

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HOME CARE QUALITY AUTHORITY

Employer,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 775

Union

joined by

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 6

CASE NO. 17331-E-03-2821

**UNION'S RESPONSE TO
DEFICIENCY NOTICE AND
AMENDED MOTION TO AMEND
CERTIFICATION**

INTRODUCTION

1. This is a petition filed jointly by two local unions and their respective executive officers to amend an earlier petition filed in this case.¹ The purpose of this and the earlier petition is to amend an existing certification. The unions seek to remove the first local union

¹ See Union's Motion to Amend Certification dated March 19, 2003. Exhibit A.

ORIGINAL

from the certification and substitute the second local union as the exclusive bargaining representative of a unit of public employees. The second local is newly chartered. Both locals are affiliates of the same international union. All constitutional requirements of the international union for the transfer of jurisdiction have been fulfilled. The executive board of the international union has approved the transfer of jurisdiction from the existing local to the newly chartered local. Both locals actively seek and agree to the change in certification. No merger or affiliation is involved. Both locals continue in existence. An executed collective bargaining agreement is in place between the substituted local and the only employer involved. The employer has recognized the substitution. No members of the bargaining unit have objected. No other unions are involved.

2. Despite the lack of objection from any quarter, the director of the state agency responsible for supervising public sector labor relations has raised questions about the legitimacy of the substitution. Those questions are addressed later in the petition.

BACKGROUND

3. For purposes of this amended petition, we offer a summary of facts which have been explained in greater detail in other pleadings.² In November, 2001, Washington voters passed Initiative 775, granting collective bargaining rights to home care workers and creating the Home Care Quality Authority. On April 2, 2002, SEIU Local 6 filed a petition for investigation of a question concerning representation. On July 22, 2002, ballots were issued

² A more complete recitation of facts can be found in the original petition, (Exhibit A); PERC's deficiency notice, (Exhibit B), and PERC's order on motion for continuance (Exhibit C.)

to 25,501 home care workers. The ballots were tallied on August 16, 2002. Of approximately 25,501 voters, 6,575 were cast for SEIU Local 6, and 1,234 were cast for “no representation.” SEIU Local 6 was certified as the exclusive bargaining representative on August 26, 2002 in *Home Care Quality Authority*, Decision 7823 (PECB, 2002).

4. The Service Employees International Union, to which Locals 6 and 775 are affiliated, conducted a hearing on November 7, 2002 in Seattle, Washington. The purpose of the hearing was to determine, among other issues, the most effective assignment of jurisdiction to SEIU locals to provide the best representation for healthcare workers and building services workers in Washington State. The jurisdictional hearing was conducted by authority of the International’s Constitution.³ (See Affidavit of Norman Gleichman, Exhibit D.)

5. Hearing Officer Josephine Mooney, Executive Director, SEIU Local 790, Oakland, California, conducted the hearing on November 7, 2003, held the record open to November 14 and issued her report and recommendations on November 18. She recommended that “the International Executive Board charter a new local union to represent long term care workers” and that Local 6 should continue its focus on representing building service industry janitors. The SEIU International Executive Board approved Mooney’s

³ The director noted that a previous pleading in this case also referenced Article VIII Section 7(g). That Article and Section generally pertains to the authority of the International President to impose trusteeships, but paragraph (g) refers to the appointment of representatives to provide assistance, and other means of providing international union assistance, to local unions. Because the hearing on November 7 also dealt with a second and unrelated topic, the internal needs of Local 6, the Article and Section in question were inadvertently referenced in the previous pleading. That Article and Section are not germane to the matter at hand.

recommendations and on December 13, 2002 chartered a new local union, Local 775, “focused on Washington State long term care workers.” Pursuant to the SEIU decision Local 6 and Local 1199NW transferred jurisdiction and representational rights and duties over long term care workers to Local 775. (See Exhibit 2 attached to the Affidavit of Norman Gleichman, Exhibit D.)

6. The President of Local 6, David Rolf, was named by SEIU President Andrew Stern President of Local 775, pursuant to Article XIV, Section 5 of the SEIU International Constitution and Bylaws, and Local 6 Vice President Suzanne Wall was similarly named Secretary-Treasurer of Local 775. Local 6 Secretary Treasurer Sergio Salinas became President of Local 6 on January 10, 2003.

7. The Washington State Home Care Quality Authority negotiated a collective bargaining agreement with the union for wages, hours and working conditions of all independent providers in the bargaining unit, recognizing SEIU Local 775 as the sole and exclusive bargaining agent in the executed collective bargaining agreement. The parties signed the collective bargaining agreement and transmitted it to Washington State Governor Gary Locke on January 13, 2003

8. On March 19, 2003, SEIU Local 775 petitioned the Public Employment Relations Commission (PERC) to amend the certification to reflect the internal realignment of jurisdiction implemented by SEIU to better service its members in Washington states.

9. By letter dated April 11, 2003, the Executive Director of PERC identified multiple deficiencies with the SEIU 775 petition and required correction on or before May 2, 2003. On April 28 the union requested a 31-day extension to comply. On May 1, the Executive Director granted a 7-day extension. This is the unions' response to the deficiencies identified by the Executive Director and amended petition.

DISCUSSION

10. The issue at the heart of this matter is whether an international union's decision to charter a new local and transfer existing jurisdiction over a specific industry to that local gives rise to question concerning representation. Petitioners assert that no question concerning representation exists. Rather, petitioners seek a simple administrative change to reflect a straightforward internal reorganization.

11. In the past, when PERC was faced with similar internal organizational changes within a union, the agency took a hands-off approach. *Pierce County*, Decision 2209 (PECB 1985). In *Pierce County*, the executive director of the agency blessed the merger of two locals finding that "merger was an exercise of internal union affairs which raises no question concerning representation." The executive director went on to write: "The constitution and bylaws of a labor organization are the contract among the members for the operation of their organization. All of the employees in the case at hand are covered by a common constitution...What has transpired appears to be more in the nature of an implementation than of a change." Although the members of both locals took an advisory vote on the merger,

the vote did not take place until *after* the merger had been finalized by the executive boards of the two locals and the international union.

12. In *Skagit Valley Hospital*, Decision 2509-A (PECB 1986) aff'd *Skagit Valley Hospital v. PERC*, 55 Wn. App. 348, 777 P.2d 573 (1989) the Commission found that the public employers had committed an unfair labor practice when it refused to recognize and bargain with Service Employees Local 6 when the Licensed Practical Nurses Association affiliated with Local 6. The Commission embraced and applied the two-part "due process" and "continuity" test to determine whether organizational changes in the union raised a question of representation.

13. The NLRB similarly finds that local union mergers conducted pursuant to international union procedures do not raise a question of representation and amends certifications to reflect union organizational changes. *City Wide Insulation*, 307 NLRB 1 (1992) In *City Wide* the Board rejected a petition to challenge merger of district councils under an international constitution, noting that because the constitution provided the necessary authority to merge district councils no membership vote was required. Similarly in *Deposit Telephone Co.*, 2001 WL 1589725 (NLRB Div. of Judges) merger of local unions was approved without a vote because workers were not members. It should be noted that in the present case only a handful of the 26,000 home care workers are members paying dues.

14. These principles govern where the reorganization takes the form of a newly chartered local union. In *Climax Molybdenum Co.* 146 NLRB 508 (1964) the Board amended the

certification to certify a newly chartered local to represent the employees more efficiently. The employer in *Climax* contested the locals' joint petition to amend on grounds that the newly chartered local was separate entity from the original local, and that the request to amend presented a question concerning representation. The NLRB granted the petition to amend on grounds that the newly chartered local was a continuation of the original local; the two locals were part of the same international union; the second local was chartered in order to make it possible to represent the workers more effectively, and the transfer of jurisdiction was approved by the International and by both locals. There is no indication of a vote.

15. In the instant case, there is no question that continuity sufficient to avoid a question of representation exists. Almost to a person, the staff members of Local 6 who were responsible for organizing and negotiating the first collective bargaining agreement for home care workers have moved to SEIU Local 775. As far as the rank-and-file are concerned, there has been virtually no change in staff representatives. Unchanged too are the principles of governance. If anything, the home care workers have greater voice in the governance of their local union by virtue of the fact that they are by far the largest segment of the membership.

16. The process followed by the Service Employees International Union's Constitution and Bylaws afforded full due process protection. The issue was appropriate jurisdiction. Notice of hearing was properly issued to each of the major SEIU locals in Washington State. A hearing was conducted by IU-appointed hearing officer Josie Mooney, Executive Director of SEIU Local 790 in Oakland, California. Locals in Washington State with jurisdiction for healthcare and building services were invited. Testimony and written evidence were taken. A

report was issued. The report was adopted by the IU Executive Board. The underlying purpose of the bargaining statute, to achieve and maintain stability, would be undermined if every union organizational adjustment were to result in the displacement of the bargaining representative. As a practical matter, many dozens or perhaps hundreds of jurisdictional changes occur among public sector employee unions in Washington State without the agency subjecting them to the level of minute scrutiny demonstrated in this matter.

EXECUTIVE DIRECTOR'S CONCERNS

17. Is there a schism within the union such that one of the locals is responsible for a temporary restraining order issued against the other local?⁴ No. SEIU Local 6 was not subjected to a TRO from its sister Local 775. Martin Selig Real Estate was the plaintiff in the TRO application. Copy of the restraining order and order vacating it are provided. Exhibits E and F. The only reason the restraining order was brought to attention of the Executive Director was to explain the time constraints faced by the Unions' legal counsel.

18. Are some provisions of the purported collective bargaining agreement illegal?⁵ With all due respect, the PERC and its executive director have no jurisdiction to declare contract provisions unlawful. *King County*, Decision 2193 (PECB, 1985); *City of Seattle*, Decision 2768, (PECB, 1987); *Snohomish County*, Decision 3690, (PECB, 1991) (no duty of fair representation jurisdiction over grievance handling.) In any event, the collective bargaining agreement between SEIU 775 and the Home Care Quality Authority is fully lawful. The contract provision for a limited automatic extension is lawful. The Commission has

⁴ Decision 8064 – PECB, p 11.

recognized the final sentences of RCW 41.56.070 as its “contract bar” rule utilized to judge the timeliness of representation petitions. *Kalama School District No. 402*, Decision No. 873 (PECB 1980). No other consequences flow from the automatic extension. *City of Port Orchard*, Decision No. 483 (1978); *City of Longview*, Decision No. 1593 (PECB 1983). Moreover, in the event that a provision, clause, section, or article of the collective bargaining agreement should be found to be illegal, the agreement by its terms contains separability clause. Article 18.

19. Does the willingness of the employer to recognize the substitute local suggest an “illegitimate relationship” between the employer and the substituted local, such that an employer-assisted union may be involved?⁶ The union has not received any unlawful assistance from the Home Care Quality Authority. While the executive director’s reference to *Washington State Patrol*, Decision 2900 (PECB, 1987) and *City of Mukilteo*, Decision 1571-A (PECB, 1983) support an inference that he believes they apply, it is not clear how they have any relevance to the instant situation. *Washington State Patrol* involves an employer which provided the union a full-time paid position, an office, and an automobile. To our knowledge, none of those amenities has been made available to the unions in this case. Moreover, *City of Mukilteo* deals with the question of voluntary recognition in a circumstance where there was no election among a group of city employees. We remind the Executive Director that in this case there was an election which was won resoundingly by the Union.

⁵ Decision 8065 – PECB, p 10, fn5.

20. Was there a hearing before the new local was chartered? If so, did the person who conducted the hearing possess the authority to do so? We believe this question has been answered in the body of the petition and in the affidavit of Norman Gleichman. It is worth noting however, the greatest form of due process afforded the rank-and-file members of SEIU comes through its international convention. SEIU met in convention in May 2000. There SEIU delegates adopted a plan to undertake a major realignment of jurisdiction by industry. The SEIU decision to conduct a hearing on how best to serve its members in Washington state and consequently to charter a new local were in concert with the programs adopted at convention.

21. Was proper notice of the hearing provided? Yes. We believe this question has been answered in the body of the petition.

22. Does the international union's constitution grant it the authority to resolve questions of jurisdiction between its locals? Yes. We believe this question has been answered in the body of the petition and the affidavit of Norman Gleichman.

