

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
BARBARA CERULLO	)	CASE NO. 4316-E-82-805
	)	
Involving certain employees of:	)	DECISION NO. 1551 - PECB
SKAGIT COUNTY PUBLIC HOSPITAL	)	
DISTRICT NO. 2, d/b/a ISLAND	)	ORDER OF DISMISSAL
HOSPITAL	)	

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On November 2, 1982, Barbara Cerullo filed with the Public Employment Relations Commission a petition for investigation of a question concerning representation of employees, seeking decertification of Service Employees International Union, Local 120, as exclusive bargaining representative of certain employees of Skagit County Public Hospital District No. 2 (employer). On its face, the petition is dated November 2, 1982. On its face, the petition identifies Local 120 as the incumbent exclusive bargaining representative, but does not indicate the date of expiration of any current contract. A routine inquiry was directed to the employer on November 3, 1982, requesting a list of employees in the unit covered by the petition and a copy of any collective bargaining agreement covering those employees.

The employer replied by letter from its attorney dated November 5, 1982, to which was attached both a list of the employees in the bargaining unit and a copy of the January 1, 1981 - December 31, 1982 collective bargaining agreement between the employer and Local 120. Article XXIV of that agreement provides:

"This Agreement shall become effective on January 1, 1981 and shall remain in full force and effect until and including December 31, 1982. Should either party desire to amend the terms of this Agreement, said party shall serve the other with written notice ninety (90) calendar days prior to the termination date of its intent to negotiate a new Agreement. Such notice of opening of this Agreement shall include the desired changes in writing, but shall not preclude additional proposed changes subsequent to this notice. Unless mutually agreed otherwise, bargaining shall commence within thirty (30) calendar days following the date of timely notice."

By letter dated November 22, 1982, the attention of the petitioner was directed to RCW 41.56.070, which provides in pertinent 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 of the agreement. ...",

and to WAC 391-25-030(1), which repeats the same "contract bar" rule. The parties were afforded time to show cause why the petition in this matter should not be dismissed as untimely. The petitioner and the employer have filed written communications urging that the petition should be regarded as timely filed.

The petitioner's letter of November 26, 1982 acknowledges that the petition was filed on November 2, 1982 and attaches a copy of an express mail receipt indicating that the petitioner mailed a document to the Commission on November 1, 1982. She urges that the petition was filed on the 60th day, and was thus timely.

The employer, speaking through a letter from its attorney dated November 29, 1982, acknowledges the existence of the collective bargaining agreement previously filed with the Commission, that the first day of expiration of that agreement will be January 1, 1982, and that the petition in this matter was filed on the 60th day prior to expiration of the collective bargaining agreement. It claims error in the computation of time and error in the interpretation of the statute and rule in the "show cause" communication, such that the petition should be considered as timely filed.

#### DISCUSSION:

Until the petitioner's letter of November 26, 1982 and its attachment were received, there was no indication that the petition was mailed earlier than the November 2, 1982 date of signature shown on the face of the petition. The fact that the petition was mailed on November 1, 1982 makes no difference. WAC 391-08-150 provides that papers are to be deemed filed with the agency upon actual receipt by the agency during its regular office hours at the place specified for filing. Both the petitioner and the employer acknowledge that the petition was filed with the Commission on November 2, 1982, and it is that date which is controlling.

The Public Employment Relations Commission administers six different collective bargaining statutes. Only two of those, Chapter 41.59 RCW and Chapter 41.56 RCW, contain statutory "contract bar" provisions. The language of RCW 41.56.070 and of RCW 41.59.070 with respect to contract bar

are identical, and the Commission has adopted WAC 391-25-030(1) making that contract bar language applicable to all of the statutes administered by the Commission. The rule has been reproduced on the reverse side of the petition form promulgated by the Commission for the filing of representation cases. That form was used by the petitioner in this case. By her own calculation, the petitioner waited until the last possible day to file her petition. In doing so, she incurred the risk that she was not correctly computing the time period involved.

The timeliness defect was not evident from the face of the petition, since the petitioner did not make any entry on the form in the space provided for: "Expiration date of current contract". A member of the Commission staff made an initial contact with the parties concerning scheduling of a pre-hearing conference, but the failure to note the timeliness defect by that time does not operate to make the petition timely. One of the items of correspondence calling attention to the existence of a timeliness defect in this case was a letter from counsel for the employer, under date of November 8, 1982, wherein advice or a ruling was requested by the employer concerning its duty to bargain with the incumbent union while the decertification proceedings were pending. After noting the contract expiration date of "December 31, 1982, at midnight", counsel for the employer went on to state:

"The decertification petition was timely filed before the parties' scheduled bargaining session of November 4, 1982."

Nothing is found in the statute or even in the arguments now advanced by the employer which would base the test for "contract bar" timeliness on the date of actual commencement of negotiations.

The "contract bar" timeliness requirements give assurance to the employer and an incumbent union of a specified period of time in which to negotiate a successor contract without interruption due to filing of a representation petition. Our statute and rule establish that time period as "not less than 60 days". The starting point for computation is, as claimed by the employer, January 1, 1983. That is the expiration date of the contract. Under WAC 391-08-100, January 1, 1983 is the day of the event from which the designated period of time begins to run, and is not counted. Agreeing with the employer and the petitioner, the 31 days of December, 1982 and the last 29 days of November, 1982 are computed as the 60 day period. If the petition in this case were to be considered timely filed, the protected period would be effectively reduced to the last 59 days of the effective life of the contract plus that portion of the 60th day which elapsed after the close of business at the Commission office. That period would be "less than 60 days" in which to negotiate, the statute and rule must be administered to exclude the 60th day from the timely filing period. The petition would have been timely only if filed with the Commission prior to November 2, 1982.

NOW, THEREFORE, it is

ORDERED

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

Dated at Olympia, Washington, this 7th day of December, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marvin L. Schurke", is written over the printed name.

MARVIN L. SCHURKE, Executive Director