King County Public Hospital District 2, Decision 11712-A (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE 1199NW Involving certain employees of: EVERGREEN HOSPITAL (KING COUNTY PUBLIC HOSPITAL DISTRICT 2)	CASE 25086-E-12-3741 DECISION 11712-A - PECB DIRECTION OF CROSS-CHECK

On August 22, 2012, Service Employees International Union Healthcare 1199NW (union) filed a petition seeking to include the a group of unrepresented security officers and lead security officers employed by Evergreen Hospital (King County Public Hospital District 2)(employer) into its existing bargaining unit of clerical and service employees. During a September 26, 2012 Investigation Conference, the employer objected to the inclusion of the employees in the union's existing bargaining unit and the matter was sent to hearing. It was subsequently determined that including the security officers and lead security officers in the union's existing bargaining unit would not render that bargaining unit inappropriate. *Evergreen Hospital*, Decision 11712 (PECB, 2013). The case was remanded to Representation Case Administrator Dario de la Rosa for a determination of whether a majority of the employees desired to be included in the union's existing bargaining unit.

On May 7, 2013, the Representation Case Administrator sent the parties an e-mail asking the employer if there had been any changes to the eligibility list during the time between the investigation conference and the direction of election. On May 10, 2013, the employer provided the updated list. On May 13, 2013, the Representation Case Administrator informed the parties by e-mail that this matter would be handled by a secret ballot election. He also asked the parties to provide their positions regarding the eligibility of an employee who was on a leave of absence.

On May 15, 2013, the employer notified the Representation Case Administrator that it would agree to the proposed election schedule and it did not believe that the employee on a leave of absence was eligible to vote. The union did not reply to that e-mail, but instead sent the Representation Case Administrator additional showing of interest cards from employees indicating additional support for the union. Based upon these additional cards, the Representation Case Administrator informed the parties that same day that the union had submitted a showing of interest in excess of 70 percent and that this matter could be resolved by a cross-check under WAC 391-25-391. The Representation Case Administrator asked the employer if it consented to the cross-check.

On May 17, 2013, the employer informed the Representation Case Administrator that it would not consent to the cross-check. The employer argued that the decision to direct a cross-check must be based upon the showing of interest submitted at the time the petition was filed. The employer also argued that the order finding the petitioned-for bargaining unit appropriate was a "Direction of Election" and that the Representation Case Administrator's May 7, 2013 e-mail informed the parties that this matter would be resolved by a secret ballot election. The employer expressed concern that altering the method by which this matter would be resolved would create unnecessary confusion.

The union responded to the employer's arguments by pointing out that nothing in Chapter 391-25 WAC prohibits a bargaining representative from supplementing its showing of interest after the petition was filed. Additionally, the union argued that there is no basis for confusion in this case because in the event a cross-check is directed, the employees will receive notice of the cross-check.

ISSUE PRESENTED

The sole issue to be determined at this time is whether 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. A cross-check is appropriate.

DISCUSSION

Applicable Legal Standards

RCW 41.56.060 sets forth the methods for determining questions concerning representation, and states in part:

> The Commission shall determine the bargaining representative by (a) examination of organization membership rolls, (b) comparison of signatures on organization bargaining authorization cards, or (c) by conducting an election specifically therefore.

In the event the agency is going to determine representation through a comparison of the signatures on organization bargaining authorization cards, the Commission's rules limit the availability of this "cross-check" procedure, as follows:

> WAC 391-25-391 SPECIAL PROVISION--PUBLIC EMPLOYEES. (1) Where *only one organization is seeking certification* as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the *organization has been authorized by in excess of seventy percent of the employees* to act as their representative for the purposes of collective bargaining, the executive director may issue a direction of cross-check.
>
> (2) A direction of cross-check and other rulings in the proceedings up to the issuance of 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).

Under WAC 391-25-110(1), the showing of interest that is submitted with a petition must be "furnished under the same timeliness standards application to the petition." Additionally, while WAC 391-25-410(1) requires that showing of interest cards be "signed and dated by employees in the [proposed] bargaining unit no more than ninety days prior to the filing of the petition," nothing in the Commission's existing rule precludes a petitioning bargaining representative from supplementing the showing of interest after the representation petition has been filed. Under

WAC 391-25-410(2), an employees may ask the Commission to withdraw his or her showing for purposes of a cross-check. If enough employees withdraw their cards so that the showing of interest drops below the requisite 70 percent, an election will be directed.

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).

WAC 391-25-440 authorizes an employee organization to petition to add a group of previously unrepresented employees to an appropriate bargaining unit that it already represents. Under WAC 391-25-440(7), the existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule. Additionally, under WAC 391-25-440(8), the petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit and the issuance of a certification for the existing appropriate bargaining unit within the previous twelve months will not bar the filing and processing of a petition under this rule. Thus, petitions filed under this rule may be filed at any time.

