

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
HEATHER M. GREGORY) CASE 21568-E-08-3339
Involving certain employees of:) DECISION 10052 - PECB
CITY OF MARYSVILLE) ORDER OF DISMISSAL
_____)

On March 5, 2008, Heather G. Gregory filed a petition seeking to decertify the Teamsters Union, Local 763 (union) as exclusive bargaining representative of certain program specialists employed by City of Marysville police department. The petition included a copy of the current collective bargaining agreement between the union and the employer which was in effect January 1, 2005 through December 31, 2007. That agreement indicated the employer recognized the union as the sole collective bargaining agent for all City of Marysville office-clerical, public works, parks and recreation and emergency services support employees, excluding supervisory, confidential and casual employees.

A routine letter was mailed to the employer requesting a list of employees. In a response filed on March 24, 2008, the employer indicated that the program specialist classification is included in a larger bargaining unit represented by Teamsters Union, Local 763 and provided a list of only the program specialists.

On April 4, 2008, the union filed a letter stating the unit of office-clerical employees consists of approximately 40 employees and the program specialist classification is part of a historically larger unit.

The petitioner was notified that the petition appeared to seek an inappropriate "severance-decertification" affecting only a portion of the employees who have historically been included in a much larger bargaining unit and that a petitioner must take the unit as it exists and cannot add or remove positions. The petitioner was given a period of 10 days in which to show cause why the petition should not be dismissed. The petitioner responded on April 17, 2008, stating that the petition was not seeking to add or remove positions but rather to change representation.

On its petition, the box that was checked indicated that the petitioner was seeking decertification. The showing of interest submitted in support of the petition had the following statement:

"I no longer wish to be represented by the union Teamsters, Local 763".

DISCUSSION

A decertification petitioner must take the unit as it exists. WAC 391-25-210(1) states:

In proceedings on a petition for "decertification" under WAC 391-25-070(6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit.

The Commission had rejected "severance-decertification" petitions long before that rule was adopted. In *City of Seattle*, Decision 2612 (PECB, 1987), where an employee sought to decertify only a

select group of employees from a larger bargaining unit, the Commission wrote:

The distinction between "decertification" of an incumbent exclusive bargaining representative and "severance" of a part of the existing bargaining unit is well founded and clear. Proceedings in the "decertification" category are characterized by employees seeking to be rid of their present union, with the result that they end up with no union representation. By contrast, cases in the "severance" category involve a petition of one organization seeking to carve out a separate bargaining unit from a larger unit historically represented by the same or another organization. In both types of cases, the Commission must honor statutory directive that it consider the "history of bargaining". RCW 41.56.060. A decertification petitioner does not have the prerogative to fashion a new bargaining unit or voting group, however. Rather, employees who seek to be rid of their union must take the existing unit as they find it and must move to decertify the context of the existing bargaining unit. Accordingly, petitions which, as here, simultaneously seek "severance" and "decertification" are precluded by controlling precedent of the Public Employment Relations Commission. See, *City of Seattle*, Decision 1229-A (PECB, 1982) [Commission affirmed Executive Director's dismissal of "severance-decertification" petition seeking to remove some, but not all, of the employees from an existing bargaining unit of City of Seattle employees represented by Plumbers Local 32]; *Valley General Hospital*, Decision 1333 (PECB, 1982) [Executive Director dismissed "severance-decertification" petition]. The Commission's decisions on this subject are, in turn, based on precedents of the National Labor Relations Board (NLRB). *Campbell Soup Co.*, 11 NLRB 234 (1055) [cited by Commission, with approval, as standing for the proposition that severance principles may not be applied to obtain decertification of part of an existing bargaining unit; *Oakwood Tool & Engineering Co.*, 122 NLRB 812 (1958); *Associated General Contractors of California, Inc.*, 209 NLRB 363 (1974).

A petition seeking a "severance-decertification" is void from the outset, and must be dismissed as such.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above matter is DISMISSED.

Issued at Olympia, Washington, this 24th day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, 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.