Chimacum School District, Decision 12623-A (PECB, 2017)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: WILL MORAN Involving certain employees of: CHIMACUM SCHOOL DISTRICT	CASE 128260-E-16 DECISION 12623-A - PECB DECISION OF COMMISSION

Will Moran, the decertification petitioner.

Thomas A. Leahy, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 589.

Charles W. Lind, Attorney at Law, Patterson Buchanan Fobes & Leitch Inc. P.S., for the Chimacum School District.

The Chimacum School District (employer) and Teamsters Local 589 (union) were parties to a collective bargaining agreement that expired on August 31, 2015. The employer and union negotiated a tentative agreement on May 13, 2016. On June 15, 2016, bargaining unit employee Will Moran filed a petition to decertify the union. Also on June 15, 2016, the union's membership ratified the agreement. The employer ratified the agreement on June 22, 2016.

Before the Executive Director, the parties disagreed about whether the petition was timely. After a hearing, the Executive Director concluded the petition was timely and ordered an election. *Chimacum School District*, Decision 12623 (PECB, 2016).

The agency conducted an election. The employees voted to decertify the union as their exclusive bargaining representative. Following the election, the union filed a timely objection to the Executive Director's order. WAC 391-25-590(1)(b).[1]

[1] On appeal, the union was the only party to file a brief. WAC 391-25-650 establishes the guidelines for written briefs in support of or in opposition to an appeal.

On appeal, the union argued that the parties' May 13, 2016, tentative agreement created a contract bar to the petition. The union asserted that a contract bar was in effect once the union ratified the May 13, 2016, tentative agreement because the employer then had an obligation to ratify the agreement. The union bears the burden of proving a contract bar existed at the time the petitioner filed the June 15, 2016, decertification petition.

The issue in this case—whether the decertification petition is timely—raises issues not yet addressed by the Commission. To decide whether the June 15, 2016, decertification petition is timely, we must decide whether the May 13, 2016, tentative agreement created a contract bar, whether ratification of the tentative agreement by one party created a contract bar, and what elements are necessary for an agreement to create a contract bar. We affirm the Executive Director. The June 15, 2016, petition was timely. The election results stand.

Applicable Legal Standards

A cornerstone of the state's collective bargaining laws is the right of employees to select their representative for purposes of collective bargaining. RCW 41.56.010. To allow employee free choice, the Legislature and the Commission have placed few limitations on when an employee may file a petition to change his or her representative. One of those limitations is a contract bar.

The contract bar doctrine does not exist to frustrate attempts to raise questions concerning representation. Rather, the principle stabilizes collective bargaining relationships by providing an orderly procedure for raising questions concerning representation. *Yakima Valley College*, Decision 280 (CCOL, 1977).

A collective bargaining agreement bars the filing of a representation petition except during the "window period." The window period is "the period not more than ninety nor less than sixty days prior to the expiration date of the agreement" during which a third party may file a representation petition. RCW 41.56.070; WAC 391-25-030(1). If the collective bargaining agreement is expired, a decertification petition may be filed at any time. RCW 41.56.070; WAC 391-25-030(1); *City of Tacoma*, Decision 5085 (PECB, 1995). The party asserting a contract bar bears the burden of

proving a valid contract exists. *King County Housing Authority*, Decision 11631-A (PECB, 2013); *West Valley School District*, Decision 2913 (PECB, 1988).

To create a contract bar, the collective bargaining agreement must meet the requirements of WAC 391-25-030(1)(a). One provision of that rule is relevant to this case: "The agreement must be in writing, and signed by the parties' representatives." WAC 391-25-030(1)(a)(ii).

The signature requirement has not regularly presented itself as an issue before agency executive directors. In *Chelan-Douglas Public Transportation Benefit Area ("Link Transit")*, Decision 5136 (PECB, 1995), the executive director dismissed a decertification petition that was filed after the parties ratified their agreement and on the same day the parties signed their agreement. The executive director found the fully ratified agreement "merely awaited the formality of signature at a later date" and created a contract bar. However, the rule requires the agreement to be signed. WAC 391-25-030(1)(a)(ii).

Ten years before the Commission adopted WAC 391-25-030, the Washington State Supreme Court decided *State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d 542 (1970). In *Bain*, a union sought a writ of mandamus to enforce an oral agreement. The court denied the union's request. In doing so, the court interpreted RCW 41.56.030 and, as it existed at the time, the Open Public Meetings Act. The court concluded that until the parties "entered into a written agreement" that was adopted by the employer at an open public meeting and executed as required by law, the parties did not have an enforceable collective bargaining agreement. *Id.* at 549.

