

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
MARY WILCOX)	CASE NO. 3427-E-81-662
For investigation of a question concerning representation of certain employees of:)	
SOUTHWEST WASHINGTON HEALTH DISTRICT)	
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In the matter of the petition of:)	
CARL L. ADDY)	CASE NO. 3428-E-81-663
For investigation of a question concerning representation of certain employees of:)	DECISION NO. 1304 - PECB
SOUTHWEST WASHINGTON HEALTH DISTRICT)	DIRECTION OF ELECTIONS
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Mary Wilcox appeared, pro se, in Case No. 3427-E-81-662.

Carl Addy appeared, pro se, in Case No. 3428-E-81-663.

Matthew D. Durham, Donworth, Taylor and Company, Management Consultants, appeared on behalf of the employer.

Carney, Probst, and Cornelius, by Darrell L. Cornelius, Attorney at law, appeared on behalf of the incumbent union, Teamsters Local 58.

McClaskey, Horenstein and Wynne, by John David Nellor, Attorney at Law, appeared on behalf of the intervenors, Southwest Washington Health District Nurses Association and Southwest Washington Health District Employees Association.

PROCEDURAL BACKGROUND:

On April 30, 1981, Mary Wilcox filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission (PERC). The petitioner is seeking to decertify Teamsters Local 58 as bargaining representative of a unit of all registered nurses employed by Southwest Washington Health District, except all Public Health Nurses III and Public Health Nurses VI.

On April 30, 1981, Carl L. Addy filed a petition for investigation of a question concerning representation, seeking to decertify Teamsters Local 58 as bargaining representative of a unit of all employees of Southwest

Washington Health District, except all public health nurses, registered nurses, Environmental Health Specialists III, department directors, the public health officer and the accounting assistant to the business manager.

Teamsters Local 58 intervened in both proceedings in accordance with WAC 391-25-170. Following initial telephone communications which indicated that all parties would agree to the conduct of representation elections, election agreements were prepared for both units and sent to the parties for signature. Prior to the filing and posting of either election agreement, on May 27, 1981, the Health Care Division of Local 335, Laborers International of North America, filed a properly supported motion for intervention in each case. Upon learning of the intervention by Laborers Local 335, Teamsters Local 58 declined to enter into an election agreement with the additional party, and requested that a pre-hearing conference be held in the matters. A pre-hearing conference was held on June 22, 1981, in Vancouver, Washington. At that time, the parties stipulated to all issues pertaining to the questions concerning representation. The parties further stipulated to a thirty day continuance in both matters, to run through July 20, 1981, in order to allow Laborers Local 335 and Teamsters Local 58 to attempt to resolve a dispute between them.^{1/} On July 13, 1981, Laborers Local 335 withdrew its intervention in both matters.

On July 16, 1981, Roxce Stavney filed a properly supported motion for intervention in Case No. 3427-E-81-662 on behalf of the Southwest Washington Health District Nurses Association (SWHDNA). On July 16, 1981, Carl Addy filed a properly supported motion for intervention in Case No. 3428-E-81-663 on behalf of the Southwest Washington Health District Employees Association (SWHDEA). The parties were again contacted to determine whether election agreements could be arranged. Local 58 declined to stipulate that either the SWHDNA or the SWHDEA were qualified to act as bargaining representatives within the meaning of RCW 41.56. Local 58 further objected to Addy's dual role as representative of an intervenor in the same matter in which he was the decertification petitioner. On July 22, 1981, Addy and David Prosch notified the Commission that Prosch would henceforth be the representative for the SWHDEA.

Hearing was held in the matters on August 18, 1981, before Martha M. Nicoloff, Hearing Officer. At hearing, the parties stipulated that the sole issues to be determined were whether the SWHDNA and SWHDEA were qualified to act as bargaining representatives within the meaning of RCW 41.56. All other matters were stipulated by the parties.^{2/}

^{1/} The International Brotherhood of Teamsters and the Laborers International are parties to a "no-raid" agreement.

^{2/} The parties stipulated to a unit description in the nurses unit which would exclude Public Health Nurses IV and V in addition to those previously excluded.

