

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
BREMERTON POLICE MANAGEMENT)	
ASSOCIATION)	CASE 7840-E-89-1330
)	
Involving certain employees of:)	DECISION 3367 - PECB
)	
CITY OF BREMERTON)	ORDER OF DISMISSAL
)	
)	

On March 8, 1989, the Bremerton Police Management Association filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking a severance of eight City of Bremerton employees holding the rank of "sergeant" from a bargaining unit represented by the Bremerton Patrolman's Association, for the purpose of adding them to an existing bargaining unit of supervisory law enforcement officers represented by the petitioner.

A routine inquiry was directed to the employer on March 13, 1989, requesting a list of names of employees in the petitioned-for unit and a copy of any applicable collective bargaining agreement. The employer responded with a letter dated March 29, 1989, and filed on March 30, 1989, enclosing a list of employees. The employer supplied the Commission with a copy of the collective bargaining agreement between the employer and the Bremerton Police Management Association for the period through December 31, 1989, as well as a copy of a contract between the employer and the Bremerton Patrolman's Association which had expired on December 31, 1988.

On April 3, 1989, the parties were notified that proceedings in the above-captioned case would be held in abeyance as "blocked",

pursuant to WAC 391-25-370, due to unfair labor practice charges filed against the Bremerton Police Management Association and/or the City of Bremerton.¹

On April 7, 1989, the Bremerton Patrolman's Association filed a letter with the Commission, asserting that it believed the representation petition to be "illegal for any number of reasons".

On May 18, 1989, Attorney Timothy J. Lowenberg filed a "notice of appearance" in the above-captioned representation case, on behalf of "the individual officers employed by the Bremerton Police Department in the classification of sergeant". No other basis for intervention was indicated.²

On May 30, 1989, the Bremerton Patrolman's Association filed a letter objecting to the entry of the notices of appearance on behalf of the sergeants as individuals.

On October 24, 1989, the Bremerton Patrolman's Association filed a letter with the Commission, indicating that it was "prepared to proceed in the representation matter . . . without regard to the unfair labor practice charge", but indicating that it desired to

¹ Case 7869-U-89-1683. Although the Bremerton Police Management Association was the only "respondent" listed on the complaint form, the statement of facts indicated a claim that the representation petition in Case 7840-E-89-1330 and/or the entire Bremerton Police Management Association has been assisted or dominated by the employer. Only the boxes indicating violations of RCW 41.56.140(1) and (2) were checked on the complaint form. When this ambiguity was subsequently called to the attention of the Bremerton Patrolman's Association, it moved to strike the Bremerton Police Management Association as a respondent in the unfair labor practice case, and to re-designate the respondent as the City of Bremerton.

² A similar notice was filed in the unfair labor practice case.

contest the propriety of the bargaining unit sought in the above-captioned representation case.

On November 8, 1989, the representation and unfair labor practice matters were fully reviewed by the Executive Director and a letter was directed to all parties, pointing out a number of procedural problems. Specifically with regard to the above-captioned representation case, it was pointed out:

1. The representation petition appears to be inherently defective in its attempt to accrete a group to an existing bargaining unit by election. It does not appear that an accretion could be accomplished in unit clarification proceedings under Chapter 391-35 WAC even if the sergeants were currently unrepresented, since the group at issue is much larger than the existing bargaining unit.
2. The representation petition appears to be inherently defective in its attempt to raise a question concerning representation in the "supervisor" bargaining unit while a collective bargaining agreement is in effect. The procedures for merger of units were discussed at length in Mount Vernon School District, Decision 1629 (PECB, 1983). It is clear that the existing contract was a bar to such proceedings at the time Case 7840-E-89-1330 was filed.
3. The notice of appearance filed in the representation case on behalf of the sergeants, as individuals, appears to be inherently defective. The Bremerton Police Management Association is a party to that case, based on its filing of a petition supported by a showing of interest, as required by the statute and rules. The City of Bremerton is automatically a party, as the employer of the employees involved. The Bremerton Patrolman's Association intervenes under WAC 391-25-170, based on its status as the incumbent exclusive bargaining repre-

sentative of the employees involved. Under WAC 391-25-190, "intervention" by any other party must be based on: (1) Establishing status as a "bargaining representative" qualified for certification under the statute, and (2) a 10% showing of interest. The notice of appearance filed by Mr. Lowenberg meets neither of those requirements. Individual employees have "voice" in a representation case if they are deemed eligible to vote in a representation election, but must look to the employer and union(s) involved for advocacy on the issues which surround the conduct of an election.

The parties were directed to file and serve written responses to certain inquiries within 14 days thereafter.

The Bremerton Patrolman's Association replied by a letter dated November 21, 1989 and filed on November 28, 1989. It therein made a "request to proceed" to clear the suspension of proceedings imposed pursuant to WAC 391-25-370, but continued to object to any representation election in the above-captioned matter. Nothing further has been heard or received from any other party.

Having considered the matter, the Executive Director concludes that the representation petition in the above-captioned matter should be dismissed for reasons already noted. The petitioner has not responded in any manner to notice that its petition appeared to be: (1) Defective on its face, by virtue of its attempt to have only a part (i.e., the sergeants) of a claimed appropriate bargaining unit (i.e., all supervisory law enforcement personnel) vote separately on a question concerning representation; or (2) untimely on its face, by reason of the existing collective bargaining agreement in the "supervisors" bargaining unit constituting a bar, under RCW 41.56.070, to any representation proceeding in that unit.

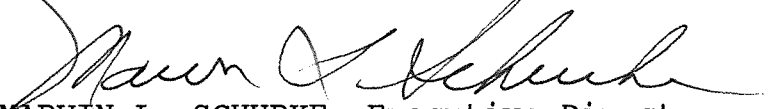
NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-entitled matter is DISMISSED as procedurally defective.

Dated at Olympia, Washington, the 6th day of December, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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