

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition )	
of: )	CASE NO. 6592-C-86-342
ISLAND COUNTY )	
)	DECISION NO. 2572 - PECB
Involving certain employees )	
in a bargaining unit )	
represented by: )	
)	ORDER OF DISMISSAL
WASHINGTON STATE COUNCIL OF )	
COUNTY AND CITY EMPLOYEES, )	
AFSCME, AFL-CIO )	
_____ )	

The petition for clarification of an existing bargaining unit was filed in the captioned matter on October 9, 1986. The employer-petitioner therein stated:

In addition to the four positions listed by supplemental agreement as disputed prior to the election, the employer petitions for the exclusion of the following:

Parks Foreman (Ed Nicholson) - Supervisor  
(Parks Department)

Chief Appraiser (Gene Beason) - Supervisor  
(Assessor's Office)

Victim-Witness Coordinator (Linda Martin)-  
Confidential (Prosecutor)

Legal Secretary (Pat Canaday) - Confidential  
(Prosecutor)

Fire Marshall (Dennis Parks) - Supervisor  
(Building Department)

The petition makes reference to a certification issued on February 21, 1986.

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. 6110-E-85-1101 was filed on November 12, 1985, and remains pending at this time. Washington State Council of County and City Employees therein raised a question concerning representation in a bargaining unit described in the petition as:

All Island County employees excluding confidential employees and supervisors; employees already represented, and county sheriff employees, and district court 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 November 14, 1985. The employer therein identified persons that it proposed should be excluded from the bargaining unit as supervisors or as confidential employees. A pre-hearing conference was held in that matter on January 8, 1986, 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. Additional pre-hearing conferences were held on January 17, 1986 and January 28, 1986, at which time the parties went through the eligibility lists in detail. An election agreement was filed with the Commission pursuant to WAC 391-25-230 on January 17, 1986, wherein the bargaining unit stipulated to be appropriate was described as:

All full-time and regular part-time clerical and technical employees of Island County excluding elected officials, officials appointed for fixed terms, confidential employees, supervisors, superior court employees, district court employees, sheriffs department, road department, engineering

department, deputy prosecutors, custodians,  
and county extension service employees.

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 the following employer-proposed exclusions:

Stephen R. Rothboeck; supervisor and  
confidential

Timothy L. McDonald; supervisor and  
confidential

Eva V. Powers; supervisor and confidential

Carole A. Croft; supervisor and confidential

A representation election was conducted by the Commission and a tally of ballots was issued on February 11, 1986, showing that the petitioner had been favored by a majority of the employees eligible to vote. An interim certification was issued on February 21, 1986, designating Washington State Council of County and City Employees, AFSCME, AFL-CIO, as exclusive bargaining representative. A hearing has been set on the issues reserved in the supplemental agreement.

At least two separate and distinct bases for dismissal rise 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);

Clover Park School District, Decision 2491 (PECB, 1986). A certification issued by the Public Employment Relations Commission is not subject to collateral attack in subsequent proceedings. Renton Education Association, 24 Wa.App. 476 (Division I, 1979). It is too late for the employer to withdraw from its stipulation in the representation case that gave rise to the certification.

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), however, 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 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 during which the union is entitled to uninterrupted good faith bargaining following certification. 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 19th day of November, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name.

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.