

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
JENAIS WHITE) CASE 19579-E-05-3083
Involving certain employees of:) DECISION 9091-A - PRSA
WASHINGTON STATE - OFFICE OF) ORDER OF DISMISSAL
MINORITY & WOMEN'S BUSINESS)
ENTERPRISES)
_____)

JeNais White appeared *pro se*.

Steve McLain, State Labor Relations Director, by *Karen Jackson*, Labor Negotiator, for the employer.

Parr, Younglove, Lyman & Coker, by *Edward Earl Younglove, III*, Attorney at Law, for the incumbent intervenor, Washington Federation of State Employees.

JeNais White filed a petition with the Public Employment Relations Commission on June 21, 2005, seeking decertification of the Washington Federation of State Employees (union) as exclusive bargaining representative of employees of the State of Washington (employer) working at the Office of Minority & Women's Business Enterprises (agency). The union was granted intervention in the proceedings, and it moved for summary dismissal of the petition (as untimely). The motion for dismissal was denied, based on arguments the petitioner advanced during an investigation conference held on July 26, 2005,¹ and Hearing Officer Terry N. Wilson held a hearing on September 16, 2005. The petitioner and the union filed briefs.

¹ *State - Minority/Women's Business, Decision 9091 (PSRA, 2005).*

ISSUES

The issues currently before the Executive Director in this case are limited to:

1. Is the collective bargaining agreement signed by the union and the agency in 1989 valid for purposes of invoking the "contract bar" under WAC 391-25-030?
2. Was the petition in this proceeding timely filed?

The Executive Director rules that the cited collective bargaining agreement was valid, and that the petition was untimely. The petition is dismissed.

APPLICABLE LEGAL PRINCIPLES

The Personnel System Reform Act of 2002 (PSRA) was passed by the Washington State Legislature and signed into law in 2002, with various effective dates. RCW 41.80.050 protects the right of state civil service employees to select their representation for the purposes of collective bargaining. The authority to determine bargaining units and the authority to certify exclusive bargaining representatives was transferred to the Public Employment Relations Commission by amendments to RCW 41.06.340 that took effect on June 13, 2002.² RCW 41.80.080 took effect on July 1, 2004, and includes:

RCW 41.80.080 REPRESENTATION -- ELECTIONS -- RULES.

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections.

² Both the unit determination and certification authority were formerly delegated to the Washington Personnel Resources Board and Department of Personnel (DOP).

. . .
(4) No question concerning representation may be raised if:

. . .
(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract.

(emphasis added). The "contract bar" principle established in RCW 41.80.080 is implemented by the Commission's rules. The general rule set forth in WAC 391-25-030(1) includes:

WAC 391-25-030 PETITION -- TIME FOR FILING. (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. . . .

(emphasis added). A special rule for state civil service employees includes:

WAC 391-25-036 SPECIAL PROVISION -- STATE CIVIL SERVICE EMPLOYEES. For state civil service employees: (1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030(1)(c) shall be computed as ninety days. . . .

The Commission maintains laboratory conditions for employees to freely exercise their statutory collective bargaining rights,³ and does not interfere haphazardly with the rights of employees. Because any "contract bar" limits the rights of employees, it must be narrowly construed to maximize the exercise of employee rights. *Roza Irrigation District v. State*, 80 Wn.2d 633 (1972); *Zylstra v. Piva*, 85 Wn.2d 743 (1975); *IAFF, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

ANALYSIS OF ISSUE 1 - VALIDITY OF THE CITED AGREEMENT

The union cites a collective bargaining agreement it signed with the agency under Chapter 41.06 RCW in 1989, claiming that contract continued in effect by operation of an automatic renewal clause, and so contends that the petition filed in this case in June 2005 was untimely. The employer impliedly affirms the validity of the cited contract by asserting that the petition in this case was untimely. The petitioner attacks the validity of the cited contract on various grounds. As discussed under separate headers below, the Executive Director rules that the contract was valid.

Signature of Representatives -

When the union and agency entered into the cited collective bargaining agreement in 1989, it was signed by since-departed

³ See, for example, *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462 (PECB, 1986).

individuals who were then the director of the agency and a union steward. The petitioner suggests that contract is no longer valid, because it was never signed by the current director of the agency, Carolyn Crowson. The Executive Director rejects this argument.

As the director of the agency and the "appointing authority" for purposes of Chapter 41.06 RCW in 1989, James Medina was clearly authorized to act on behalf of the agency when he signed the collective bargaining agreement. Similarly, there is no doubt that Alfredo Longoria was then a union shop steward authorized to act on behalf of the union. An agent is a person who has the authority to make decisions and create obligations for another party, so that actions taken by an agent are, in essence, actions of the party the agent represents. The petitioner does not dispute that the persons who signed the collective bargaining agreement in 1989 were then authorized agents for the involved parties. By entering into a contract, Medina and Longoria (plus other union officials) created obligations for the agency and union they represented. Those contractual obligations remain with those parties regardless of whether the agent continues to represent the party. Therefore, the signatories of the collective bargaining agreement need not be the current authorized agents in order for the contract to be valid.

