

State - Insurance Commissioner, Decision 10373 (PSRA, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
LARRY A. OMDAL)	CASE 22372-E-09-3452
)	
Involving certain employees of:)	DECISION 10373 - PSRA
)	
STATE - OFFICE OF INSURANCE)	ORDER OF DISMISSAL
COMMISSIONER)	
)	
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On April 1, 2009, Larry A. Omdal filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to decertify the Washington Federation of State Employees (WFSE) as exclusive bargaining representative of the nonsupervisory insurance examiners employed by the Washington State Office of Insurance Commissioner. The petition identified 26 employees, and described the unit as "Non-supervisory Insurance Examiners".

A routine letter was mailed to the employer requesting a list of employees. In a response filed on April 10, 2009, the employer indicated that the petitioner is seeking decertification of a single classification which is part of a larger bargaining unit. The employer also supplied a copy of a collective bargaining agreement between the union and the employer which is in effect through June 30, 2009.

The petitioner was notified that the petition appeared to seek an inappropriate "severance-decertification" affecting only a portion of the employees who are included in a much larger bargaining unit. The petitioner was given a period of 10 days in which to show cause why the petition should not be dismissed.

On April 24, Dennis Redmon filed a notice of appearance requesting to be added to the case as the petitioner representative along with a request for an extension in responding to the deficiency notice. Mr. Redmon also questioned the validity of the merger of the nonsupervisory insurance examiners.

Review of the Commission's records show that WFSE filed a petition to merge the nonsupervisory insurance examiners into its existing nonsupervisory unit. The parties stipulated to the merger and Decision 9593 was issued February 16, 2007, merging the nonsupervisory insurance examiners into the existing agencywide nonsupervisory bargaining unit.

The petition currently before the Commission is seeking to decertify a single classification within a larger bargaining so the petition must be dismissed. The "window period" has closed so there is no way to remedy the filing, so the request for extension is denied.

DISCUSSION

A decertification petitioner must take the unit as he or she finds it. 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 1st day of May, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Cathleen Callahan".

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.