

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
INTERNATIONAL ASSOCIATION OF)	CASE 21719-C-08-1338
MACHINISTS AND AEROSPACE WORKERS,)	
DISTRICT LODGE 160,)	DECISION 10125 - PECB
)	
For clarification of an existing)	
bargaining unit of employees of:)	
)	
CITY OF SEATTLE)	ORDER OF DISMISSAL
_____)	

On May 16, 2008, the International Association of Machinists and Aerospace Workers, District Lodge 160 (union) filed a petition for clarification of a bargaining unit with the Public Employment Relations Commission under Chapter 391-35 WAC. The petition concerns employees of the City of Seattle (employer). The petition was reviewed under WAC 391-35-020, and a deficiency notice issued on June 3, 2008, indicated that the petition was defective. The union was given a period of 21 days in which to file and serve an amended petition or face dismissal of the case.

The union has not filed an amended petition. The petition is dismissed.

DISCUSSION

The deficiency notice pointed out several defects to the complaint. The petition appears to be untimely; in addition, it apparently seeks to place a supervisor in a non-supervisory bargaining unit.

Unit clarification proceedings are controlled by Chapter 391-35 WAC. Within that chapter, WAC 391-35-020 reads as follows, in pertinent part:

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.

WAC 391-35-340 concerns the unit placement of supervisors:

UNIT PLACEMENT OF SUPERVISORS--BARGAINING RIGHTS OF SUPERVISORS

(1) It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

(2) It shall be presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

Regarding timeliness, WAC 391-35-020(2) provides that a petition for clarification concerning the status of supervisors must be filed while the parties are in contract negotiations, unless a change of circumstances applies. The petition does not allege a change in circumstance, only that the position was inadvertently left out of the bargaining unit. The collective bargaining agreement indicates that the parties presently have a "closed" contract. Thus, the petition appears to be untimely.

In any case, the petition does not indicate that a question exists concerning whether the position is supervisory. Rather, the petition seemingly intends to include this position in the rank-and-file bargaining unit. This is prohibited under WAC 391-35-340. The employer and union cannot agree to place a supervisor in a non-supervisory unit, and the Commission cannot affirm such an agreement.

NOW, THEREFORE, it is

ORDERED

The petition for clarification of a bargaining unit filed in Case 21719-C-08-1338 is DISMISSED as procedurally defective.

ISSUED at Olympia, Washington, this 2nd day of July, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 21719-C-08-01338 FILED: 05/16/2008 FILED BY: PARTY 2
DISPUTE: COMMUNITY INT
BAR UNIT: SUPERVISORS
DETAILS: Waterworks Maintenance Supervisor
COMMENTS:

EMPLOYER: CITY OF SEATTLE
ATTN: GREG NICKELS
600 4TH AVE
PO BOX 94749
SEATTLE, WA 98124-4749
Ph1: 206-684-2489 Ph2: 206-386-1234

REP BY: HANNI PERELLA
CITY OF SEATTLE
600 FOURTH AVE 4TH FLOOR
PO BOX 94769
SEATTLE, WA 98124
Ph1: 206-233-2658

PARTY 2: IAM/AW DIST 160
ATTN: DON HURSEY
9135 15TH PL S FLR 2
SEATTLE, WA 98108
Ph1: 206-764-0473 Ph2: 206-762-7990

REP BY: LEIF JENSEN
IAM/AW LOCAL 160
9135 15TH PL S
SEATTLE, WA 98108
Ph1: 206-762-7990