23. Why is the union representing that other sister locals within the same international union in Washington state had any jurisdiction to transfer? As explained in the body of the petition, the other locals had jurisdiction at stake and potential jurisdiction to transfer. As the other transferring bargaining units consist of private sector health care employees, they fall outside the jurisdiction of the PERC.

⁶ Decision 8064 – PECB, p 4, fn3.

24. Did the executive board of the international union approve whatever transfer of jurisdiction may have occurred? Yes. Answered in the body of the petition.

25. How did David Rolf and Suzanne Wall become officers in the newly chartered local and how did they migrate from one local to the other? We believe this question has been answered in the body of the petition and the affidavit of Norman Gleichman.

26. What was the bargaining history between the substituted local and the employer, including details about the manner in which the ratification vote was conducted and its outcome? Please see the body of the petition and the Declaration of David Rolf. (Exhibit G.)

27. Why did the union fail to cite a statute or rule for proposition that one union may replace another without going through an election or cross-check? We believe this question has been answered in the body of the petition. See paragraphs 10-16.

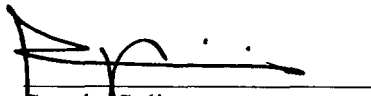
CONCLUSION

For the reasons set forth above, the unions' petition to amend the certification from SEIU 6 to SEIU Local 775 should be approved.

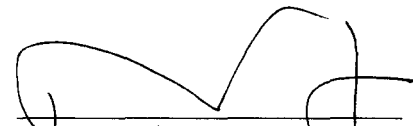
Locals 6 and 775 will provide additional documentary or other evidence in support of this motion on request.

Locals 6 and 775 will provide additional documentary or other evidence in support of this motion on request.

Dated this 7th day of May 2003.



Sergio Salinas
President
SEIU Local 6



David Rolf
President
SEIU Local 775

RECEIVED
OLYMPIA, WA

MAY 08 2003

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

CERTIFICATE OF SERVICE

I certify that on this day of 8th day of May 2003, I filed the Union's Response to
Deficiency Notice and Amended Motion to Amend Certification via legal messenger:

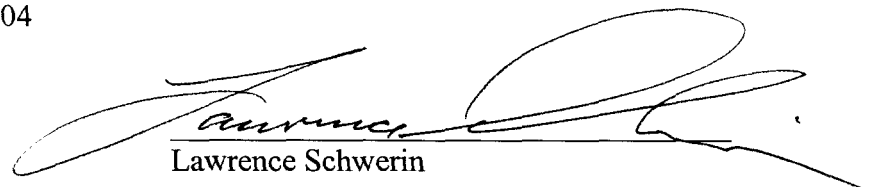
Marvin L. Schurke
Public Employment Relations Commission
603 Evergreen Plaza Building
P.O. Box 40919
Olympia, Washington 98504-0919
Facsimile No. (360) 570-7334
E-mail address filing@perc.wa.gov

and sent a copy sent via facsimile and First Class U. S mail to:

Mike Sellars
Labor Relations Specialist/AAG
Office of the Attorney General
905 Plum Street SE Bldg
Olympia, WA 98504-0145
Facsimile (360) 664-4170
E-mail address: mikes@atg.wa.gov

Charley Reed
Chair
Washington State Home Care Quality Authority
3033 85th Ave. S.W.
Olympia, WA 98512
E-mail: huntie@attbi.com

Mindy Schaffner
Executive Director
Washington State Home Care Quality Authority
P.O. Box 40940
640 Woodland Sq Loop SE
Lacey, WA 98504
Facsimile: (360) 407-0304
SchafML@dshs.wa.gov



Lawrence Schwerin

RECEIVED
OLYMPIA, WA

MAY 08 2003

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HOME CARE QUALITY AUTHORITY

Employer,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 775

Union.

CASE NO.

UNION'S MOTION TO AMEND
CERTIFICATION

Service Employees International Union, Local 775 moves the Commission to amend the certification of Service Employees International Union, Local 6 as the representative of individual providers of in-home care services employed by the Home Care Quality Authority for purposes of collective bargaining in Case 16321-E-02-2706 to Service Employees International Union, Local 775. The Employer does not challenge the representation status of Local 775 and there is no proceeding pending under the Act to bring into question the authority of Local 775 to represent the long term care workers. We, nonetheless, submit that PERC has authority under its certification authority, RCW 41.56.080, to amend the certification on this motion by the recognized union.

The Service Employees International Union, of which Local 6 is affiliated, conducted a hearing on November 7, 2002 in Seattle, Washington pursuant to its Constitution, Article VIII, Section 7(g) and Article XIV, Sections 2, 3 and 4 to determine, among other issues, the most appropriate effective organizational structure to represent

the individual providers of in-home care services. Notice of the hearing was given to the officers of Locals 6, 925 and 1199NW. The officers of Local 6 at the time of the hearing included David Rolf, President, Suzanne Wall, Vice President and Sergio Salinas, Secretary-Treasurer. Hearing Officer Josephine Mooney held the record open to November 14 and issued her report and recommendations on November 18. She recommended that "the International Executive Board charter a new local union to represent long term care workers" and that Local 6 should continue its focus on representing building service industry janitors. The SEIU International Executive Board approved Mooney's recommendations and on December 13, 2002 chartered a new local union, Local 775, "focused on Washington State long term care workers." Pursuant to the SEIU decision Local 6, Local 1199 and Local 775 transferred jurisdiction over long term care workers to Local 775.

The President of Local 6, David Rolf, was named President of Local 775, pursuant to the SEIU constitution. Local 6 Vice President Suzanne Wall was named Secretary-Treasurer of Local 775. Local 6 Secretary Treasurer Sergio Salinas became President of Local 6 January 10, 2003.

The Washington State Home Care Quality Authority negotiated a collective bargaining agreement with the union for wages, hours and working conditions of all independent providers in the bargaining unit, recognizing SEIU Local 775 as the sole and exclusive bargaining agent in the executed collective bargaining agreement. The parties signed the collective bargaining agreement and transmitted it to Washington State Governor Gary Locke on January 13, 2003. David Rolf, President of SEIU Local 775 and Suzanne Wall, Secretary-Treasurer of SEIU Local 775 signed the collective

bargaining agreement, along with Charles Reed, Chair of the Home Care Quality Authority, and Mindy Schaffner, Executive Director of the Home Care Quality Authority. Throughout negotiations for the agreement, David Rolf represented the union as chief negotiator, and Suzanne Wall served as the union's second chair on the negotiating team.¹ At no time during the thirteen bargaining sessions or informal meetings did any other officer of SEIU chair the union's negotiating committee, preside or attend bargaining sessions or informal meetings.

ARGUMENT

WHERE, AS HERE, A LABOR UNION REORGANIZES AND CHANGES ITS NAME IN ACCORDANCE WITH ITS CONSTITUTION, ITS CERTIFICATION SHOULD BE AMENDED TO REFLECT THE CHANGE.

The purpose of the Public Employment Labor Relations Act is to promote collective bargaining. RCW 41.56.010. Accordingly the Commission has adhered to NLRA precedents allowing unions to reorganize to more effectively represent workers. In *Skagit Valley Hospital*, Decision 2509-A (PECB 1986) aff'd *Skagit Valley Hospital v. PERC*, 55 Wn. App. 348, 777 P.2d 573 (1989) the Commission found that the public employers had committed an unfair labor practice when it refused to recognize and bargain with Service Employees Local 6 when the Licensed Practical Nurses Association affiliated with Local 6. The Commission relied in part on *NLRB v. Financial Institution Employees of America*, 475 U.S. 192 (1986) that held the NLRB could not lawfully require voter approval by non-members. Previously the Commission had rejected a challenge in a representation case to a merger between two local unions conducted pursuant to the international union's constitutional procedures. *Pierce County*, Decision

¹ David Rolf and Suzanne Wall represented the bargaining unit prior to the election and David Rolf signed the election tally for the union.

2209 (PECB 1985). The Commission opined that "the 'merger' of Local 461 into Local 599 was an exercise of internal union affairs which raises no question concerning representation."²

The NLRB similarly finds that local union mergers conducted pursuant to international union procedures do not raise a question of representation and amends certifications to reflect union organizational changes. *City Wide Insulation*, 307 NLRB 1 (1992) In *City Wide* the Board rejected a petition to challenge merger of district councils under an international constitution, noting that because the constitution provided the necessary authority to merge district councils no membership vote was required. Similarly in *Deposit Telephone Co.*, 2001 WL 1589725 (NLRB Div. of Judges) merger of local unions was approved without a vote because workers were not members. Constitutional authority was also paramount in *Knapp-Sherrill Co.*, 263 NLRB 396, 399 (1982) that concerned the merger of Meat Cutters and the United Food & Commercial Workers Union.

These principles govern where the reorganization takes the form of a newly chartered local union. In *Climax Molybdenum Co.* 146 NLRB 508 (1964) the Board amended the certification to certify a newly chartered local to represent the employees more efficiently. In *Defiance Hospital*, 330 NLRB No. 70 (2000) Board found an unfair labor practice when the Employer refused to bargain with SEIU Local 1199 following an SEIU hearing and Executive Board decision to merge local unions.

The Board has regularly amended certifications to reflect international union mergers. *American Enka Co.* 231 NLRB 1335, 1336-37 (1977) (Textile Workers and

² The Commission acknowledges it has no role in the regulation of union reporting and disclosure requirements. *King County*, Decision 4253 (PECB 1992).

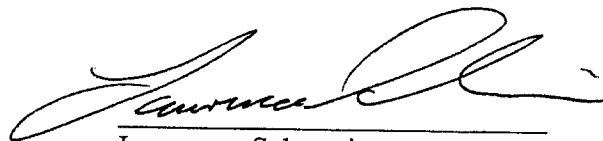
Amalgamated Clothing Workers); *May Department Stores Co.*, 289 NLRB 661 (1988) (United Retail Workers and United Food & Commercial Workers); *Potters' Medical Center, Inc.*, 289 NLRB 201 (1988)(Pottery Workers and Glass Bottle Blowers).

The Washington State Department of Personnel in proceedings under a different, but similar statute has amended certifications to reflect union reorganizations in the absence of a controversy or refusal to bargain. *In re Washington Public Employees Association*, Amended Certification Case RC-92; *In re International Federation of Professional and Technical Engineers, Local 17*, Amended Certification Case RC-83.³

Here Local 6 reorganized under the SEIU international constitutional procedures to designate Local 775 as the representative of long term care workers and the employer has so recognized the reorganization. While the Employer is complying and has complied with its duty to bargain with the successor local and there is no proceeding pending under the Act to bring into question the authority of Local 775 to represent the long term care workers, we submit PERC has authority under RCW 41.56.080 to amend the certification to Service Employees International Union Local 775.

Local 775 will provide additional documentary or other evidence in support of this motion on request.

Dated this 19th day of March 2003.



Lawrence Schwerin
WSBA # 4360
Schwerin Campbell Barnard LLP

³ Copies of these determinations are attached.

