

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

DANIEL VAREY

Involving certain employees of:

WASHINGTON STATE UNIVERSITY

CASE 25539-E-13-3777

DECISION 12048 - PSRA

ORDER DENYING MOTION

On March 15, 2013, Daniel Varey (Varey) filed a petition to decertify the Washington Federation of State Employees (union) as the exclusive bargaining representative of a Facilities Maintenance bargaining unit at Washington State University (employer). Processing of the petition has been blocked pending the outcome of the union's unfair labor practice complaint against the employer.

The union moved to dismiss Varey's petition because Varey is no longer an employee of the employer. The union's motion to dismiss is denied. WAC 391-25-010 only requires that an individual filing a decertification petition be employed at the time the petition was filed. Nothing in Chapter 391-25 WAC requires a decertification petitioner to continue to hold status as an "employee" during the processing of the petition. At the time Varey filed his petition on March 15, 2013, he was an employee who had lawful standing to file the decertification petition.

BACKGROUND

Varey was employed as a Maintenance Mechanic 2 until May 1, 2013. His position was included in a Facilities Maintenance bargaining unit represented by the union. The union and employer were parties to a collective bargaining agreement that expired on June 30, 2013.

Varey filed a petition to decertify the union as the exclusive bargaining representative of the Facilities Maintenance bargaining unit on March 15, 2013. At least 30 percent of the bargaining unit employees supported the petition and advanced the case forward for further processing.

On May 2, 2013, following an inquiry by the union, processing of the petition was blocked pending the outcome of a related unfair labor practice charge filed by the union against the employer. That unfair labor practice charge involved the Facilities Maintenance bargaining unit and was on appeal before the Commission.

On August 15, 2013, the Commission issued a decision finding the employer had committed an unfair labor practice. *Washington State University*, Decision 11498-A (PSRA, 2013). On September 16, 2013, the employer filed a petition for judicial review of the Commission's decision. Varey's petition remained blocked pending the outcome of the employer's petition for judicial review.

On March 15, 2014, the union filed its motion to dismiss the petition when it discovered that Varey resigned effective May 1, 2013, and was no longer a bargaining unit employee.

DISCUSSION

This agency is responsible for administering all union representation elections involving state civil service employees and adjudicates all disputes that result from those elections. RCW 41.80.080. This agency also has the authority to adopt rules to process elections. RCW 41.80.080. All representation petitions processed by this agency are governed by the provisions of Chapter 391-25 WAC.

Generally, there are three kinds of representation petitions that come before this agency: 1) new organizing; 2) change of representation; and 3) removal of a bargaining representative, which is also referred to as decertification. While the possible outcome for these three types of petitions differs, the manner in which this agency processes all three types of cases is almost exactly same.

When a representation petition is filed with this agency, agency staff examine the filing to ensure that the petitioner provided information about the petitioner, employer and petitioned-for employees as required by WAC 391-25-070. Additionally, agency staff ensure that the showing of interest filed in support of the petition meets the requirements of WAC 391-25-110.

Who may File a Representation Petition –

Representation petitions may be filed by “any employee, group of employees, employee organization, employer, or their agents. WAC 391-25-010. The scope of WAC 391-25-010 is broad. No special rule or rules changes WAC 391-25-010 to limit the individuals and entities permitted to file a decertification petition.

Although WAC 391-25-010 specifies who may file a representation petition, the remaining representation rules are silent regarding the continued standing of the petitioner to act as a party of interest during the processing of the petition. Once a petition has been filed, the rules simply refer to the participants in the process as the employer, party or parties. Nothing in the existing rules requires the individual or entity filing the petition to maintain the WAC 391-25-010 status throughout the processing of the petition.

Varey was an “Employee” at the Time He Filed the Petition –

There is no dispute that Varey was an employee when he filed his petition on March 15, 2015. There is also no dispute that Varey’s petition was not timely filed or properly supported.¹ The union argues that Varey lost standing to serve as the decertification petitioner when he retired from employment on May 1, 2013.

The union’s motion seeks to engraft a standing requirement to Chapter 391-25 WAC where one currently does not exist. The only requirement that the existing rules placed on Varey was the WAC 391-25-010 requirement that he be an “employee” at the time the petition was filed.² Varey met that requirement and, as explained above, nothing in the rules requires that he maintain that status throughout the processing of the petition.

