

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
ALFRED J. LUNDE	)	CASE 8034-E-89-1358
Involving certain employees of:	)	DECISION 3339 - PECB
CITY OF SEATTLE	)	ORDER OF DISMISSAL
	)	
	)	
	)	

Alfred J. Lunde, appeared pro se.

Douglas N. Jewett, City Attorney, by James Pidduck, Assistant City Attorney, appeared on behalf of the City of Seattle.

James Freeman, District Council of Carpenters Representative, appeared on behalf of the incumbent exclusive incumbent bargaining representative, Carpenters Union, Local 131.

On June 13, 1989, Alfred J. Lunde filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to decertify Carpenters Local 131 as the exclusive bargaining representative of a group of approximately 13 individuals employed by the City of Seattle in the classifications of building inspector, senior inspector, and structural inspector in the employer's Department of Construction and Land Use. Carpenters Local 131 was granted intervention in the proceedings, pursuant to WAC 391-25-170.

A pre-hearing conference was conducted pursuant to WAC 391-08-210 on September 15, 1989, by Hearing Officer Frederick J. Rosenberry. The petitioner declined to stipulate that the union is a lawful organization qualified for certification as exclusive bargaining representative, maintaining that the union has failed to fulfill

its obligations. The union maintained that decertification was being sought in an inappropriate unit, and that no question concerning representation existed. Specifically, the union claimed that the appropriate unit is an existing, city-wide bargaining unit consisting of approximately 64 employees who are assigned to the Department of Construction and Land Use (classified as building inspector, senior building inspector, and structural inspector); City Light Department (classified as carpenter, senior carpenter, and crew chief carpenter); Engineering Department (classified as bridge maintenance lead worker); Parks and Recreation Department (classified as carpenter, senior carpenter, and crew chief carpenter); Seattle Center (classified as carpenter and crew chief carpenter); Department of Administrative Services (classified as carpenter, senior carpenter, and crew chief carpenter); and Water Department (classified as carpenter).<sup>1</sup>

A Statement of Results of Pre-Hearing Conference was issued on September 21, 1989, pursuant to WAC 391-08-210. That statement stated the stipulations made by the parties, and recited the foregoing disputed issues. No objections to the Statement of Results were filed within the time specified for doing so.<sup>2</sup>

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<sup>1</sup> The showing of interest filed in support of the decertification petition is not sufficient to support a petition for a unit of 64 employees.

<sup>2</sup> On October 2, 1989, the petitioner filed copies of documents which, he claims, support his petition in this case. The documents consist of correspondence between King County and the Washington State Department of Labor and Industries, and a copy of a tally of a representation election conducted on March 4, 1975, indicating that a majority of the votes were to discontinue representation by Carpenters Local 131. There is no reason to doubt the authenticity of the information provided. The petitioner cites the transaction, which permitted building inspectors employed by King County to vote on whether they desired to sever from a county-wide bargaining unit and decertify the union, as being similar to the case at hand.

BACKGROUND

The existing city-wide bargaining unit represented by Local 131 was created on June 11, 1968, when the employer granted voluntary recognition to the union for a bargaining unit described as:

Included Departments: Lighting; Building;  
Water; Engineering; Seattle Center; Park

Excluded Departments: All other departments

Included Budget Titles: Carpenter I,  
Carpenter II; Building Inspector I, Building  
Inspector II, Structural Building Inspector;  
Carpenter Foreman; Bridgeman

Excluded Budget Titles: All other titles.

In recent years, negotiations for the bargaining unit have been handled as part of a multi-lateral bargaining process between the City of Seattle and the Joint Crafts Council.<sup>3</sup> The most recent collective bargaining agreement covering the bargaining unit was for the period from September 1, 1986 through August 31, 1989.<sup>4</sup>

From the documents of record and the positions taken at the pre-hearing conference, it is apparent that the petitioner is attempting to sever and decertify a portion of an existing bargaining unit.

