STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: ROSE HILL WATER & SEWER DISTRICT For investigation of a question concerning representation of certain employees of: ROSE HILL WATER & SEWER DISTRICT	CASE NO. 6348-E-86-1122 DECISION 2488-A - PECB DECISION OF COMMISSION

Syrdal, Danelo, Klein, Myre & Woods, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the district.

Davies, Roberts, Reid & Wacker, by Herman L. Wacker, Attorney at Law, appeared on behalf of the Teamsters Union, Local 763.

This case requires us to interpret WAC 391-25-090, which applies to employer-filed representation petitions. The employer, Rose Hill Water and Sewer District, filed a petition for investigation of a question concerning representation, claiming a good faith doubt as to the continued majority status of the incumbent union, Teamsters Local 763.

The employer grounds its good faith doubt exclusively on a document it received, which was signed and dated by five employees in the ten-employee bargaining unit. The union asserts that it was never served with a copy of the decertification petition; the employer maintains that a copy was sent to the union. It is not disputed that the document containing employee signatures has not been shown to the union; the employer views that list as confidential.

The Executive Director dismissed the employer's representation petition because the employer's claim of a good faith doubt was based on employees' signatures on a single sheet of paper. Commission rules do not accept multi-signature documents to substantiate a showing of interest in support of employee-filed or union-filed representation petitions. WAC 391-25-110. The Executive Director ruled that employer petitions should be evaluated under a like standard and that, since individually-signed cards or documents were not submitted, the employer's petition was flawed. The employer seeks review.

APPLICABLE STATUTE AND REGULATIONS

RCW 41.56.050 states:

> In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

WAC 391-25-090, applicable to employer-filed representation petitions, provides in part:

> Each petition filed by an employer shall contain a statement that the employer has been presented with a demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition. WAC 391-25-110 shall not be applicable to such petitions. Where the status of an incumbent exclusive bargaining representative is questioned, the employer shall attach such affidavits and other documentation as may be available to it to demonstrate the existence of a good faith

> doubt concerning the representation of its employees.

WAC 391-25-110 states, in part (emphasis added):

> The original petition shall be accompanied by a showing of interest indicating that the petitioner has the support of not less than thirty percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest must be timely filed under the same standards applicable to the petition, and <u>must consist of individual authorization cards or letters</u> signed and dated by employees in the bargaining unit claimed appropriate . . .

DISCUSSION

Service of Petition on Union

We will first deal with the procedural issue. The union maintains that, in addition to the basis for dismissal specified by the Executive Director, the employer's petition should be dismissed because WAC 391-25-050 was violated. That provision requires that copies of representation petitions be served on each employee organization having an interest in the proceedings. The union maintains that it was not so served. The attorney for the employer submitted an affidavit stating that he instructed his secretary to serve the petition on the union and believes this was done. The employer also maintains that the union had actual notice of the proceedings, given orally during a negotiating session.

Early notice of a representation proceeding is desireable and is encouraged by our rules, but we observe that the opportunity

for an incumbent exclusive bargaining representative to intervene remains available until an election agreement (which, by its terms, must dispose of the participation of any incumbent) is filed or a hearing is held on the petition. WAC 391-25-170. In this case, the union received a copy of the employer's transmittal letter to the Commission, and it apparently does not dispute that it was orally notified of the proceedings. At some point, obviously, the union received a copy of the petition. It is thus clear that the union had actual notice of the employer's petition in this case. It made a timely motion for intervention, and it has been granted intervention. Although we do not mean to encourage violations of our rules as to service, we also note that a party who is aware of a representation proceeding may easily obtain a copy of the petition from the Commission's offices, if not from the opposing party. While such an error might not be harmless in all cases, we find in the context of this case that it was.

<u>Employer-Filed Decertification Petitions</u>

The employer challenges the Executive Director's ruling as being in violation of WAC 391-25-090. The employer reads that regulation as either not requiring individual authorization cards or as specifically exempting employers from the requirement of submitting individual authorization cards. The employer maintains it should not be held to the same standard applied to employee-filed or union-filed representation petitions because, agreeing with the Executive Director's observation, it is caught between a "rock and a hard spot". It states that it

> is not free to sponsor a decertification petition, which it runs the risk of doing if it instructs employees how to comply

> with the Executive Director's detailed showing of interest requirements,

but, if it refuses to bargain with the union based on its "good faith doubt", it risks being the target of an unfair labor practice charge.

