

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CLARK COUNTY HEALTH GUILD)	CASE 18478-E-04-2947
)	
Involving certain employees of:)	DECISION 8648 - PECB
)	
CLARK COUNTY)	ORDER OF DISMISSAL
)	
_____)	

Garrettson, Goldberg, Fenrich & Makler, P.C., by *Becky Gallagher*, Attorney at Law, for the union.

Carol Chislett, Human Resources Manager, for the employer.

No appearance was entered on behalf of the incumbent exclusive bargaining representative, Laborers' International Union, Local 335.

On April 30, 2004, the Clark County Health Guild (CCHG) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to replace Laborers' International Union, Local 335, as exclusive bargaining representative of certain employees of Clark County (employer). The case is now before the Executive Director for a ruling on a procedural defect described in a deficiency notice issued on May 4, 2004, and a show cause directive issued on June 10, 2004.

The Executive Director has considered the matter, including the response of the CCHG to a show cause directive, and concludes that the petition was fatally flawed from its outset. The petition is dismissed.

BACKGROUND

The bargaining unit at issue here traces its origin to the former Southwest Washington Health District, where the employees had been represented by Local 335 since 1982. A collective bargaining agreement was in effect for the period from July 1, 2002, through June 30, 2004. The former employer merged with the current employer as of January 1, 2003, and became the Clark County Health Department. Clark County and Local 335 signed a new collective bargaining agreement to be in effect for the period from January 1, 2003, through December 31, 2004.

In March 2003, an organization calling itself "Clark County Health Professionals" filed a representation petition with the Commission, seeking to replace Local 335 as exclusive bargaining representative of this bargaining unit. The employer and Local 335 challenged that petition as untimely, and it was dismissed after a hearing. The dismissal order outlined two periods when the contract bar "window" period would be open under WAC 391-25-020, as follows:

- Between April 2, 2004, and May 1, 2004, based on the stated expiration date of the collective bargaining agreement between Local 335 and the former employer; and
- Between October 2, 2004, and November 1, 2004, based on the stated expiration date of the collective bargaining agreement between Local 335 and Clark County.

Thus, the premature extension of the contract signed by the former employer could not operate to close the "window" created by that contract.

An organization calling itself "Clark County Health Guild" filed the petition in this case. The petition was accompanied by cards

bearing employee names and signatures, but none of those cards named any specific organization. Representation Coordinator Sally Iverson promptly questioned the sufficiency of the showing of interest, by sending a letter to the parties on May 4, 2004. Further correspondence ensued, and a show cause directive was issued on June 10, 2004. The CCHG filed a response to the show cause directive on June 28, 2004.

ANALYSIS

Applicable Legal Principles

RCW 41.56.070 requires that a petitioner provide an adequate showing of interest before the Commission conducts a representation election. Amplifying that statute to reduce or eliminate both a potential for mischief with the showing of interest process and expenditure of effort on petitions that are doomed to failure, the Commission's rules include:

WAC 391-25-110 SUPPORTING EVIDENCE -- SHOWING OF INTEREST CONFIDENTIAL. (1) A petition filed by employees or an employee organization 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. The showing of interest shall be furnished under the same timeliness standards applicable to the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. . . .

(emphasis added). Thus, the Commission staff will not expend state resources on processing of petitions that lack positive and timely support when they are filed.

Application of StandardsAuthorization Document Fails to Name CCHG -

The showing of interest filed in support of the petition in this case consisted of pieces of paper which appeared to have been torn off of larger sheets. The text is replicated as follows:

I, (Please print) _____, am an employee of the Clark County Health Department. With my signature below, I am joining with fellow employees to petition for a change of representation.

On its face, that document fails to indicate that the Clark County Health Guild "*has the support of . . . the employees in the bargaining unit*" (emphasis added) as required by WAC 391-25-110. Indeed, employees signing such document could as easily support a decertification effort as supporting any particular union. There is no reason for the Commission to upset the existing bargaining relationship or expend state resources without a positive indication that the petitioner had a reasonable chance of success.

Underlying Document Fails to Name CCHG -

Among its response to the letter sent by Representation Coordinator Iverson, the CCHG has supplied a copy of the full-page document from which employees tore off the bottom three inches to sign and submit as authorization cards. A "new Clark County Health Department Union" reference in the header on that document and a reference to "a new union" in the third paragraph of the text are vague, and do not connote an organization already in existence. Two references to a "Guild" in the fourth paragraph of the text support an inference that no such organization was yet in existence. The change of names from the "Clark County Health Professional" used in 2003 to the "Clark County Health Guild" used in this case reinforces a conclusion that there was no continuity

between the organizations. Thus, the omission of clear identification of the Clark County Health Guild from the portion of the sheet torn off and signed by employees cannot be written off as a typographical error or inconsequential circumstance when viewed in the context of the larger document.

Two Wrongs Don't Make a Right -

The CCHG asserts that the authorization cards it used in this case were similar to cards "accepted" by the Commission in 2003. The Commission has waived procedural errors based on affirmative actions of Commission staff members, such as in *City of Tukwila*, Decision 2434-A (PECB, 1987), but the CCHG claim in this case would have to be based on inaction rather than on erroneous action. The logic of the CCHG argument is that an erroneous inaction in the application of WAC 391-25-110 to a petition filed by another organization in 2003 gave the CCHG a right to the same erroneous interpretation in 2004. The rule must be enforced as written.

Deadline to Correct Error -

Although at least some of the authorization cards submitted by the CCHG in this case were dated earlier, the CCHG did not choose to file its petition until the last possible business day of the "window" period pointed out in the earlier case. As a practical matter, that delay in filing precluded correction of any procedural error by the CCHG.

It is the general practice of the Commission staff to issue a "deficiency notice" under the state Administrative Procedure Act at RCW 34.04.416(2), whenever any "obvious errors or omissions" are noted. Representation Coordinator Iverson conformed with that general practice when she issued her letter on May 4, 2004, calling attention to the insufficiency of the authorization cards under WAC

391-25-110, and setting a 10-day period for the CCHG to respond. Had the close of the contract bar "window" period been noted at that time, the letter would properly have included the show-cause-to-avoid-dismissal directive which followed on June 10, 2004. In retrospect, it would have been better if the correct letter had been sent, but Representation Coordinator Iverson did not mislead the CCHG to its detriment. While an apology to the CCHG is in order and is hereby tendered, the minor inconvenience to the CCHG does not provide basis for ignoring the statute or the applicable rules.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED for insufficient showing of interest.

Issued at Olympia, Washington, on the 15th day of July, 2004.

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.