STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL UNION NO. 690, Complainant, vs. SPOKANE AIRPORT BOARD, Respondent.	CASE NO. 2044-U-79-282 DECISION NO. 919-PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Hafer, Cassidy and Price, by Thomas K. Cassidy, attorney at law, appeared on behalf of the Teamsters Union Local No. 690.

Quackenbush, Dean and Bailey, by Justin L. Quackenbush, attorney at law, appeared on behalf of the Spokane Airport Board.

PROCEDURAL BACKGROUND:

On April 9, 1979, Teamsters Local Union No. 690 (hereinafter Local 690) filed a complaint with the Public Employment Relations Commission (PERC) charging an unfair labor practice against the Spokane International Airport. At the request of Local 690 the hearing date was changed from August 7, 1979, to September 27, 1979. This case was heard in Spokane, Washington, by Hearing Examiner Katrina I. Boedecker. The final post-hearing brief was filed with the Examiner on November 6, 1979.

FACTS:

Spokane International Airport is jointly owned by the City of Spokane and the County of Spokane. The airport is operated by the Spokane Airport Board, an agency composed of five citizens jointly appointed by the city and county. The Board has sole authority for the operation of the Spokane International Airport. Therefore, by stipulation of the parties, the title of the respondent was changed from Spokane International Airport to Spokane Airport Board (SAB) at the commencement of the hearing.

For more than 10 years, the SAB has leased the operation of the parking facilities at the airport to APCOA, Inc., an Ohio corporation.

In 1968 the National Labor Relations Board (NLRB) certified Local 690 as the exclusive bargaining representative for the unit of all employees employed at the public parking lot of the Spokane International Airport. In 1978, APCOA employed 15 people in the bargaining unit.[1/] Local 690 and APCOA had had approximately four collective bargaining agreements; the most recent contract covered the period November 1, 1977 through October 31, 1980. In the fall of 1978 the SAB decided to terminate the lease agreement with APCOA. As of February 1, 1979, the SAB assumed full responsibility for the operation of the parking facilities at the airport.

Previously, on January 17, 1979, Lee Holford, a representative of the SAB, contacted Bob Kivett and Mike Olds, business agents for Local 690 and requested they bring a copy of the APCOA collective bargaining agreement to his office at the airport. That collective bargaining agreement contained the following provision:

ARTICLE XVIII SUCCESSORS

> Section 1. This agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an operation covered by this agreement is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceedings (collectively referred to as a "merger") such operation shall continue to be subject to the terms and conditions of this agreement.

Holford took the representatives of Local 690 in to meet the Administrative Manager of the airport, Dorsey Gruver. At that meeting, the parties went through the provisions of the contract discussing working conditions, dues checkoff, hourly rates, medical insurance, wages, and some miscellaneous provisions. Gruver stated the SAB would pay a higher wage than was called for in the APCOA contract. At that time the parties also discussed the status of Jack Udahl who was taking a leave of absence from membership in Local 690-Maintenance to become the Parking Lot Superintendent.[2/] They negotiated and agreed that Udahl would be on probation for six months during which time he would be able to return to his original position for any reason. Kivett testified that when he

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1/ Those employed were:

Ron Hattenberg	Kathleen Boren	Larry Matthias
Biff Williams	James Brock	Michael Phillips
Maybelle Gendron	Gary Chapman	Annette Simonsen
Bryan Annis	Thomas Fields	Larry Spink
John Bomben	Joy Jannsen	Robert Tidd

2/ Local 690 had a contract directly with the SAB to cover a unit of employees in the building/field maintenance and janitorial operations of the airport during the year 1979.

left the meeting he had the impression that Local 690 was recognized as the bargaining representative and the only item remaining to be resolved was whether the APCOA contract would be taken over as a whole by the airport or whether the airport would add an addendum to the Local 690 maintenance contract to cover the parking lot employees. Sometime prior to February 1, 1979, Gruver interviewed various individuals to be hired by the airport to work in the parking lot. He interviewed all former employees of APCOA and some new personnel. During the employment interviews, three former APCOA employees -- Hattenberg, Williams and Gendron -- asked Gruver if they could start working for the airport without being represented by any union. Gruver informed the employees that he thought they could vote to be represented by Local 690, another organization, or have no representative.

Sometime between January 17 and February 1, 1979, Gruver notified representatives of Local 690 that he had been advised by legal counsel that the airport was not bound by the successor clause in the APCOA contract and therefore would not recognize Local 690 as the bargaining representative for the employees at the parking lot. Gruver did indicate that if the parking lot employees demanded recognition of Local 690, the airport would recognize the union as their exclusive bargaining representative. He also indicated that if the employees desired a secret ballot vote, the SAB would ask for an election.

Kivett testified that he spoke with Hattenberg and some other unit members after the January 17, 1979 meeting between Holford, Gruver, Olds and himself, to inform the employees of the status of the situation regarding the change in employers. Kivett testified that at that time "people still wanted to be represented by Local 690." "They were pretty happy about it." When the SAB began operating the facility on February 1, 1979, there were 14 people working at the parking lot[3/] and Udahl, as Parking Lot Superintendent. Twelve of those people had been former APCOA employees. The SAB employed two former APCOA employees, Hattenberg and Williams, as supervisors/lead people at the parking lot and also hired two new supervisors/lead people, Bruck and Wagner.

Upon the termination of its lease agreement, APCOA removed its corporate and personnel records from the airport grounds. The Spokane Airport Board purchased APCOA's interest in fixed physical assets installed in the ground and otherwise physically attached to the parking lot.

3/ Those employed were:

Ron Hattenberg	Gary Chapman	Annette Simonsen
Biff Williams	Thomas Fields	Robert Tidd
Maybelle Gendron	Joy Jannsen	Richard Bruck
John Bomben	Larry Matthias	Craig Wagner
Kathleen Boren	Michael Phillips	

On and after February 1, 1979, cars were being parked in the same location, and going through the same operations to get in and out of the parking lot, as were used prior to that month. A driver would drive up to a ticket machine, take a ticket, a barricade gate would raise up, the driver would drive in and then park his or her own car. The same titles of cashier and supervisor were used for bargaining unit members after the SAB took over. Testimony on the record indicates that the same functions were being performed by the cashiers in the same physical booths after the SAB terminated APCOA's lease, although the cashiers were required by the SAB to use a different form and different accounting procedures to "tighten up procedures".

The parking lot at the airport continued to be operated on a 24 hour a day basis. There continued to be three shifts per day with one supervisor/lead person and one to four cashiers working each shift.

POSITIONS OF THE PARTIES:

The union contends that the SAB was a successor to APCOA because of the continuity of the parking lot facilities and their operation which, the union argues, did not change when the SAB took them over on February 1, 1979. As a remedy, the union urges that the SAB be ordered to recognize and bargain with Local 690.

The airport characterizes the termination of the APCOA lease as a "clean break" and as such stresses the SAB did not assume any of the obligations of APCOA, including its labor contract. The airport defends its refusal to recognize Local 690 as a collective bargaining agent for the parking lot employees on the grounds that none of the parking lot employees requested the SAB to recognize any representative as their collective bargaining agent. The airport implies it had a good faith doubt as to the majority of the unit's desires because three unit members specifically asked the airport administrative manager how they could change and get out of Local 690's representation. The airport argues that since the individual employees at the parking lot neither requested voluntary recognition of Local 690 nor an election, Local 690 must show that a majority of the employees still desire it to act as their bargaining agent. Additionally, the SAB argues it would be an unfair labor practice for it to negotiate with Local 690 when it does not represent the majority. As a remedy, the SAB requests a direction of election.

DISCUSSION:

A successorship of employers exists if there is continuity in the employing industry and continuity in the work force.

In the instant situation, the SAB continues to use the same parking lot facilities that APCOA used. The same jobs exist under the SAB and there is no evidence that the working conditions of the employees have been significantly altered. The SAB admitted in its first brief that it bought certain physical fixed assets from APCOA at the time of the lease termination. The SAB is using the same equipment APCOA did to provide the same service. There is no evidence that there has been a change in the method of providing the parking service. There is a substantial continuity of identity in the business enterprise. Border Steel Rolling Mills, 204 NLRB 814 (1973); Howard Johnson Company, Inc. vs. Detroit Local Joint Executive Board of Hotel Employees, 417 U.S. 249 (1974).

When the totality of circumstances are considered in testing for successorship, a great weight is given to the existence of or lack of continuity in the work force. The courts have developed two different tests. Most courts look to the successor's work force in determining continuity of the work force, finding that continuity exists if the successor's work force is a majority of hold-overs from the previous employer. NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972). aff'g 441 F.2d 911 (CA 2, 1971) enf'g in part 182 NLRB 348 (1970). The alternative test looks back to the previous employer's work force, finding that continuity exists if the successor has hired a majority of the previous employer's work force. Howard Johnson Company, supra. The difference may relate to the differing circumstances under which the cases arose, as the Howard Johnson test was developed in a proceeding involving the duty to arbitrate under Section 301 of the Taft-Hartley Act while the Burns test was handed down in a refusal to bargain unfair labor practice case. The record in this case supports a finding of continuity of work force under either test. APCOA employed 15 people. When the SAB took over the parking lot on February 1, 1979, it employed 14 bargaining unit people, 12 of whom had worked for APCOA.

It is clear that the SAB's takeover of the parking facilities was a nominal change that did not materially affect the nature of the service or the employees. The SAB took over the entire parking operation not just a segment of APCOA's parking lot business. There was no hiatus in the resumption of the parking service and there is no question that the parking lot employees would still be an appropriate unit for purposes of collective bargaining. In short, no countervailing elements can be seen to have destroyed the continuity of the employing industry or the employed work force.

The SAB develops a two part defense. First, it argues that it would have been an unfair labor practice for the SAB to bargain with Local 690 since the SAB was uncertain of the union's majority status. It should be noted here that if the SAB or another labor organization had filed a petition on a question concerning representation during the course of the contract between either APCOA and Local 690 or the SAB and Local 690, their petition would have been dismissed as premature since it was outside the window period of the contract that was not due to expire until October 31, 1980. [RCW 41.56.070.] Second, the SAB argues that it had no duty to bargain with Local 690 since three unit members, on their own initiative,implied they did not want Local 690 to represent them. The normal presumption of a union's majority status which attaches during the term of a contract applies to a successor employer as well as the original employer. NLRB v. Band-Age, Inc., 534 F.2d 1 (CA 1, 1976) enf'g 217 NLRB 449. That presumption of the majority status of the predecessor's union can only be rebutted by the successor employer's showing of a good faith doubt. (Band-Age, supra) A successor employer may not during the life of the contract assert a doubt of its obligations to bargain with an incumbent union unless the successor can show "objective considerations". Ranch-way, Inc., 203 NLRB 911 (1973) 183 NLRB 1168 (1970) suppl'g 445 F.2d 625 (CA 10, 1971). "Objective considerations" has been interpreted as a high standard for a successor employer to meet. The mere fact that a majority of the unit employees hired by the successor did not authorize dues checkoff did not justify the successor's refusal to bargain in Virginia Sportswear, Inc., 226 NLRB 1296 (1976). The NLRB has also held that it is not enough for a successor employer to base its doubts on "nothing more than isolated reports of dissatisfaction among the employees with the union." NLRB vs. Wayne Convalescent, Inc., 192 NLRB 768 (1971) enf'd 465 F.2d 1039 (CA 6, 1972). Terrell Machine Co. vs. NLRB, 173 NLRB 1480 (1969) enf'd 70 F.2d 1049 (CA 4, 1970) den cert 398 US 929 (1970). Negative sentiments from three employees out of a unit of 14 employees is not enough objective evidence to support a good faith doubt as to the desires of the majority of the unit.

Since the SAB is the successor employer to APCOA, and the SAB did not advance enough objective considerations to substantiate a good faith doubt as to Local 690's majority status, the final issue to be resolved is when did the bargaining obligation attach to the successor relationship? The duty to bargain is not created by a contract, it is a statutory obligation. [RCW 41.56.080]. Therefore, whether or not the successorship clause contained in the collective bargaining agreement between APCOA, Inc. and Local 690 is binding upon the SAB under strict contract law doctrine, is not determinative of the labor law aspects of this case. Under NLRB successorship case law, the SAB had a duty to bargain with

Local 690 when it was clear that the parking lot unit would consist of a majority of hold over APCOA employees and when there was no indication from the SAB that they would be expected to work under new or different terms. Howard Johnson Company, supra. However, testimony in this case indicates the SAB, through its agents Holford and Gruver, recognized Local 690 as the bargaining representative of the parking lot employees as early as January 17, 1979, when Holford and Gruver met with Kivett and Olds and discussed modifications in the contract between APCOA and Local 690. (Although Kivett testified that he knew Gruver and Holford could not bind the SAB to a contract, there is no evidence that Kivett was ever on notice that Holford and Gruver did not act as representatives of the SAB.) Therefore the SAB unlawfully withdrew from recognition of Local 690 on or about January 17, when its agent notified representatives of Local 690 that the SAB would not bargain further with them. Considering the facts in this record, Local 690 did not have to make an explicit demand for recognition and demand to bargain of the SAB. When the SAB took the initiative and telephoned Local 690 to tell it that the SAB would not recognize Local 690 as the collective bargaining representative, it would have been futile for the union to have requested to continue to bargain. It is not necessary for a union to make useless requests. C. M. E. Inc., 225 NLRB 514 (1976), L. A. Beefland, 232 NLRB No. 175 (1977).

