STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
DOUGLAS F. GOETT	CASE NO. 3012-E-80-580
Involving certain employees of:	DECISION NO. 1229-A - PECB
CITY OF SEATTLE	DECISION OF COMMISSION

Douglas F. Goett appeared as decertification petitioner.

Douglas N. Jewett, City Attorney, by Debra K. Hankins, Assistant City Attorney, appeared on behalf of the employer.

Hafer, Cassidy & Price, by John Burns, Attorney at Law, appeared on behalf of intervenor United Association of Jouyneyman and Apprentices of the Plumbing and Pipefitting Industry, Local 32, AFL-CIO.

Executive Director Marvin L. Schurke issued his findings of fact, conclusions of law and order in the captioned matter on September 28, 1981, wherein he found that the petitioned-for unit of crew chiefs was not an appropriate unit for the purpose of holding a decertification election. The employer filed a timely petition for review of the Executive Director's decision by the Commission. The decertification petitioner took no part in the proceedings on the petition for review. The employer and the union filed briefs.

POSITIONS OF THE PARTIES:

The employer objects to the Executive Director's characterization of the petition as a "decertification" petition, and would have the matter decided under "severance" principles. The employer contends that the Commission has the authority to honor a severance petition seeking to remove supervisors from the bargaining unit, and that it should have been done in this case.

Local 32 argues that the decision of the Executive Director should be affirmed because: 1) It follows PERC precedent that bargaining units with significant bargaining histories will not be fragmented by carving out portions of them for severance, and 2) The petitioned-for employees share, to a significant extent, the duties, skills and working conditions of the other bargaining unit employees.

DISCUSSION:

The petitioner's aim in this case was to remove from the existing bargaining unit a relatively small number of "supervisors", claiming that those supervisors have been inappropriately included in the rank and file bargaining unit. This Commission has dealt with such issues frequently, but always in the context of a unit clarification proceeding, City of Richland, Decision 279-A (PECB, 1978), or in the context of an employee organization seeking certification as exclusive bargaining representative of a bargaining unit, City of Seattle, Decision 689-C (PECB, 1981). Petitions for unit clarification may be filed only by the employer or the exclusive bargaining representative. See: WAC 391-35-010 and King County, Decision 298 (PECB, 1977). Even the employer and exclusive bargaining representative are limited by Commission policy when attempting to remove positions from a bargaining unit in which they have been historically included. Toppenish School District, Decision 1143-A (PECB, 1981). The employer presented no proposal concerning the unit status of the crew chiefs during the negotiations between the city and the union which were conducted while this case was pending. The employer has not filed a petition for clarification of the bargaining unit in the manner required by Toppenish, supra. The employee petitioner in the case at hand did not have standing to "clarify" the crew chiefs out of the bargaining unit.

"Decertification" petitions 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, "severance" cases involve a petition of one organization seeking to carve out a separate bargaining unit from a larger unit historically represented by another organization. The petitioner in the case at hand is not an organization seeking certification as bargaining representative, but rather is an individual whose desired result was to be rid of Local 32 and to have no union representation. The employer does nothing to explain why Campbell Soup Co., 111 NLRB 234 (1955), cited by the Executive Director, should not be controlling in this case. In that case, the National Labor Relations Board ruled that "severance" principles may not be applied to obtain decertification of part of an existing bargaining unit.

The employer is also incorrect in its claim that the petitioned-for employees constituted an appropriate bargaining unit for "severance". The Executive Director dealt with those issues in his decision and we concur with his analysis. The city's reliance on Kent School District, Decision 127 (PECB, 1976) is misplaced. Kent was decided under an emergency rule which, as is noted in the city's brief, has long since been repealed. Further, the situation in Kent is distinguished on its facts from this case by the circumstance of the petitioner there seeking to represent the employees for future collective bargaining.

The Hearing Officer was correct in refusing to take testimony on the "desires of employees". It is highly undesireable that employees should be placed on

the witness stand, under oath, and compelled to testify concerning their bargaining unit preferences. Their preferences in regard to bargaining unit will too often be tied to or identifiable with their preferences as to choice of bargaining representative, and as to the latter, they are entitled to the secrecy of the ballot box or the confidential procedures of the cross-check.

Our rules preclude disclosure of the contents of a "showing of interest" and provide, in WAC 391-25-530(1) for unit determination elections. Clark County, Decision 290-A (PECB, 1977) establishes that the desires of employees may be properly determined by a self-determination election ("Globe" election in NLRB terminology, based on 3 NLRB 294 (1937)), but only if all unit choices made available to the employees are appropriate units. The petitioned-for unit was not otherwise appropriate in this case, making it unnecessary to run a self-determination election to determine the desires of the employees.

The decision of the Executive Director is affirmed.

DATED this 12th day of March, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Robert J. Williams
R. J. WILLIAMS, Commissioner

Mark C. Endresen
MARK C. ENDRESEN, Commissioner