CERTIFICATE OF SERVICE

I certify that on this day of 19th day of March 2003, I filed the Union's Motion To Amend Certification via facsimile and e-mail, and by sending the original plus one copy via First Class U. S. mail to:

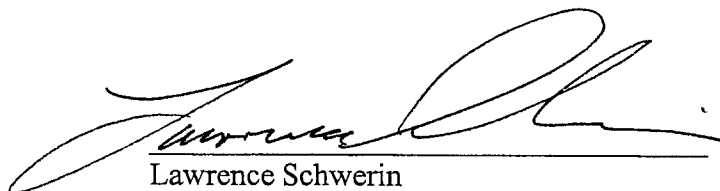
Marvin L. Schurke
Public Employment Relations Commission
603 Evergreen Plaza Building
P.O. Box 40919
Olympia, Washington 98504-0919
Facsimile No. (360) 570-7334
E-mail address filing@perc.wa.gov

and sent a copy sent via facsimile, e-mail and First Class U. S mail to:

Mike Sellars
Labor Relations Specialist/AAG
Office of the Attorney General
905 Plum Street SE Bldg
Olympia, WA 98504-0145
Facsimile (360) 664-4170
E-mail address: mikes@atg.wa.gov

Charley Reed
Chair
Washington State Home Care Quality Authority
3033 85th Ave. S.W.
Olympia, WA 98512
E-mail: hunttye@attbi.com

Mindy Schaffner
Executive Director
Washington State Home Care Quality Authority
P.O. Box 40940
640 Woodland Sq Loop SE
Lacey, WA 98504
Facsimile: (360) 407-0304
SchafML@dshs.wa.gov



Lawrence Schwerin



RECEIVED

APR 14 2003

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

711 Capitol Way South, Suite 603 • Post Office Box 40919 • Olympia, Washington 98504-0919
(360) 570-7300 • Fax: (360) 570-7334 • E-mail filings: filing@perc.wa.gov • Website: www.perc.wa.gov

April 11, 2003

Lawrence Schwerin
Schwerin Campbell Barnard LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971

Michael Sellars
Assistant Attorney General
PO Box 40145
Olympia, WA 98504-0145

Sergio Salinas
SEIU Local 6
PO Box 19360
Seattle, WA 98109-1360

Re: Home Care Quality Authority
Case 17331-E-03-2821
Filed March 19, 2003

Gentlepersons:

Service Employees International Union, Local 775, has filed a request with the Public Employment Relations Commission for amendment of the certification issued on August 26, 2002, as *Home Care Quality Authority*, Decision 7823 (PECB, 2002). While there is no explicit procedure within the Commission's rules for amendment of a certification, Chapter 391-25 WAC delegates authority for the Executive Director to act on all representation case issues, subject to the right of the parties to appeal to the full Commission. Accordingly, I have had this case assigned to me, and I will personally conduct at least the initial processing of the case.

Background

In November of 2001, Washington voters passed Initiative Measure No. 775, creating the Home Care Quality Authority and extending collective bargaining rights to certain individuals under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The Public Employment Relations Commission has exclusive jurisdiction to resolve all issues relating to questions concerning representation under that statute, which includes policing of its certifications. RCW 41.56.050 - .030.



April 11, 2003

Page 2

On April 2, 2002, Service Employees International Union, Local 6, filed a petition for investigation of a question concerning representation under Chapter 391-25 WAC, seeking certification as the exclusive bargaining representative of individual providers of in-home care services. That petition was signed by David Rolf, using the title of "Secretary-Treasurer" of Local 6. When Case 16321-E-02-2706 was docketed, Marc Earls was listed as "President" of Local 6, and Suzanne Wall was listed as a representative of Local 6. The letter covering transmittal of the petition was on the letterhead of Local 6, which also listed Sergio Salinas as holding one of two "Vice-President" titles.

On June 10, 2002, an Election Agreement was filed in Case 16321-E-02-2706 under WAC 391-25-230. The document was signed by David Rolf, then using the title of "President" of Local 6. Suzanne Wall was listed in the document with an "Organizing Director" title.

On July 22, 2002, ballots were issued to 25,501 employees, offering them the choice of voting for "SEIU, Local 6" or "No Representation" for the purposes of collective bargaining.

The ballots returned to the Commission were tallied on August 16, 2002, and a Tally of Election Ballots issued on that day set forth the results of the election as follows:

1.	Approximate Number of Eligible Voters	25,501
2.	Void Ballots	218
3.	Votes Cast for "SEIU, Local 6"	6,575
...		
6.	Votes Cast for "No Representation"	1,234
7.	Valid Ballots Counted (... Lines 3 through 6)	7,809
8.	Challenged Ballots	73
9.	Valid Ballots Counted Plus Challenged Ballots (... Lines 7 and 8) ..	7,882
10.	Number of Valid Ballots Needed to Determine Election	3,942

Boxes were marked to indicate that the challenged ballots did not affect the outcome, and that the results appeared to be conclusive. David Rolf signed the tally, using the "President" title.

No objections were filed, and "Service Employees International Union, Local 6" was certified on August 26, 2002, as exclusive bargaining representative of the bargaining unit described as:

All individual providers of in-home care services as defined in [RCW] 74.39A.40 and 74.39A.270 in Washington State employed by the Home Care Quality Authority for the purposes of collective bargaining, excluding supervisors, confidential employees and all other employees.

Home Care Quality Authority, Decision 7823 (PECB, 2002). The appearances on that decision listed David Rolf as "President" of Local 6.¹

¹ The Executive Director notes, with apology, that Mr. Rolf's name was mis-spelled in that order. The spelling was correct on the Commission's docket records for the case, and no other reference to a "David Roth" is found in the case file.

April 11, 2003

Page 3

The Petition Now Pending

My first comment is more in the nature of a request than notice of a deficiency. The preparation of this letter was hampered until I wrote in paragraph numbers onto a copy of the petition filed on March 19, 2003. For future reference, please be mindful that there is a practical purpose for the Commission's rules requiring separate numbered paragraphs in pleadings, and please number the paragraphs in any amended petition or other information to be filed in this case.

Paragraph 1 -

Service Employees International Union, Local 775, requests that it be named as the exclusive bargaining representative of the employees in the bargaining unit described in *Home Care Quality Authority*, Decision 7823, in place of Local 6. No statute or rule is cited as authority for one union to replace another without going through an election or cross-check. The Commission precedent that seems closest to the situation is *Skagit Valley Hospital, et al.*, Decision 2509-A (PECB, 1987), where the Commission applied due process principles enunciated by the Supreme Court of the United States in *Financial Institutions Employees of America, Local 1182 (FIEA) vs. NLRB*, 471 U.S. 1098 (1986), to facts concerning the merger of the Licensed Practical Nurses Association of Washington State into SEIU Local 6.

This paragraph also asserts that, "The employer does not challenge the representation status of Local 775" as exclusive bargaining representative. We would, however, need to have that concurrence in writing from the employer, whether supplied of its own volition or in response to a request from either Local 775 or the Commission.

Paragraph 2 -

This paragraph represents that a hearing was held by a named individual on November 7, 2002, but does not provide any background as to the origin and affiliation of that individual, or as to who gave her the authority to conduct this particular hearing. It is thus impossible to evaluate one of the sources of authority relied upon by Local 775 in making its request.

This paragraph also represents that the hearing was held pursuant to specific articles of a "constitution", but no copy of that document (or even of the cited provisions) has been provided to the Commission. It is thus impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

This paragraph represents that notice was provided to "the officers of Locals 6, 925 and 1199NW" and that the officers of Local 6 at the time of the hearing included "David Rolf, President, Suzanne Wall, Vice-President and Sergio Salinas, Secretary-Treasurer." The relevance of this sole reference to Local 925 is uncertain. Without the ability to evaluate the source of authority for the alleged proceedings, it is impossible to evaluate whether notice requirements imposed by the SEIU or its locals upon themselves were met.

This paragraph next represents that the hearing officer issued a report and recommendations on November 18, 2002, but no copy of that document (or even of the cited portion) has been provided

April 11, 2003

Page 4

to the Commission. It is thus impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

This paragraph goes on to represent that the SEIU International Executive Board approved the recommendations of the hearing officer, but no minutes of a meeting or other documentation has been provided to the Commission. It is thus impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

This paragraph concludes with, "Local 6, Local 1199 and Local 775 transferred jurisdiction over long term care workers to Local 775." This is a mystery because, at least:

1. Local 1199 NW was not a party to the proceedings leading to *Home Care Quality Authority*, Decision 7823, and certainly was not certified as exclusive bargaining representative of any employees in that proceeding, so it does not appear to have had any relevant jurisdiction to transfer; and
2. Local 775 was described earlier in the same paragraph as being newly chartered, so it does not appear to have had any relevant jurisdiction to transfer.

Local 775 would need to clear up these mysteries by filing and serving an amended petition in this proceeding.

Paragraph 3 -

This paragraph represents that David Rolf was "named President of Local 775, pursuant to the SEIU constitution" and that Suzanne Wall was "named Secretary-Treasurer of Local 775" on an unspecified date, but no minutes of a meeting or other documentation has been provided to the Commission. It is thus impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

This paragraph further represents that Sergio Salinas "became President of Local 6" as of January 6, 2003. That is consistent with the Commission's current records.²

Paragraph 4 -

This paragraph represents that the Home Care Quality Authority has negotiated a collective bargaining agreement which recognizes SEIU Local 775 as the exclusive bargaining representative of the employees in the bargaining unit described in *Home Care Quality Authority*, Decision 7823, but no copy of that contract was provided to the Commission with the petition in this case. It is thus impossible to evaluate another of the sources of authority relied upon by Local 775.

This paragraph further represents that the negotiated collective bargaining agreement was transmitted to Governor Locke on January 13, 2003. The Executive Director can take notice of the fact that House Bill 1777, which was read for the first time on February 10, 2003, concerns legislative action to implement the collective bargaining agreement described in this petition.

²

Notice is taken of the Commission's docket records, which now list Sergio Salinas as the principal representative of SEIU Local 6.

April 11, 2003

Page 5

This paragraph further states that David Rolf and Suzanne Wall represented the bargaining unit throughout the negotiations, but does not provide details as to their transfer from Local 6 to Local 775.

PLEASE TAKE NOTICE THAT, the above-referenced case will be held open to receive copies of the documents referenced in the petition and other materials described in this letter, within:

21 days following the date of this letter.

If additional materials are filed and served, they will be considered in the further processing of the petition filed on March 19, 2003. In the absence of documents and materials, the petition filed on March 19, 2003, will be DISMISSED and SEIU Local 6 will continue to hold status as the exclusive bargaining representative of the bargaining unit involved as specified in *Home Care Quality Authority*, Decision 7823 (PECB, 2002).

Very truly yours,

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

MLS:mcb

cc: David Rolf
Mindy Schaffner

Home Care Quality Authority, Decision 8064 (PECB, 2003)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 775)	CASE 17331-E-03-2821
Involving certain employees of:)	
HOME CARE QUALITY AUTHORITY)	DECISION 8064 - PECB
)	ORDER ON MOTION
)	FOR CONTINUANCE

Schwerin Campbell Barnard LLP, by *Lawrence Schwerin*, Attorney at Law, and *Terrance M. Costello*, Attorney at Law, for the union.

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

This case is before the Executive Director on a motion for a 31-day extension of the deadline previously established for response to a deficiency notice issued in the above-captioned proceeding. The requested continuance is granted for seven days only.

BACKGROUND

The Statutory Framework

In November of 2001, Washington voters passed Initiative Measure No. 775, creating the Home Care Quality Authority (HCQA) and extending collective bargaining rights to certain individual providers under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The Public Employment Relations Commission has

DECISION 8064 - PECB

PAGE 2

exclusive jurisdiction to resolve all questions concerning representation under Chapter 41.56 RCW. RCW 41.56.050 - .080.

The Present Petition

On March 19, 2003, Service Employees International Union, Local 775 filed the petition to initiate the above-captioned proceeding before the Commission. SEIU Local 775 requests that it be substituted for Service Employees International Union, Local 6, on a certification previously issued by the Commission.

The certification which is the subject of the petition was issued as *Home Care Quality Authority*, Decision 7823 (PECB, 2002), and described a bargaining unit consisting of:

All individual providers of in-home care services as defined in [RCW] 74.39A.40 and 74.39A.270 in Washington State employed by the Home Care Quality Authority for the purposes of collective bargaining, excluding supervisors, confidential employees and all other employees.

That proceeding was initiated by a representation petition filed with the Commission by SEIU Local 6.¹ The HCQA and SEIU Local 6 filed an election agreement, and the Commission mailed ballots to 25,501 eligible voters offering them the choice of voting for "SEIU, Local 6" or "No Representation" for the purposes of collective bargaining. The ballots returned to the Commission were tallied on August 16, 2002, at which time 6575 valid ballots were cast for "SEIU Local 6" and 1234 valid ballots were cast for the "No Representation" choice. The results appeared to be conclusive in favor of SEIU Local 6 (under the majority of ballots cast test

¹ Case 16321-E-02-2706. The petition was signed by David Rolf as Secretary-Treasurer of Local 6. Suzanne Wall was listed as a representative of Local 6.

DECISION 8064 - PECB

PAGE 3

in RCW 41.56.070 and WAC 391-530(2)), and no timely objections were filed. Thus, "Service Employees International Union, Local 6" was certified as the exclusive bargaining representative of the bargaining unit involved.

