STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
JEFF GEFOROS	CASE 11603-E-95-1905
Involving certain employees of:	DECISION 5085 - PECB
CITY OF TACOMA	DIRECTION OF ELECTION

Jeff Geforos, petitioner, appeared pro se.

Mary Brown, Assistant Human Resources Director, appeared on behalf of the employer.

Sarah T. Luthens, Attorney at Law and union representative, appeared on behalf intervenor, IFPTE, LOCAL 17.

On February 17, 1995, Jeff Geforos filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking "decertification" of International Federation of Professional and Technical Engineers, Local 17, as exclusive bargaining representative of a bargaining unit of supervisors in the Public Works Department and Light Department of the City of Tacoma. The showing of interest filed in support of the petition was administratively determined to be sufficient, [1] and the parties were notified on March 8, 1995 that further proceedings would be conducted on the matter.

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[1] On February 27, 1995, the employer was asked to supply a list of employees currently on its payroll in positions of the type described in the petition, pursuant to WAC 391-25-130. The employer furnished a list of employees on March 7, 1995, by telefacsimile.

In a telephonic pre-hearing conference conducted on March 20, 1995, Local 17 raised an issue concerning the timeliness of the petition. A hearing and disposition of that issue would ordinarily be a condition precedent to any election in this case, but a timeliness claim that is legally insufficient on its face can be disposed of by summary judgment under WAC 391-08-230. On March 28, 1995, the parties were directed to show cause as to why summary judgment should not be issue in this matter.

Local 17 filed an argument and brief on April 11, 1995. The other parties did not respond.

The "Contract Bar"

The Public Employees' Collective Bargaining Act, Chapter 41. 56 RCW, grants and protects the right of public employees to form and join unions of their own choosing. RCW 41. 56. 040. Any dispute concerning representation must be submitted to the Commission. RCW 41.56050. The Commission has adopted Chapter 391-25 WAC to regulate the processing of representation cases.

RCW 41.56.070 imposes two time limits on the filing of representation petitions. One of those is the so-called "contract bar" which is asserted by Local 17 in this case:

> **Where there is a valid collective bargaining agreement in effect,** no question concerning 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. . . .

[Emphasis by **bold** supplied.]

RCW 41. 56. 070 then continues with language which is notably unfriendly to contract extensions:

> 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 of more than three years.

Consistent with RCW 41. 56. 070, the Commission's rules also limit the opportunity to raise a question concerning representation. WAC 391-25-030 provides:

> WAC 391-25-030 PETITION--TIME FOR FILING. In order to be timely filed:
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> (1) **Where there is a valid written and signed agreement in effect** covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, **a petition must be filed during the period** not more than ninety nor less than sixty days prior to the expiration of the collective bargaining agreement, **or after the expiration thereof. . . .**

[Emphasis by **bold** supplied.]

The petition in this case was accompanied by a copy of the collective bargaining agreement signed by the City of Tacoma and Local 17 on June 24, 1992. Local 17 admits that contract expired on December 31, 1994. Thus, there is no dispute that the petition in this case was filed "after the expiration" of the collective bargaining agreement that is being asserted as a contract bar.

Effect of RCW 41. 56. 123

Local 17 argued at the pre-hearing conference, and again in its response to the show-cause directive, that the contract between it and the City of Tacoma has been extended and remains in effect pursuant to RCW 41. 56. 123, and thereby remains a bar to this representation petition. Local 17 contends that RCW 41. 56. 123 was enacted by the Legislature to promote stability in labor relations, by establishing a "cooling off" period in which the employer is prevented from implementing its final offer.

RCW 41. 56. 123 was enacted by Chapter 46, Laws of 1989, long after either the enactment of RCW 41. 56. 070 in 1967 or the adoption of WAC 391-25-030 in 1980. It provides, in relevant part:

> RCW 41. 56. 123 COLLECTIVE BARGAINING AGREEMENTS--EFFECT OF TERMINATION--APPLICATION OF SECTION. (1)

> After the termination date of a collective bargaining agreement, **all of the terms and conditions specified in the collective bargaining agreement shall remain in effect** until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law. . . .

[Emphasis by **bold** supplied.]

Local 17 reasons that, by prohibiting the filing of representation petitions during the "cooling off" period, the Commission would also be promoting labor stability.

