



A direction of cross-check was issued,<sup>1</sup> and a cross-check was conducted. The union prevailed by a majority that was not affected by the reserved eligibility issues, and an interim certification was issued on May 21, 1998, naming the union as exclusive bargaining representative of the employees involved.<sup>2</sup> The case remained open, and was assigned to a Hearing Officer, for resolution of the eligibility issues.

In Spokane County and Sweetser v. PERC, \_\_\_ Wn.2d \_\_\_ (No. 64791-1, October 22, 1998), the Supreme Court of the State of Washington ruled that deputy prosecuting attorneys are not public employees for the purpose of coverage under Chapter 41.56 RCW. There was no request for reconsideration of that decision, and the Supreme Court issued a mandate in due course.

On November 3, 1998, even before the Supreme Court issued its mandate, the employer asserted the deputy prosecuting attorneys involved in this case were excluded from the coverage of Chapter 41.56 RCW by the Sweetser decision, and it refused to bargain with the union. The same letter announced that the employer "assume[d]" that the Commission would terminate this proceeding.

A deficiency notice was sent to the parties on February 22, 1999, pointing out the jurisdictional problem posed by the Sweetser decision. The union was given a period of time in which to show cause why the petition in this case should not be dismissed. The response filed by the union, on March 8, 1999, urges that considerations of "judicial economy and the public interest" warrant keeping this case open pending the outcome of bills pending before the Legislature, and cites Senate Bill 5152 which would change the

---

<sup>1</sup>Thurston County, Decision 6275 (PECB, 1998).

<sup>2</sup>Thurston County, Decision 6275-A (PECB, 1998).

definition of "public employee", but does not dispute the applicability of the Sweetser decision to this bargaining unit.

The direction of a cross-check in this case, and the proceedings in general, could be subject to challenge in the future on the basis that the Commission had no jurisdiction over the affected employees at the time those actions were taken. By vacating the interim certification, the dismissal of this case on procedural grounds will not stand as a bar to a new representation petition, should the pending legislation become law.


NOW, THEREFORE, it is

ORDERED

1. The interim certification issued in the above-captioned case is VACATED.
2. The petition filed in the above-captioned case is DISMISSED for lack of jurisdiction.

Issued at Olympia, Washington, on the 6th day of April, 1999.

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 391-25-390.