STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
JON KENNISON	)	CASE 7778-E-89-1326
	)	
Involving certain employees of:	)	DECISION 3195 - PECB
	)	
KING COUNTY WATER DISTRICT 42	)	ORDER OF DISMISSAL
	)	
	)	

On January 23, 1989, several employees of King County Water District 42 filed petitions for investigation of a question concerning representation with the Public Employment Relations Commission. The name of Jon Kennison appeared in each such petition as the "person to contact" for the employer, as well as appearing on most of the petitions as the person to contact on behalf of the petitioner(s). Although the petitions purported to request decertification of an incumbent exclusive bargaining representative, they did not contain the name of the incumbent organization.

A routine inquiry to the employer, directed to the attention of Kennison, sought a list of employees and a copy of any existing or recently expired collective bargaining agreement covering the petitioned-for bargaining unit.

The employer responded by letter filed on February 13, 1989,[1] providing the names of the employer's manager and attorney. The same response supplied a list of names of bargaining unit employees and a copy of the current collective bargaining

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[1] The letter does not indicate, on its face, that a copy was sent to Mr. Kennison.

agreement between the employer and Public, Professional & Office-Clerical Employees and Drivers Local Union No. 763.[2]

A letter was directed to Kennison on February 27, 1989, informing him that the petition was defective in several aspects:

1. It was noted that there was no "original" petition with copies, as required by WAC 391-25-050. Rather, a number of employees had individually signed petition forms and sent them to the Commission.

2. It was noted that there had been confusion concerning the identities and roles of the various persons in the case.[3]

3. It was noted that the petitions had failed to disclose the incumbency of Local 763.

4. It was noted that the petition appeared to be time-barred, under RCW 41.56.070 and WAC 391-25-030(1), by the current collective bargaining agreement between the employer and union.

The petitioner was given until March 6, 1989 to show cause why the petition should not be dismissed as untimely.

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2 Local 763 is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

3 This confirmed a telephone conversation between the Executive Director and Kennison, wherein Mr. Kennison had asked that the docket records for the case be corrected to name the employer's manager as its designated representative, and to list Kennison as the decertification petitioner.

Nothing further has been heard or received from the petitioner. On March 9, 1989, the employer filed a written response to the order to show cause, supporting the viability of the petition.[4] The union responded, in writing with supporting affidavit, on April 5, 1989, urging the dismissal of the petition.[5]

DISCUSSION

There are multiple, independent, reasons for dismissal of the petition in this case. Each is sufficient, in its own right, to warrant dismissal. The cumulation of all three leaves no doubt that the petition must be dismissed.

Abandonment of the Case by the Petitioner

As noted above, the decertification petitioner, Mr. Kennison, has never responded to the "show cause" directive contained in the February 27, 1989 letter. He was given notice of the extension granted to the employer. He was supplied with a copy of the union's response. From the lack of any response by Mr. Kennison, it is inferred that the decertification petitioner has abandoned this representation matter.

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4 A continuance, to March 10, 1989, was granted at the request of the employer, whose confirming letter dated March 2 indicates that a copy was sent to Kennison. The March 7 letter covering transmittal of the employer's response to the Commission indicates service of a copy upon the union, but does NOT indicate service of a copy upon the petitioner.

5 The certificate of service appended to the union's written response indicates that a copy was mailed to the petitioner, as well as to the employer, on March 31. A "fax" copy had been received in the offices of the Commission, by messenger, on March 31, 1989.

Employer Response is Procedurally Defective

The employer has not filed the petition in this case under WAC 391-25-090(1), and has not filed the affidavits or other evidence required by WAC 391-25-090(3) for an employer-filed petition. The viability of the case thus depends on the petition filed (or at least taken over by) Mr. Kennison. WAC 391-08-120(1) requires:

> All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon parties not represented by counsel or upon their agents designated by them or by law.

