

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| In the matter of the petition of: | ) |                      |
|                                   | ) |                      |
| THE SILVER DOLLAR CLUB            | ) | CASE 18047-E-03-2909 |
|                                   | ) |                      |
| Involving certain employees of:   | ) | DECISION 8816 - PECB |
|                                   | ) |                      |
| SNOHOMISH COUNTY FIRE DISTRICT 4  | ) | ORDER OF DISMISSAL   |
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Cedar River Law Professionals, by *Eileen Lawrence*, Attorney at Law, and *Amy Plenefisch*, Attorney at Law, for the petitioner.

Garvey Schubert Barer, by *Bruce Heller*, Attorney at Law, for the employer.

On December 4, 2003, the Silver Dollar Club (SDC) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of part-time fire fighters at Snohomish County Fire District 4 (employer). An investigation conference was held, and an investigation statement issued on February 5, 2004, framed issues for hearing, as follows:

- a. The Commission's jurisdiction in this matter.
- b. The status of the Silver Dollar Club as a qualified labor organization.
- c. The appropriateness of the petitioned-for unit.

Hearing Officer Christy L. Yoshitomi held a hearing on June 23, 24 and 25, 2004. The parties filed briefs on September 10, 2004.

Based on the evidence and arguments presented, the Executive Director concludes that the SDC has failed to establish that it is

a labor organization qualified for certification as an exclusive bargaining representative under the applicable statute. The petition is dismissed.

Status of the Silver Dollar Club -

RCW 41.56.030(3) broadly defines a bargaining representative as "[a]ny lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." As noted in *Franklin Pierce School District*, 78-B (PECB, 1977), an organization need only be a "prospective" bargaining representative to file a representation petition under RCW 41.56.070.

Commission precedents do not impose particular documentation or formality requirements to qualify as a bargaining representative. *King County*, Decision 5910-A (PECB, 1997), continued a long line of cases which rejected requirements for adoption of formal by-laws or constitutions, for election of officers, or regular meetings to qualify as a labor organization. The focus is on the existence of an organization (separate and apart from the employees themselves), and on the purpose of representing employees in collective bargaining with employers. *Southwest Washington Health District*, Decision 1304 (PECB, 1981). At the same time, RCW 41.56.140(2) prohibits employer involvement in the internal affairs of a union, as explained in *Washington State Patrol*, Decision 2900 (PECB, 1987). An organization that was called into existence by an employer was refused a place on the representation election ballot in *Quillayute Valley School District*, Decision 2809 (PECB, 1987).

Importantly, an organization that files as a "prospective" bargaining representative must provide timely evidence that it is actually qualified for certification under the statute. *Franklin Pierce School District*, Decision 78-B. The close of the hearing in

a representation case is the last opportunity for a "prospective" bargaining representative to provide evidence that it is, in fact, qualified for certification under the statute.

In this case, the focus is on the primary purpose of the SDC. It is a long-established organization that has adopted by-laws, elected officers, and held regular meetings, but its long-standing purpose has been to promote charity and betterment of the community in which the employer operates. The SDC membership is composed of individuals who have (or have had) some involvement with the employer, and includes part-time fire fighters, full-time fire fighters, supervisors, managers (up to and including the fire chief), and former employees of the employer.<sup>1</sup> Persons are elected to membership by a majority vote of the membership. The by-laws further state that "[a]ny member may be expelled for cause, by two-thirds (2/3) vote of the active membership, after notice and opportunity for a hearing." The current by-laws of the SDC do not indicate that representation of employees for collective bargaining is one of its primary purposes.

By the terms of the SDC by-laws, amendment or repeal of the by-laws requires approval by two-thirds of the members voting with a quorum of at least 50 active members. Accepting that the filing of the petition in this case and testimony given at the hearing in this case both indicate an *INTENTION* of some current members of the SDC to re-cast the social organization as a labor organization, the SDC has not provided any evidence that those modifications were finalized prior to the close of the hearing in this case. The testimony that the SDC board has expressed a willingness to amend

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<sup>1</sup> The current SDC by-laws state that "[a]ll members of the Fire Department . . . [are] eligible for active membership in the organization . . ." Former employees may continue as members, but do not have voting rights.

the by-laws upon issuance of a favorable decision by the Public Employment Relations Commission concerning the part-time fire fighters having employee status must be viewed in its context. However strong the willingness of the SDC board may be, the requirement for a 2/3 vote of the SDC membership (which includes management officials up to and including the executive head of the employer) precludes a finding that amendment is a certainty.

The SDC has failed to prove that one of its primary purposes is to represent employees in their employment relations with the employer. It would be irresponsible for the Executive Director to assume that the SDC would follow through with the announced intentions of its current board members,<sup>2</sup> or that it would follow through with a larger set of membership changes that would seemingly be necessary to avoid improper involvement of employer officials in the internal affairs of a labor organization.<sup>3</sup>

Other Issues Moot -

In light of the conclusion that the SDC is not currently qualified for certification as an exclusive bargaining representative under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, there is no need to reach or decide the other issues that were framed in the investigation statement and were a subject of evidence and argument in this proceeding. Inasmuch as the dismissal of this petition does not give rise to a "certification bar" under WAC 391-25-030, it is possible that those substantive

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<sup>2</sup> If the SDC membership rejected amendment of the SDC by-laws to change the purpose of the organization, there would be no established procedure for the Commission to reconsider or revoke a certification already issued.

<sup>3</sup> The testimony suggesting that managers employed by the employer have been (and still may be) active members of the SDC raises concerns similar to those which existed in *Quillayute Valley School District*, Decision 2809 .

issues will be re-raised in a petition filed by a reformed SDC or by some new organization. It would then be appropriate to consider and decide the issues left unresolved in this case.

#### FINDINGS OF FACT

1. Snohomish County Fire District 4 (employer) is a municipal corporation of the state of Washington and is a public employer within the meaning of RCW 41.56.030(1).
2. The Silver Dollar Club is a non-profit organization engaged in purposes described in its adopted by-laws as advancing "charitable, public, literary, and scientific purposes" in the community served by the employer. Amendment of those by-laws requires approval by two-thirds of the active members voting with a quorum of 50 active members.
3. The adopted by-laws of the Silver Dollar Club allow any person currently or formerly associated with the employer to join the organization, and also provide for expulsion of a member by vote of the active members. The membership of the organization has historically included management officials, up to and including the executive head of the employer.
4. The adopted by-laws of the Silver Dollar Club do not state a primary purpose of representing employees in their employment relations with employers.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.

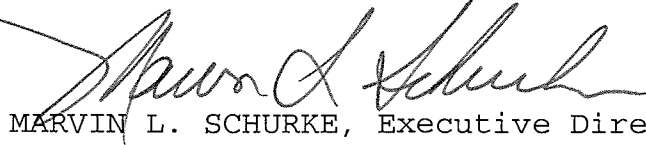
2. On the basis of the facts set forth in paragraphs 2, 3 and 4 of the forgoing findings of fact, the Silver Dollar Club has failed to establish that it is an organization within the meaning of RCW 41.56.030(3) that is qualified for certification as an exclusive bargaining representative under RCW 41.56.080.

ORDER

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

Issued at Olympia, Washington, on the 16<sup>th</sup> day of December, 2004.

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 391-25-660.