

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

AIRWAY HEIGHTS PUBLIC SAFETY  
GUILD

Involving certain employees of:

CITY OF AIRWAY HEIGHTS

CASE 22934-E-09-3521

DECISION 10658 - PECB

ORDER OF DISMISSAL

On December 28, 2009, the Airway Heights Public Safety Guild filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission seeking a change of representation for certain employees at the City of Airway Heights.

On January 4, 2010, a routine letter was sent to the employer requesting a list of petitioned-for employees. The employer responded to that request on January 13, 2010, and provided a copy of the current collective bargaining agreement between the employer and the incumbent union, Washington State Council of County and City Employees. The agreement is valid January 1, 2007 through December 31, 2009.

The petition appeared to be untimely under the Commission's rules, and a deficiency notice was issued on January 14, 2010, to show good cause why the petition should not be dismissed as untimely.

The petitioner responded to the show cause letter on January 25, 2010, stating that even though a formal petition was not filed within the "window" period, the guild had been working on the process of changing representation since March of 2009.

ISSUE

The sole issue to be determined at this time is whether the representation petition was timely filed.

APPLICABLE LEGAL PRINCIPLES

RCW 41.56.070 creates a “contract bar” which is restated in the Commission rules, as follows:

WAC 391-25-030 *Petition-Time for filing.* (1) A “contract bar” exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the “window” period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement... (3) Where neither a “contract bar” nor a “certification bar” is in effect under this section, a petition may be filed at any time.

The “window” period for the current collective bargaining agreement was October 3, 2009 through November 1, 2009. The petition in this case was filed after the window period, and must be dismissed. A valid petition may be filed after the expiration date of a collective bargaining agreement if a new agreement has not been reached.

Your attention is directed to the following rule:

WAC 391-25-030 (c) A “protected” period is in effect during the sixty days following a “window” period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. *If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.*

(emphasis added).

Since the petition was filed prematurely before the contract had expired, it disrupted the “protected” period for the incumbent union and employer to negotiate a successor agreement.

Therefore, the petition must be dismissed and the employer and incumbent union shall be given a new sixty-day “protected” period.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 4<sup>th</sup> day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.