The portion of *Bain* applicable to the contract bar doctrine is the requirement that a public employer must ratify an agreement before the agreement is enforceable. Chapter 42.30 RCW, the Open Public Meetings Act (OPMA), requires a governing body of a public agency (public employers) to adopt ordinances, resolutions, rules, regulations, orders, or directives in meetings open to the public. RCW 42.30.060; *State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d at 547–49. The Legislature did not exclude a public employer ratifying a collective

bargaining agreement from the requirements of the OPMA. Reading Chapter 42.30 RCW in conjunction with Chapter 41.56 RCW, a public employer must ratify a collective bargaining agreement in an open public meeting before the parties have an agreement that can serve as a contract bar.

Thus, a public employer and an exclusive bargaining representative do not have an agreement that creates a contract bar until the parties reach an agreement that is set forth in writing, signed by the parties, and ratified by the employer as required by law.

Application of Standards

The union relies on *Clark County*, Decision 8347 (PECB, 2004), to support its position that the May 13, 2016, tentative agreement created a contract bar. In *Clark County*, the Southwest Washington Health District (SWHD), a public agency, merged with Clark County. The employees were represented for purposes of collective bargaining by Laborers' Local 335. At the time of the merger, Clark County agreed to honor the collective bargaining agreement in effect between SWHD and Local 335 that expired June 30, 2004. After the merger, Clark County and Local 335 negotiated a collective bargaining agreement that expired December 31, 2004. Local 335 ratified the agreement on March 10, 2003, and Clark County ratified the agreement on March 25, 2003. On March 11, 2003, Clark County Health Professionals (CCHP) filed a representation petition. The Commission's operations manager concluded that CCHP's petition was not timely because it was filed before either window period opened.

While addressing CCHP's arguments that no collective bargaining agreement was in effect, the operations manager concluded that not recognizing a tentative agreement as a contract bar would "nullify the import of tentative agreements" and allow a third party to "derail" ratification in a manner "contrary to harmonious and stable labor relationships." While the operations manager's point was that obtaining a tentative agreement takes time and effort, allowing a tentative agreement to bar a representation petition did not apply WAC 391-25-030(1)(a) and is inconsistent with the requirement that a public employer take action to ratify a collective bargaining agreement in an

open public meeting. We take this opportunity to overrule *Clark County*, Decision 8347, to the extent that the case stands for the proposition that a tentative agreement creates a contract bar.

The union asserted that the May 13, 2016, tentative agreement was based on the employer's last, best, and final offer accepted by the union; therefore, the employer was obligated to ratify the tentative agreement. The union's business representative and lead negotiator testified that he thought the employer's May 13, 2016, offer was its final offer or that the parties "were very close to that," but the offer was not titled last, best, and final. The union did not enter the employer's proposal into evidence. Additionally, the employer's superintendent testified that ratification by the employer was not necessarily a superfluous step. Contrary to the union's assertion, there is insufficient evidence to conclude that the employer was required to ratify the May 13, 2016, tentative agreement as a matter of law.[2]

In this case, the collective bargaining agreement between the employer and the union expired on August 31, 2015. The employer and union reached an agreement on May 13, 2016. The union offered the agreement into evidence. While the agreement was in writing, neither party had signed it. Thus, the agreement does not meet the requirements of WAC 391-25-030(1)(a)(ii) and cannot form a contract bar. Finally, the employer had not yet ratified the agreement as required by the OPMA.

CONCLUSION

The union did not meet its burden of proving a contract barred the representation petition. The collective bargaining agreement expired on August 31, 2015. The May 13, 2016, tentative agreement alone did not create a contract bar. The parties had not signed the agreement, and the employer had not ratified the agreement at the time the petitioner filed the petition. Therefore, a

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[2] In an unfair labor practice case, if a union proves that an employer was obligated to ratify an agreement as a matter of law, then an employer's failure to ratify an agreement may be an unfair labor practice. *See Mason County*, Decision 10798-A (PECB, 2011); *Shoreline School District*, Decision 9336-A (PECB, 2007); *City of Fife*, Decision 5645 (PECB, 1996); *City of Milton*, Decision 4512 (PECB, 1993); and *Olympic Memorial Hospital*, Decision 1587 (PECB, 1983).

contract bar did not exist when the petitioner filed the decertification petition. The decertification petition was timely. The results of the election stand.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Executive Director Michael P. Sellars are affirmed and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 24th day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

MARK E. BRENNAN, Commissioner

MARK R. BUSTO, Commissioner

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DECISION 12623-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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