ANALYSIS

A review of the showing of interest in this case demonstrates that at the time the union filed its petition, it had submitted a showing of interest in excess of 70 percent.[1] The wording on the authorization cards submitted as the showing of interest clearly indicates that, by signing the card, the employee wishes to be represented by the union for the purpose of collective bargaining. However, when the Representation Case Administrator reviewed the showing of interest against the updated list of employees, the union could not demonstrate that it had the support of 70 percent of the employees.

The only limitation that the Commission's rules placed on the showing of interest cards was that the cards must have been timely to the petition. Because the union's petition to include unrepresented employees in its existing bargaining unit could be filed at anytime, it had the right

[1] Although a party may dispute the application of the cross-check rule, the sufficiency of the showing of interest cannot be litigated. RCW 34.05.010(3)(b); WAC 391-25-110.

to supplement the showing of interest at any point of the proceeding. Therefore, nothing in the Commission's rules precluded the union from supplementing the showing of interest.

Although nothing precluded the union from supplementing its showing of interest, the employer also argued that the original "Direction of Election" as well as the Representation Case Administrator's May 7, 2013 e-mail already set the method by which the question would be resolved. The employer asserts that it informed employees that this matter would be resolved by mail ballot election, and changing the method at this time would create unnecessary confusion. The employer's argument is not persuasive.

Nothing in *Evergreen Hospital*, Decision 11712, affirmatively states that this matter would be resolved by mail ballot election. Rather, that decision only remanded the case to the Representation Case Administrator for further processing consistent with the decision. Had the eligibility list not changed, this record demonstrates that the Representation Case Administrator would have informed the parties through his May 7, 2013 e-mail that this matter would have been resolved by a cross-check, as opposed to a mail ballot election. Thus, the employer's reliance on the title of Decision 11712 is misplaced.

Furthermore, the employer's reliance upon the Representation Case Administrator's May 13, 2013 e-mail to inform employees that a mail ballot election would occur was premature. The Representation Case Administrator only *proposed* an election schedule; he did not affirmatively state that this was the election schedule. The Representation Case Administrator also asked the parties "if the election schedule is acceptable." The union never consented to that election schedule, and instead asked that a cross-check be conducted based upon the revised showing of interest. Nothing from this agency formally informed the employees that a mail ballot election would occur.

Finally, once it has been established that a mail ballot election or cross-check will be used to resolve the question concerning representation, the Representation Case Administrator will prepare an Amended Investigation Statement to be posted in the employer's workplace as required by WAC 391-25-220. Under WAC 391-25-220(2), this statement must be posted for at

least seven days. Furthermore, the investigation statement contains the date of the election or cross-check and, in the event a cross-check will be conducted, a statement as to how employees can revoke their authorization card for purposes of a cross-check under WAC 391-25-410(2). *See also City of Yakima*, Decision 11638 (PECB, 2013).

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), and if enough employees withdraw their cross-check, an election will be ordered.

NOW, THEREFORE, it is

ORDERED

1. The Representation Case Administrator shall immediately prepare an Amended Investigation Statement that sets forth the updated eligibility list and the terms of the cross-check.

2. 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.

2. The Representation Case Administrator shall perform a cross-check of records for a bargaining unit that is consistent with *Evergreen Hospital*, Decision 11712 (PECB, 2013).

Issued at Olympia, Washington, on the 4th day of June, 2013.

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

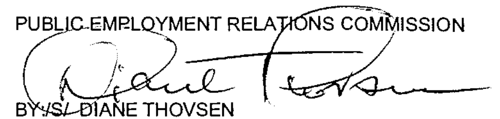
112 HENRY STREET NE.SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/04/2013

The attached document identified as: DECISION 11712-A-PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY /S/ DIANE THOVSEN

CASE NUMBER: 25086-E-12-03741 FILED: 08/22/2012 FILED BY: PARTY 2
DISPUTE: MISC QCR
BAR UNIT: MIXED CLASSES
DETAILS: -
COMMENTS:

EMPLOYER: KING PUB HOSP DIST 2
ATTN: BOB MALTE
EVERGREEN HOSPITAL
12040 NE 128TH ST
KIRKLAND, WA 98034-3098
Ph1: 425-899-2621 Ph2: 425-899-2610

REP BY: MATTHEW W LYNCH
SEBRIS BUSTO JAMES
14205 SE 36TH STREET STE 325
BELLEVUE, WA 98006
Ph1: 425-454-4233

PARTY 2: SEIU HEALTHCARE 1199 NW
ATTN: CHRIS BARTON
15 S GRADY WAY STE 200
RENTON, WA 98057
Ph1: 425-917-1199

REP BY: CASEY RUKESYER
SEIU HEALTHCARE 1199 NW
15 S GRADY WAY STE 200
RENTON, WA 98057
Ph1: 425-917-1199

REP BY: MARGARET CARY
SEIU HEALTHCARE LOCAL 1199 NW
15 S GRADY WAY STE 200
RENTON, WA 98057
Ph1: 425-917-1199 Ph2: 800-422-8934