Fixed Expiration Date -

The petitioner contends the cited collective bargaining agreement lacks the fixed expiration date required by WAC 391-25-030. The Executive Director rejects the argument as factually erroneous.

The requirement for a fixed expiration date gives potential petitioners the means to compute the window period in which they must file a petition, and so it is an important component of the "contract bar" procedure. In this case, the signature page of the cited contract clearly bears a date of November 13, 1989, and is immediately preceded by the page containing an article titled

"Article 19 - Term, Amendments and Modification of Basic Agreement". The text of Article 19 includes:

19.1 All provisions of this Agreement shall become effective the day following the date of the signing and shall continue to be in force and effect for a one year period thereafter. . . .

Taking the materials on those two consecutive pages in the context of the contract as a whole, they sufficiently indicated that the contract was to be in effect for an initial term of November 14, 1989, through November 13, 1990.

Operation of Automatic Renewal and Statutory Extension -

The cited contract contained an automatic renewal clause, but the petitioner claims it neither operated repeatedly nor provided the fixed expiration date required to invoke the contract bar principle. The union and the employer accept that the cited contract remained in effect through June 30, 2005, first by operation of the automatic renewal clause and then by operation of law in RCW 41.80.001. The Executive Director accepts the arguments advanced by the employer and union.

Article 19 of the cited collective bargaining agreement contained language that explicitly kept that contract in effect beyond the original one-year term, as follows:

19.1 All provisions of this Agreement shall become effective the day following the date of the signing and shall continue to be in force and effect for a one year period thereafter. . . . *Either party may call for the re-negotiation of any or all parts of the agreement In the absence of such notice by either party, this Agreement shall be extended for twelve (12) months.*

(emphasis added). There is no claim or evidence that either the employer or the union took the steps necessary to reopen the contract in 1990, or at any time thereafter.

Although prohibited by Chapter 41.56 RCW (and perhaps precluded by fiscal year or biennium limitations in some of the other laws administered by the Commission, including the PSRA), automatic renewal clauses were a common and accepted practice in collective bargaining agreements signed under Chapter 41.06 RCW. Repealed WAC 356-42-050(4) included:

WAC 356-42-050 ELECTION PROVISIONS -- GENERAL.

(4) The initial term of a written agreement shall not exceed three years. Automatic renewal or extension provisions may extend the period of the contract for a period not to exceed one year at a time.

Thus, collective bargaining agreements negotiated under Chapter 41.06 RCW could be rolled over, and the "at a time" phrase clearly indicated an automatic renewal clause could operate more than once.

The contract signed in 1989 clearly remained in effect by operation of the automatic renewal clause up to the first PSRA effective date of June 13, 2002. The first operation of the automatic renewal clause kept the contract in effect through November 13, 1991,⁴ and 11 subsequent reiterations of the automatic renewal clause kept the contract in effect through November 13, 2002. In addition:

⁴ Notice is taken of records transferred to the Commission by the DOP, under RCW 41.80.901, which indicate the union had strong support early in the history of this bargaining unit. The union was certified in December 1988 (Case RC-94) and the employees voted for a union shop in January 1989 (Case US-87).

- Bargaining unit employee Gina Redman testified that she received a copy of the collective bargaining agreement when she was first hired in 1996.
- There was evidence that union members affirmatively decided not to re-open the contract as recently as 1999.⁵

That evidence supports a conclusion that the contract was known to have rolled over from year to year after 1991. At the same time, although rules adopted under RCW 41.06.150 included "contract bar" and "window period" principles similar in concept to those found in WAC 391-25-030, there is no claim or evidence that the employees involved ever sought to decertify the union as their exclusive bargaining representative while they remained under the jurisdiction of the DOP.⁶

As of June 13, 2002, this bargaining unit arrived on the Commission's doorstep with a contract in place. RCW 41.80.070(1) clearly preserved the propriety of existing bargaining units and RCW 41.80.070(2) clearly protected the status of existing exclusive bargaining representatives as of June 13, 2002. By emergency rules adopted shortly after June 13, 2002, Chapter 391-25 WAC was made generally applicable to state civil service employees and WAC 391-

⁵ The Executive Director declines to rule on the petitioner's claim that the union did not follow its own procedure concerning employee voting on reopeners. Apart from delving into internal union affairs, the proper focus here is on the written (in conformity with *State ex rel. Bain v. Clallam County*, 77 Wn.2d 542 (1970)) contract between union and agency. It suffices here that there was no notice to reopen by either of those parties.

⁶ Although the employees voted to decertify the union shop in an election conducted by the DOP in 2001 (Case US-150), they did not take the separate steps that would have been necessary to decertify the union as their exclusive bargaining representative.