The certification issued in August 2002 would normally operate as a "certification bar" for one year after its issuance, under RCW 41.56.070 and WAC 391-25-030(2). Historically, the purpose of representation case procedures in collective bargaining statutes is to have the legitimacy of bargaining relationships established or confirmed by an impartial administrative agency, based on the desires of the affected employees as evidenced by the results of a confidential cross-check of union and employer records under Washington law (WAC 391-25-410) or by the results of a secret-ballot election (WAC 391-25-430, and -470 through -590). Although no statute or rule expressly authorizes amendment of a certification to have one union replace another without going through an election or cross-check process, Chapter 391-25 WAC generally authorizes the Executive Director to act on representation cases subject to the parties' right of appeal to the full Commission. The Executive Director thus expedited the processing of this case.

The Deficiency Notice

Except for the showing of interest process excluded by RCW 34.05.010(3)(b), representation proceedings under Chapter 391-25 WAC are "adjudicative proceedings" under the state Administrative Procedures Act (APA), Chapter 34.05 RCW. The union's petition was thus reviewed under RCW 34.05.419, which requires agencies to:

Examine the application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require . . .

DECISION 8064 - PECB

PAGE 4

A deficiency notice letter was issued on April 11, 2003, setting the due date for a response as May 2, 2003.²

The Employer's Position -

The first paragraph of the petition asserted, "The employer does not challenge the representation status of Local 775" as exclusive bargaining representative. The deficiency notice indicated the Commission needed a statement in writing directly from the HCQA.

On April 28, 2003, the HCQA filed a statement indicating it is willing to recognize SEIU Local 775 as the successor to SEIU Local 6. Concurrence by the HCQA is certainly of interest here, but cannot be taken as conclusive.³

Alleged Hearing by Named Individual -

The second paragraph of the petition asserted that a person who is not a member of the Commission staff held a hearing on November 7,

² The deficiency notice pointed out *Skagit Valley Hospital, et al.*, Decision 2509-A (PECB, 1987), where the Commission applied due process principles enunciated by the Supreme Court of the United States in *Financial Institutions Employees of America, Local 1182 (FIEA) vs. NLRB*, 471 U.S. 1098 (1986). The *Skagit Valley* case concerning a merger of the Licensed Practical Nurses Association of Washington State into SEIU Local 6, following union-conducted elections in which the merger was approved by the eligible voters.

³ Although voluntary recognition can be lawful under RCW 41.56.050, the representation case procedures of the statute guard against illegitimate relationship. The history and evils of employer-assisted unions were described in *Washington State Patrol*, Decision 2900 (PECB, 1987). In *City of Mukilteo*, Decision 1571-A (PECB, 1983), a voluntary recognition agreement signed by that employer's mayor but questioned by its city council was found invalid, in the absence of actual proof that the union had the support of a majority of the employees in the bargaining unit.

DECISION 8064 - PECB

PAGE 5

2002, but no details were provided as to the origin and affiliation of the individual, as to the purpose of the hearing, or as to who gave her the authority to conduct this particular hearing. The deficiency notice thus indicated it was impossible to evaluate one of the sources of authority relied upon by Local 775.

While the specific reference to the procedure supports an inference that information about it was readily available when the petition was prepared, nothing accompanied the motion for a continuance.

The Unspecified Constitution -

The second paragraph of the petition also asserted that the hearing was held pursuant to specific articles of a "constitution", but no copy of that document (or even of the cited provisions) was provided to the Commission. The deficiency notice thus indicated it was impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

A document titled "SEIU 2000 Constitution and Bylaws" accompanied the request for a continuance, and has been reviewed. The relevance of the "Article VIII, Section 7(g)" cited in the petition is unclear, inasmuch as all of Section 7 appears to deal with placing local unions in trusteeship and there is no reference in the petition to SEIU Local 6 having been under trusteeship on or since August 23, 2002, when the certification was issued. The "Article XIV, Sections 2, 3 and 4" cited in the petition deal with the chartering of locals and resolution of "questions of jurisdiction" between locals, but are not conclusive. The documents of a private organization cannot overrule provisions of state law.

References to SEIU Local 925 and SEIU Local 1199NW -

The second paragraph of the petition also asserted that notice was provided to "the officers of Locals 6, 925 and 1199NW." The

DECISION 8064 - PECB

PAGE 6

deficiency notice questioned the relevance of reference to SEIU Local 925 (and should have raised the same question as to Local 1199NW).

While the specific reference to the other locals supports an inference that information was readily available when the petition was prepared, nothing accompanied the motion for a continuance.

The Hearing Officer Report -

The second paragraph of the petition next asserted that the hearing officer issued a report and recommendations on November 18, 2002. The deficiency notice pointed out that no copy of that document (or even of the portion relied upon) had been provided to the Commission, so that it was impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

While the specific reference to the document supports an inference that it was readily available when the petition was prepared, no copy accompanied the motion for a continuance.

International Union Action -

The second paragraph of the petition went on to assert that the SEIU International Executive Board approved the recommendations of the hearing officer. The deficiency notice pointed out that no minutes of a meeting or other documentation had been provided to the Commission, so that it was impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

While the specific reference to the transaction supports an inference that information was readily available when the petition was prepared, nothing accompanied the motion for a continuance.

DECISION 8064 - PECB

PAGE 7

Alleged Transfers of Jurisdiction Among Locals -

The second paragraph of the petition concluded with, "Local 6, Local 1199 [sic] and Local 775 transferred jurisdiction over long term care workers to Local 775." The deficiency notice pointed out multiple uncertainties, including that:

1. Local 1199NW was not a party to the proceedings leading to *Home Care Quality Authority*, Decision 7823, and certainly was not certified as exclusive bargaining representative of any employees in that proceeding, so it was not clear how it could have had any relevant jurisdiction to transfer; and
2. Local 775 was described earlier in the same paragraph as being newly chartered, so it was not clear how it had any relevant jurisdiction to transfer.

Local 775 was directed to clear up these mysteries by filing and serving an amended petition in this proceeding.

While the specific reference to the transaction supports an inference that information was readily available when the petition was prepared, nothing accompanied the request for a continuance.

Appointment of David Rolf and Suzanne Wall -

The third paragraph of the petition asserted that David Rolf was "named President of Local 775, pursuant to the SEIU constitution" and that Suzanne Wall was "named Secretary-Treasurer of Local 775" on an unspecified date, but did not cite any authority for such appointments in the SEIU constitution and bylaws. The deficiency notice pointed out that no minutes of a meeting or other documentation had been provided to the Commission, so that it was impossible to evaluate another of the sources of authority relied upon by Local 775 in making its request.

DECISION 8064 - PECB

PAGE 8

While the specific reference to the transaction(s) supports an inference that information was readily available when the petition was prepared, no documentation accompanied the request for a continuance.

The Bargaining History -

The fourth paragraph of the petition asserted that a collective bargaining agreement had been negotiated for the bargaining unit described in *Home Care Quality Authority*, Decision 7823, but the deficiency notice pointed out that no copy had been filed with the petition. This paragraph also asserted that David Rolf and Suzanne Wall represented the HCQA bargaining unit throughout the negotiations, but the deficiency notice pointed out that details were lacking as to their migration from Local 6 to Local 775.

The request for continuance was accompanied by a document titled as follows:

Collective Bargaining Agreement
between
SEIU Local 775
and
Washington State
Home Care Quality Authority
Effective December 20, 2002 to June 30, 2005

Page 1 of that document sets forth a "Recognition" clause as follows:

Service Employees International Union Local 775 ("Union") is recognized by the Washington State Home Care Quality Authority ("HCQA" or "Employer") as the sole and exclusive representative for all individual providers of in-home care services ("homecare workers" or "caregivers") as defined in RCW 74.39A.240 and under the provisions of

DECISION 8064 - FECB

PAGE 9

74.39A.270 in Washington State employed by the Home Care Quality Authority, and for any other home care worker employed by the Home Care Quality Authority, for the purposes of collective bargaining, excluding supervisors, confidential employees, office staff, and guards.

The document includes an "Appendix 1: Side Letter of Agreement between SEIU and HCQA Regarding Ratification" which sets forth detailed procedures for mail balloting among all "home care workers, regardless of their membership or 'card signer' status with the union to vote to ratify or reject" the contract, along with the consequences of that voting process.⁴ No details are provided, however, as to the conduct or results of such a vote.

Notwithstanding the effective date stated on the contract cover, signatures were affixed under the following language:

Article 20 Term of the Agreement

Except for those provisions requiring a legislative appropriation of funds, this agreement shall go into full effect subsequent to ratification by the Union and upon the date of signing by the parties, and shall continue in full effect until June 30, 2005. Those provisions requiring a legislative appropriation shall go into full effect on July 2003 if approved.

The parties shall begin negotiations for a successor agreement no later than July 1, 2004. If no successor agreement has been reached, or if the legislature has not approved appropriations required to fund the economic provisions of a successor agreement as of June 30, 2005,

⁴ In particular, paragraph "g." of the appendix includes: "The Union shall count ballots not earlier than December 16, 2002. If a majority of those voting casting [sic] ballots vote 'Yes,' then this Agreement shall be considered ratified. If a majority of those workers casting ballots vote 'No,' then the Union shall agree to the Employer's proposal relating to Union Dues and Maintenance of Membership dated 10/28/02."

DECISION 8064 - PECB

PAGE 10

all of the terms of this Agreement shall automatically be extended until such time as a new Agreement is concluded.

In witness whereof, the Washington State Home Care Quality Authority and the Service Employees International Union, Local 775, AFL-CIO have entered into this agreement on this 13th day of January, 2003.

Collective bargaining agreement at 19 (emphasis added).⁵ Now that a copy of the contract has been filed, the specific date listed for the elevation of Sergio Salinas to the presidency of SEIU Local 6 (in January of 2003) raises a question as to how David Rolf was acting for SEIU Local 775 prior to and during December 2002.⁶

The Request for a Continuance

The Commission and its staff members act on continuance requests under WAC 391-08-180, which includes:

⁵ By its recitation here, the Executive Director does not rule that the quoted language is lawful. In particular: The italicized language in the second paragraph may conflict with RCW 41.56.070 (which includes: "Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement") and/or with RCW 41.56.123 and RCW 74.39A.270(3), where the statute specifies the parties' rights beyond contract expiration.

The discrepancy between the effective date on the contract cover and the date of signature may conflict with the "all collective bargaining agreements must be written and signed" holding in *State ex rel. Bain v. Clallam County*, 77 Wn.2d 542 (1970), and with RCW 41.56.950 (which only permits parties to make their second and subsequent contracts retroactive).

⁶ The third paragraph of the petition had asserted that Sergio Salinas "became President of Local 6" as of January 6, 2003. The deficiency notice pointed out that the information provided is consistent with the Commission's current records. Notice was taken of the Commission's docket records.

DECISION 8064 - PECB

PAGE 11

(1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(emphasis added.) In this case, the requested 31-day extension would change the due date for response to the deficiency notice to June 2, 2003.

Several assertions made in the April 28 letter do not, on their face, constitute good cause for a continuance:

- In stating that, "Much of the information is available and will be provided . . ." the April 28 letter is subject to an interpretation that the union will refuse to provide some of the requested information even in June.
- In stating that, "[S]ome information has been difficult to produce . . ." the April 28 letter provides basis for concern about the legitimacy of factual assertions seemingly made without qualification or hesitation in the petition.
- In stating that "Officers and staff of SEIU 775 have been and will continue to be fully engaged with the State Legislature . . ." the April 28 letter assumes that lobbying to secure funding for the collective bargaining agreement is entitled to a higher priority than responding to questions about the legitimacy of Local 775 in the bargaining relationship, even though the Legislature has concluded its 2003 Regular Session and will not return for a special session until May 12, 2003.
- In stating that, "Officers and staff of SEIU Local 6 . . ." are inhibited by a temporary restraining order, the April 28 letter raises the spectre of a schism or other new issue in this case which cannot be evaluated without more information.

DECISION 8064 - PECB

PAGE 12

Even then, the April 28 letter suggests that crisis would have passed by April 23.

