

Pierce County, Decision 7018 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
STARR ELLIOT)	CASE 15011-E-00-2498
Involving certain employees of:)	DECISION 7018 - PECB
PIERCE COUNTY)	ORDER OF DISMISSAL
)	
)	

This case is before the Executive Director on a motion for summary judgment filed under WAC 391-08-230. Based upon a specific Commission ruling concerning this bargaining unit which binds the Executive Director, the petition must be dismissed.

BACKGROUND

On January 28, 2000, Starr Elliot filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The petition described the affected department as, "Human Services Department", and it described the bargaining unit involved as:

All Office Assistants 1 and 2; all Grant Accounting Assistants; and all Grant Accountants 1 employed in the Pierce County Human Services Department.

The petitioner listed Teamsters Union, Local 599, as the incumbent exclusive bargaining representative of the employees involved, and marked a box on the petition form to indicate: "DECERTIFICATION.

The employees in the bargaining unit no longer desire to be represented by any employee organization."

In response to a routine request from the Commission staff, the employer supplied a list of employees holding titles of "office assistant 2", "grant accounting assistant 2", "grant accountant 1" and "grant accountant 2". The employer also supplied a copy of a collective bargaining agreement between it and Local 599, which was signed on February 13, 1998 and was effective for the period from January 1, 1997 through December 31, 1999. Examination of that contract discloses that it neither expressly mentions a "human services" department in the recognition language at its Article 3, nor expressly mentions the "office assistant 2", "grant accounting assistant 2", "grant accountant 1" or "grant accountant 2" classifications in its Appendix A.¹

Notice is taken of the Commission's docket records for Case 12321-C-96-771, which disclose that a unit clarification petition concerning this bargaining unit remained pending before the Commission at the time the employer and Local 599 signed their 1997-1999 contract.² The Commission set forth the background to its decision in that case, as follows:

¹A copy of the same collective bargaining agreement was filed with the petition in this matter. It expressly covers only employees in the following departments or units: "Assessor/Treasurer", "Clerk", "Facilities Management-Building Maintenance", "Facilities Management -Building Mechanics", "Facilities Management-Other", "Medical Examiner", "Parks and Recreation Services", and "Veteran's Aid Bureau".

²That petition was filed on February 9, 1996; an order was issued under WAC 391-35-190 on November 4, 1997; Local 599 appealed the case to the Commission; the Commission's final order was not issued until August 19, 1998.

Pierce County (employer) and Teamsters Union, Local 599 (union) have had a long-term bargaining relationship. The parties' collective bargaining agreement for the period 1994-1996 covered approximately 150 employees in the following operations: **area agency on aging, assessor/treasurer, clerk, medical examiner/coroner, parks and recreation, veterans' aid bureau, building maintenance, and building mechanics.** **Pertinent to this case, the contract covered the classifications of Office Assistant I, Office Assistant II, and Grant Accountant I, in the Area Agency on Aging (also known as the Department of Aging and Long Term Care).** Prior to April of 1996, the union represented five Office Assistant 2's and one Grant Accountant in the Department of Aging and Long Term Care.

The parties' collective bargaining agreement covered no employees in the Department of Social Services. ... [P]rior to early 1996, there were six unrepresented Office Assistant 2's and one Grant Accountant in the Department of Social Services.

On February 9, 1996, the union filed a petition for clarification of existing bargaining unit with the Public Employment Relations Commission. **The union stated that the social services department had merged with the aging and long term care department and the name of the department had been changed to human services.** The union sought to have employees in the positions of Office Assistant I, Office Assistant II, and Grant Accountant I that had previously been within the social service function accreted to the bargaining unit of employees it represents. ...

... Immediately after the merger, about seven new Office Assistant 1 positions were created. Six of those were within the Department of Aging and Long Term Care, and one within the Department of Social Services. Those within the Department of Aging were placed in the bargaining unit. Thus, immediately after the merger, the positions numbered as follows:

Represented employees in the Aging and Long Term Care function

6 Office Assistant 1's
 5 Office Assistant 2's
 1 Grant Accountant

Unrepresented employees in the Social Services function

1 Office Assistant 1's
 6 Office Assistant 2's
 1 Grant Accountant

[A]t the time of the hearing, the pertinent positions numbered as follows:

Represented employees in the Aging and Long Term Care function

1 Office Assistant 1
 9 Office Assistant 2's
 1 Grant Accountant

Unrepresented employees in the Social Services function

7 Office Assistant 2's
 1 Grant Accountant

The total numbers of represented and unrepresented positions are shown below:

	<u>In ... Unit</u>	<u>Not in Unit</u>
Before Merger	6	7
Immediately After Merger	12	8
At time of hearing	11*	8

- One Office Assistant II had promoted to Office Assistant III by the hearing.

