

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PACIFIC NORTHWEST CHILD  
CARE ASSOCIATION

Involving certain employees of:

STATE – FAMILY CHILD CARE  
PROVIDERS

CASE 128937-E-17

DECISION 12746 - PECB

ORDER OF DISMISSAL

*Deborah Thurber*, for the petitioner, Pacific Northwest Child Care Association.

*Gina L. Comeau*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the State of Washington.

*Robert H. Lavitt*, Attorney at Law, Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, for the incumbent, Service Employees International Union, Local 925.

The issue in this matter is whether the Pacific Northwest Child Care Association’s (Association) petition to change the exclusive bargaining representative for the family child care providers bargaining unit should be dismissed because the Association submitted a showing of interest of less than 30 percent. This agency has consistently and unambiguously held that the 30 percent showing of interest requirement is mandatory and not discretionary. Once evidence exists demonstrating that a petitioner has not submitted the requisite showing of interest, the representation petition must be dismissed. Because the Association’s petition is not supported by at least 30 percent of the employees in the bargaining unit, the petition is dismissed.

**BACKGROUND**

Individuals who provide regularly scheduled child care in their homes and receive child care subsidies administered by the State of Washington (employer) are eligible for collective bargaining rights under Chapter 41.56 RCW. RCW 41.56.030(7). Because some providers do not continuously care for children that are eligible for state subsidies, the list of eligible family child

care providers fluctuates from month to month. The Washington State Department of Early Learning is currently responsible for administering the family child care subsidies.

This agency certified the Service Employees International Union, Local 925 (SEIU) as the exclusive bargaining representative of the family child care providers in 2006. *State – Social and Health Services*, Decision 9362 (PECB, 2006). The SEIU and the employer are parties to a collective bargaining agreement that expired on June 30, 2017. The statutory window period to file a change of representation or decertification petition concerning the family child care providers bargaining unit was open from April 3, 2017, through May 2, 2017. RCW 41.56.070.

On April 27, 2017, the Association filed a change of representation petition seeking to replace the SEIU as the exclusive bargaining representative of the bargaining unit. The Association indicated in its petition that there were approximately 7,100 employees in the bargaining unit. The Association submitted approximately 892 showing of interest cards with its petition.

A letter issued on April 28, 2017, directed the employer to provide verification of the approximate number of family child care providers in the bargaining unit. The parties were also informed that the Association's petition appeared to be supported by less than 30 percent of the employees estimated to be in the bargaining unit. The letter stated the Association could supplement the showing of interest up until the close of the statutory window period on May 2, 2017.

On May 19, 2017, the employer filed a letter stating that between October 2016 and April 2017 there was an average of 7,111 eligible family child care providers in the bargaining unit and 7,076 family child care providers in the bargaining unit as of the date the Association filed its petition. In light of the Association's insufficient showing of interest, this agency issued a deficiency notice. The Association was provided an opportunity to demonstrate why processing of this matter should be continued despite the Association's failure to submit the requisite showing of interest.

On June 1, 2017, the Association responded to the deficiency notice and requested that processing of its petition be continued. The Association acknowledged that it failed to submit a proper showing of interest but asserted that it was not possible to collect the approximately 2,100 showing

of interest cards based upon factors outside the Association's control. Specifically, the Association asserted that the size and scope of a statewide bargaining unit made it prohibitively expensive to obtain the necessary showing of interest cards. The Association also asserted that nothing in RCW 41.56.070 requires a representation petition to be supported by a 30 percent showing of interest and that the Public Employment Relations Commission possesses the discretion to conduct a representation election at a lower threshold. Additionally, the Association noted that it is precluded by recent changes to the state's public disclosure laws from obtaining a list of the eligible family child care providers. Without this list, the Association argued that it would be next to impossible to properly contact employees in the statewide bargaining unit.

Alternatively, the Association argued that the SEIU engaged in objectionable conduct that would warrant continued processing of the petition. Finally, the Association asked that its petition be processed because evidence exists demonstrating that the SEIU no longer has the support of a majority of employees in the bargaining unit.

The SEIU and the employer filed responses requesting dismissal of the Association's petition for its failure to submit a proper showing of interest.

### ANALYSIS

The Public Employment Relations Commission is responsible for uniformly and impartially administering the collective bargaining laws concerning the selection and certification of exclusive bargaining representatives. RCW 41.58.005. To ensure this right, this agency conducts secret ballot elections or confidential card-checks to ascertain the preferred exclusive bargaining representative of the public employees who are included in an appropriate bargaining unit. RCW 41.56.070.

