

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL 280) CASE 22299-E-09-3437
)
Involving certain employees of:) DECISION 10352 - PECB
)
CITY OF CONNELL) DIRECTION OF CROSS-CHECK
)
)
_____)

Rick Pound, International Representative, for the union.

Kevin Wesley, Labor Consultant, for the employer.

On February 27, 2009, the International Union of Operating Engineers, Local 280, filed a petition, seeking certification as exclusive bargaining representative of certain employees of the City of Connell. An investigation conference was conducted by telephone conference call on March 30, 2009. The parties disagreed about the method to determine the question concerning representation. The dispute concerning methodology was referred to the Executive Director.

ISSUE

The sole issue to be determined at this time is whether use of the cross-check method is appropriate in this case. The union stated a preference for a cross-check, while the employer objected to the use of the cross-check procedure. The Executive Director rules that a cross-check is appropriate.

APPLICABLE LEGAL PRINCIPLES

RCW 41.56.060 sets forth the methods for determining questions concerning representation:

The Commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor.

The Commission's rules limit the availability of the "cross-check" procedure, as follows:

WAC 391-25-391 SPECIAL PROVISION--PUBLIC EMPLOYEES.

(1) Where *only one organization is seeking certification* as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the *organization has been authorized by in excess of seventy percent of the employees* to act as their representative for the purposes of collective bargaining, the executive director may issue a direction of cross-check.

(2) A direction of cross-check and other rulings in the proceedings up to the issuance of tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

(emphasis added). The general preference for elections occasionally expressed by employers is not sufficient to disregard the statute and rule.

In *City of Redmond*, Decision 1367-A (PECB, 1982) and numerous subsequent decisions, the Commission and the Executive Director have refused to ignore the cross-check option (or to write it out of the statute).

ANALYSIS

Employers frequently allege that employees were not aware of what they were signing, and should therefore be allowed to vote in an election. The Executive Director rejects this argument. The showing of interest is confidential under WAC 391-25-110, and cannot be the subject of a hearing.

The wording on the authorization cards submitted as the showing of interest in this case clearly indicate that, by signing the card, the employee wishes to be represented by the International Union of Operating Engineers, Local 280 for the purposes of collective bargaining. Just as people can be expected to attach importance to checks, contracts, and other documents they sign in their course of their personal business affairs, employees can be expected to read and give importance to authorization cards they sign for a union.

Examination of the case file indicates that the union submitted a showing of interest in excess of the 70 percent required by WAC 391-25-391. If employees desire to withdraw their authorization cards in advance of a cross-check, the procedure for doing so is detailed in WAC 391-25-410(2).

NOW, THEREFORE, it is

ORDERED

1. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees on the eligibility list stipulated by the parties.

2. A cross-check of records shall be made by the staff of the Public Employment Relations Commission in the appropriate bargaining unit described as:

ALL FULL-TIME AND REGULAR PART-TIME EMPLOYEES OF THE CITY OF CONNELL IN PUBLIC WORKS, CITY HALL, PLANNING OFFICE AND POLICE COURT, EXCLUDING SUPERVISORS, CONFIDENTIAL EMPLOYEES, UNIFORMED EMPLOYEES AND ALL OTHER EMPLOYEES.

to determine whether a majority of the employees in that bargaining unit have authorized the International Union of Operating Engineers, Local 280, to represent them for purposes of collective bargaining.

Issued at Olympia, Washington, on the 31st day of March, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.