THE FACTS:

Teamsters Local 58 was certified by PERC in April, 1980, as exclusive bargaining representative of the employees in the two bargaining units involved here. Southwest Washington Health District, Decision 848, 848-A (PECB, 1980) and Decision 849 (PECB, 1980). About March 11, 1981, a group of employees of the health district began meeting to discuss concerns regarding the representation being provided them by Local 58, and possible alternatives to that representation. Notices of meetings were posted on employee bulletin boards, and individuals from the group were designated to inform others of upcoming meetings by word of mouth. At first, employees from both bargaining units met as one group. Contract improvements were discussed. Representatives from other unions and associations were invited to speak. Affiliation with established unions was explored, as was decertification and formation of local associations to act as bargaining representatives. In July, 1981, members of the two bargaining units began to meet separately.

On or about July 23, 1981, the nurses met and adopted the name "Southwest Washington Health District Nurses Association" for their group. At that time, Stavney was selected as the representative of the group by a "vote of confidence". The July 23 meeting was the only occasion the nurses met as a separate group. At the time of hearing, the nurses association had adopted no by-laws, (although a rough draft was being considered), had collected no dues, and had selected no "officers" other than Stavney. The testimony shows that the nurses association was formed "to bargain for the employees", "to form a unit where (we) have more bargaining power where we are represented to our employer as a nursing association, as a professional group".

The employees group adopted the name "Southwest Washington Health District Employees Association" sometime in July or August. They met separately from the nurses on August 14 and 17, 1981. In the course of those meetings, Prosch was selected as representative by a vote of confidence. On August 17, bylaws were adopted by consensus. No dues have been collected; no "officers" other than Prosch have been selected. The testimony shows that the purpose of the employees association is to represent employees in collective bargaining; "in matters of employment, contracts".

POSITIONS OF THE PARTIES:

Teamsters Local 58 asserts that neither association can be considered to be lawful organizations capable of functioning as bargaining representatives within the meaning of RCW 41.56.030. It represents that Alto Plastics Manufacturing Corporation, 136 NLRB 850 (1962), sets forth the criteria required by the National Labor Relations Board for an organization to be a labor organization, and urges that PERC adopt those criteria.

The nurses association and the employees association argue that they meet the statutory requirements to be considered bargaining representatives. They claim that the purpose of an organization, rather than its structure, should be the controlling factor in determining the standards for a bargaining representative, and cite several NLRB and circuit court decisions in support of that claim.

While both decertification petitioners and the employer appeared at the hearing, they did not take an active role in litigating the matters at issue.

DISCUSSION:

RCW 41.56.030(3) defines "bargaining representative" as "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers". A bargaining representative which can show written proof of ten percent representation of the employees in an appropriate unit shall have its name appear on the ballot. RCW 41.56.070. WAC 391-25-190 provides that any organization with the statutorily required showing of interest may be granted intervention. The opportunity for intervention ends at the close of hearing or seven days after the filing and posting of an election agreement.

The Commission has not heretofore ruled on the requirements for "bargaining representative" status of an intervenor. It has, however, ruled on a petitioning organization's status under this statute. Franklin Pierce School District, Decision No. 78-D (PECB, 1977), affirming Decision No. 78-B (PECB, 1977). That case turned on the question of whether the petitioner met the requirements of WAC 391-20-065 (since repealed) as well as the statute. Under that administrative code provision, a standard which is no longer in effect was imposed upon bargaining representatives.

Local 58 interprets Alto Plastics Manufacturing Corp., supra, to require bylaws adopted by the general membership, membership meetings at established intervals, election of officers by secret ballot, membership votes on all matters, existence of prior collective bargaining contracts, and prior processing of grievances for employees. The listing of attributes of the organization involved in Alto Plastics was a recitation of facts made in support of the NLRB's finding that the organization met the requirements of the Act. At no time did that listing rise to the level of a requirement for statutory compliance.

A review of more recent Board decisions which involve organizations established for representation of employees is instructive. An organization in which employees participate, which was established for the purpose of representing employees, and which intends to carry out its purpose if certified, is a labor organization within the meaning of Section 2(5), even though it does not have a constitution or bylaws and collects no dues or

fees. Butler Manufacturing Company, 167 NLRB 308 (1967); American Automobile Association, 242 NLRB No. 78 (1979) Where testimony showed that an organization intended to engage in collective bargaining, the fact that it had not yet done so, had no bylaws of its own, and functioned under the bylaws of a state association whose bylaws did not include collective bargaining as a stated purpose, was not controlling. Sweetwater Hospital Association, 219 NLRB 803 (1975). In yet another case, a petitioner was a labor organization within the meaning of Section 2(5) in spite of the fact that its purposes had not yet come to fruition, when it indicated that it intended to perform collective bargaining and to become formally structured if certified. Advance Industrial Security, 225 NLRB 151 (1976).