- Paragraph 5 of the April 28 letter injects a whole new set of facts dating back to 1980 into the equation, without providing any backup details or documentation.

The only assertion that clearly provides good cause for the requested continuance is in paragraph 6 of the April 28 letter, which indicates that the union's attorney has been unavailable during the week of April 28 through May 2 due to a long-standing out-of-state commitment.

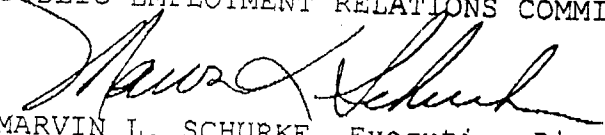
NOW THEREFORE, it is

ORDERED

The due date for copies of the documents referenced in the petition and other materials described in this order is extended to Friday, May 9, 2003.

Issued at Olympia, Washington, on the 1st day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

Affidavit of Norman Gleichman

Norman Gleichman, having first been duly sworn, deposes and says:

1. I am a member of the District of Columbia Bar and am employed by the Service Employees International Union, AFL-CIO, (SEIU) in Washington, D.C., as an Associate General Counsel. As part of my duties, I was assigned to assist to the Hearing Officer in the SEIU hearing on Washington State building services and health care jurisdiction.

2. The delegates to the 22nd SEIU International Union Convention in May 2000 adopted a New Strength Unity Plan to build power for SEIU members and their families. A critical part of that plan was a Jurisdiction Policy and Procedure, set forth in the Decide Report prepared by the President's Committee 2000 after an extensive period of review, dialogue with members and union leaders and hearings across the nation to explore the question of how SEIU can better secure improvements for its members. With respect to the specific question of jurisdiction, the Committee concluded that "industry-based jurisdiction gives local unions the best opportunity to be recognized by the public, elected officials, industry employers, and workers as the principal voice of workers in that industry and geographic area." The delegates to the 2000 Convention adopted the Decide Report.

3. The jurisdictional standard adopted by the International Convention provides that a local's jurisdiction should be focused on one industry within the most logical geography and discourages locals representing members in different and unrelated industries. In short, the policy of the International Union, as democratically expressed at the May 2000 Convention, is to combine members employed in a particular industry in a

manner that mirrors the structure of that industry, minimizes fragmentation and, as a result, increases bargaining power within the industry. Local unions that represent workers in a single industry can better represent those members because the local union is focused completely on that industry.

4. Article XIV, Section 2, of the SEIU Constitution and Bylaws states in pertinent part:

The International Executive Board shall establish the policy and procedures governing the issuance of charters and shall determine all questions of jurisdiction between Local Unions. . . . If there be any contested question in connection with the matters referred to in this Section, action of the International Executive Board shall be after a hearing upon reasonable notice before it or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board

5. Article XIV, Section 3, of the SEIU Constitution and Bylaws provides that the International Executive Board may "consolidate or merge existing Local Unions under such terms and conditions as the International Executive Board may determine when in the opinion of the International Executive Board the interests and welfare of the International Union and the membership thereof would be better served by such action." Thus, the International Executive Board is authorized to consider questions of jurisdiction and to consolidate, divide or transfer units between existing local unions where it is in the best interests of the union and its members to do so. A copy of Article XIV of the SEIU Constitution and Bylaws is attached as part of Exhibit 1.

6. Further, with respect to the due process requirements for altering a local union's jurisdiction, Article XIV, Section 4, states as follows:

Such merger or consolidation of existing Local Unions shall be conditioned upon the consent of the Local Unions or shall be

effectuated after a hearing upon reasonable notice before the International Executive Board or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

7. Since the 2000 Convention, SEIU has merged, divided and transferred units between local unions in many areas of the country in order to carry out the mandate of the 2000 Convention. Even before the proceedings in Washington State, SEIU had reorganized local union jurisdiction in many parts of the country either by voluntary agreement of the local unions involved or after conducting the due process hearing required by the SEIU Constitution and Bylaws. In some cases, new local unions were chartered where necessary to carry out the Convention mandate. For example, local union jurisdiction was reorganized for building service workers in California, Washington, D.C., and New York City and southern Connecticut; for building services, health care and public employees in Chicago and Pennsylvania; for health care employees in Southern California; and for public sector employees in Michigan. Since the proceedings in Washington State, the International Executive Board has ordered a reorganization of jurisdiction of local unions representing the health care, building service and public employees in Massachusetts.

8. On October 25, 2002, the SEIU International Secretary-Treasurer issued a notice to Locals 6, 925 and 1199NW that on November 7, 2002, at a designated time and place there would be a hearing on "issues of local union jurisdiction over health care and building services employees in the State of Washington, including possible merger or transfer of bargaining units." The International Executive Board voted to appoint Josie Mooney, a member of the Board and Executive Director of Local 790 in San Francisco, as the Hearing Officer.

9. Normally, in SEIU jurisdictional hearings, all locals in the relevant geographical area that might have an interest in the proceeding are sent a notice of the hearing. In this case, Local 6 was noticed because, at the time, it represented both building service and health care employees. Local 1199NW was noticed because it represented health care employees, and Local 925 was noticed because it represented some health care employees at the University of Washington.

10. The hearing was held as scheduled. It was well attended. Presentations were made to the Hearing Officer by each of the three local unions and by a number of individual members.

11. The Hearing Officer subsequently issued a Report and Recommendation to the International Executive Board. The pertinent portions of the Report and Recommendation are attached hereto as Exhibit 2. On November 18, 2002, the International Executive Board was polled on the Hearing Officer's Report and Recommendation on Washington State building services and health care jurisdiction and voted to adopt it.

12. Consistent with the democratically adopted mandate of the 2000 SEIU Convention, the Hearing Officer recommended that jurisdiction in Washington State be reorganized so that there would be four major local unions with each focused on a particular industry: Local 6 representing building service workers; Local 1199NW representing workers in acute care hospitals and clinics and mental health workers; Local 925 representing workers at the University of Washington and other non-health care public sector employees; and a new local union (subsequently designated as Local 775) representing long-term care workers.

13. As result of this decision, the acute care units in Local 6 were transferred to Local 1199NW and the long-term care units in Locals 6 and 1199NW were transferred to the new Local 775. Local 925 retained its jurisdiction over non-health care public employees and the employees at the University of Washington.

14. With respect to the chartering of new or provisional local unions, Article XIV, Section 5, states:

The International President may designate such coordinators and establish such organizing committees or provisional Local Unions for the purpose of organizing workers, with or without requiring the payment of dues, initiation fees or per capita tax, as he or she may deem advisable, and the International President shall be authorized and empowered to name provisional officers for and to expend and control the finances of such organizing committees or provisional Local Unions. The International President shall thereafter report such matters to the International Executive Board.

15. Pursuant to Article XIV, Section 5, Local 775 was issued a charter, and on December 13, 2002, the International President appointed David Rolf as President of Local 775 and Suzanne Wall as Secretary-Treasurer. The letter announcing the issuance of the charter and appointing the President and Secretary-Treasurer of Local 775 is attached as Exhibit 3. Mr. Rolf and Ms. Wall were previously President and Vice

President respectively of Local 6 but their term of office expired in January 11, 2003.

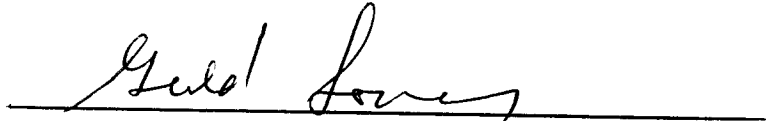
Further, affiant sayeth not.


Norman Gleichman

Dated: May 7, 2003

I, Gerald Sommer, a Notary Public in and for the District of Columbia, do hereby state that Norman Gleichman personally appeared before me in said District of Columbia being personally well known to me as the person who executed the said instrument, and acknowledged the same to be his/hers act and deed.

Given under my hand and seal this 7 day of May 2003
Gerald Sommer, Notary Public.



MY COMMISSION EXPIRES
APRIL 14, 2004

SEIU 2000

Constitution and Bylaws



SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Article XIV ISSUANCE OF CHARTERS

Section 1. Twenty-five (25) or more persons within the jurisdiction of this International Union may apply to the International Secretary-Treasurer for the issuance of a charter. In any event, the International President or the International Executive Board may issue a charter whenever it is deemed advisable. The application for a charter shall be accompanied by the required initiation fees and charter fee.

*Application
for charter*

Section 2. The International Executive Board shall establish the policy and procedures governing the issuance of charters and shall determine all questions of jurisdiction between Local Unions. Local Unions in existence at the time of the formation of the International Union shall retain the jurisdiction which they held at that time. If there be any contested question in connection with the matters referred to in this Section, action of the International Executive Board shall be after a hearing upon reasonable notice before it or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

*Chartering
procedures
and
jurisdiction*

*Contested
questions*

*Consolidation
and merger*

Section 3. The International Executive Board may consolidate or merge existing Local Unions under such terms and conditions as the International Executive Board may determine when in the opinion of the International Executive Board the interests and welfare of the International Union and the membership thereof will be better served by such action.

*Merger
hearings*

Section 4. Such merger or consolidation of existing Local Unions shall be conditioned upon the consent of the Local Unions or shall be effectuated after a hearing upon reasonable notice before the International Executive Board or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

*Provisional
organizations*

Section 5. The International President may designate such coordinators and establish such organizing committees or provisional Local Unions for the purpose of organizing workers, with or without requiring the payment of dues, initiation fees or per capita tax, as he or she may deem advisable, and the International President shall be authorized and empowered to name provisional officers for and to expend and control the finances of such organizing committees or provisional Local Unions. The International President shall thereafter report such matters to the International Executive Board.

SERVICE EMPLOYEES INTERNATIONAL UNION

In re: Jurisdiction over
Washington State Health Care
and Building Service Workers,
and Internal Needs of
SEIU Local 6

Hearing Officer:
Josephine Mooney

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

I. Introduction

Pursuant to Article VIII, Section 7(g) and Article XIV, Sections 2, 3 and 4, of the Constitution and Bylaws of the Service Employees International Union ("SEIU"), the International Executive Board ("IEB") and International President Andrew Stern called a hearing to review the jurisdiction of local unions in Washington State over health care and building services workers, including possible merger and/or transfer of bargaining units, and to examine the internal needs of SEIU Local 6. The IEB and President Stern appointed me as Hearing Officer. Notice of the hearing was given to the officers of Locals 6 and 925, and District 1199NW. A hearing was held on November 7, 2002, at the Hilton Hotel in Seattle, Washington. Norm Gleichman, Associate General Counsel of the International Union, assisted me at the hearing. I kept the record open until November 14, 2003, to allow for additional input from attendees and members who could not attend the hearing. This report and recommendation addresses only the jurisdiction of Washington State SEIU locals over the health care and building services industries.

In opening the hearing, I emphasized that our inquiry was not related to the job performance of any local or local union official. Instead, I noted that the purpose of the hearing was to find facts necessary to determine how SEIU local unions representing building services and health care workers in Washington could best be organized to build industry power, organize new members and serve current members more effectively.

Each affected local union that so desired was provided the opportunity to be heard at the hearing and to submit any documents that it wished me to consider. Locals 6 and 925 and District 1199NW made presentations at the hearing. Local 6 and District 1199NW also responded in writing to the Request for Information issued by the International Union in connection with the jurisdiction issue. Steve Askin of the International Union's Research Department made a presentation on the International Union's policies on jurisdiction established by the 2000 Convention, and a profile of the health care and building services industries in Washington. Howard Croft, Director of the Home Care Sector of the Health Care Division for the International Union, made a presentation on the importance of establishing local unions that focus on the health care industry in particular markets. Mike Garcia, President of SEIU Local 1877 and Co-Chair of the Building Services Division, made a presentation on the programs and experiences of the Building Service Division and on the structure of the real estate industry in Seattle and on the West Coast. In addition, a number of members made statements concerning

jurisdiction and the internal needs of Local 6. Three post-hearing submissions were received and reviewed, including submissions from Local 6 Secretary-Treasurer Sergio Salinas and District 1199NW President Diane Sosne. A transcript of the hearing was made by a court reporter.

II. Jurisdiction of Washington State SEIU Local Unions

A. The International Union's Policies on Jurisdiction Established by the 2000 Convention

Article XIV, Section 2, of the SEIU Constitution and Bylaws provides that the IEB "shall establish the policy and procedures governing the issuance of charters and shall determine all questions of jurisdiction between Local Unions." This section authorizes the IEB to take action on jurisdictional questions after a hearing.

In May 2000, the delegates to the 22nd SEIU International Union Convention adopted a New Strength Unity Plan to build power for SEIU members and their families. A critical part of that plan was a "Jurisdiction Policy and Procedure," set forth in the "Decide Report" prepared by the President's Committee 2000. The report was issued after an extensive period of review, dialogue with members and union leaders and hearings across the nation to explore the question of how SEIU can better secure improvements for its members. Concerning jurisdiction, the Committee concluded that "industry-based jurisdiction gives local unions the best opportunity to be recognized by the public, elected officials, industry employers and workers as the principal voice of workers in that industry and geographic area." The report concluded that locals that are focused on one industry rather than two or three can more effectively represent the workers in that industry. By focusing on one industry, locals come to know their industry better, become

known in the industry as the voice for workers in the industry, and don't face the problem of competing demands from workers in different industries. The delegates to the 2000 Convention adopted the Decide Report.

The jurisdictional standard adopted by the International Convention provides that a local's jurisdiction "should be focused on one industry within the most logical geography" and discourages fragmentation of jurisdiction among locals that lack sufficient density to affect working standards. In short, the policy of the International Union, as expressed at the May 2000 Convention, is to combine members employed in a particular industry in a manner that mirrors the structure of that industry, minimizes fragmentation and, as a result, increases bargaining power.

B. Building Services

1. Policy and Experience of the Building Services Division

Consistent with the policy of the 2000 SEIU Convention to establish the strongest possible industry-based local unions, the Building Services Division developed a pledge that outlines the principles and standards for building effective building services locals. The key principles of the pledge are the following:

- There should be one local per market. Because building owners and contractors compete within a particular geographic area, local unions need to mirror that structure so that one local has jurisdiction for all the building service workers in that market;
- Each local should have one contract and uniform enforceable standards throughout its market; and
- Building service locals should be focused on building service and have sufficient numbers to sustain an effective building service program.

The Building Services Division standards/pledge also states that, to truly win for our members, we need to increase union density in a given market to 90%.

The Building Services Division's experience over the past several years, as detailed by Mike Garcia, has taught us the importance of having one local in each market. Brother Garcia explained that, thanks to the tremendous focus of building services local unions, SEIU organized close to 10,000 building services workers in 2001. In 2002, SEIU has organized 8,900 members to date. The Building Services Division has set a goal of reaching 90% density in commercial cleaning in each city with a key building services market.

Most recently, in Boston, SEIU won health insurance for one thousand part-time members who previously had no access to health insurance, and established Local 615, to focus on the building services industry. These victories are incredibly important as SEIU building services locals move into bargaining in 2003. Across the Western Region and across the country, we have lined up our master contracts to coordinate bargaining. Starting in April 2003, contracts covering some 90,000 workers will expire. This includes the master contract for Local 6.

Unfortunately, however, the economic reality SEIU now faces is very different from what the Union faced the last time we went into bargaining. In 2000, the economy was strong and the real estate market was booming. Now we face an economy that is in a downward spiral. As more and more companies go bankrupt, lay off employees, or simply cut back, building owners are faced with higher vacancy rates and pressure on rental rates. While three years ago, building owners were not terribly concerned about passing on wage increases for hard working janitors to their tenants, now they are extremely resistant to any move that would increase costs. For

example, Equity Office, the largest building owner in the country, recently announced a plan to cut \$50 million from its operations budget. We have already seen the impact of this in several of our markets where Equity has made the decision to cut cleaning service, and our members' jobs, or to try and save money, as Equity did in Seattle, by going non-union in suburban buildings.

Although in the end successful, the Boston strike we just lived through demonstrates the difficult situation our building services locals are going to face next year. Despite tremendous political and community support, the unity of our members and staff and resources that poured into Boston from all over the Division and the Union, it took a bitter 4 week strike to win. Now, as we face a recession and growing office vacancies in many of our markets, we will have to fight harder, smarter and with even greater unity to build on the gains we have won for our members.

The Boston fight demonstrated that, while it is possible to win for our members in an economic downturn, it is only possible with a tremendous amount of energy and focus. Brother Garcia testified that the 2003 campaign to maintain existing benefits plus win increases for our members is going to be a vicious fight.

Success in bargaining in 2003 will be closely linked to our ability to increase our numbers and strength. We must increase our density in the Seattle area so that we are strong going into contract negotiations. Brother Garcia explained that experience has shown that in building services, the only way to win these kinds of fights is with a high degree of focus. If we want to successfully increase working standards for SEIU building services members in Seattle, we will need to immediately begin to prepare a campaign to reach out to politicians, community and

building owners. Brother Garcia pointed out that preparing for such a campaign takes a tremendous amount of time from local union staff, members and leaders.

A strong focus of attention and resources on the very difficult task of winning in the building services industry is even more critical now in this difficult economy. Across the country, eight SEIU locals representing over 90% of our membership are focused exclusively on building power for building services workers. While not all SEIU building services locals are very large, the Building Services Division structure has made it possible for stand-alone locals to do well. In each of three SEIU regions the Union has one very large local (called an "anchor local") where SEIU has a concentration of both resources and membership. In the East this local is 32BJ, in the Central Region it is Local 1 and in the West, Local 1877.

This structure works because our industry is dominated by many national and regional companies. This is true for both cleaning contractors and building owners. Because of the overlap with employers, the membership and the leadership of each of our anchor locals understands that their continued success is tied to the success of all the members in the region. By working together to engage these national and regional players, the anchor locals and the other locals in the region speak with one voice and are able to exert leverage much more effectively.

Local 26 is an example of a smaller local that is receiving effective support from an anchor local. Local 26 is currently in the middle of a breakthrough campaign to organize security officers. While the campaign is not yet over, Local 26 has been able to make progress because Local 1 is intimately involved. Security employers and building owners are taking SEIU much more seriously because they know that the problems that they have in Minneapolis might well

become problems in Chicago — and they don't want to back into a fight with Local 1.

Furthermore, Local 1 has the capacity to train Local 26's staff and to help develop the security team in Minnesota.

2. The Seattle Real Estate Market and Local 6's Current and Potential Strength in the Building Services Industry

Most janitorial contractors in Seattle are national or regional contractors that are under SEIU contracts in other cities across the country; 31% of the major contractors are national or regional compared to 17% that only operate in Washington. National and regional players also dominate commercial property ownership in the state of Washington. For example, Equity Office Properties, the largest owner in Seattle, is also a major office owner in Chicago, Boston and California. In Washington State, Equity has almost 10 million square feet of office space compared to the next largest local player, Martin Selig, who owns over 3 million square feet and just announced he is going non-union downtown. Similarly, commercial real estate property managers in Washington are dominated by companies that SEIU faces in other cities throughout the U.S.

Local 6 currently has 2,664 members in the Building Services Division, 2,300 of whom clean commercial real estate. The rest include some in-house janitors, airport passenger service workers and parking lot attendants. SEIU density is about 90% in downtown Seattle, 53% in the Eastside, and 41% in the greater Seattle area in buildings above 50,000 square feet. There are certain key pockets of office space where density is even lower. Downtown Bellevue, for

example, is considered a premier office market outside of Seattle but has over 4 million square feet of non-union work compared to only 3 million union.

We know from our experience in other cities that dramatically increasing union density in greater Seattle is the only lasting way to win significant wage and benefit increases for Local 6 janitors. If the local builds its density to 90% in Seattle and the surrounding areas, organizes janitors in hi-tech manufacturing where we already have a base, the local could add over 3000 or so building service workers to its base. Assuming Local 6 reaches the Division's density target, it would probably be larger than several other stand-alone building service locals. For example, Local 26 has approximately 4200 members, Local 36 has approximately 4500 members and Local 82 has 4,600 members.

There are several challenges to raising standards for commercial real estate janitors in Seattle and the surrounding areas. In Washington State, as elsewhere in the country, the real estate industry has been hit hard by the downturn in the economy, including the high-tech downturn and the relocation of Boeing to Chicago. Rental rates continue to fall and vacancy rates continue to climb. The downturn could likely impact our ability to maintain market share. Recently, for example, area building owners have invited non-union contractors to submit bids and some, like Equity and Clarion, have taken work non-union. The downturn also will present unique challenges for raising standards as Local 6 heads into 2003 bargaining for the 2,300 commercial real estate cleaners.

Finally, another challenge to raising standards for janitors is the current fight with Equity Office in the Pacific Northwest. Equity recently chose to contract with a non-union contractor in the suburbs for buildings that had been previously cleaned union. Equity is the largest building

owner in Seattle and the nation. Due to its size and importance, the entire Division is taking this decision very seriously. If Equity is successful in its attempts to go non-union in Seattle, it will dramatically lower density and standards throughout the Seattle area and may encourage the company to challenge SEIU in other markets across the country.

There is a plan to overcome these difficult challenges. The Division intends to organize two of the largest non-union contractors in the Seattle area. Victories in these campaigns would increase market share and bring in hundreds of new members. Also, SEIU is working closely with Local 1877, the Western Region anchor local, to develop an aggressive organizing program that engages union and non-union contractors and their clients across the region and across the United States.

Finally, a massive effort by Local 6 will be required to achieve a successful outcome in the negotiations over a new master contract in the spring of 2003. In view of the current depressed state of the real estate market, Local 6 will need assistance from Local 1877, as well as from the International Union, to win for workers in this critical round of negotiations. Local 6 will need to begin now to prepare for those negotiations, which will require focus, time and attention.

C. Health Care

1. SEIU Health Care Policies and Washington Health Care Markets

Howard Croft testified that, in applying the New Strength Unity Plan in the health care industry, SEIU has been guided by the principle that local unions should organize and represent all workers in an industry or industrial sector to achieve the best standards on wages, benefits,

and improved working conditions, including adequate staffing for hospital workers. Brother Croft explained that the three recognized sectors in the Health Care Division are the acute care sector (also referred to as the hospital or health systems sector); the nursing home sector; and the home care sector.

The nursing home and home care sectors are frequently referred to jointly as the long term care sector. Long term care is made up of providers of a continuum of care. Home care providers provide consumers with a service that allows them to remain in their homes. Nursing homes provide a broader level of care around the clock to those who cannot be cared for at home. Brother Croft pointed out that both the nursing home and home care sectors have a common payer, a common regulator, and common stakeholders.

David Rolf testified that the common payer for both sectors of the long term care industry is the Medicaid system, which accounts for 70% of nursing home funding in Washington and 90% of home care funding. Brother Rolf explained that funding for nursing homes, home care, developmental disabilities services and other long term care services is set by the governor and the state legislature through the budget process. The funding is administered by the Disabilities and Long-Term Care Administration of the State Department of Social and Health Services ("DSHS"). Because this common funding source is ultimately political in nature, the governor, the legislature, and DSHS hold much more power over worker standards in all parts of the long term care sector than does any single agency, nursing home, disability service, or other long term care provider. In practice, virtually all economic issues affecting all long term care workers are decided in the state capital, Olympia.

DSHS also regulates both the nursing home and home care sectors through its rulemaking authority, provides for ombudsmen and other quality control measures, establishes payment rates subject to legislative funding, and coordinates service delivery either directly or through contracts with area agencies on aging. In addition, in Washington, eligibility for home care programs for the elderly and disabled is linked to client eligibility for nursing home care or residential care for the developmentally disabled. Furthermore, nursing home and home care workers share a common demographic and economic profile. The vast majority of both groups are direct caregivers without professional degrees or licenses. Workers across both sectors are likely to earn between \$7.50 and \$12.00 per hour and to lack employment-based family health care coverage. Turnover and labor market instability is common across both sectors, and workers are disproportionately middle-aged women who are more likely than the average Washington resident to have been born outside of the United States.

Finally, advocacy organizations and coalition partners active in the areas of home care, nursing homes, and developmental disabilities are substantially the same groups. Any successful union organizing effort among non-union workers anywhere in Washington's long term care system will depend on strong community support and alliances with the same organizations.

