STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
AMALGAMATED TRANSIT UNION NO. 758	)	CASE NO. 4266-E-82-788
Involving certain employees of:	)	DECISION NO. 1593 - PECB
CITY OF LONGVIEW.	)	DIRECTION OF ELECTION

Donald T. Hansen, President and Business Agent, appeared on behalf of Amalgamated Transit Union No. 758.

J. Walter Barnham, City Manager, and Larry T. Yok, Labor Relations Consultant, appeared on behalf of the City of Longview.

Ray McColley, President, appeared on behalf of intervenor Longview Employee Bargaining Association.

Amalgamated Transit Union No. 758 filed a petition with the Public Employment Relations Commission on October 5, 1982, for investigation of a question concerning representation involving employees in the transit department of the City of Longview, Washington. The petition indicated that an incumbent exclusive bargaining representative had a collective bargaining agreement expiring on December 31, 1982. A pre-hearing conference was held on January 5, 1983 before Rex L. Lacy, Hearing Officer. The Employees Bargaining Association moved to intervene as the incumbent. During the pre-hearing conference, the parties framed an issue concerning the timeliness of the petition, with the employer claiming that the petition was untimely. Conditioned on the outcome on the timeliness issue, the parties executed an election agreement resolving all other issues in the matter.

PERTINENT STATUTORY PROVISION:

> 41.56.070 Election to ascertain bargaining representative. In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The

> ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. 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. (emphasis added).

FACTS AND ANALYSIS:

On December 20, 1979, the employer and the intervenor executed a collective bargaining agreement containing the following provision on "Termination and Renewal":

> This Agreement shall be in full force and effect from October 1, 1979 or on its date of execution, whichever is later, to and including December 31, 1982 with the exclusion of Article XXII, Section 1, which shall be negotiated and attached as an addendum to this Agreement. Articles VI, VIII, IX, X, XX and XXII may be negotiated yearly by mutual consent of both parties to this agreement. Either party to this Agreement, wishing to renew or modify, must notify the other in writing not later than ninety (90) days prior to the expiration date or subsequent anniversary date of this Agreement. Such notification shall contain the substance and detail of the modification or renewal, and the specific language with such desired modification or renewal are to be expressed.

That agreement was to be in effect for a period in excess of three years, in contravention of RCW 41.56.070. The language used by the parties concerning notice of proposals for subsequent bargaining suggests, but falls just short of constituting, an automatic renewal clause in contravention of RCW 41.56.070.

On December 2, 1980, the employer and the intervenor executed a complete new document as the collective bargaining agreement. The termination and renewal article of that agreement provided:

> This Agreement shall be in full force and effect from December 31, 1980 or on its date of execution, whichever is later, to and including December 31, 1982. Either party to this Agreement, wishing to renew or modify, must notify the other in writing not later than ninety (90) days prior to the expiration date or subsequent anniversary date of this Agreement. Such notification shall contain the substance and detail of the modification or renewal, and the specific language with such desired modification or renewal are to be expressed.

That agreement complied with the three-year limitation of RCW 41.56.070, and it established a "window" period under the contract bar principle during the period not more than 90 nor less than 60 days prior to December 31, 1982. Having once established that expiration date, and having thus established that window period, any attempt by the contracting parties to move the window would be considered to be a premature extension and would not bar a representation petition timely filed in the original window period. See: Deluxe Metal Furniture Company, 21 NLRB 995 (1958); Leonard Wholesale Meats, Inc., 136 NLRB 1000 (1962); New England Tel. and Tel. Co., 179 NLRB 93 (1979).

The next document was another complete new agreement signed by the parties on December 17, 1981. That document purports to be effective from "December 31, 1980 or on its date of execution, whichever is later, to and including December 31, 1982." The employer and the intervenor thus re-affirmed the existence of a contract bar window period in the autumn of 1982. The petition in this case was filed on October 5, 1982. The petition was in good order and was supported by a sufficient showing of interest. The petition was timely, having been filed within the period not more than ninety nor less than sixty days prior to December 31, 1982.

The document relied upon by the employer is an "Amendatory Agreement" executed by the employer and the intervenor on November 2, 1982, purporting to amend the existing collective bargaining agreement between the employer and the intervenor. That document makes certain changes of wages and benefits, effective July 1, 1982, and it reforms the termination and renewal article of the agreement to state that the agreement was effective "from October 1, 1979, to and including December 31, 1983." The November 2, 1982 document fails to bar the petition in this case. First, the petition was already on file within the previously established window period before the new contract was signed, making that new contract ineffective and potentially unlawful with respect to the employees covered by the representation petition. See: Yelm School District, Decision 704, 704-A (PECB, 1980). Second, the latest contract document signed by the employer and the intervenor is again a document for a period in excess of three years, in contravention of RCW 41.56.070.

FINDINGS OF FACT

1. The City of Longview is a public employer within the meaning of RCW 41.56.030(1).

2. The Employees Bargaining Association is a bargaining representative within the meaning of RCW 41.56 and is the recognized exclusive bargaining representative of a city-wide non-uniformed employees bargaining unit that presently includes bus operators.

3. Amalgamated Transit Union No. 758 is a bargaining representative within the meaning of RCW 41.56. On October 5, 1982, Local 758 filed a petition seeking to represent bus operators in a separate bargaining unit. The petition was accompanied by a showing of interest sufficient to raise a question concerning representation.

4. At the time that Amalgamated Transit Union No. 758 filed the petition referred to in paragraph 3 of these findings of fact, the City of Longview and Employees Bargaining Association were parties to a collective bargaining agreement effective from December 31, 1980 to December 31, 1982.

5. Subsequent to the filing of the petition raising a question concerning representation in this matter, on or about November 2, 1982, the City of Longview and Employees Bargaining Association executed an addendum to their collective bargaining agreement making certain changes of wages, hours and working conditions effective retroactive to a date prior to the filing of the petition and simultaneously extending the duration of said collective bargaining agreement to December 31, 1983.

6. All parties to this proceeding have executed and filed an Election Agreement pursuant to WAC 391-25-230, wherein they stipulate that a bargaining unit consisting of bus operators constitutes an appropriate bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The agreement extension entered into by the City of Longview and Employees Bargaining Association on or about November 2, 1982 does not constitute a bar to a representation petition timely filed during the period not more than ninety nor less than sixty days prior to the expiration date previously established.

3. The petition filed on October 5, 1982 to initiate the instant matter was timely filed under RCW 41.56.070.

4. A question concerning representation presently exists in the stipulated appropriate bargaining unit comprised of all full time and regular part-time bus operators of the Transit Department of the City of Longview, excluding supervisors, confidential employees, casual employees and all other employees of the employer.

DIRECTION OF ELECTION

A representation election by secret ballot shall be held under the direction of the Public Employment Relations Commission among all full-time and regular part-time bus operators of the Transit Department of the City of Longview, excluding supervisors, confidential employees, casual employees and all other employees of the employer, to determine whether a majority of those employees desire to be represented for the purpose of collective bargaining by Employees Bargaining Association; by Amalgamated Transit Union, Local No. 758; or by no representation.

DATED at Olympia, Washington, this 2nd day of March, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director