

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
MARTIN MCGINN	)	CASE 16866-E-02-2785
	)	
Involving certain employees of:	)	DECISION 7935 - PECB
	)	
SOUTHWEST WASHINGTON HEALTH	)	
DISTRICT	)	ORDER OF DISMISSAL
	)	
	)	

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*Martin McGinn*, pro se.

*Laurie Bourcier*, Administrator, for the employer.

*Dave Ritchey*, Business Representative, on behalf of the incumbent intervenor, Laborer's International Union of North America Health Care Division, Local 335.

On November 1, 2002, Martin McGinn filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking decertification of the Laborer's International Union of North America Health Care Division, Local 335 (union) as exclusive bargaining representative of employees of the Southwest Washington Health District (employer). The petition was accompanied by a copy of the current collective bargaining agreement between the employer and union, which indicates the contract is valid from July 1, 2001, through June 30, 2004. The petition thus appeared to be untimely under the Commission's rules.

On November 14, 2002, the Commission received a letter from Carol Chislett of Clark County, asserting that neither the Southwest

Washington Health District nor the union was served with a copy of the petition.

A deficiency notice issued on November 15, 2002, pointed out the apparent defects in the representation petition. The petitioner was given until December 2, 2002, to show good cause why the petition should not be dismissed. To date, the petitioner has not responded.

### DISCUSSION

#### The Petition is Untimely

RCW 41.56.070 creates a "contract bar" which is restated in the Commission's rules as follows:

WAC 391-25-030 PETITION--TIME FOR FILING. (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

The "window" period of the current collective bargaining agreement expiring June 30, 2004, will not occur until April 2, 2004, through May 1, 2004.

#### Service of Process Requirement

Service of a representation petition upon other parties is specifically required by WAC 391-25-050, which includes: "The party filing the petition shall serve a copy of the petition (excluding

any showing of interest) on the employer and on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120(3) and (4)". Service of documents filed with the Commission is generally required by WAC 391-08-120, as follows:

#### SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of the record and upon unrepresented parties or upon their agents designated by them or by law. *Service shall be completed no later than the day of filing*, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with the same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

#### PROOF OF SERVICE

(4) *On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:*

(a) *Obtain an acknowledgment of service* from the person who accepted personal service; or

(b) *Make a certificate* stating the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) *Make a certificate* stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3) (b) of this section; or

(ii) Depositing a copy under subsection (3) (c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3) (d) or (e) of this section.

(5) *Where the sufficiency of service is contested*, an acknowledgment of service obtained under subsection (4) (a) of this section or certificate of service made under subsection (4) (b) or (c) of this section shall constitute proof of service.

(Emphasis added.) The petition in this case indicated that the union is the incumbent exclusive bargaining representative of the employees involved, so the employer and union were both entitled to service of any petition seeking to upset their collective bargaining relationship. The sufficiency of service has been contested, and the petitioner has failed to produce the required proof of service.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED as untimely and as procedurally defective.

Issued at Olympia, Washington, on the 19th day of December, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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.