The Washington health care market provides SEIU with tremendous challenges and opportunities. As detailed in the testimony of Steve Askin, although a majority of hospitals in Washington are organized by Locals 6, District 1199NW, and non-SEIU unions, 28 acute care facilities remain unorganized. The goal of the Health Care Division is to take the acute care market 100% union, and to do so before our competitors, who are already represented in our market, move to further organize the hospital sector. As Diane Sosne testified, District 1199NW

has ambitious plans to improve working standards in Washington hospitals. Sister Sosne explained that District 1199NW is working to get a single health benefit package adopted by all of the health systems employers, and to establish the right of hospital workers to take their accrued benefits with them should they become employed at a different covered facility. She also detailed District 1199NW's efforts to create a training fund to enhance worker mobility, increase wages, give hospital employees a voice in staffing levels, and improve health and safety in the hospital workplace. Sister Sosne also described the critical need for a strategy to deal with the particular problems and opportunities presented by the hospitals affiliated with Catholic institutions. In addition, she emphasized the importance of achieving common expiration dates for hospital contracts, and pointed out that Local 6 has three hospital contracts coming up for renegotiation in 2003, while District 1199NW has a number of contracts expiring in 2004.

The long term care market also presents important challenges and opportunities. The vast majority of Washington nursing homes remain unorganized. Organizing this sector is a top priority of the Division. There is one major employer in Washington's long term care system that is also a major employer in the acute care sector. The Providence Health System own or operates eight long term care facilities in Washington, including four nursing homes. Providence also operates a large hospital system. The Providence nursing homes and other long term care enterprises are operated by a separate division of Providence Health System, and most Providence long term care facilities stand alone as long term care providers, not managed by or fully integrated with the Providence hospitals. Most of the Providence long term care facilities are highly Medicaid dependent.

The home care sector in Washington presents special challenges. In the week prior to the hearing in this case, Local 6 reached an historic first agreement on a wage and benefit package for home care workers with Washington's new Home Care Quality Authority. The new contract includes pay increases of \$2.07 per hour over the two-year life of the agreement, health coverage for workers who work half time or more, and workers' compensation coverage for the first time. However, under Washington law, the contract cost must be submitted to the state legislature under a "fast track" procedure in which the legislature must vote the funding proposal up or down, without amendments. If funding is rejected, the parties would have to return to the bargaining table.

The fight for funding the contract will be hard fought. Complicating the picture is the current budget deficit of approximately \$2 billion, as well as this month's elections, which have placed the leadership of the state legislature in doubt. A local focused exclusively on the needs of long term care workers will be in the best position to mobilize politically, at all levels, with assistance from the International Union, to get the legislature to fund the home care workers contract. The estimate is that, if the contract is funded in the upcoming legislative session, it will still take until mid-2003 before the home care workers become full, dues-paying SEIU members.

3. Current SEIU Local Union Jurisdiction Among Washington State Health Care Workers

SEIU Local 6 represents 4,796 members at acute care facilities in Washington. In addition, Local 6 represents 149 long term care workers at 3 facilities, and 1,445 home care workers. A number of important health systems collective bargaining agreements are set to

expire later this year and in 2003. Local 6 is heading into critical negotiations with these employers. The two Providence-run long term care facilities whose workers are represented by Local 6 are stand alone facilities. On August 16, 2002, Washington's independent provider home care workers voted overwhelmingly to join SEIU in an election conducted by the Public Employment Relations Commission. This bargaining unit includes 26,000 employees.

SEIU District 1199NW contains only members in the Health Care Division. It represents 8,222 members in hospital facilities and 162 nursing home members. The nursing home workers are employed by Providence Mother Joseph Care Center in Olympia, a stand-alone nursing home that is part of the Providence long term care system.

IV. Implementation of the New Strength Unity Plan by Washington Local Unions

At the time of the 2000 SEIU Convention in Pittsburgh, Pa., there were 10 SEIU local unions in Washington representing approximately 30,000 workers. Local 6 was an amalgamated local representing 13,000 workers in all three SEIU divisions: janitors, home care and nursing home workers, hospital workers in the service, technical and licensed practical nurse classifications, and public sector workers. At that time District 925 was a national local that represented publicly funded higher education employees in Washington. District 1199NW represented approximately 6,500 health care workers, principally hospital and mental health workers with a concentration among nurses and other professionals. Kim Cook testified that, after adoption of the New Strength Unity Plan, a series of discussions took over several months among Washington local unions that led to the creation on July 1, 2001, of a new local union in

Washington State for public employees, Local 925. Locals 6, 114, 120 and District 925 transferred public sector members into this new local.¹

During this same period of time, Washington local unions began discussions on how to carry out the New Strength Unity program in the Health Care Division. On April 13, 2001, Local 6 and District 1199NW entered into a "Joint Statement of Vision and Principles." In the Joint Statement, both Locals committed to the principle of achieving organizing victories and bargaining power to win the victories necessary for working people by creating statewide locals that can focus their political, financial and staff resources in core industries. The Joint Statement recites Local 6's commitment to begin the necessary discussions and actions that will result in moving acute care and mental health members of Local 6 to District 1199NW.

One of Local 6's hospital units that it intends to transfer to District 1199NW pursuant to the understanding between the two locals is the LPN unit at Providence Centralia Hospital. That hospital contains within it an unorganized nursing home known as Rosewood Manor. This home is integrated into the operation of the hospital and employees assigned to the home could be part of a hospital bargaining unit.

¹ Among Local 6's public sector members are three units of attorneys who work for publicly-funded non-profit agencies that provide public defender services for several Washington counties. These members were never transferred from Local 6 to Local 925. Following the hearing, I received a letter from Locals 6 and 925 requesting me to address jurisdiction over these members and recommend a transfer from Local 6 to Local 925. However, as noted above, the subject matter for this hearing did not include public sector jurisdiction, and accordingly I have no authority to reach this question. Nevertheless, I urge Locals 6 and 925 to discuss the proper placement of these members consistent with the New Strength Unity Plan.

The parties did not agree on a fixed date by which the transfer of health care members from Local 6 to District 1199NW would occur. Various dates have been mentioned as possible targets since discussions among the locals began. The initial assumptions were that the transfer would take place sometime between late 2001 and mid-2002. As of the date of the hearing, only eight members had been transferred.

As explained by David Rolf, the delay in transferring Local 6's health care members has been caused by the same consideration that led the locals to propose, as a temporary measure, that the long term care workers and the building service workers be placed in the same local – Local 6. That consideration was a concern by local leaders that a local comprised of only building service members would not be strong enough financially to make it on its own. For that reason, it was felt that the transfer of the Local 6 hospital workers to District 1199NW should await the securing of a funded contract for Local 6's home care members and the commencement of their payment of dues as members in good standing of Local 6. This view was apparently the basis of statements such as those contained in the Organizing Resource Agreement between Local 6 and the International Union which assumed that the long term care workers would belong to Local 6.

However, as hearing officer, my duty is to determine as best I can what jurisdictional arrangements will create the best prospects for winning bargaining, organizing and political victories for workers in the future. My decision is not dictated by prior jurisdictional agreements or assumptions by local unions or the International. A more recent analysis of Local 6 income and expenditures indicates that the assumptions underlying the earlier belief in the problems

associated with a stand-alone Seattle building service local may not be valid. Brother Rolf testified that, in fact, Local 6's building services members are helping to subsidize the long term care programs of the Local.

VI. Discussion and Recommendations

A. Jurisdiction

I believe and recommend that the home care and nursing home workers currently in Local 6 be transferred to a new local union that will focus exclusively on long term care workers, and that the newly organized unit of 26,000 home care workers be assigned to that new local as well. The evidence is overwhelming that the nursing home and home care sectors in Washington are closely intertwined, and that workers in both sectors share a community of interest and commonality of characteristics. The ability to win for these workers will be greatly strengthened by placing them in a single local where they can bring their combined power to bear on the urgent priority of organizing the largely unorganized nursing home industry in Washington. If past history is a reliable guide, we can expect vigorous resistance by nursing home management to our organizing efforts. A local union that is intensely focused on this crucial organizing program stands the best chance of persuading nursing home workers of the importance of collective action, and of overcoming employer resistance.

Such a local will be ideally suited to the difficult and vital task of leading a sophisticated political campaign to achieve full funding of the historic agreement SEIU recently negotiated to

improve home care worker wages and working conditions. This fight must begin immediately, as the legislature will be considering the home care package in the session that will be convened in January 2003. In addition, both Brother Rolf and Brother Sergio Salinas, Secretary-Treasurer of Local 6, agreed that the building service and long term care members should ultimately be served by separate local organizations.

Because an aggressive campaign to pass the funding for this contract must begin at once, I recommend that the International Union charter this new local, with jurisdiction over Washington State long term care workers, by December 13, 2002, at the latest, and that Local 6's long term care members (i.e., home care and nursing home members) be transferred to the new local as soon as possible with the goal of uniting all long term care members by April 25, 2003, or as soon thereafter as feasible.

I also recommend that District 1199NW's Providence-affiliated nursing home unit at the Providence Mother Joseph Care Center in Olympia be transferred to the new long term care local as soon as possible following the issuance of its charter. If my recommendation is approved, Local 6's units owned or managed by Providence as stand alone facilities will be transferred to the new local. It makes sense for all of the Providence stand alone nursing homes to be in a single local, and for that local to be the new long term care local. Although the Providence nursing homes are part of the overall Providence system, they function much like other stand alone nursing homes and are not fully integrated into the Providence hospital system. The strength of our Providence nursing home members, when added to that of our other long term care members, will empower the new local to achieve the necessary political, organizing and bargaining victories necessary to convert the largely non-union nursing home industry in

Washington into an industry where we have the density to really impact working standards. As with the Local 6 long term care members, I recommend that the District 1199NW nursing home members in Olympia be transferred to the new local as soon as possible with the goal of uniting all long term care members by April 25, 2003, or as soon thereafter as feasible.

I recommend that District 1199NW have jurisdiction over the unorganized nursing home located on the premises of the Providence Centralia Hospital. If the IEB approves my recommendation, District 1199NW will have jurisdiction over that hospital's LPNs. Unlike the case of stand alone homes, employees assigned to work at the Providence Centralia nursing home are more fully integrated into the operation of the hospital, and may be in a bargaining unit with other hospital employees. Accordingly, it makes sense for District 1199NW to have jurisdiction over these potential members.

In connection with the transfers of long term care members to the new local, I recommend that Local 6 and District 1199NW enter into discussions with the new long term care local as soon as possible following the establishment of that local to work out the details of the transfers, and that the three locals reduce their agreement to writing. This agreement should provide for a process that will involve the transferring members in the transition to the new local. The agreement should also contemplate the transfer of members as soon as possible with the goal of uniting all long term care members by April 25, 2003, or as soon thereafter as feasible. I further recommend that the transfer agreement be submitted to me, preferably by December 31, 2002, but in any event no later than January 17, 2003, and that I retain jurisdiction over this matter to oversee the transfers and to resolve any disputed questions.

Further, I recommend that Local 6 and District 1199NW enter into discussions forthwith to effectuate the transfer of Local 6's health systems members to District 1199NW. The current arrangement of both locals with jurisdiction over health systems workers is contrary to the principles of the New Strength Unity Plan. At the hearing, all witnesses supported this transfer and emphasized the importance of getting input from members. In view of critical upcoming collective bargaining negotiations, uniting Washington's health care workers should be implemented as soon as possible. I therefore recommend that Local 6 and District 1199NW immediately work out the details of the transfer of these members, and reduce their agreement to writing. This agreement should provide for a process that will involve the transferring members in the transition to District 1199NW. The agreement should also contemplate the transfer of members by as soon as possible with the goal of uniting all Washington hospital workers by April 25, 2003, or as soon thereafter as feasible. I further recommend that the transfer agreement be submitted to me, preferably by December 31, 2002, but in any event no later than January 17, 2003, and that I retain jurisdiction over this matter to oversee the transfers and to resolve any disputed questions.

