

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TOWN OF FIRCREST)	Case No. 7352-C-88-391
for clarification of an existing)	Decision 2966 PECB
bargaining unit of its employees)	
represented by:)	
WASHINGTON STATE COUNCIL OF)	ORDER OF DISMISSAL
COUNTY AND CITY EMPLOYEES)	
_____)	

On April 11, 1988, the Town of Fircrest filed a petition with the Public Employment Relations Commission seeking clarification, pursuant to Chapter 391-35 WAC, of an existing bargaining unit of its employees represented by the Washington State Council of County and City Employees (WSCCCE).

The employer seeks clarification of a bargaining unit which was the subject of recent representation proceedings conducted pursuant to Chapter 391-25 WAC. The proceedings in Case No. 7247-E-88-1247 were commenced by a petition filed by the WSCCCE on February 4, 1988, seeking a unit estimated to include 14 employees. The employer and the WSCCCE entered into a cross-check agreement pursuant to WAC 391-25-250, stipulating the propriety of a bargaining unit, as follows:

The bargaining unit agreed to be appropriate (subject to issues reserved in a supplemental agreement filed with this cross-check agreement) is: (specify inclusions and exclusions)

All employees of the Town of Fircrest in office, clerical,

finance and administration, parks and recreation, building and purchasing, courts, street sweeping and meter reading; excluding supervisors, administrative assistant to the mayor and all other employees.

The cross-check agreement was signed on behalf of the employer by the administrative assistant. No supplemental agreement was filed.¹ The cross-check was conducted and a tally was issued on March 10, 1988. No objections were filed, and a certification was issued on March 22, 1988, in Town of Fircrest, Decision 2889 (PECB, 1988), designating the WSCCCE as the exclusive bargaining representative of the bargaining unit.

At issue in the instant petition are the employees of the "courts" department and the employees classified as "street sweeper/meter reader". In addition, the employer challenges the use of the "and all other employees" terminology of the unit description.

¹ The hearing officer placed a note in the case file, as follows:

MEMO TO FILE

At the time of the cross-check, Administrative Assistant Susan Clough made mention of the City Attorney's concern and hesitancy re: inclusion of the court employee(s). She wanted to have this mentioned for purposes of the record.

However, both Clough and business agt. John Doucett felt this matter could be resolved among the parties without the need to set aside the ct. employee(s) for resolution at hearing.

Therefore, the ct. employee was at this time included in the proposed bargaining unit. (emphasis in original)

The "all other employees" Terminology

Turning first to the exclusion of "all other employees" from the bargaining unit, examination of the cross-check agreement and certification reveals that the phrase properly denotes the extent of the exclusions from the bargaining unit. The phrase at issue is commonly used in bargaining unit descriptions, and clearly does not have the meaning assigned to it by the employer in its petition in the instant case.

A bargaining unit description sets forth, by either or both specific or generic terms, the inclusions in and exclusions the bargaining unit. The unit description will outlast the list of incumbents of bargaining unit positions at the time of its creation, and may well outlast one or more labor organizations designated from time to time as exclusive bargaining representative of that bargaining unit. The bargaining unit at issue in this case only includes the classifications and generic types of employees listed up to the semicolon in the sentence which describes that unit. Following the semicolon and the word "excluding" are listed the classifications and generic types of employees which are to be excluded from that unit. Although it is common to state exclusions of elected officials, officials appointed for fixed terms of office, and confidential employees, the omission of such language in this unit description is not fatal in view of the statutory exclusion of those types of individuals from the coverage of the Act. RCW 41.56.030(2). Supervisors have collective bargaining rights under Chapter 41.56 RCW, METRO, 88 Wn.2d 925 (1977), but are commonly excluded from the bargaining units which include their subordinates, in order to reduce the potential for conflicts of interests. Thus, the exclusions of "supervisors" and the "administrative assistant to the mayor" are quite within the realm of propriety. As used in this unit description, the

phrase "and all other employees" modifies the exclusionary clause, and explains that the employer is not obliged to expand the bargaining unit to include any employees it may have or acquire who are not within the generic types and specific classes which precede the semicolon.

The Timeliness of the Unit Clarification Petition

Turning to the petition itself, it must be noted that the petition was filed shortly after the certification of the bargaining unit. An examination of the certification record discloses that the employer did not raise specific issues concerning the positions now at issue.

To the extent that the employer now indicates that another labor organization has indicated an interest in representing some of the employees (specifically, the street sweeper/meter reader classification) comes too little and too late. WAC 391-25-190 permitted other organizations to move for intervention in the original representation proceedings, by showing support of 10% of the employees in the bargaining unit sought by the original petitioner or by showing support of 30% of the employees in some different, but overlapping, bargaining unit sought by the intervenor. No timely motion for intervention was filed in Case No. 7247-E-88-1247, and the opportunity for intervention closed under the terms of the rules. RCW 41.56.070 and WAC 391-25-030 bar the raising of a new question concerning representation within one year following the certification. Finally, it must be observed that the other union named in the employer's petition has not come forward with a petition and showing of interest to raise a question concerning representation under Chapter 391-25 WAC, and so has no standing before the Commission in this matter.

With respect to the court employees, it must be noted first that they are public employees within the meaning and coverage of Chapter 41.56 RCW. Zylstra v. Piva, 85 Wn.2d 743 (1975). The stipulations made by parties during the course of representation proceedings, including the stipulations made in election agreements, are binding upon those parties except for good cause shown. Community College District No. 5, Decision 448 (CCOL, 1978); and Clover Park School District, Decision 2491 (PECB, 1986). The employer may not withdraw from the stipulations entered to raise issues that should have been raised in the initial representation matter, particularly during the one year "certification bar" period which immediately follows the issuance of a certification. Island County, Decision 2572 (PECB, 1986). A certification issued by the Public Employment Relations Commission is not subject to collateral attack in subsequent proceedings. Renton School District, 24 Wa.App. 476 (Division I, 1979).

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),² where a unit previously agreed to is no longer appropriate following a change of circumstances. The Commission indicated in Toppenish School District, Decision 1143-A (PECB, 1981), that the authority to modify a bargaining unit will be exercised only in a manner that does not unduly disrupt the agreements of parties. The unit which the employer would question in the instant proceedings is the result of a recent certification based on the stipulations made by the union and the employer. The employer has not alleged that circumstances have changed in any meaningful way from those which existed when the unit was created.

² Aff. 29 Wa.App. 599 (Division III, 1981); pet. rev. denied, 96 Wn.2d 1004 (1981)

ORDER

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

DATED at Olympia, Washington, this 1st day of July, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review pursuant to WAC 391-35-210.