

In re: WAC 391-25-130, Decision 10153 (2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition for)	
rulemaking concerning:)	
)	DECISION 10153
)	
WAC 391-25-130)	ORDER DENYING PETITION
)	
_____)	

On May 19, 2008, Russ Keefer (Keefer) filed a rulemaking petition with the Public Employment Relations Commission under RCW 34.05.330, requesting amendment of WAC 391-25-130. The proposed amendment would have changed the existing rule as follows:

Within ten days following a request by the agency, the employer shall submit to the agency a list containing the names ((and last known addresses)) of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the agency shall furnish a copy of the list of names ((and addresses)) to the petitioner. Following granting of a motion for intervention, the agency shall furnish a copy of the list of names ((and addresses)) to the intervenor.

After the unit has been determined appropriate by the agency and supported by a sufficient showing of interest, the agency shall request from the employer a list containing the names and last known addresses of all of the employees in the unit. The employer shall submit to the agency the list within ten days following such a request by the agency. The agency shall furnish a copy of the list of names and addresses to the petitioner and any appropriate intervenor.

In a letter accompanying the petition, Keefer's legal counsel argued that adopting such an amendment would make the Commission's rule more consistent with the standard set forth in *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966), where the National Labor Relations Board (NLRB) requires an employer to provide to the regional director within seven days of an election agreement a list of all the names and addresses of the employees who are eligible to vote in the election. The regional director then provides the list to the petitioners.

On June 4, 2008 Executive Director Cathleen Callahan sent a letter to Keefer informing him that this Commission would consider his petition at the July 15, 2008 public meeting. Agency staff placed copies of Keefer's petition on the agency website, and solicited written comments from interested clientele.

At the July 15, 2008 meeting, Keefer presented arguments in favor of his petition. Interested clientele in attendance were also permitted the opportunity to speak for or against the petition, and several of those in attendance took the opportunity to speak against the petition.

At the conclusion of the public comments, and following a brief caucus, this Commission then considered a motion to deny the petition. The motion before the Commission noted the history of the rule, and particularly the fact that the practice under the rule has existed essentially unchanged since its adoption in 1980, and that no convincing reason had been presented to support the need for an amendment. Finally, the motion noted that this Commission may consider the practices of the NLRB where the statutes are similar, but here, the representation provisions are not similar, so this Commission is free to adopt its own path. This Commission then unanimously adopted the motion to deny the rulemaking petition, and informed the petitioner that written confirmation of its decision would be provided as required by RCW 34.05.330(1)(a).

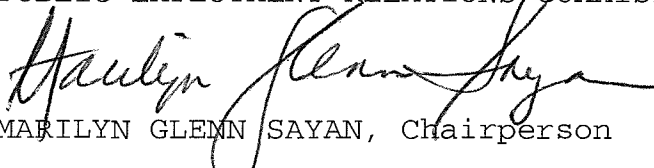
NOW, THEREFORE, it is


ORDERED

The rulemaking petition filed by Russ Keefer is DENIED.

Issued at Olympia, Washington, the 13th day of August, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


THOMAS W. McLANE, Commissioner