Kennison is a necessary party to the proceedings, and was entitled to service of any document filed with the Commission by the employer.[6]

As also noted above, it is inferred from the discrepancy between the documents on file that the employer has not served a copy of its response on Kennison. The Commission has previously enforced the obligations of WAC 391-08-120, by refusing to consider pleadings filed in the absence of service on another necessary party. Clover Park School District, Decision 377 (EDUC, 1976). Refusal to consider the "merits" of the response filed by the employer leaves the case in the posture of there being no timely response to the "show cause" directive.

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[6] To hold otherwise would raise a genuine issue as to which party is actually seeking decertification. The employer has filed legal arguments supporting the decertification effort, and has otherwise assumed an advocacy role in the case, but has not taken the necessary steps to become the petitioning party.

The Existing Contract as a "Contract Bar"

Assuming, arguendo, that both of the foregoing bases for dismissal of the petition could be overcome, dismissal would nevertheless be warranted on the "merits" of the arguments advanced by the employer.

The collective bargaining agreement between the employer and the union which was supplied by the employer bears the date of "12-12-88" under the signature of the union official, and states on its front cover: "December 13, 1988 through December 31, 1991". The employer argues that the "contract bar" set forth in RCW 41.56.070 and WAC 391-25-030(1) should not apply, because the collective bargaining agreement was for a term of more than three years.

RCW 41.56.070 provides, in relevant part:

> Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years.

In its response to the "show cause" directive, the employer went to considerable effort to discredit the existence of a "contract bar" in this case. Relying upon a line of National Labor Relations Board (NLRB) decisions, the employer argued that the underlying contract was void and unenforceable. See: Botany Industries, Inc. v. New York Joint Board, 375 F. Supp. 485 (District Court, New York), vacated on other grounds, 506 F.2d 1246 (2d Circuit, 1974).

Conversely, the union argued in its response that the disputed collective bargaining agreement should be treated as an effective "contract bar" to the representation petition. The union's argument, supported by affidavit, was that the contract, chiefly negotiated on behalf of the employer by Mary Drobka,[7] did not have to be invalidated under Commission precedent. The union placed its focus on contract interpretation sources such as Corbin on Contracts, NLRB decisions, Washington State Court decisions, and, most importantly, precedent from the Public Employment Relations Commission.

In Seattle School District, Decision 2079-A (PECB, 1985), the Commission overturned an Examiner decision which had given an "absolute" reading to the "automatic renewal" provisions of RCW 41.56.070. While acknowledging that the contract at issue in that case contained an "automatic renewal" clause which appeared to fly in the face of RCW 41.56.070, the Commission did not render the contract void. In explaining its decision, the Commission reasoned:

> We do not believe that the legislature intended to render collective bargaining agreements such technically fragile instruments, especially in a section of the statute dealing not with substantive contract provisions, as do RCW 41.56.110, 41.56.120 and 41.56.122, but in a section relating to elections. In the instant case, both parties believed they had a contract and conducted themselves accordingly. The Union enjoyed the continued benefits of the union security clause and of the grievance procedure. It is hardly conducive to stable or harmonious labor relations to tell the parties that everything they have done for the past six

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7 Drobka is one of the attorneys who signed the employer response urging the invalidity of the contract as a bar to the petition.

NLRB precedent has been used frequently in the interpretation of Chapter 41.56 RCW, and our Supreme Court used the definition of "confidential" employee found in RCW 41.59.020(4) to flesh out the skeletal, but consistent, use of "confidential" in RCW 41.56.030(2)(c). City of Yakima v. IAFF, 91 Wn.2d 101 (1979). Applying those principles in this case, it is concluded that the existing contract will operate as a "bar" to this and other representation petitions only for the first three years that the contract is in existence. Such a result would give effect to the Legislature's intent, while not causing undue disruption in the bargaining relationship.

ORDER

The petition seeking investigation of a question concerning representation is hereby DISMISSED as untimely.

DATED at Olympia Washington, this 24th day of April, 1989.

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.