

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
SERVICE EMPLOYEES INTERNATIONAL )  
UNION, LOCAL 775 ) CASE 17799-E-03-2876  
 )  
Involving certain employees of: ) DECISION 8241 - PECB  
 )  
STATE - HOME CARE QUALITY ) ORDER AMENDING  
AUTHORITY ) CERTIFICATION  
 )  
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\_\_\_\_\_ )

Schwerin Campbell Barnard LLP, by *Lawrence Schwerin*,  
Attorney at Law, for the union.

Christine O. Gregoire, Attorney General, by *Michael P.  
Sellars*, Senior Assistant, for the employer.

On August 26, 2003, Service Employees International Union, Local 775, and Service Employees International Union, Local 6, jointly filed a motion with the Public Employment Relations Commission, concerning home care providers under the Home Care Quality Authority (employer). Specifically, the unions seek amendment of a certification issued by the Commission, to substitute Local 775 as exclusive bargaining representative of the home care workers, in place of Local 6. A letter was sent on September 4, 2003, requesting the employer's response to the request made by the unions. In a letter filed with the Commission on October 2, 2003, the employer indicated it does not contest the unions' request.

The Executive Director has considered the matter, and concludes that the request advanced by the union (and concurred in by the employer) should be granted.

BACKGROUND

By approving Initiative Measure No. 775 in November 2001, Washington voters extended the coverage of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, to individual providers of home care services under various state-administered programs. They also created the Home Care Quality Authority to act as the employer for purposes of collective bargaining.

Service Employees International Union, Local 6, filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the state-wide bargaining unit of home care workers, and the Commission conducted a representation election with more than 25,500 eligible voters. Local 6 was certified as exclusive bargaining representative in *Home Care Quality Authority*, Decision 7823 (PECB, 2002). Under RCW 41.56.070 and WAC 391-25-030(2), a "certification bar" was in effect for one year following issuance of that certification on August 26, 2002.<sup>1</sup>

The employer and union negotiated their first collective bargaining agreement, and it was submitted to the Governor in January 2003. The legislature did not ratify that agreement prior to adjournment of the 2003 session in March 2003. Under the terms of the initiative and Chapter 41.56 RCW, the collective bargaining

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<sup>1</sup> The proposal to substitute Local 775 for Local 6 first arose within the certification bar year, when those unions filed a motion with the Commission on March 19, 2003. Case 17331-E-03-2821 was docketed for that proceeding. Questions about the sufficiency of that petition were framed in *State - Home Care Quality Authority*, Decisions 8064 and 8064-A (PECB, 2003). That petition was then withdrawn, and the certification of Local 6 remained in effect. *State - Home Care Quality Authority*, Decision 8064-A (PECB, 2003).

relationship continued to exist and the parties were to return to bilateral negotiations.

One of the allegations in the petition now before the Commission is that the transfer of exclusive bargaining representative status between the two local unions was submitted to and ratified by the employees in the bargaining unit. Specifically:

15. . . . [T]he local unions . . . [have conducted] a ratification vote among all bargaining unit employees regardless of their union membership status. The vote was publicized among all bargaining unit employees and 19 meetings held at eighteen locations around the state to discuss the transfer vote. Written comments received were read at each meeting. The bargaining unit ratified the transfer by \* [sic] per cent. . . .

That allegation is supported by an affidavit of Suzanne Wall, who is identified as having been an officer of Local 6 when the certification was issued and as presently being an officer of Local 775. Her affidavit was filed with the petition and described the election process, including: "The ballot tally was 3305 in favor of the transfer and 53 opposed. The ballots are being retained in a secure location."

#### DISCUSSION

Chapter 391-25 WAC regulates the processing of representation cases by the Commission staff. While that chapter does not contain any provision expressly authorizing the "amendment of certification" requested by the unions in this case, this proceeding is conducted under a statute which both permits "voluntary recognition" and authorizes certifications. Chapter 41.56 RCW includes:

RCW 41.56.050 DISAGREEMENT IN SELECTION OF BARGAINING REPRESENTATIVE -- INTERVENTION BY COMMISSION. In the event that a public employer and public employees are *in disagreement* as to the selection of a bargaining representative the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

(emphasis added). With the expiration of the certification bar year, the employer's concurrence under that statute may enable action that may not be available under other statutes administered by the Commission.

The unions aptly cite *Skagit Valley Hospital*, Decision 2509-A (PECB, 1986), *aff'd Skagit Valley Hospital v. PERC*, 55 Wn. App. 348 (1989), which stands for the proposition that bargaining rights may be transferred by means of internal union affairs transactions in which "due process" and "continuity" concerns are satisfied. The petition filed by the unions in this proceeding addresses both of those concerns, by assertions in regard to the election process conducted by the unions and by assertions in regard to involvement of their international union affiliate and the transition of key officers from Local 6 to Local 775.

The Commission has both a responsibility to maintain accurate records and an inherent authority to police its certifications.<sup>2</sup> In the absence of any information that would contradict the facts alleged by the unions in this proceeding, and in light of the employer's statement indicating that it does not disagree with the request to substitute Local 775 for Local 6, the Executive Director

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<sup>2</sup> Such an inherent authority has also been recognized (without explicit reference in any statute or rule) in regard to "breach of duty of fair representation" claims where a union is accused of bringing its status as exclusive bargaining representative to bear to effect invidious discrimination.

concludes that the requested amendment of the certification previously issued under Chapter 41.56 RCW is appropriate.

NOW THEREFORE, it is

ORDERED

1. Service Employees International Union, Local 775, is substituted as exclusive bargaining representative of the bargaining unit certified in *State - Home Care Quality Authority*, Decision 7823 (PECB, 2002), in place of Service Employees International Union, Local 6.
2. The amendment of certification issued in this proceeding does not give rise to a new "certification bar" year under RCW 41.56.070 or WAC 391-25-030(2).

Issued at Olympia, Washington, on the 9<sup>th</sup> day of October, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, 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.