

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
UNITED ASSOCIATION OF JOURNEYMEN)	
AND APPRENTICES OF THE PLUMBING)	CASE 15362-D-00-120
AND PIPEFITTING INDUSTRY, et al.,)	
LOCAL 82)	
)	DECISION 7199 - PECB
For a declaratory order involving:)	
)	
TACOMA SCHOOL DISTRICT)	DECISION OF COMMISSION
)	
)	

Leggett & Kram, by James F. Leggett, Attorney at Law,
represented the petitioner.

Curran Mendoza, P.S., by David T. Hokit, Attorney at Law,
represented the employer.

Welch & Condon, by David B. Condon, Attorney at Law,
represented the Pierce County Building and Construction
Trades Council.

Schwerin Campbell Barnard, LLP, by Nancy Maisano,
Attorney at Law, represented International Brotherhood of
Electrical Workers, Local 76.

On August 30, 2000, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 82 (UA), filed a petition for declaratory order with the Public Employment Relations Commission under WAC 391-08-520. The petition named the Tacoma School District (employer), International Brotherhood of Electrical Workers, Local 76 (IBEW), and Pierce County Building and Construction Trades Council (BCTC) as interested parties. The operative allegations describe a work jurisdiction dispute between the UA and IBEW, affecting employees

of the employer, and affected by contractual provisions referring certain issues to the BCTC.

The Executive Director issued a letter on September 26, 2000, providing the parties with official notice of the petition and requesting responses from the employer, IBEW, and BCTC. The IBEW had objected to the issuance of a declaratory order in a letter filed on September 8, 2000, and it reiterated that objection in a letter filed on October 5, 2000. The BCTC had objected to the issuance of a declaratory order in a letter filed on September 11, 2000, and it did not alter that position. The employer filed a letter on October 6, 2000, objecting to the issuance of a declaratory order.

The matter was considered by the Commission at an open, public meeting held on October 10, 2000, where representatives of the UA and employer made oral arguments. The Commission took the case under advisement at that time, and now issues this order declining to process the petition for declaratory order.

BACKGROUND

The petition in this matter was accompanied by a copy of a collective bargaining agreement. The front cover identifies it as an agreement between the employer and the "Pierce County, Washington, Building & Construction Trades Council", while the preamble adds "and each of the unions who are signatory hereto" and the signature page recites as follows:

This Agreement is made and entered into this 15th day of September, by and between Tacoma School District #10 and Pierce County, Washington, Building and Construction Trades Council and each of the Unions signatory thereto.

FOR TACOMA SCHOOL DISTRICT #10

/s/
President, Board of Directors

FOR THE COUNCIL AND SIGNATORY UNIONS

<u>/s/</u> Boilermakers, Local #568	<u>/s/</u> Machinist, District Council #160 on behalf of Local No. 297
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<u>/s/</u> Bricklayers, Local #1	<u>/s/</u> Painters, Local #64
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<u>/s/</u> Carpenters, Local #470	<u>/s/</u> Plasterers & Cement Masons, Local #77
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<u>/s/</u> Carpet & Linoleum Layers Local #1238	<u>/s/</u> Plumbers & Fitters, Local #82
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<u>/s/</u> Electrical Workers, Local #76	<u>/s/</u> Roofers, Local #153
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<u>/s/</u> Engineers, Local #612	<u>/s/</u> Sheet Metal Workers, Local #66
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<u>/s/</u> Glaziers & Glass Workers Local #188	<u>/s/</u> Teamsters, Local #313
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<u>/s/</u> Laborers, Local #252	<u>/s/</u> Pierce County, Washing- ton, Building & Cons- truction Trades Council
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Section 4 of that collective bargaining agreement addresses the arbitration of grievances, while Section 12, paragraph 1 of that contract addresses jurisdictional disputes "between the signatory unions".

The relief requested in the petition for declaratory order is as follows:

a. Determining that the current Collective Bargaining Agreement between [the UA and employer], Section 12, Paragraph 1, preventing arbitration of jurisdictional disputes and allowing management to assign work across craft lines, is a management right clause which invades the [UA's] statutory right and the duty to be exclusive [bargaining] representative of the relevant employees, and is in violation of the duty to arbitrate found in RCW 41.56.122, and is void;

b. Determining Section 4, Grievance Procedure, of the current Collective Bargaining Agreement between [the UA and employer], Level 4 limiting the request for binding arbitration to the [BCTC] to the exclusion of [the UA], which processes Levels 1 through 3, invades the [UA's] statutory right and duty to be exclusive [bargaining] representative of relevant employees and effectively denies arbitration to [the UA] in violation of the duty to arbitrate, RCW 41.56.122, and is void;

c. Determining a Memorandum of Understanding of 1 October 1999 between the [employer and BCTC], without notice, participation or ratification by [the UA], purportedly resolving a work jurisdiction grievance brought by [the IBEW] which attempted to delete a substantial portion of [the UA's] craft's historical work, i.e.,

"Connect motors, compressors, temperature control panels, and control panels to power source. Replaces defective breaker controls, thermostats, switches and electrical wiring to repair installed units"

is void as another attempted amendment of the Collective Bargaining Agreement, and the purported signature of the president of the [BCTC] is *ultra vires* and without authority, which was known to [the employer and BCTC] at the time, so that it is void.

The petition goes on to detail a lawsuit filed by the IBEW on April 21, 2000, seeking to compel the employer to put the memorandum of understanding into effect, and stating that the UA was not aware of that litigation until June or July of 2000.