The union cites to *Port of Edmonds*, Decision 2178 (PORT, 1985) and *Seattle Housing Authority*, Decision 4420 (PECB, 1993) as standing for the proposition that in the absence of a spokesperson

¹ Agency staff also verified that Varey’s petition was properly supported by at least 30 percent of the employees in the Facilities Maintenance bargaining unit.

² Arguably, WAC 391-25-010 does not specify that an employee filing the petition be an employee of the bargaining unit.

to act on behalf of the decertification petitioner, a petition to decertify an exclusive bargaining representative must be dismissed. Neither of those cases is applicable to this factual situation.

In *Port of Edmonds*, an employee filed a timely and properly supported representation petition to decertify the incumbent bargaining representative in December 1978. Processing of that petition was delayed for six years by an unfair labor practice complaint. When the decertification petitioner was ultimately contacted about the processing of the representation petition, he did not respond and the petition was dismissed because a spokesperson for the decertification petitioner did not exist.

In *Seattle Housing Authority*, a petition to decertify a nonsupervisory bargaining unit was filed by two individuals, a supervisory employee and a non-supervisory employee. The employer sent a letter to this agency about the status of the supervisory employee and stated that the supervisor had been instructed to cease her involvement in the decertification effort. Shortly thereafter, the nonsupervisory employee filed a letter stating that he no longer wished to be involved in the case leaving no valid spokesperson for the petition. Although the employer asked that processing of the petition continue, the petition was dismissed because a spokesperson for the decertification petitioner did not exist.

In *Pasco Housing Authority*, Decision 6823 (PECB, 1999), a representation petition was held in abeyance due to an unfair labor practice complaint. When the blocking charge was lifted, agency staff requested an updated list of employees from the employer. The decertification petitioner's name was not included on the updated list. Because it appeared that the decertification petitioner was no longer an employee, she was asked to show good cause as to why the petition should not be dismissed due to her lack of standing. The decertification petitioner did not respond and the petition was dismissed. That decision assumed without meaningful analysis that WAC 391-25-010 created a standing requirement that applied throughout the entirety of the petition by claiming that it "appeared [the petitioner] no longer had legal standing to be a party" to the proceeding due to a lack of continued employment.

Unlike those cases, Varey *has* responded to requests from this agency to provide input as to the status of this case and continues to make himself available to agency requests. Thus, a spokesperson for the petition continues to exist. No evidence exists suggesting that Varey is a supervisor who would be ineligible to act as the spokesperson for individuals in the bargaining unit.³

Furthermore, like the petitioners in the *Port of Edmonds* and *Seattle Housing Authority* cases, the *Pasco Housing Authority* decertification petitioner abandoned her role as the spokesperson for the employees seeking decertification when she failed to respond to agency requests. Due to the lack of response, the petition was dismissed as being abandoned without any meaningful analysis of the rules and precedents. Thus, the truncated analysis contained within the *Pasco Housing Authority* decision is incomplete and inconsistent with a plain reading of WAC 391-25-010 and the remainder of Chapter 391-25 WAC.

Conclusion

Varey was an employee within the meaning of WAC 391-25-010 when he filed his decertification petition. Nothing in this agency's rules precludes him from continuing to serve as a spokesperson for those employees who signed showing of interest cards.⁴

NOW, THEREFORE, it is

ORDERED

The motion to dismiss filed by the Washington Federation of State Employees in the above-entitled matter is DENIED. Processing of this case shall be held in abeyance pending the

³ Supervisory employees may not assist in the decertification efforts of the employees that they supervise. See *Port of Edmonds*, Decision 1191-C (PORT, 1982).

⁴ Although it is clear that Varey is no longer employed in the bargaining unit, no rule or agency decision would have precluded Varey from serving as an agent and spokesperson for the bargaining unit employees. WAC 391-08-010(1)(c) does not require that an actual bargaining unit employee file a petition to decertify a union as the exclusive bargaining representative of a bargaining unit; rather, the rule allows the authorized representative of an individual in a bargaining unit to file such a petition.

resolution of the employer's petition for judicial review of *Washington State University*, Decision 11498-A (PSRA, 2013).

Issued at Olympia, Washington, this 1st day of May, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Michael P. Sellars", written over the printed name.

MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.⁵

⁵ Because of the related unfair labor practice case pending before the Court, any appeal of this decision shall be due within 20 days of this order as required by WAC 391-25-660.



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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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CASE NUMBER: 25539-E-13-03777 FILED: 03/15/2013 FILED BY: PARTY 2
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