Executive Director Marvin L. Schurke issued an order denying the requested accretion on November 4, 1997. The Executive Director found that the employees represented by the union did not constitute a single appropriate bargaining unit under RCW 41.56.060, and that accretion of the employees at issue would call into question the union's majority status in the new Human Services Department, and so would be inappropriate. The Executive Director also concluded that the bargaining unit of employees historically represented by the union in the Department of Aging became inappropriate under RCW 41.56.060, as a result of the merger that created the Department of Human Services. The union petitioned for

review, thus bringing the case before the Commission.

Pierce County, Decision 6051-A (PECB, 1998) [emphasis by **bold** supplied].

Reversing the decision of the Executive Director in that case, the Commission found that all of the office-clerical-accounting employees of the Department of Human Services had similar duties, similar skills, common supervision, similar wages and benefits, similar work locations, and interchange in daily operations so that a community of interest existed among them. The office-clerical-accounting employees who previously worked in the social services department were thus accreted into the existing, multi-department bargaining unit represented by Local 599.

POSITIONS OF THE PARTIES

Teamsters Local 599 filed its motion for summary judgment on February 25, 2000. It relies generally upon Commission precedents rejecting "severance-decertification" petitions, and it relies specifically on Pierce County, Decision 6051-A (PECB, 1998) as the basis for its contention that the petition in this case seeks a severance-decertification from an existing bargaining unit of approximately 150 employees working in several Pierce County departments. It thus urges that the petition filed in this matter is defective, and should be dismissed.

In a written response to the motion filed on March 8, 2000, the petitioner disputes the claim that Pierce County, Decision 6051-A (PECB, 1998) is controlling. The petitioner contends that decision was based upon inaccurate information, that the Commission erred in failing to consider the "desire of employees" under RCW 41.56.060, and that there are other issues of material fact which merit review

by the Commission. The petitioner alleges that an interim director of the merging departments made commitments to the affected employees prior to the merger, that those commitments were disregarded by a successor director, and that the employees were shocked at having been included in the bargaining unit as a result of the earlier proceedings. She urges that a hearing would bring out facts contradicting the conclusions and result reached by the Commission in the earlier case.

The employer has not filed any response to the motion for summary judgment.

DISCUSSION

Precedent on "Severance-Decertification"

The Public Employment Relations Commission has rejected "severance-decertification" petitions in the past. The decision in City of Seattle, Decision 2612 (PECB, 1987), where an employee sought to decertify only a select group of employees from a larger bargaining unit of employees, set forth a policy that is controlling in this matter. That decision included the following reasoning:

The distinction between "decertification" of an incumbent exclusive bargaining representative and "severance" of a part of the existing bargaining unit is well founded and clear. Proceedings in the "decertification" category are characterized by employees seeking to be rid of their present union, with the result that they end up with no union representation. By contrast, cases in the "severance" category involve a petition of one organization seeking to carve out a separate bargaining unit from a larger unit historically represented by the same or another organization. In both types

of cases, the Commission must honor statutory directive that it consider the "history of bargaining". RCW 41.56.060. A decertification petitioner does not have the prerogative to fashion a new bargaining unit or voting group, however. Rather, employees who seek to be rid of their union must take the existing unit as they find it and must move to decertify the context of the existing bargaining unit. Accordingly, petitions which, as here, simultaneously seek "severance" and "decertification" are precluded by controlling precedent of the Public Employment Relations Commission. See, City of Seattle, Decision 1229-A (PECB, 1982) [Commission affirmed Executive Director's dismissal of "severance-decertification" petition seeking to remove some, but not all, of the employees from an exiting bargaining unit of City of Seattle employees represented by Plumbers Local 32]; Valley General Hospital, Decision 1333 (PECB, 1982) [Executive Director dismissed "severance-decertification" petition]. The Commission's decisions on this subject are, in turn, based on precedents of the National Labor Relations Board (NLRB). Campbell Soup Co., 11 NLRB 234 (1955) [cited by Commission, with approval, as standing for the proposition that severance principles may not be applied to obtain decertification of part of an existing bargaining unit]; Oakwood Tool & Engineering Co., 122 NLRB 812 (1958); Associated General Contractors of California, Inc., 209 NLRB 363 (1974).

A petition seeking a "severance-decertification" is void from the outset, and must be dismissed as such.

Application of Precedent

The Commission saw the 150+ employees represented by Local 599 at Pierce County as being a single bargaining unit in Pierce County, Decision 6051-A, supra, and it reversed a decision in which the employees of the former Area Agency on Aging were considered to be

a separate bargaining unit within an amalgam of units represented by Local 599. As an appointee and agent of the Commission, the Executive Director is bound by the Commission's decision in the earlier case, and is not in a position to consider or rule upon the petitioner's contentions that the Commission erred in its decision on the earlier case. The petitioner can, of course, present those arguments to the Commission itself, as part of the basis for an appeal of this order of dismissal. City of Seattle, supra, and the precedents cited there in are applicable to this petition, which seeks to decertify Local 599 as to only a portion of those 150+ employees.

NOW, THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above entitled matter is DISMISSED.

Issued at Olympia, Washington, this 7th day of April, 2000.

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 391-35-210.