Contemporaneous with the filing of this petition for declaratory order, the UA initiated two other relevant proceedings before the Commission involving the same basic controversy: A petition for clarification of an existing bargaining unit filed under Chapter 391-35 WAC,¹ and a complaint charging unfair labor practices filed under Chapter 391-45 WAC.²

DISCUSSION

The sole question before the Public Employment Relations Commission at this time is procedural: Whether the Commission should (or can) resolve the parties' present controversy by means of the declaratory order procedure.

The Applicable Statutes

Collective bargaining between the Tacoma School District, a municipal corporation of the state of Washington within the meaning of RCW 41.56.020, and its classified employees is regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

The Commission is a state agency, created by Chapter 41.58 RCW with a mission to provide "uniform and impartial . . . efficient and expert" resolution of labor-management disputes. The Legislature

¹ Case 15363-C-00-989. The Executive Director's September 26 letter included a ruling that the petition can be the subject of further proceedings before the agency.

² Cases 15369-U-00-3881, 15393-U-00-3891, and 15394-U-00-3892. The Executive Director's September 26 letter included a preliminary ruling on those cases under WAC 391-45-110, finding causes of action to exist and directing the employer, IBEW and BCTC to file answers.

has delegated the Commission authority to administer several state collective bargaining laws, including Chapter 41.56 RCW.

The state Administrative Procedure Act (APA), Chapter 34.05 RCW, sets forth standards and procedures for actions taken by state agencies, including the Commission. Apart from regulating "adjudicative proceedings" by provisions set forth in RCW 34.05.410 through 34.05.494, the APA establishes the procedure for state agencies to issue declaratory orders, as follows:

RCW 34.05.240 DECLARATORY ORDER BY AGENCY--PETITION. (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for:

(a) The form, contents, and filing of petitions for a declaratory order;

(b) the procedural rights of persons in relation thereto; and

(c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the

general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

[Emphasis by **bold** supplied.]

The Commission has adopted a rule under the authority conferred by RCW 34.05.240(2). It provides as follows:

WAC 391-08-520 DECLARATORY ORDERS. Any person may petition the commission for a declaratory order, under RCW 34.05.240, with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order shall generally adhere to the following . . . [detailed form and filing requirements omitted].

(2) Within fifteen days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person he or she deems desirable. The notice shall establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties shall be forwarded to the commission for consideration. **The commission shall not issue a declaratory order if:**

(a) **The matter is or could have been the subject of any other adjudicative proceeding before the commission; or**

(b) **A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.**

(4) **The commission** may consider the petition without argument and **shall**, within thirty days after receipt of the petition, **do one of the following:**

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within ninety days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, or submission of written argument upon the matter if the material facts are not in dispute. The commission shall give seven days or more advance written notice to the petitioner and other persons who have been given notice of the

petition pursuant to subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, including setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or (b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for such action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order shall be in writing, and shall be served upon all parties identified in subsection (2) of this section. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order has the same status as any other order entered in an adjudicative proceeding conducted by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

[Emphasis by **bold** supplied.]

The Executive Director's September 26 letter both fulfilled the notice requirements of WAC 391-08-520(2) and properly explained that the need to analyze multiple and complex case filings provided

good cause for delay in the processing of the declaratory order petition.

The employer, the IBEW, and the BCTC have all gone on record, clearly and unequivocally, as opposing the resolution of this controversy by a declaratory order. The UA asks for a waiver of the "consent" requirement, citing a Commission rule and urging that consolidation of issues into one proceeding is appropriate here.

The rule cited by the UA was adopted by the Commission for its processing of cases under the several collective bargaining statutes administered by the Commission. It provides:

WAC 391-08-003 POLICY--CONSTRUCTION--WAIVER.
The policy of the state being primarily to promote peace in labor relations, **these rules and all other rules adopted by the agency shall be liberally construed** to effectuate the purposes and provisions of the statutes administered by the agency, and **nothing in any rule shall be construed to prevent** the commission and its authorized agents from using their best efforts to adjust any labor dispute. **The commission and its authorized agents may waive any requirement of the rules** unless a party shows that it would be prejudiced by such a waiver. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

[Emphasis by **bold** supplied.]

While the "consent" requirement appears in WAC 391-08-520(3)(b), that rule merely repeats the requirement imposed by the APA at RCW 34.05.240(7). Even if WAC 391-08-003 would permit the Commission to give a liberal interpretation to some statute administered by the Commission, it certainly does not authorize us to waive a

requirement of the APA statute by which the Legislature has regulated our processing of cases.

The Commission does not require the consent of other parties to process either the pending unit clarification petition under Chapter 391-35 WAC or the pending unfair labor practice complaints under Chapter 391-45 WAC, and those proceedings will go forward. This order issued under WAC 391-08-520(4)(d), to "[d]ecline to enter a declaratory order [. . . and] stating [the lack of consent of affected parties as] the reasons for its action", does not constitute a substantive ruling on any issue between the parties, and the disposition of this declaratory order petition on procedural grounds will have no effect on the other proceedings.


NOW, THEREFORE, it is

ORDERED


The petition for declaratory order filed in this proceeding is DISMISSED, based on the refusal of all affected parties to provide their consent under RCW 34.05.240(7).

Issued at Olympia, Washington, on the 26th day of October, 2000.

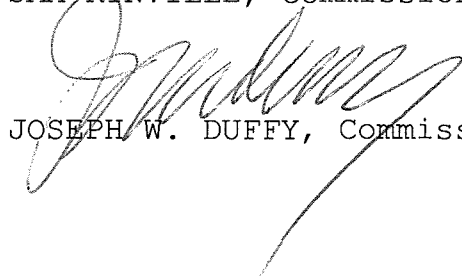
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner