

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CLOVER PARK SCHOOL DISTRICT)	CASE NO. 6396-C-86-325
)	
Involving certain employees)	DECISION NO. 2491 - PECB
in a bargaining unit represented)	
by:)	ORDER OF DISMISSAL
)	
CLASSIFIED PUBLIC EMPLOYEES)	
ASSOCIATION/WEA/NEA)	
)	
)	
)	

The petition for clarification of an existing bargaining unit was filed in the captioned matter on May 13, 1986. The employer-petitioner therein stated:

Employee groups at issue are employed in the following departments: Computer Services, Purchasing and Accounts Payable Departments, Business Office and Printing Department. In addition the position of John Lillie is in dispute. The basis for this petition is that the employees identified above have little community of interest with respect to terms and conditions of employment relative to the remaining secretarial and teacher aide positions in the unit. There are approximately 31 employees involved.

The petition makes reference to a certification issued on June 12, 1985.

Since the petition indicates, on its face, that the bargaining unit is of recent certification, a search has been made of the

docket records of the Commission. Notice is taken of the following from the agency's case files and docket records: Case No. 5759-E-85-1028 was filed on April 4, 1985, and remains pending at this time. Classified Public Employees Association/WEA/NEA therein raised a question concerning representation in a bargaining unit described in the petition as:

All regularly employed full-time and part-time aides, secretarial/clerical and professional/technical employees, excluding confidential, supervisory and certificated employees.

A routine request was made of the employer for a list of employees, and the employer supplied a list under cover of a letter dated April 17, 1985. While the employer identified persons that it proposed should be excluded from the bargaining unit as supervisors or as confidential employees, the name of John Lillie appeared on the list without any claim of exclusion. A pre-hearing conference was held in that matter on May 9, 1985, at which time the parties stipulated a number of basic matters, including the jurisdiction of the Commission and the existence of a question concerning representation, and discussed the list of employees to be eligible to vote. A second pre-hearing conference was held on May 13, 1985, at which time the parties went through the eligibility lists in detail, specifically including discussion of the position held by John Lillie. An election agreement was filed with the Commission pursuant to WAC 391-25-230 on May 14, 1985, wherein the bargaining unit stipulated to be appropriate was described as:

All full-time and regular part-time office-clerical, aide, professional and technical employees of Clover Park School District No. 400, excluding certificated employees,

confidential employees, supervisors, clinical instructors, substitutes, and all other employees of the district.

John Lillie was included on the stipulated list of eligible voters. At the same time, the parties filed a supplemental agreement with the Commission pursuant to WAC 391-25-270, wherein they reserved eligibility issues concerning:

Approximately 49 persons claimed by the employer to be supervisory and/or confidential, as listed on the eligibility list developed at pre-hearing conference held 5/13/86.

A representation election was conducted by the Commission and a tally of ballots was issued on June 4, 1985, showing that the petitioner had been favored by a majority of the employees eligible to vote (including persons subject to the supplemental agreement). An interim certification was issued on June 12, 1985, designating the Classified Public Employees Association/WEA/NEA as exclusive bargaining representative. A hearing was held in October, 1985 on the issues reserved in the supplemental agreement. The parties filed post-hearing briefs, and that matter remains pending for decision.

At least two separate and distinct bases for dismissal arise from the petition in the captioned matter and from the history set forth above. The first is the absence of sufficient basis to upset the existing bargaining unit. The second is the application of "certification bar" principles.

The stipulations made by parties during the course of representation proceedings, including the stipulations made in election agreements, are binding upon parties except for good cause shown. Community College District No. 5, Decision 448 (CCOL, 1978). A

certification issued by the Public Employment Relations Commission is a final administrative order which is not subject to collateral attack in subsequent proceedings. Renton Education Association, 24 Wa.App. 476 (Division I, 1979). Faced with a representation petition which sought to commingle "professional" and "technical" employees and the position held by John Lillie with secretarial and aide employees of the district, this employer stipulated the propriety of the petitioned-for bargaining unit. RCW 41.56.060 permits the modification of bargaining units, and a unit clarification petition will be considered under City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wa.App. 599 (Division III, 1981); cert. den., 96 Wn.2d 1004 (1981) where a unit previously agreed to is no longer appropriate. The Commission indicated in Toppenish School District, Decision 1143-A (PECB, 1981) that the authority to modify a bargaining unit will not be exercised in the absence of a change of circumstances. The unit which the employer would place at issue in this case is the product of a recent certification based on a stipulation of the employer that the unit was appropriate. The employer is bound by that stipulation and has not alleged that the circumstances have changed in any meaningful way from those which existed when the unit was created.

Beyond the need for the employer to allege and demonstrate a change of circumstances sufficient to relieve it of its previous stipulation that the existing bargaining unit is appropriate, it is evident from the face of the petition in this case that the employer has attempted to attack the existing bargaining unit even before the expiration of the one-year "certification bar" period following certification during which the union is entitled to uninterrupted good faith bargaining. See: RCW 41.56.070; WAC 391-25-030.

NOW, THEREFORE, it is

ORDERED

The petition for clarification of an existing bargaining unit filed in the above-entitled matter is dismissed.

DATED at Olympia, Washington, this 8th day of July, 1986.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.