

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
COMMUNICATIONS WORKERS OF)	
AMERICA, LOCAL 37083)	CASE 18263-E-04-2032
)	
Involving certain employees of:)	DECISION 8496 - PECB
)	
CHELAN COUNTY PUBLIC UTILITY)	ORDER DENYING
DISTRICT)	MOTION FOR DISMISSAL
)	
)	

Marcus Courtney, Organizer, for the union.

Ogden, Murphy, Wallace, PLLC, by Gil Sparks, Attorney at Law, filed the motion for dismissal; Summit Law Group, PLLC, by Bruce L. Schroeder, subsequently filed a notice of appearance, for the employer.

On March 1, 2004, Communications Workers of America, Local 37083 (CWA) filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of information technology employees of the Chelan County Public Utility District (employer). On March 9, 2004, the employer filed a motion for dismissal of the petition as untimely, claiming a "certification bar" under WAC 391-25-030. The Executive Director has considered the motion for dismissal, and finds it is unfounded.

ANALYSIS

The employer asserts that the petition filed by the CWA is untimely, because a petition involving the same employees was filed

by another labor organization and withdrawn by that organization within the past year.

The earlier petition was filed by the International Brotherhood of Electrical Workers (IBEW) on August 25, 2003. Case 17794-E-03-2875. It was withdrawn on September 24, 2003. The IBEW and the employer then made their own arrangements for an election held outside of the Commission's processes. When that election was held on October 22, 2003, all 16 employees voted against the union.

The employer's "certification bar" argument is unfounded, because elections held outside of the Commission's processes are not honored under WAC 391-25-030. The rule states:

(2) A "certification bar" exists *where a certification has been issued by the agency*, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) more than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) more than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

(emphasis added.) There was no "certification" issued by this agency as a result of the election held on October 22, 2003.

The filing and withdrawal of the earlier petition can be established by taking official notice of the Commission's docket records for the earlier case, but neither of those events constitutes a "certification", an "election", or a "cross-check" under the applicable rule. See *Yakima County*, Decision 6267 (PECB, 1998) and *City of Mill Creek*, Decision 6837 (PECB, 1999).

NOW, THEREFORE, it is

ORDERED

1. The employer's motion for dismissal in the above-captioned case is DENIED.
2. The above-captioned case is remanded to Representation Coordinator Sally Iverson for further proceedings under Chapter 391-25 WAC.

Issued at Olympia, Washington, this 9th day of April, 2004

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director