25-036 was adopted to anticipate the 120th day / 90th day language in RCW 41.80.080. That created window periods from July 17 through August 15, 2002, and from July 17 through August 15, 2003, but no decertification petition was filed with the Commission in either of those timeframes. The employer did not file a petition under WAC 391-25-092, claiming the union had abandoned the bargaining unit or gone defunct.⁷ Thus, the automatic renewal clause operated for two further reiterations to keep the contract signed in 1989 in effect through November 13, 2004.

The situation that existed in 2004 was the first to be substantively affected by the PSRA. The bargaining process that had existed under Chapter 41.06 RCW disappeared with amendments to RCW 41.06.150 that were effective on July 1, 2004, and all existing contracts negotiated under Chapter 41.06 RCW were extended by operation of law. Effective July 1, 2004, the PSRA included:

RCW 41.80.001 APPLICATION OF CHAPTER. Collective bargaining negotiations under this chapter shall commence no later than July 1, 2004. A collective bargaining agreement entered into under this chapter shall not be effective prior to July 1, 2005. However, *any collective bargaining agreement entered into before July 1, 2004, covering employees affected by this section and RCW 41.80.010 through 41.80.130, that expires after July 1, 2004, shall . . . remain in full force during its duration, but the agreement may not be renewed or extended beyond July 1, 2005, or until superseded by a collective bargaining agreement entered into under this section and RCW 41.80.010 through 41.80.130, whichever is later.* The duration of any collective bargaining agreement under this chapter shall not exceed one fiscal biennium.

⁷ To the contrary, testimony in this proceeding indicates the new agency director was given a copy of the 1989 collective bargaining agreement on her arrival in 2003.

(emphasis added). A new duty to bargain on a broadened scope of subjects under the PSRA also took effect on July 1, 2004, with a deadline to complete negotiations of first contracts by October 1, 2004.⁸ Thus, the PSRA itself put employees at this agency on notice that the contract which was initially effective to 1990, and was continued in effect by operation of the automatic renewal clause thereafter, would cease to operate as of July 1, 2005.

ANALYSIS OF ISSUE 2 - TIMELINESS OF PETITION

Applying WAC 391-25-030, the union and the agency had a valid collective bargaining agreement in effect through June 30, 2005. There was a window period for filing petitions under WAC 391-25-036, from March 3 through April 1, 2005, but no decertification petition was filed in that timeframe. The petition filed to initiate this proceeding on June 21, 2005, was untimely.

FINDINGS OF FACT

1. The Office of Minority & Women's Business Enterprises (OMWBE) is a state agency within the meaning of RCW 41.80.005(1).

⁸ The Executive Director also declines to rule on a debate found in both the testimony and in the petitioner's brief concerning the sufficiency of notice given to employees of this agency about the terms and ratification of the first contract negotiated by the union with the employer under the PSRA. Similar issues are the subject of numerous unfair labor practice complaints filed by employees under the PSRA, and unfair labor practice proceedings would have been the proper forum for the employees of this agency to assert such claims. Even if there were doubt about the validity of the contract that took effect July 1, 2005, that would not negate the validity of the contract negotiated under the prior law. Taking RCW 41.80.080, WAC 391-25-030, and WAC 391-25-036 together, the window period under the new contract will not occur until March 5 through March 30, 2007.

2. The Washington Federation of State Employees (WFSE), an employee organization within the meaning RCW 41.80.005(7), is the exclusive bargaining representative of classified employees of the employer working at OMWBE.
3. OMWBE and the WFSE were parties to a written collective bargaining agreement signed under authority of Chapter 41.06 RCW on November 13, 1989, and initially effective for the period from November 14, 1989, through November 13, 1990.
4. The collective bargaining agreement described an automatic renewal clause which kept the contract in effect for one year periods from year to year after its stated expiration date, in the absence of notice from either of the parties to reopen the contract. Neither the OMWBE nor the WFSE gave notice to prevent operation of that automatic renewal clause at any time during or after 1990.
5. As of July 1, 2004, the Personnel Reform Act of 2002 repealed the authority and duty to bargain previously established in Chapter 41.06 RCW, and extended existing collective bargaining agreements that were in effect under Chapter 41.06 RCW to remain in effect through June 30, 2005.
6. On June 21, 2005, JeNais White filed the petition to initiate this proceeding, seeking to decertify WFSE as the exclusive bargaining representative of employees working at OMWBE.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-25 WAC.

2. The collective bargaining agreement signed by OMWBE and WFSE in 1989 contained a discernable fixed expiration date sufficient to invoke the contract bar principle under RCW 41.80.080 and WAC 391-25-030.
3. The collective bargaining agreement signed by OMWBE and WFSE remained in effect through June 30, 2005, by operation of the automatic renewal clause in Section 19.1 of that contract, and by operation of RCW 41.80.001 after July 1, 2004.
4. The petition filed as described in paragraph 6 of the foregoing findings of fact was not timely under RCW 41.80.080, WAC 391-25-020, and WAC 391-25-036.

ORDER

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

Issued at Olympia, Washington, this 18th day of November, 2005.

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.