STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
LESLIE N. SWALLING	)	CASE NO. 6462-E-86-1142
	)	
For investigation of a question concerning representation of certain employees of:	)	DECISION NO. 2612 - PECB
	)	
CITY OF SEATTLE	)	ORDER OF DISMISSAL
	)	

Reed, McClure, Moceri, Thonn & Moriarty, by David E. Breskin, Attorney at Law, appeared on behalf of the petitioner.

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

Hafer, Price, Rinehart & Schwerin, by Richard H. Robblee, Attorney at Law, appeared on behalf of incumbent intervenor Machinists District Lodge 160 and International Association of Machinists Local Lodge 79.

Reed, McClure, Moceri, Thonn & Moriarty, by David E. Breskin, Attorney at Law, also filed a motion for intervention on behalf of Hydro-Electric Machinists Union.

On June 27, 1986, Leslie N. Swalling filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation. The petition described a bargaining unit consisting of: "Hydro Electric Machinists & Specialists...", and indicated that the "decertification" of Local No. 79 of the International Association of Machinists was

sought. Twenty-three employees were claimed to be involved. The petitioner used the title of: "Committee Chairman for Decertification of Seattle City Light Machinists", and explanatory materials on and attached to the petition described various complaints about the quality of representation received from the incumbent exclusive bargaining representative.

A pre-hearing conference was conducted on September 16, 1986 by Hearing Officer Jack T. Cowan. A statement of results of the pre-hearing conference issued on October 10, 1986 reflects stipulations of the parties that the Public Employment Relations Commission has jurisdiction in the matter, that the petition was timely filed, and that there are no blocking unfair labor practice charges. Several contested issues were also framed.

During the course of the pre-hearing conference, it became clear that the petitioner had initially sought decertification of the incumbent union as to some, but not all, of the city's machinist employees. The existing bargaining unit is within the bargaining relationship between the City of Seattle and the Joint Crafts Council, a multi-union, multi-craft organization formed in 1971.[1] The City of Seattle and the Joint Crafts Council were parties to a collective bargaining agreement which covered the period of September 1, 1983 through August 31, 1986. It appears there are 33 machinists city-wide.

---

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

At the pre-hearing conference, the petitioner proposed to amend the petition to seek decertification of Local No. 79 in a bargaining unit consisting of all machinists employed by the City of Seattle, not merely the 23 hydro-electric machinists employed by Seattle City Light who were referenced in the petition filed on June 27, 1986 to initiate this case.

The employer took the position at the pre-hearing conference that the unit sought in the original petition was not an appropriate unit for bargaining.

Machinists District Lodge 160 and International Association of Machinists Local Lodge 79 moved for intervention as the incumbent exclusive bargaining representative (within the Joint Crafts Council) of machinists city-wide. The union contends that the appropriate bargaining unit encompasses the entire group represented by the Joint Crafts Council, or at least the city-wide group of machinists.

The petitioners evidently sought "decertification" in this case as the initial step towards obtaining representation by another labor organization. On October 9, 1986, following the pre-hearing conference, a Motion of Intervention was filed on behalf of a newly-formed organization identified as: "Hydro-Electric Machinists Union". The proposed intervention was directed at the amended bargaining unit consisting of all machinists employed by the City of Seattle. While that motion was supported by a showing of interest and a copy of the bylaws of the intervenor, it is clear from those documents that the organization was not formed until after the petition in this case had been filed.

This case has been processed in tandem with the almost simultaneous petition and proceedings in City of Seattle, Decision

2611 (PECB, 1987). Superficially, this case appears to be made more complicated by the presence of the motion for intervention. There is some inertia towards making the motion for intervention (and an underlying question of whether the newly created organization is a "bargaining representative" within the meaning of RCW 41.56.030) the initial question for determination in this case. One would then expect to move on to the making of a unit determination under RCW 41.56.060. On close analysis, however, it is concluded that neither the motion for intervention nor the propriety of bargaining unit issue need be determined in this case.

Regardless of what else has happened, the fact remains that this case was initiated during the "contract bar window" period of RCW 41.56.070 as an attempt at "decertification" of only a portion of an existing bargaining unit. Both the attempt to amend the petition and the motion for intervention came after the "contract bar window" had closed. Thus, if the petition itself is found to have been invalid, the proceedings must be closed and there is no vehicle for making determinations on other issues.

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 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. Accordingly, petitions which, as here, simultaneously seek "severance" and "decertification" are precluded by controlling precedent of the Public Employment Relations Commission. 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]. The Commission's decisions on this subject are, in turn, based on precedents of the National Labor Relations Board (NLRB). Campbell Soup Co., 111 NLRB 234 (1955) [cited by Commission, with approval, as standing for the 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); 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 incumbent labor organization 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 union 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. Kitsap County, Decision 2116 (PECB, 1984).

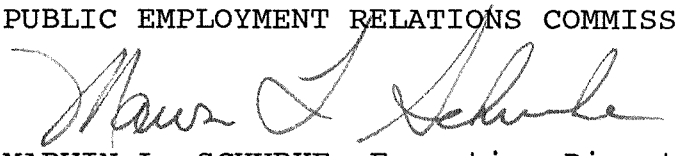
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 27th 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).