

Thurston County, Decision 6806 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
LAWRENCE T. CRAIG	)	CASE 14648-E-99-2442
Involving certain employees of:	)	DECISION 6806 - PECB
THURSTON COUNTY	)	ORDER OF DISMISSAL
	)	
	)	

---

On June 16, 1999, Lawrence T. Craig filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The petition sought to sever Thurston County Road Department employees working at the Tilly Road facility from the multi-department bargaining unit in which they have historically been included.

The petition appeared to be defective on its face for several reasons. The parties were directed to show cause why the petition should not be dismissed. There has been no response from any of the parties. The petition is thus dismissed.

DISCUSSION

Result Sought Not Attainable

This petitioner seeks a result that is not available in a representation proceeding initiated by an individual employee.

1. Employees can file representation petitions under RCW 41.56.0-70 and WAC 391-25-070 (subject to supplying the 30% showing of

interest required by RCW 41.56.070 and WAC 391-25-110), but the only purpose available to individual employees under WAC 391-25-070(7)(c) is to test a claim that,

The employees in the bargaining unit do not desire to be represented by any employee organization.

Individual employees or groups of employees cannot impose themselves on an unwilling organization, and the union itself must step forward as petitioner to test a claim under WAC 391-25-070(7)(a) (i.e., organizing unrepresented employees) or WAC 391-25-070(7)(b) (i.e., changes of exclusive bargaining representatives).

2. Employees who file a "decertification" petition under WAC 391-25-070(7)(c) must take the bargaining unit as it exists, and none of the parties to a "decertification" proceeding is entitled to alter the scope of the bargaining unit. Accordingly, the Commission does not process petitions seeking a "severance-decertification".
3. While a union can seek a "severance" of particular employees from an existing bargaining unit (albeit under very stringent unit determination criteria described in Yelm School District Decision 704-A (PECB, 1980)), the petitioner in this case is not seeking to change the representation of the employees involved from the incumbent union.

The Washington State Council of County and City Employees (WSCCCE) has neither filed the petition in this case nor stepped forward to become the petitioner in place of Mr. Craig.

Insufficient Showing of Interest

The authorization cards submitted with the petition in this case read as follows:

As an employee of Thurston County Roads and Transportation, located at 9605 Tilly Road, and also a member of the Washington State Council of County and City Employees, Local 618-CO, AFSCME, AFL-CIO, I fully support pursuing the much needed effort to obtain our own bargaining unit. I feel we need our separate bargaining unit and believe that we are not asking for something we should not be able to obtain. I would deeply appreciate it if the Public Employment Relations Commission would give this issue a very hard and honest evaluation.

A showing of interest is required by RCW 41.56.070. The content of authorization cards is prescribed by WAC 391-25-110 as follows:

The original petition shall be accompanied by a showing of interest **indicating that the petitioner has the support of thirty percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate.**

[Emphasis by **bold** supplied.]

Inasmuch as an individual employee has no legal standing to be the petitioner or file a "severance" petition, the showing of interest requirement is not met.

Res Judicata

The result sought by the petitioner appeared to have been considered and rejected in a previous proceeding before the Commission.

A hearing was held on a similar petition filed by the WSCCCE in 1985. A decision was issued in Thurston County, Decision 2574 (PECB, 1986), rejecting the requested severance.

The Supreme Court of the State of Washington defined res judicata in Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759 (1995), as referring:

[T]o "the preclusive effect of judgments, including the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action." ... It is designed to "prevent relitigation of already determined causes and curtail multiplicity of actions and harassment in the court." ... For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.

The Supreme Court also stated, in Stevedoring Services v. Eggert. 129 Wn.2d 17 (1996):

**Res judicata applies in the administrative setting only where the administrative agency "resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate."** ... In Washington, **other considerations are also relevant when the prior adjudication took place in an administrative setting including (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations.** ...

[Emphasis by bold supplied.]

There is no claim here of a substantial change of circumstances since the decision was issued in 1986.

ORDERED

The petition for investigation of a question concerning representation filed in this matter shall be DISMISSED.

Issued at Olympia, Washington, on the 27<sup>th</sup> day of August, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written in dark ink over a light background.

MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.