The two associations in question clearly meet the requirements of both RCW 41.56 and the current Washington Administrative Code. Further, they come under the standards of the NLRB applied to similar circumstances. While the origins of the two associations are very recent, and while they are obviously loosely organized, the record reflects the purpose of both associations to be that required by the statute. They were both organizations prior to the close of hearing.

FINDINGS OF FACT

1. Southwest Washington Health District is a health district within the meaning of RCW 70.05.010(4), organized under Chapter 70.46 RCW, and is a political subdivision of the state of Washington. The district is a public employer within the meaning of RCW 41.56.030(1).
2. Mary Wilcox is employed by the Southwest Washington Health District in a bargaining unit comprised of all registered nurses of the district except all Public Health Nurses III, IV, V and VI and all other employees. Wilcox is a public employee within the meaning of RCW 41.56.030(2). She has petitioned to decertify Teamsters Local 58 as the exclusive representative of the bargaining unit.
3. Carl Addy is employed by the Southwest Washington Health District in a bargaining unit comprised of all employees of the district except all public health nurses, registered nurses, Environmental Health Specialists III, department directors, the public health officer and the accounting assistant to the business manager. Addy is a public employee within the meaning of RCW 41.56.030(2). He has petitioned to decertify Teamsters Local 58 as the exclusive representative of the bargaining unit.
4. Chauffeurs, Teamsters, and Helpers Local 58 is a bargaining representative within the meaning of RCW 41.56.030(3), and was certified in Case No. 2647-E-80-505, Decision No. 849 (PECB, 1980), as the exclusive representative of the bargaining unit described in finding of fact #2. Local 58 was certified in Case No. 2510-E-79-457, Decision 848-A (PECB, 1980), as the

exclusive representative of the bargaining unit described in finding of fact #3. It has intervened in both decertification proceedings in accordance with WAC 391-25-170.

5. The Southwest Washington Health District Nurses Association intervened in the decertification proceeding initiated by Wilcox. Prior to close of hearing, the nurses association held one meeting at which it elected a representative and determined that its purpose was to represent unit employees in their employment relationships with their employer. The association had adopted no bylaws and collected no membership dues.

6. The Southwest Washington Health District Employees Association intervened in the decertification proceedings initiated by Addy. Prior to close of hearing, the employees association held two meetings at which it selected a representative and adopted bylaws providing that its purpose was to represent unit employees in their employment with their employer. The association had collected no membership dues.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of the matters pursuant to RCW 41.56.

2. The Southwest Washington Health District Nurses Association is a bargaining representative within the meaning of RCW 41.56.030(3).

3. The Southwest Washington Health District Employees Association is a bargaining representative within the meaning of RCW 41.56.030(3).

4. A question concerning representation exists in the bargaining unit described in finding of fact No. 2, and such question concerning representation must be resolved under RCW 41.56.070 by a representation election.

5. A question concerning representation exists in the bargaining unit described in finding of fact No. 3, and such question concerning representation must be resolved under RCW 41.56.070 by a representation election.


DIRECTION OF ELECTIONS

1. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all employees employed in the bargaining unit described as all registered nurses of the district, except all Public Health Nurses III, IV, V, and VI and all other employees, to determine whether a majority of the employees desire to be represented by Chauffeurs, Teamsters, and Helpers Local 58, by the Southwest Washington Health District Nurses Association, or by no representative.

2. An election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all employees employed in the bargaining unit described as all employees of the district except all public health nurses, registered nurses, Environmental Health Specialists III, department directors, the public health officer and the accounting assistant to the business manager, to determine whether a majority of employees desire to be represented by Chauffeurs, Teamsters, and Helpers Local 58, by the Southwest Washington Health District Employees Association, or by no representative.

DATED at Olympia, Washington this 18th day of December, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director