an earlier grievance (the Culver case) where the Fire Commissioners had overruled the fire chief. Text messages sent by fire chief, in the wake of that grievance decision—describing Employee A and another union leader as "bullies"—no doubt added spice to the case.

But PERC noted a key fact: the fire chief did not make the promotional decision alone. The interview panel consisted of four Assistant Chiefs, all of whom testified they rated Employee B higher in the final interview. Notably, several of those Chiefs had positive things to say about Employee A's leadership abilities. In other words, even if there was friction between the fire chief and Employee A, it wasn't enough to overcome the district's "legitimate and substantial" rationale for the promotion.

What This Means for Fire Service Management

This case is a reminder that while anti-union bias can invalidate even well-documented employment decisions, management still retains discretion—especially under a collectively bargained process like the "rule of three." The key is consistency, documentation, and multiple decision-makers.

And yes, chief executives—be careful what you text to your commissioners and staff (and everyone).[6]

[5] PERC found that the union successfully argued a "prima facie" case of discrimination, i.e. that there was enough evidence to establish a discriminatory motive. But PERC went on to find that the employer articulate adequate non-discriminatory reasons for the promotion.

[6] *See* Discussion of the *Nissen* case, here:

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