

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
OKANOGAN EDUCATION ASSOCIATION) CASE 12158-E-95-2013
Involving certain employees of:) DECISION 5394 - PECB
OKANOGAN SCHOOL DISTRICT) DIRECTION OF CROSS-CHECK
_____)

Roger Stephens, Organizer, appeared on behalf of the union.

Robert Schwerdtfeger, Attorney at Law, Richard Johnson, Superintendent, appeared on behalf of the employer.

On November 9, 1995, Okanogan Education Association, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Okanogan School District. A pre-hearing conference was conducted, by telephone conference call, on December 19, 1995. The union stated a preference for a cross-check to determine the question concerning representation. The employer declined to stipulate that the Commission has jurisdiction in this matter, but it agreed to other issues including the use of the cross-check method to determine the question concerning representation.

The Commission's Jurisdiction

In Castle Rock School District, Decisions 4722-B, 4723-B (EDUC, 1995), the Commission ruled that both the school district and the Castle Rock Education Association committed unfair labor practices by bargaining the wages, hours and working conditions of a coaching position that did not require a professional education certificate

issued by the Superintendent of Public Instruction. The Commission ordered that employer and union to post a notice to all employees, informing them that non-certificated jobs were being removed from the teacher bargaining unit under Chapter 41.59 RCW, and that the employee's bargaining rights would be under Chapter 41.56 RCW.

The Commission subsequently adopted WAC 391-45-560, which directed all school districts and all organizations representing certificated employee bargaining units under Chapter 41.59 RCW to:

- (1) Effect a separation of non-certificated jobs from certificated employee bargaining units;
- (2) post notices informing employees of that separation, in order to give the employees adequate notice of their new situation; and
- (3) file a copy of the posted notice with the Commission.

This case involves extra-curricular positions at the Okanogan School District. The employer and the Okanogan Education Association posted the separation notice on June 20, 1995, and filed a copy of that notice with the Commission on July 24, 1995.

The employer is a school district organized and operated under Title 28A RCW, and it is a public employer under Chapter 41.56 RCW. It is concluded that the Commission has jurisdiction in this matter.

The Cross-check

RCW 41.56.060 sets forth the methods for determining questions concerning representation:

The commission shall determine the bargaining representative by (1) examination of organization memberships roles, (2) comparison of signatures on organization bargaining authori-

zation cards, or (3) by conducting an election specifically therefor.

[1975 1st ex.s. c 296 §17; 1967 ex.s. c 108 §6.]

The Commission's rules limit the availability of the "cross-check" procedure, as follows:.

WAC 391-25-391 SPECIAL PROVISION--PUBLIC EMPLOYEES. Where **only one organization is seeking certification** as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that such **organization has been authorized by a substantial majority of the employees** to act as their representative for the purposes of collective bargaining, and the executive director finds that the **conduct of an election would unnecessarily and unduly delay** the determination of the question concerning representation with little likelihood of altering the outcome, the executive director may issue a direction of cross-check. The direction of cross-check and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590.

[Statutory Authority: RCW ... 41.56.040, 41.58.050, ... 80-14-046 (Order 80-5), §391-25-391, filed 9/30/80, effective 11/1/80.]

When WAC 391-25-391 was adopted, the "substantial majority" was defined as a showing of interest of more than 70% of the employees in the bargaining unit.

Examination of the petition and pre-hearing statement in this case indicates that the union has submitted the kind of substantial showing of interest required by WAC 391-25-391. Use of the election procedure would inherently delay the determination of the question concerning representation, and the union's showing of interest in excess of 70% inherently indicates little likelihood of an election altering the result.

DIRECTION OF CROSS-CHECK

1. A cross-check of records shall be made under the direction of the Public Employment Relations Commission in the appropriate bargaining unit described as:

All extra-curricular positions of the Okanogan School District for which no certification is required.

to determine whether a majority of the employees in that bargaining unit have authorized Okanogan Education Association to represent them for purposes of collective bargaining.

2. The employer shall immediately supply the Commission with copies of documents from its employment records which bear the signatures of the employees on the eligibility list stipulated by the parties.

Issued at Olympia, Washington, on the 3rd day of January, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.