

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
ROD DITTMER)	CASE 12103-C-95-753
For clarification of an existing bargaining unit of employees of:)	
EVERGREEN SCHOOL DISTRICT)	DECISION 5325 - PECB
Represented by:)	
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON)	ORDER OF DISMISSAL
_____)	

On October 12, 1995, Rod Dittmer filed a petition with the Public Employment Relations Commission, seeking to invoke the procedures for clarification of an existing bargaining unit set forth in Chapter 391-35 WAC. Attachments to the petition indicate that Dittmer is an employee of the Evergreen School District, and that he is currently within a bargaining unit represented by Public Employees of Washington (PSE). The petition was accompanied by a copy of the collective bargaining agreement that was in effect between PSE and the employer for the period from September 1, 1992 through August 31, 1995. Dittmer seeks to sever maintenance employees from the existing bargaining unit.

An administrative agency must operate within the terms of applicable statutes. The "classified" employees of school districts are subject to the jurisdiction of the Public Employment Relations Commission under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute sets forth a 30% showing of interest requirement for employees or a labor organization to raise a question concerning representation. RCW 41.56.070. The statute authorizes the Commission to determine appropriate bargaining

units, RCW 41.56.060, and that necessarily occurs in connection with each application for certification under RCW 41.56.070. The statute also authorizes the Commission to "modify" bargaining units, but that is only done upon a change of circumstances. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

An administrative agency must also operate in accordance with its own administrative rules. The Commission has adopted detailed procedures in Chapter 391-25 WAC for the filing and processing of representation cases, including procedures to implement the showing of interest requirements of the statute. Separately, the Commission has adopted detailed procedures in Chapter 391-35 WAC for the modification of bargaining units (as authorized by RCW 41.56.060) upon a change of circumstances. Important to this case, only the employer and the incumbent exclusive bargaining representative have legal "standing" to invoke Chapter 391-35 WAC:

WAC 391-35-010 PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT--WHO MAY FILE. In the absence of a question concerning representation, **a petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative or their agents, or by the parties jointly.**

[Emphasis by **bold** supplied.]

In this case, neither of the parties to the existing collective bargaining relationship have indicated a desire to file (or join) a petition filed under Chapter 391-35 WAC.

The individual employee who submitted the petition in this case did not have legal "standing" under Chapter 391-35 WAC, and has not submitted the 30% showing of interest necessary to raise a question concerning representation under Chapter 391-25 WAC. The petition must be dismissed. King County, Decision 298 (PECB, 1977).


NOW, THEREFORE, it is

ORDERED

The petition filed in the above-captioned matter shall be, and hereby is DISMISSED.

DATED at Olympia, Washington, this 26th day of October, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-35-210.