

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON FEDERATION OF  
STATE EMPLOYEES

Involving certain employees of:

STATE – ADMINISTRATIVE HEARINGS

CASE 24737-E-12-3710

DECISION 11503-A - PSRA

DIRECTION OF CROSS-CHECK

On April 12, 2012, the Washington Federation of State Employees (union) filed a petition seeking certification as exclusive bargaining representative of certain employees of the Office of Administrative Hearings (employer). During the May 14, 2012, investigation conference, the parties agreed upon the propriety of the petitioned-for unit, but disagreed about the eligibility of one employee to be included in the unit because that employee was a supervisor. Because the eligibility of that employee could have affected the outcome of an election, a hearing was held to determine that employee's status.

On October 9, 2012, the disputed employee was determined not to be a supervisor. *State – Administrative Hearings*, Decision 11503 (PSRA, 2012). On October 29, 2012, the employer appealed that decision, but subsequently withdrew its appeal on November 19, 2012. The case was then transferred to the Representation Case Administrator for further processing.

On December 5, 2012, a second conference call was conducted to resolve issues that were not resolved during the first conference call because of the employer's eligibility challenge. The parties disagreed about the method to determine the question concerning representation. The dispute concerning methodology was referred to the Executive Director.

ISSUE

The sole issue to be determined at this time is whether the use of the cross-check method is appropriate in this case. The union stated a preference for a cross-check, while the employer objected to the use of the cross-check procedure. In this case, a cross-check is appropriate.

APPLICABLE LEGAL PRINCIPLES

The Commission's rules limit the availability of the "cross-check" procedure for cases filed under the Personnel Services Reform Act of 2002, Chapter 41.80 RCW, as follows:

WAC 391-25-396 SPECIAL PROVISION — STATE CIVIL SERVICE EMPLOYEES.

(1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 *if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining*, provided:

The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

- (a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;
- (b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;
- (c) A statement that the showing of interest may be used for purposes of a cross-check election under this rule;
- (d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and
- (e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of cross-check of records. The agency shall notify the petitioner of the existence and number of any such

revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

(emphasis added). The general preference for elections occasionally expressed by employers is not sufficient to disregard the statute and rule. In *City of Redmond*, Decision 1367-A (PECB, 1982), and numerous subsequent decisions, the Commission and the Executive Director have refused to ignore the cross-check option (or to write it out of the statute).

### ANALYSIS

The wording on the authorization cards submitted as the showing of interest in this case clearly indicates that, by signing the card, the employee wishes to be represented by the Washington Federation of State Employees for the purposes of collective bargaining. Employees can be expected to read and give importance to authorization cards they sign for a union, just as people can be expected to attach importance to checks, contracts, and other documents they sign in the course of their personal business affairs,.

Examination of the case file indicates that the union submitted a showing of interest in excess of the 50 percent required by WAC 391-25-396. If employees desire to withdraw their authorization cards in advance of a cross-check, the procedure for doing so is detailed in WAC 391-25-410(2).

Other than stating a preference for the question concerning representation to be resolved by mail ballot election, the employer provided no compelling reason as to why the question should not be resolved by cross-check.

NOW, THEREFORE, it is

ORDERED

1. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees on the eligibility list stipulated by the parties.
2. A cross-check of records shall be made by the staff of the Public Employment Relations Commission in the appropriate bargaining unit described as:

All civil service employees covered under Chapter 41.06 RCW and Chapter 41.80 RCW in the Information Technology section of the Washington State Office of Administrative Hearings, excluding supervisors, confidential employees, Washington Management Service employees, and all other employees,

to determine whether a majority of the employees in that bargaining unit authorize Washington Federation of State Employees to represent them for purposes of collective bargaining.

Issued at Olympia, Washington, on the 12<sup>th</sup> day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, Executive Director

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