STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
GREGORY S. BROWN	CASE NO. 6461-E-86-1141
For investigation of a question concerning representation involving certain employees of:	DECISION NO. 2611 - PECB
CITY OF SEATTLE	ORDER OF DISMISSAL

Gregory S. Brown appeared pro se.

Douglas N. Jewett, City Attorney, by Augustin R. Jimenez, Assistant City Attorney, appeared on behalf of the employer.

Hafer, Price, Rinehart and Schwerin, by Richard H. Robblee, Attorney at Law, appeared on behalf of Painters District Council No. 5 and Painters Local 339.

On June 27, 1986, Gregory S. Brown filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation. The petition described a unit consisting of:

Carpenters - all carpenters employed by City Light

Painters - all painters employed by City Light

and indicated that the "decertification" of two incumbent organizations (both affiliated with the Joint Crafts Council)

was sought. Twenty-three employees were claimed to be involved.

A pre-hearing conference was conducted on September 16, 1986 by Hearing Officer Jack T. Cowan. The statement of results of the pre-hearing conference issued by the Hearing Officer reflects stipulations by the parties that the Public Employment Relations Commission has jurisdiction, that the incumbent labor organizations are qualified to act as exclusive bargaining representatives under the statute, that the petition was timely filed and that no blocking charges exist that would suspend the representation proceedings. Disputed issues were framed as to whether petitioned-for unit was an appropriate bargaining unit and whether there was an adequate showing of interest.

From the documents of record and the positions taken at the pre-hearing conference, it now appears that the petitioner seeks to sever approximately 24 employees (12 painters and 12 carpenters) employed at Seattle City Light from a larger unit of City of Seattle employees. The existing unit has been represented since 1971 by the Joint Crafts Council, a multi-union organization. The most recent collective bargaining agreement between the city and the Joint Crafts Council covered the period from September 1, 1983 through August 31, 1986.[1] It came out during the pre-hearing conference that there are some 52 painters and 55 carpenters employed by the City of Seattle under the Joint Crafts Council collective bargaining agreement. The petitioner evidently seeks "decertification" in this case

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1 From information supplied by the employer, it appears that the Joint Crafts Council originally consisted of 18 unions representing various City of Seattle employees. The council was voluntarily recognized by the city with the proviso that the city or a union could withdraw such recognition provided 120 days advance notice was given. The bargaining unit for the most recent collective bargaining agreement covers 13 unions.

to accomplish the first of two steps towards obtaining representation by another labor organization.

The employer objects to the proposed severance claiming that the appropriate bargaining units include all painters employed by the city and all carpenters employed by the city.

The incumbent exclusive bargaining representative (within the Joint Crafts Council) of the city-wide unit of painters, Painters District Council 5, and Painters Local 339, join the city in asserting that the only appropriate unit includes all of the painters employed by the employer.

If the argument advanced by the employer and the incumbent union is valid, the petitioner will have failed to meet the 30% showing of interest requirement of RCW 41.56.070 and WAC 391-25-110. A hearing and a unit determination under RCW 41.56.060 would normally be necessary to determine the unit question. However, it has become clear from the petitioner's own statements that the petition must be dismissed for other reasons, so that a ruling on the appropriate bargaining unit is not necessary to resolve this matter.

It is now clear that the petitioner is attempting to obtain "decertification" of only part(s) of one or more existing bargaining units.[2] The distinction between "decertification" of an incumbent exclusive bargaining representative and "severance" of a part of the existing bargaining unit is well founded and clear. Proceedings in the "decertification" category are

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[2] Although reference was made to the possibility of representation, during an interim, by an independent organization, it is clear that no such organization was the petitioner in this case (or even in existence at the time the petition in this case was filed with the Commission.

characterized by employees seeking to be rid of their present union, with the result that they end up with no union representation. By contrast, cases in the "severance" category involve a petition of one organization seeking to carve out a separate bargaining unit from a larger unit historically represented by the same or another organization. In both types of cases, the Commission must honor statutory directive that it consider the "history of bargaining". RCW 41.56.060. A decertification petitioner does not have the prerogative to fashion a new bargaining unit or voting group, however. Rather, employees who seek to be rid of their union must take the existing unit as they find it and must move to decertify in the context of the existing bargaining unit.

Petitions, as here, which simultaneously seek "severance" and "decertification" are precluded by controlling precedent of the Public Employment Relations Commission, which is in turn based on precedents of the National Labor Relations Board (NLRB). See: City of Seattle, Decision 1229-A (PECB, 1982) [Commission affirmed Executive Director's dismissal of "severance-decertification" petition seeking to remove some, but not all, of the employees from an existing bargaining unit of City of Seattle employees represented by Plumbers Local 32]; Valley General Hospital, Decision 1333 (PECB, 1982) [Executive Director dismissed "severance-decertification" petition]; Campbell Soup Co., 111 NLRB 234 (1955) [cited by Commission with approval as standing for proposition that severance principles may not be applied to obtain decertification of part of an existing bargaining unit]; Oakwood Tool & Engineering Co., 122 NLRB 812 (1958); and Associated General Contractors of California, Inc., 209 NLRB 363 (1974).

The petition in this case was void from the outset and must be dismissed as such. Under these circumstances, dismissal of the

petition does not invoke the one-year "bar" period which would flow from a certification. However, the two incumbent labor organizations and the City of Seattle have been deprived of the 60-day "insulated" period which they would have enjoyed immediately prior to the August 31, 1986 expiration of their latest collective bargaining agreement, during which they could have signed a new contract. In order to restore the incumbent unions and the employer to the bargaining positions they would have occupied but for the filing of the inherently defective petition in this case, representation petitions affecting employees involved in this case will be barred for sixty (60) days following the date on which dismissal of this case becomes final. See: Kitsap County, Decision 2116 (PECB, 1984).

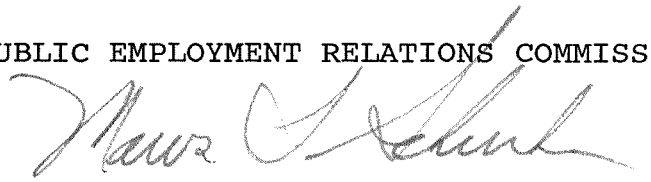
NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above entitled matter is dismissed.

DATED at Olympia, Washington, this 26th day of January, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-25-390(2).