

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
DRIVERS SALES AND WAREHOUSE)	CASE 9432-E-91-1567
LOCAL 117)	
Involving certain employees of:)	DECISION 3989 - PECB
PIKE PLACE MARKET PRESERVATION)	
AND DEVELOPMENT AUTHORITY)	DIRECTION OF CROSS-CHECK
_____)	

Davies, Roberts & Reid, by Bruce Heller, Attorney at Law, appeared on behalf of the union.

Robert Squaglia, and Preston, Thorgrimson, Shidler, Gates & Ellis, by J. Markham Marshall, Attorney at Law, appeared on behalf of the employer.

On October 23, 1991, Drivers Sales and Warehouse Local 117, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The union seeks certification as exclusive bargaining representative of certain "security" employees of the Pike Place Market Preservation and Development Authority. A pre-hearing conference was conducted by telephone conference call, at which time the parties stipulated the description of the bargaining unit and the list of eligible employees, but framed an issue concerning the appropriate method for determining the question concerning representation. A statement of results of the pre-hearing conference was issued on December 12, 1991. On December 16, 1991, counsel for the employer submitted a letter seeking to withdraw from the stipulations made as to the description of the bargaining unit and the list of eligible employees. The employer filed an additional letter on December 23, 1991,

narrowing its proposed withdrawal from the stipulations to one classification of employees.

BACKGROUND

The petition filed by the union in this matter described the bargaining unit claimed appropriate as:

Includes: All Security Department employees, including officers, corporals, and sergeants.

Excludes: All supervisors, clerical and all other employees.

A letter was sent to the employer on October 29, 1991, providing notices for posting pursuant to WAC 391-25-140, and making a routine request that the employer provide a list of employees within seven days.

The requested list of employees was not received from the employer until November 27, 1991.¹ The employer was represented during the telephonic pre-hearing conference by the official who responded to the Commission's request for a list of employees. The same employer official provided an updated list of employees on December 11, 1991.²

POSITIONS OF THE PARTIES

The employer notes that a representation question involving another bargaining unit of its employees was resolved by the conduct of a

¹ The employer's letter was dated November 18, 1991. No explanation is known for the delay of its receipt.

² The employer's letter was dated December 4, 1991. No explanation is known for the delay of its receipt.

secret ballot election, and it indicates a preference for that procedure. Apart from turnover of employees, it does not state any statutory or factual basis for refusing to follow Commission precedent concerning the availability of the cross-check procedure for determining questions concerning representation. Counsel for the employer indicated initially that the stipulation to include corporals and sergeants in the bargaining unit was made by an employer official not knowledgeable in Commission procedures or precedent, and that the employer desired to investigate whether the employees in those ranks should properly be placed in a separate bargaining unit. In a subsequent letter, counsel for the employer only asserted a claim that the sergeants were supervisors.

The union's request for a cross-check is based on its claim that it has the support of more than 75% of the employees in the bargaining unit. The union's petition described the bargaining unit as including "sergeants", and the parties stipulated during the pre-hearing conference to a description of the bargaining unit as: "All security personnel below the rank of Lieutenant, excluding supervisors, ..."

DISCUSSION

The Request to Withdraw From Stipulations

The stipulations made by parties in pre-hearing conferences conducted by the Commission are binding upon the parties, except for good cause shown. Community College District 5, Decision 448 (CCOL, 1978).

In this case, the only employer response to the petition and the Commission's inquiry had come (albeit late) from the official who represented the employer during the telephonic pre-hearing conference. The stipulation made during the pre-hearing conference

was consistent with the scope of the bargaining unit sought in the original petition. The initial request to withdraw from the stipulation was not based on an actual claim of supervisory status, and the request for time to investigate the possibility of a supervisory claim clearly did not constitute good cause to be excused from the stipulation already made.

While supervisors are employees within the meaning of Chapter 41.56 RCW, Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977), substantial Commission and judicial precedent supports their separation from their rank-and-file subordinates. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). The representation proceedings concerning the creation of a bargaining unit are clearly an appropriate time to determine "supervisor" claims.