The SAB cites a myriad of case holdings to support its position. A careful reading of those cases -- many of which are cited in the above discussion of this decision -- show that courts find successorship exists if the nature or extent of the employing enterprise has not significantly changed. Since there is no evidence in the present record of significant change in the employing enterprise, even the SAB's own citations of authority direct a finding of an unlawful withdrawal of recognition by a successor employer.

FINDINGS OF FACTS

1. The Spokane Airport Board operates the Spokane International Airport and is a "public employer" within the definition of RCW 41.56.030(1). Lee Holford and Dorsey Gruver were agents of the Spokane Airport Board at all material times herein.

2. The International Brotherhood of Teamsters, Local 690, is a labor organization within the definition of RCW 41.56.030(3). Acting as its business agents were Bob Kivett and Mike Olds.

3. APCOA, Inc. leased the operation of the parking facilities at the airport from the Spokane Airport Board until the lease was terminated, February 1, 1979. As of February 1, 1979, the Spokane

Airport Board assumed full responsibility for the operation of the parking facilities at the airport.

4. APCOA, Inc. and Local 690 had a collective bargaining agreement covering the period November 1, 1977 through October 31, 1980.

5. On or about January 17, 1979, Holford and Gruver discussed with Kivett and Olds alterations to be made in the APCOA collective bargaining agreement when the Spokane Airport Board would assume the operation of the parking facilities.

6. During January, 1979, three unit members -- Hattenberg, Williams and Gendron -- indicated to Gruver that they did not desire representation by Local 690.

7. On and after February 1, 1979, employees of the Spokane Airport Board, working at the parking lot, were performing basically the same functions to provide the same service at the same location with the same equipment for the same customer pool as did the employees of APCOA, Inc.

8. Twelve out of the fourteen employees working at the parking lot when it was operated by the Spokane Airport Board had previously been employed there by APCOA, Inc.

9. On or about February 1, 1979, the Spokane Airport Board gave no indication of a major change in its operations or work force at the parking lot.

10. Between January 17, 1979 and February 1, 1979, Gruver notified Olds or Kivett that the airport would not recognize Local 690 as the collective bargaining representative of the parking lot employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter under Chapter 41.56 RCW.

2. The Spokane Airport Board is a successor to APCOA, Inc. as the employer of a bargaining unit of employees working at the airport parking lot represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 690.

3. The Spokane Airport Board recognized and began bargaining with Local 690 as the collective bargaining agent of the parking lot employees.

4. The Spokane Airport Board did not have sufficient information on which to base a good faith doubt as to the desires of majority of the parking lot employees regarding representation by Local 690.

5. The Spokane Airport Board unlawfully withdrew from recognition of and bargaining with Local 690.

ORDER

The Spokane Airport Board, its officers, agents and representatives, shall immediately:

I. Cease and desist from:

A. Failing or refusing to recognize International Brotherhood of Teamsters, Local 690 as the collective bargaining representative of the appropriate unit of its employees working at the parking lot facilities.

B. Failing or refusing to bargain with the said labor organization respecting rates of pay, wages, hours or other terms and conditions of employment of its employees in the aforesaid unit.

C. In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Chapter 41.56 RCW.

II. Take the following affirmative action which is necessary to effectuate the policies of Chapter 41.56 RCW:

A. Upon request, recognize and bargain with the International Brotherhood of Teamsters, Local 690, as the collective bargaining representative of the employees in the aforesaid appropriate unit respecting rates of pay, wages,

hours or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

B. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the Spokane Airport Board, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Spokane Airport Board to ensure that said notices are not removed, altered, defaced or covered by other material.

C. Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceeding paragraph.

DATED at Olympia, Washington, this 23rd day of July, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

"Appendix A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, THE SPOKANE AIRPORT BOARD HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to recognize International Brotherhood of Teamsters, Local 690 as the collective bargaining representative of the appropriate unit of employees working at the parking lot facilities.

WE WILL NOT fail or refuse to bargain with the International Brotherhood of Teamsters, Local 690 respecting rates of pay, wages, hours or other terms and conditions of employment for employees working at the parking lot facilities.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Chapter 41.56 RCW.

WE WILL, upon request, recognize and bargain with the International Brotherhood of Teamsters, Local 690, as the collective bargaining representatives of the employees working at the parking lot facilities respecting rates of pay, wages, hours or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

DATED: _____

SPOKANE AIRPORT BOARD

BY: _____

Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.