The legislative history of RCW 41. 56. 123 does not support Local 17 in this matter. The focus of the debate leading up to enactment of RCW 41. 56. 123 was on limiting "unilateral changes". Before 1989, employers could impose changes of wages, hours or working conditions under the terms of their last offer, once parties bargained in good faith to an impasse. Pierce County, Decision 1710 (PECB, 1983). The implementation of a final offer did not create a collective bargaining agreement between the negotiating parties, [2] however, and no "contract bar" was created limiting the right of employees to seek a change of bargaining representatives (i. e. , under RCW 41. 56. 040, . 050 and. 070), once a contract expired. By enacting RCW 41. 56. 123, the Legislature kept contract terms in place, [3] including terms which one or both of the parties might be seeking to alter or delete in the negotiations for a successor contract. That affected some, but not all, of the legal rights and options of the immediate parties to collective bargaining negotiations. [4] Importantly, Chapter 46, Laws of 1989, did not amend RCW 41. 56. 040, . 050 or.

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[2] Neither union security nor grievance arbitration provisions survived the expiration of a collective bargaining agreement. Clark County, Decision 3451 (PECB, 1990); City of Yakima, Decision 3880(PECB, 1991).

[3] This would arguably include union security and grievance arbitration arrangements.

[4] RCW 41. 56. 123 does not, by its terms, provide a universal solution to the "unilateral change" debate: (1) It operates only for one year following the stated expiration date of a collective bargaining agreement; (2) it does not preclude unilateral changes on matters that are not covered by the terms of the parties' expiring contract; and (3) it has no apparent effect on parties negotiating their first collective bargaining agreement.

070 to limit the rights held by employees as third parties outside of the immediate bargaining relationship.

Local 17 would have the enactment of RCW 41. 56. 123 interpreted as providing for an automatic extension of contracts, notwithstanding the language in RCW 41. 56. 070 which prohibits automatic contract renewals or extensions. Local 17 suggests that the "unfriendliness" of RCW 41. 56. 070 toward contract extensions should not apply to contracts affected by RCW 41. 56 123. The two provisions must be interpreted "in parimateria", however, so as to give meaning to both of the seemingly conflicting provisions.

A fundamental defect in the theory advanced by Local 17 is that RCW 41. 56. 123 falls short of expressly stating that the contract itself is extended. It merely provides that **"terms and conditions specified in the collective bargaining agreement"** are to remain in effect for an indefinite period not greater than one year. Thus, the focus of the limitation on "unilateral changes" is on the rights and interests of the particular employer and union. The preservation of certain "terms and conditions" between two parties is not a basis to preclude the assertion of rights by a third party (e. g. , the petitioner in this case).

The rights of third parties are not extinguished by agreed-upon contract extensions. Mabton School District, Decision 2419 (PECB, 1986), stands for the proposition that the window period cannot be defeated by a premature extension of a contract. It is the signing of a contract which creates statutory rights for third parties. Thus, even a contract extension negotiated in complete good faith prior to the contract's window period will not bar a petition filed in the original window period.

The rights of third parties are not extinguished by contracts or extensions for an indefinite period. Local 17's reliance on Hill & Sanders-Wheaton. Inc. , 195 NLRB 1137 (1972), is misplaced. The National Labor Relations Board (NLRB) dismissed a representation petition filed in that case after a contract expiration when the incumbent union agreed to return to work under an indefinite extension of the contract. The NLRB dismissed the petition in that case, however, because the union was on strike when President Nixon announced a wage-price freeze, and did not have an opportunity to bargain an agreement under the new policy. The NLRB ordered a 60-day

insulation period of bargaining because of the new circumstances. [5] The remedy of providing another insulated period when the original insulated period was lost is not unique, [6] but no such special circumstances are present in this case.

Conclusions

As a matter of law, the fact that **"the terms and conditions specified in the collective bargaining agreement. . . remain in effect"** under Chapter 46, Laws of 1989 and RCW 41. 56. 123 does not constitute a contract bar under RCW 41. 56. 070 to a representation petition filed by a third party after the stated expiration date of the contract. The decertification election should be conducted without further delay.

DIRECTION OF ELECTION

A secret ballot election by mail shall be conducted under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described as:

> All supervisors, assistant supervisors senior supervisors and crew leaders employed in the Public Works and Light Departments of the City of Tacoma

to determine whether a majority of the employees in that bargaining unit do not wish to be represented by the International Federation of Professional and Technical Engineers, Local 17, for purposes of collective bargaining.

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5 The petitioner could refile the petition ifthe union failed to reach agreement during the 60 day period.

6 The Commission has also extended the insulation period, where equity demanded. In King County, Decision 2644 (PECB, 1987), an employer and incumbent organization were given 60 days to negotiate a successor agreement following dismissal of decertification petition for insufficient showing of interest. The 6 0-day period was to restore the statutory insulated period (between the window period and the expiration of the contract) that was lost due to the filing of the invalid petition.

Issued at Olympia, Washington, on the 24th day of April, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

MARVIN L. SCHURKE, Executive Director

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