In order to proceed to an election or cross-check, a representation petition must be supported by a showing of interest. A showing of interest consists of individual cards signed by the employees in the proposed or existing bargaining unit stating that they support the purpose of the representation petition. A representation petition filed by employees or an employee organization

must be accompanied by a showing of interest indicating that the petition has the support of 30 percent or more of the employees in the proposed or existing bargaining unit. RCW 41.56.030; WAC 391-25-110(1). The 30 percent requirement provides evidence that at least a significant number of employees desires a change in order to invoke this agency's jurisdiction and resources. *State – Labor and Industries*, Decision 9052 (PSRA, 2005). The 30 percent requirement is mandatory, not discretionary. *Id.*<sup>1</sup>

The Association's petition is not supported by at least 30 percent of the employees in the family child care providers bargaining unit and must be dismissed. Assuming that all 892 cards submitted by the Association were signed by eligible family child care providers, the Association's showing is less than 13 percent. This is true regardless of whether the total number of family child care providers is the 7,076 in the bargaining unit as of April 2017 or the seven-month average of 7,111. The number of cards submitted is deficient under the existing standards. The petition must be dismissed pursuant to the Commission's decision in *State – Labor and Industries*.

The Association requests waiver of the showing of interest rule because nothing in RCW 41.56.070 requires a petition to be supported by a 30 percent showing. The Association asserts that RCW 41.56.070 only requires a representation election if the prospective bargaining representative submits a 30 percent showing of interest. The Association interprets RCW 41.56.070 as allowing this agency the discretion to conduct an election in the absence of a 30 percent showing of interest. The Association further argues that utilizing such discretion is appropriate in this case because the size and scope of the family child care providers bargaining unit makes it prohibitively expensive to gather the necessary number of cards. These arguments are not persuasive.

The Association's claim that a representation election under RCW 41.56.070 may be conducted absent a 30 percent showing of interest is not supported by the historical interpretation of that statute. This agency consistently interprets the statute as requiring representation petitions to be supported by at least 30 percent of the employees in the bargaining unit. *Benton County*, Decision

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<sup>1</sup> The only exception to the 30 percent showing of interest requirement involves the individual providers who collectively bargain under Chapter 41.56 RCW. RCW 74.39A.270(2)(b) requires a 10 percent showing of interest for that group of employees. The showing of interest rule for individual providers, WAC 391-25-051, mirrors the statute.

3959 (PECB, 1992); *Rose Hill Water and Sewer District*, Decision 2488 (PECB, 1985), *aff'd*, Decision 2488-A (PECB, 1986). Furthermore, the Commission clearly announced a policy of strict compliance with the 30 percent rule in *State – Labor and Industries*.

The Association also argues that recent changes in the state's public disclosure laws present additional challenges to collecting showing of interest cards. RCW 42.56.640 now limits disclosure of the list of family child care providers in the state of Washington. A petitioning labor organization like the Association is not one of the authorized recipients of the list of family child care providers. According to the Association, this change increases the difficulty of collecting showing of interest cards.

This agency's authority is limited to administering the state's collective bargaining laws and adopting procedures consistent with those laws. Because the Association's petition is procedurally deficient, it is unnecessary to comment on any conflicts between RCW 42.56.640 and the representation processes in RCW 41.56.070.

Alternatively, the Association claims that a representation election should be conducted in this case because the SEIU engaged in activities that violated several provisions of WAC 391-25-480. That rule describes and outlines the types of prohibited conduct that could form the basis for setting aside a representation election. *See Central Washington University*, Decision 10938 (PECB, 2010).<sup>2</sup>

Here, the Association's allegations all concern activity and conduct that occurred prior to the filing of the Association's petition. A party asserting that it was prevented from collecting its showing of interest by the actions of other parties must seek redress through an unfair labor practice proceeding. *State – Labor and Industries*, Decision 9052. If a violation is found, the appropriate remedy will come from the unfair labor practice provisions. *Id.*

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<sup>2</sup> In 2016, former WAC 391-25-470 and WAC 391-25-490 were consolidated into a single new rule, WAC 391-25-480.

Finally, the Association claims that evidence exists demonstrating that the SEIU no longer enjoys the support of a majority of employees in the bargaining unit and therefore its petition could be processed under WAC 391-25-090. This rule provides that an employer may dispute the majority status of the incumbent union. When doing so, the employer must present evidence with its petition. WAC 391-25-090(2). Absent such evidence, the employer's petition shall be dismissed. *Rose Hill Water and Sewer District, Decision 2488-A.*

The employer has not filed a petition under WAC 391-25-090 and does not argue that the SEIU no longer enjoys the support of a majority of employees in the bargaining unit. The Association lacks standing to raise this claim.

#### Conclusion

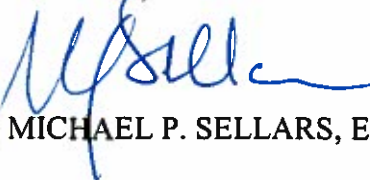
RCW 41.56.070 strictly requires a representation petition to be supported by at least 30 percent of the employees in the bargaining unit. The Association submitted a showing of interest of less than 30 percent. The petition is deficient and must be dismissed.

#### ORDER

The representation petition filed by the Pacific Northwest Child Care Association in the above-entitled action is DISMISSED.

ISSUED at Olympia, Washington, this 14th day of July, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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### RECORD OF SERVICE - ISSUED 07/14/2017

DECISION 12746 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



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