

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
CLASSIFIED PUBLIC EMPLOYEES	)	CASE 10087-E-92-1658
ASSOCIATION/WEA	)	
Involving certain employees of:	)	DECISION 4286 - PECB
SOAP LAKE SCHOOL DISTRICT	)	DIRECTION OF ELECTION
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In the matter of the petition of:	)	
SOAP LAKE SCHOOL DISTRICT	)	CASE 10105-C-92-587
For clarification of an existing	)	
bargaining unit of employees of:	)	DECISION 4287 - PECB
PUBLIC SCHOOL EMPLOYEES OF	)	
SOAP LAKE	)	ORDER OF DISMISSAL
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On October 26, 1992, the Washington Education Association (WEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the Soap Lake School District (employer). The matter was docketed as Case 10087-E-92-1658. Public School Employees of Washington (PSE) was granted intervention in the proceedings, on the basis of its status as the incumbent exclusive bargaining representative of the petitioned-for employees.

On November 2, 1992, the Soap Lake School District filed a petition for clarification of an existing bargaining unit with the Commission, seeking a ruling as to whether a position titled "maintenance/transportation supervisor" should be included in or excluded from a bargaining unit of its classified employees theretofore represented by Public School Employees of Soap Lake. The matter was docketed as Case 10105-C-92-587.

A pre-hearing conference was conducted, by telephone, on November 23, 1992. During the course of that procedure, the parties stipulated that an appropriate bargaining unit can be described as:

All classified employees of the employer working as aides, secretaries/clerical, food service, transportation, custodial, and maintenance, excluding supervisors, and confidential employees.

The parties also stipulated to the timeliness of the representation petition, the qualification of the organizations to serve as "representatives" within the meaning of Chapter 41.56 RCW, and the existence of a question concerning representation. The only manner remaining in dispute concerned the disposition of the issue that had previously been framed between the employer and PSE, and which had been submitted to the Commission in Case 10105-C-92-587.

#### BACKGROUND

The employer and PSE were parties to a collective bargaining agreement which was effective for the period from September 1, 1989 through August 31, 1992. The parties opened negotiations for a successor agreement, but were unable to resolve their differences before the expiration of their 1989-92 contract.<sup>1</sup> The WEA filed its petition during a hiatus between contracts.

#### POSITIONS OF THE PARTIES

PSE moved to "consolidate" the above-captioned unit clarification proceeding with the above-captioned representation proceeding. It

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<sup>1</sup>

When these petitions were filed, the negotiations between the employer and PSE were in mediation under the auspices of a member of the Commission's staff.

further contends that the issue framed in the unit clarification petition must be resolved prior to the conduct of an election.

The employer did not object to the proposed "consolidation" of the two proceedings.

The WEA did not object to the proposed "consolidation", but it argued that the representation election should be conducted as soon as possible. It urges that the unit clarification issue should be held over for a post-election determination.

#### DISCUSSION

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060. Unit definition is not a mandatory subject of collective bargaining in the usual mandatory/permissive/illegal sense. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The Commission has adopted Chapter 391-25 WAC as administrative rules for the processing of cases where a "question concerning representation" is claimed to exist. Such proceedings involve the creation and termination of bargaining relationships, and inherently include the making of stipulations or rulings as to: (1) The unit appropriate for the purposes of collective bargaining; and (2) the list of employees who are in that bargaining unit at that time (and so eligible to participate in the determination of the question concerning representation).

The Commission has adopted Chapter 391-35 WAC as a simplified set of administrative rules for the processing of cases where only an "eligibility" dispute is claimed to exist. Such proceedings only involve the adjustment of existing bargaining relationships. WAC

391-35-010 expressly precludes the processing of a "unit clarification" case under Chapter 391-35 WAC where a "question concerning representation" exists.

Application of the foregoing to the above-captioned cases results in a conclusion that "consolidation" is not appropriate, and that the "eligibility" issue framed by the parties must be dealt with in the representation case. A "question concerning representation" had already been raised by the WEA's petition in Case 10087-E-92-1658 when the employer filed its unit clarification petition. Even if the filings had come in the opposite order, the parties have now stipulated that a question concerning representation exists. There is no reason to keep two proceedings open on the same issue, and the unit clarification petition is therefore dismissed.

The Commission places a high priority on the timely determination of questions concerning representation. It has long been established that, whenever practical to do so, it is preferable to conduct an election or cross-check while reserving concurrent "eligibility" issues for determination in supplemental proceedings. City of Redmond, Decision 1367-A (PECB, 1982). In this case, the bargaining unit includes approximately 18 employees. Only the status of one employee is at issue. The circumstances presented in the instant matter indicate that an election can be conducted without waiting for a determination on the "eligibility" issue. The only circumstance under which an early ruling on that issue would be necessary would be if a challenged ballot cast by that individual could affect the outcome of the election.<sup>2</sup> Otherwise, issuance of an interim certification will permit the employer and a prevailing union to proceed with bargaining on the undisputed employees while the status of the "maintenance/transportation supervisor" is determined in supplemental proceedings.

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<sup>2</sup> Any of the parties will be entitled to challenge the ballot of the disputed individual, to preserve their position on the "eligibility" dispute.

NOW, THEREFORE, it is

ORDERED

1. Decision 4286 - PECB. DIRECTION OF ELECTION A representation election shall be conducted by secret mail ballot, under the direction of the Public Employment Relations Commission, in Case 10087-E-92-1658, in the appropriate bargaining unit described as:

All classified employees of the employer working as aides, secretaries/clerical, food service, transportation, custodial, and maintenance, excluding supervisors, and confidential employees,

for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Classified Public Employees Association/WEA, or by Public School Employees of Soap Lake, or by no representative.

2. Decision 4287 - PECB. ORDER OF DISMISSAL The petition for clarification of an existing bargaining unit filed in Case 10105-C-92-587 is DISMISSED.

ISSUED at Olympia, Washington, this 28th day of January, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.

Paragraph 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.