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<sup>3</sup> The Joint Crafts Council is an organization made up of a number of different labor organizations that have joined together for the purpose of negotiating a single labor agreement with the City of Seattle regarding matters of common interest. Separate addenda to the Joint Crafts Council agreement address individual craft interests. The union makes no claim that the appropriate unit encompasses the entire Joint Crafts Council.

<sup>4</sup> The employer and the union have discontinued bargaining for the disputed positions during the pendency of this representation petition.

DISCUSSIONThe Scope of Decertification Proceedings

Representation proceedings involving "decertification" attempts are characterized by employees seeking to discontinue representation by an incumbent union, with the result that they end up with no union representation. By contrast, cases involving "severance" involve an attempt by an organization to carve out a separate bargaining unit from a larger historical bargaining unit. Petitions which seek to simultaneously seek "decertification" and "severance" are precluded, however, by controlling precedent of the Public Employment Relations Commission. City of Seattle, Decision 1229-A (PECB, 1982). The Commission's policy is based, in turn, on the practices and precedents of the National Labor Relations Board (NLRB). Campbell Soup Co., 111 NLRB 234 (1955).

A decertification petition must take the existing bargaining unit as he or she finds it. Port of Seattle, Decision 3247 (PECB, 1989). As a member of the bargaining unit, the petitioner would not have standing to seek modification of the existing bargaining unit through unit clarification proceedings under Chapter 391-35 WAC, as access to that process is limited to the employer and the incumbent exclusive bargaining representative of the unit involved. WAC 391-35-010.

The "Labor & Industries" Precedent

From the time of its enactment until December 31, 1975, Chapter 41.56 RCW was administered by the Washington State Department of Labor and Industries. That agency adopted Chapter 296-132 WAC as its rules for the processing of cases under Chapter 41.56 RCW, including determinations on appropriate bargaining units and representation elections.

The Public Employment Relations Commission was created by Chapter 41.58 RCW, and it assumed jurisdiction for the administration of Chapter 41.56 RCW on January 1, 1976. The statute which created the Commission states, in relevant part:

**RCW 41.58.005 INTENT -- CONSTRUCTION.**

(1) It is the intent of the legislature by the adoption of this 1975 amendatory act

to achieve more efficient and expert administration of public labor relations . . .

The authority of the Department of Labor and Industries to adopt or enforce Chapter 296-132 WAC expired with the legislature's transfer of jurisdiction to the Public Employment Relations Commission. Chapter 296-132 WAC thereupon became null and void. Mount Vernon School District, Decision 2273-A (PECB, 1986).

In order to accomplish the legislative directive, the Commission and the courts of this state give consideration to federal precedent in the evaluation of questions concerning representation, where that federal precedent is consistent with Chapter 41.56 RCW. Nucleonics Alliance, Local 1-369 v. WPPSS, 101 Wn.2d 24 (1984); Public Employees v. Highline Community College, 31 Wn.App. 203 (Division II, 1982); Clallam County, Decision 1405-A (PECB, 1982), aff. 43 Wn.App. 589 (Division I, 1986). The Commission has adopted Chapter 391-25 WAC as its rules for the administration of representation cases. The representation case involving King County building inspectors was processed under rules and/or policies that are obsolete or no longer in effect.

Extension of "Contract Bar" Period

The instant petition was defective from the outset. It was filed during the contract bar "window" provided by RCW 41.56.070 during the period not more than 90 nor less than 60 days prior to the

expiration of the existing collective bargaining agreement, but has remained pending during the remaining life of that contract and into a hiatus period. The employer and the incumbent exclusive bargaining representative have been deprived of their opportunity to bargain concerning the disputed group, without outside interference in the form of a representation petition, during the last 60 days the expired contract was in effect. The employer and union could have negotiated and ratified a successor agreement were it not for the suspension of bargaining forced upon them by this petition and the precedent of Yelm School District, Decision 704-A (PECB, 1980). In order to return the employer and union to the bargaining relationship that they would have enjoyed in the absence of the defective petition, representation petitions regarding the existing unit will be barred for a period of 60 days following the date on which dismissal of this case becomes final. See: City of Seattle, Decision 2611 (PECB, 1987).

NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 9th day of November, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the commission pursuant to WAC 391-25-390(2).