

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 763)	CASE 15988-C-01-1027
)	
For clarification of an existing)	DECISION 7594 - PECB
bargaining unit of employees of:)	
)	
CITY OF MEDINA)	ORDER OF DISMISSAL
)	
)	

The petition for clarification of bargaining unit in the above-referenced matter was filed with the Public Employment Relations Commission by Teamsters Union, Local 763 (union) on September 10, 2001. The union represents certain employees of the City of Medina (employer). The petition sought to include the finance officer position in an existing bargaining unit, due to an "unfair labor practice" committed by the employer.

The petition was reviewed under WAC 391-35-020.¹ A deficiency notice was issued on October 23, 2001, indicating that it appeared that the petition was untimely under WAC 391-35-020. The deficiency notice listed several problems with the petition. The collective bargaining agreement attached to the petition covered employees of King County, not the employer named in the petition. The deficiency notice stated that allegations concerning the transfer of bargaining unit work, whether in the form of skimming the work to other employees of the same employer, or subcontracting

¹ At this stage of the proceedings, the question at hand is whether the petition states a claim for relief available through unit clarification proceedings before the Public Employment Relations Commission.

the work to employees of another employer, are processed by the Commission under the refusal to bargain provisions of RCW 41.56.140(4). The deficiency notice informed the union that an unfair labor practice complaint would need to be filed with the Commission to enforce the provisions of RCW 41.56.140(4).

Unit clarification proceedings are controlled by Chapter 391-35 WAC, as follows:

WAC 391-35-020 TIME FOR FILING PETITION--LIMITATIONS ON RESULTS OF PROCEEDINGS.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless

the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

The deficiency notice indicated that the union had provided insufficient information to ascertain whether the petition met the timeliness requirements of WAC 391-35-020.

The deficiency notice advised the union that an amended petition could be filed and served within 21 days following such notice, and

that any materials filed as an amended petition would be reviewed under WAC 391-35-020 to determine if they stated a cause of action. The deficiency notice further advised the union that in the absence of a timely amendment stating a cause of action, the petition would be dismissed. Nothing further has been received from the union.

NOW, THEREFORE, it is

ORDERED

The petition for clarification of bargaining unit in the above captioned matter is DISMISSED as procedurally deficient.

ISSUED at Olympia, Washington, this 8th day of January, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.