The possibility of a "supervisor" claim should come as no surprise to the union in this case, as both its original petition and the stipulated unit description made provision for the exclusion of "supervisors" from the petitioned-for bargaining unit. The Commission has shown some tolerance of procedural miscues in advancing such issues. See, City of Seattle, Decision 689-A (PECB, 1979). It appears that the employer should be permitted to make its arguments concerning an exclusion of the sergeants.

While the employer will be permitted to litigate its claim of "supervisor" status concerning the "sergeant" classification, the processing of that issue will not be permitted to further delay the determination of the question concerning representation in this case. See, City of Redmond, Decision 1367-A (PECB, 1982), where the Commission admonished the Executive Director and staff to get on with the determination of a question concerning representation where only a small number of "eligibility" issues were to be decided. As compared to the 7 of 28 (25%) group at issue in the

Redmond case, only 3 of 15 (20%) are at issue in this case. The employer will need to "challenge" the eligibility of the sergeants at the time the question concerning representation is determined, if it desires to preserve its objections to their inclusion in the bargaining unit.

The Request for a Cross-Check

The Commission re-examined the cross-check procedure in a trilogy of cases decided just over a year ago. Port of Pasco, Decision 3398-A (PECB, 1990); City of Centralia, Decision 3495-A (PECB, 1990); and City of Winslow, Decision 3520-A (PECB, 1990). The use of the cross-check procedure is indicated in a case where the union claims a substantial majority of the employees in the bargaining unit. The union assumes the risk of failure if there has been significant turnover among the employees in the bargaining unit, as it does not have the option to revert to the election procedure once a cross-check has been commenced. WAC 391-25-410.

In this case, the union claims to have the support of 75% of the employees in the petitioned-for bargaining unit. The preference of the employer for an election, and even the fact of the Commission having conducted an election in another bargaining unit of employees of this employer, do not constitute a basis for ignoring the statutory availability of the cross-check procedure in this bargaining unit.

FINDINGS OF FACT

1. Pike Place Market Preservation and Development Authority is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Driver Sales and Warehouse Local 117 is a bargaining representative within the meaning of RCW 41.56.030(3).

3. Driver Sales and Warehouse Local 117 has filed a timely and properly supported petition, seeking certification as exclusive bargaining representative of certain employees of the Pike Place Market Preservation and Development Authority.
4. During a telephonic pre-hearing conference conducted by a member of the Commission staff on December 6, 1991, the parties stipulated to the propriety of a bargaining unit described as:

All security personnel below the rank of Lieutenant; excluding supervisors, confidential employees and all other employees of the employer.

The parties stipulated, at the same time, to a list of the employees in that bargaining unit.

5. The union claims to have the support of more than 70% of the employees in the bargaining unit described in paragraph 4 of these findings of fact.
6. The employer has requested to withdraw from its stipulations concerning the description of the bargaining unit and the list of eligible employees, pending investigation of whether the employees in the "corporal" and/or "sergeant" classifications are supervisors.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter, pursuant to Chapter 41.56 RCW.
2. The bargaining unit stipulated by the parties, as described in paragraph 4 of the foregoing findings of fact, is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060.

3. The desire of the employer to investigate whether some of the employees in the bargaining unit stipulated to be appropriate are actually supervisors does not, in the absence of any actual claim of supervisory status, constitute good cause to withdraw from the stipulations made at a pre-hearing conference duly conducted pursuant to WAC 10-08-130 and 391-08-210.
4. A question concerning representation presently exists in the bargaining unit described in paragraph 4 of the foregoing findings of fact, and all conditions have been met for the conduct of a cross-check pursuant to RCW 41.56.060 and WAC 391-25-410.

DIRECTION OF CROSS-CHECK

A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the bargaining unit described in paragraph 4 of the foregoing findings of fact, to determine whether a majority of the employees in that bargaining unit have authorized Driver Sales and Warehouse Local 117 to represent them for the purposes of collective bargaining.

Issued at Olympia, Washington on the 7th day of February, 1992.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.