The union begins its argument by noting the lack of specific statutory authorization in Chapter 41.56 RCW for employer-filed representation petitions. The union contrasts our statute with the provision in Section 9(c) of the National Labor Relations Act which expressly authorizes such petitions. 29 USC Sec. 159(c). The cited provision was added by Congress in 1949, according to the union, because an employer doubting a union's continued majority status prior to that amendment either had to continue bargaining in spite of its doubt, or risk an unfair labor practice charge by refusing to bargain. The union contends that, given the absence of statutory authorization, a cautious approach, such as that taken by the Executive Director, is warranted. In maintaining that employers should be held to the same standards as the employees, the union indicates a belief that the NLRB's less rigid procedures disrupt the stability of bargaining relationships by allowing an employer to relatively easily delay the bargaining process by filing a representation petition. The union also contends that the employer's predicament is not all that difficult, since the employees themselves are free to file a properly documented decertification petition.

Having considered the parties' arguments, we first observe that while we lack an express statutory mandate to consider an employer-filed decertification petition, we believe that the language of RCW 41.56.050 is sufficiently broad to provide that authorization by implication.

In carrying out our Legislative authorization, RCW 41.56.090 requires us to adopt rules and regulations "consistent with the best standards of labor-management relations." Chapter 391-25 WAC has been adopted to regulate the processing of representation cases.

WAC 391-25-090, brought to our attention in the context of this case, is not an easily-read statement of the requirements for an employer-filed decertification petition. It must be dissected as follows: The first sentence of WAC 391-25-090 applies to the employer who has been presented with a recognition demand by a union. The second sentence exempts "such petitions" from the individual authorization card requirement applicable to employee-filed and union-filed petitions. The words "such petitions" refer to the antecedent, i.e., to employer-filed recognition petitions. Only the last sentence of WAC 391-25-090 applies to employer-filed decertification petitions. It requires the employer to submit "affidavits and other documents" supporting its "good faith doubt" of the union's continued majority status. By not specifically identifying the required supporting documents, that language strongly suggests that their sufficiency is a matter left for this agency's discretion. Likewise, WAC 391-25-210 leaves matters pertaining to the sufficiency of the showing of interest to the agency's discretion.

The exercise of discretion necessarily carries with it judgments of policy. The Executive Director evidently believed that the soundest policy on this issue is to reject multi-signature documents. Such a policy diminishes the possibility of coercion having taken place and, according to the union, also breeds labor-management stability by not allowing employers to easily disrupt contract negotiations by filing a decertification petition. Further, it is consistent with the

anti-coercive policy which underlies our "individual cards or letters" requirement for employee-filed or union-filed petitions. We agree with this view, even though we are mindful, as was the Executive Director, of the difficulty in which the employer is placed. Although an employer is not free to solicit individually signed decertification authorizations, or to otherwise sponsor a decertification movement, the employees themselves are free to investigate their rights under the statute, to contact the Commission for information about its procedures, and to file a decertification petition, if they so desire. Balancing these considerations against one another, we believe it is reasonable and appropriate to hold the employees who would create an employer's "doubt" to the same standards which those employees are held in the case of employee-filed petitions.

The employer cites procedures and precedents of the National Labor Relations Board (Board), which allow a wide variety of evidence in support of employer-filed representation petitions. The Executive Director's decision in this case does not address the situations dealt with by the Board in Houston Shopping News Co., 233 NLRB 105 (1977) [where the Board accepted oral statements of employee dissatisfaction with union] and Star Mfg. Co. v. NLRB, 536 F.2d 1192 (7th Cir. 1976) [where the Board considered dropoff in dues checkoff authorizations], as no such facts are presented here. The only objective evidence relied upon by the employer to support a good faith doubt as to the continued majority status of the union in this case is the multi-signature document which has been supplied to it by one of its employees. With respect to Boaz Carpet Yarns, Inc., 280 NLRB No. 4 (1986) [where the Board accepted signed petition from employees], the Executive Director correctly pointed out that our policies requiring "individual" showing of interest documents are more stringent than the counterpart requirements

imposed by the Board in its processing of representation cases. Thus, we deviate consciously from Board precedent in this instance.

ORDER

The order of the Executive Director dismissing the petition for investigation of a question concerning representation is AFFIRMED.

ISSUED at Olympia, Washington, this 10th day of November, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

JOSEPH F. QUINN, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or decision of this case.