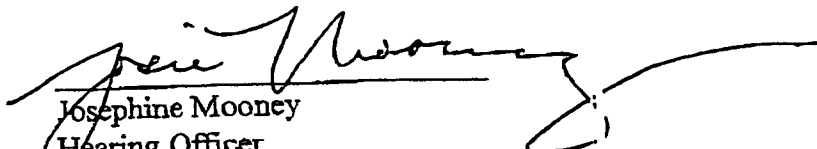
The transfer of Local 6's health care workers to District 1199NW and the new home care local, and the assignment of the newly organized home care workers to the new home care local, will leave Local 6 with jurisdiction and membership concentrated in the Building Services Division. I believe that, as a local union with its major focus on the building services industry, Local 6 will be able to successfully confront the enormous challenges facing building services members in the Seattle area. The testimony offered at the hearing demonstrates that Local 6 would be at least comparable in size to other SEIU building services locals around the country if

it achieved the requisite density in the greater Seattle market. In addition, the sole focus on the needs of building services members should enable Local 6 to better represent its building services members and follow the New Strength Unity program of political action and bargaining power that will allow Local 6 to win better working standards for Washington building services workers. Furthermore, Local 6's efforts in this regard will be enhanced by a closer relationship with anchor Local 1877 and the Building Services Division.

transfer agreement to the undersigned, preferably by December 31, 2002, but not later than January 17, 2003. The agreement should provide for the transfers to take place as soon as possible with the goal of uniting all long term care members by April 25, 2003, or as soon thereafter as feasible. The new local should also have jurisdiction over the newly organized unit of 26,000 Washington home care workers. In addition, Local 6's health systems membership should be transferred to District 1199NW, the two locals should confer immediately to finalize the details of the transfer, and they should submit a written transfer agreement to the undersigned, preferably by December 31, 2002, but not later than January 17, 2003. The agreement should provide for the transfers to take place as soon as possible, with the goal of uniting all hospital members by April 25, 2003, or as soon thereafter as feasible. District 1199NW should have jurisdiction over the nursing home located on the premises of Providence Centralia hospital, which is currently unorganized. I further recommend that I retain jurisdiction over this matter to resolve disputes and oversee implementation of the transfers. In addition, I recommend that Local 6 remain as primarily a stand alone building services local union.

Dated: November 18, 2002

Respectfully submitted,


Josephine Mooney
Hearing Officer



December 13, 2002

David Rolf
2022 E. Jefferson St
Seattle, WA 98122-5829

Re: SEIU Local Union 775

Dear David:

Consistent with my authority under Article XIV, Section 1 of the International Constitution, and with the International Executive Board's approval on November 21, 2002, of Hearing Officer Josie Mooney's Report and Recommendations on Washington State health care and building services jurisdiction, I hereby establish SEIU Local Union 775. This Local Union shall have jurisdiction for long term care workers in Washington State.

In addition, I name you as the President of Local 775, and Suzanne Wall as Secretary-Treasurer. I will name additional members of the Executive Board at a later date. These appointments shall remain in effect until such time as bylaws are adopted by the membership and elections are scheduled pursuant to the bylaws. Please confer with my office regarding a schedule for these elections, which must be conducted within the time constraints of the LMRDA.

You should proceed immediately to draft and submit to me a proposed Constitution and Bylaws for Local 775.

This establishment of Local 775 and the naming of the above officers shall take effect immediately.

In unity,

Andrew L. Stern
International President

Cc: Eliseo Medina, EVP
Sheila Velazco, Executive Assistant to EVP

ALS/nmg

ANDREW L. STERN
International President

ANNA BURGER
International Secretary-Treasurer

PATRICIA ANN FORD
Executive Vice President

ELISEO MEDINA
Executive Vice President

TOM WOODRUFF
Executive Vice President

SERVICE EMPLOYEES
INTERNATIONAL UNION
AFL-CIO, CLC

1313 L Street, N.W.
Washington, D.C. 20005

202.898.3200
TDD: 202.898.3481
www.SEIU.org

FILED

03 APR -8 PM 2:32 RECEIVED

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

RECEIVED
COPY
EXPO1

KING COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

MARTIN SELIG d/b/a MARTIN
SELIG REAL ESTATE,

Plaintiff,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU),
SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 6,
SERGIO SALINAS, SEKEY
FASCIONE, and JOHN AND JANE
DOES 1-20,

Defendants.

NO. 03 2 214 990 SEA

TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE

[PROPOSED]

MS

THIS MATTER having come before the undersigned judge/court commissioner on motion of the plaintiff, Martin Selig ("Selig") for a temporary restraining order and order to show cause; the court having reviewed the pleadings filed in support of the motion, including the declarations of Lauren Selig and Elizabeth Gallagher and having heard the argument of counsel; and the court having determined that if the temporary restraining order requested by the plaintiff is not granted plaintiff will suffer great injury;

TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE - 1

lw/corel7/my files/selig/seiu/temporary restraining order

ORIGINAL

W.K. McInerney PLLC
1000 Second Avenue, Suite 1760
Seattle, WA 98101
(206)624-4404 Fax (206)624-1744

1 and it further appearing to the court that defendants are doing, or threatened, or are about
2 to do an act which would be in violation of plaintiff's rights respecting the subject matter
3 of this action; and it appearing that the other requisites of RCW 7.40.020 for the granting
4 of a temporary restraining order have been demonstrated by the plaintiff; now, therefore,
5 IT IS HEREBY ORDERED as follows:

6 1. Temporary Restraining Order: The defendants Service Employees International
7 Union ("SEIU"), SEIU Local 6, Sergio Salinas, and Sekey Fascione, and each of their
8 officers, members, agents, employees, and attorneys, and all other persons in active
9 concert and participation with them who have actual notice of this restraining order ARE
10 HEREBY RESTRAINED from the following acts:

- 11 A. Having contact or communication with persons known to be tenants of
12 Martin Selig Real Estate ("Selig") or any business entity owned by or
13 affiliated with Selig regarding any matter relating to (i) the conduct of
14 Selig's business or to (ii) Selig's relationship with Allied Building Services;
- 15 B. Having contact or communication with any person with the intent of
16 causing such person to be deterred from doing business with Selig or with
17 any business entity owned by or affiliated with Selig;
- 18 C. Having communications with any person for the purpose of inducing such
19 person to exert pressure, either directly or indirectly, upon Selig to
20 terminate its business relationship with Allied Building Services;
- 21 D. Threatening, harassing, intimidating employees or other persons affiliated
22 with Selig;
- 23 E. Otherwise interfering with the conduct of Selig's business or its
24 relationship with contractors and tenants for the purpose of exerting
25 pressure on Selig to cease doing business with Allied Building Services.
- 26 F. Entering upon the premises of any building owned by Selig or a business
27 entity owned by or affiliated with Selig.


28 TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE - 2
w:\corel7\myfiles\selig\sciu\temporary restraining order

W.K. McInerney PLLC
1000 Second Avenue, Suite 1760
Seattle, WA 98101
(206)624-4404 Fax (206)624-1744

1 2. Bond: Plaintiff is ordered to file a bond pursuant to RCW Chapter 7.40 in the
2 sum of \$5000⁰⁰ within 48 hours of the time this order is entered.

3 3. Order to Show Cause: Defendants are hereby ordered to appear on
4 April 22, 2003, at 4:00 a.m. (p.m.) in Room W-829, in the courtroom of the
5 Honorable Terry Lukens, located within the King County Courthouse, Third and
6 James Street, Seattle, Washington, then and there to show cause why the temporary
7 restraining order granted herein should not be converted to a preliminary injunction
8 *pendente lite*.

9 DONE IN OPEN COURT this 8th day of April 2003.

10
11
12 
Judge/Court Commissioner *Mar*

13 Presented by:

14
15 
16 W.K. McInerney, WSBA #4809
17 Attorney for Plaintiff

18
19
20
21
22
23
24
25
26
27
28 TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE - 3

lw/core/7/myfiles/scelig/sciu/temporary restraining order

W.K. McInerney PLLC
1000 Second Avenue, Suite 1760
Seattle, WA 98101
(206)624-4404 Fax (206)624-1744

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

MARTIN SELIG d/b/a MARTIN SELIG
REAL ESTATE,

Plaintiff

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION (SUTU), SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 6,
SERGIO SALINAS, SEKEY FASCIONE, and
JOHN and JANE DOES 1-20

Defendants

No. 03-2-21499-0 SEA

ORDER DISSOLVING TEMPORARY
RESTRAINING ORDER

THIS MATTER came on for hearing on April 23, 2003 on the Defendants' Motion to Dissolve Temporary Restraining Order and on the return on the show cause order contained in the Temporary Restraining Order and Order to Show Cause entered in the above-captioned matter (the "TRO"), and the court having reviewed the files and records herein and being fully advised in the premises, the court concludes as follows:

1. Jurisdiction of those areas of restraint set forth in Paragraphs A, B, C and E of the TRO rests with the National Labor Relations Board and not with this court.
2. Moreover, those restraints contained in Paragraphs A, B and C of the TRO, on this record, constitute an unconstitutional prior restraint on free speech.

ORDER DISSOLVING TEMPORARY
RESTRAINING ORDER

Judge Terry Lukens
King County Superior Court

1 3. While state court jurisdiction may exist to restrain trespassing and harassment, there is
2 no direct evidence on this record to support a factual conclusion that a trespass or other
3 illegal act has occurred, with only hearsay being submitted to support the allegation.

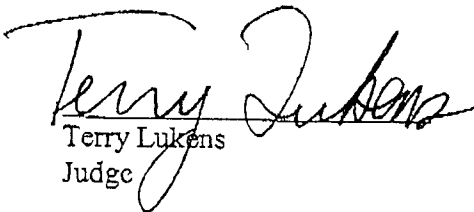
4 Based on the forgoing, it is hereby

5 ORDERED, the Temporary Restraining Order and Order to Show Cause entered in the
6 above-captioned matter is dissolved; and it is further

7 ORDERED, that the Plaintiff's Motion for a Preliminary Injunction is DENIED; and it
8 is further

9 ORDERED, that nothing in this Order shall be deemed to preclude any action at law
10 by the Plaintiff with respect to the claims against the Defendants or to preclude
11 equitable relief in the event that acts of trespass or harassment or incidents of other
12 illegal conduct are demonstrated in the future, assuming that state court jurisdiction
13 exists.

14 DONE IN OPEN COURT this 2 day of May, 2003.

15
16 
17 Terry Lukens
18 Judge
19
20
21
22
23
24
25
26
27

28 ORDER DISSOLVING TEMPORARY
29 RESTRAINING ORDER

Judge Terry Lukens
King County Superior Court

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HOME CARE QUALITY AUTHORITY

Employer,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 775

Union.

CASE NO. 17331-E-03-2821

DECLARATION OF DAVID ROLF

David Rolf, being first duly sworn hereby deposes and says:

1. I am over the age of majority, am competent to testify herein, have personal knowledge of the matters stated, and the opinions rendered herein are to a reasonable probability;

2. I am presently employed by Local 775, Service Employees International Union, (SEIU), AFL-CIO, CLC. I hold the office of President. Prior to beginning employment with SEIU Local 775, I was employed by SEIU Local 6. I held the office of President of SEIU Local 6.

3. In November 2002, at the direction of the International Union, a hearing was conducted by Josephine Mooney, Executive Director, SEIU Local 790, Oakland, California. The purpose of the hearing was to determine, among other issues, the most effective assignment of jurisdiction to SEIU locals for healthcare workers in Washington state. The

hearing was conducted by authority of the International Union's Constitution and followed procedural rules determined according to the IU Constitution.

4. The Hearing Officer recommended that the International Executive Board charter a new local union to represent long term care workers and that Local 6 should continue its focus on representing building service industry janitors. The SEIU International Executive Board voted to approve Mooney's recommendations and on December 13, 2002 chartered a new local union, Local 775, focused on Washington State long term care workers. I was named by SEIU President Andrew Stern as the President of the new local 775, and Suzanne Wall was named Secretary Treasurer. The charter document was issued in our names and signed by President Andrew Stern and SEIU Secretary Treasurer Anna Burger.

5. Commencing in September, 2002, I served as chief spokesperson for the union's negotiating committee involved in bargaining the first collective bargaining agreement with the Home Care Quality Authority. Tentative agreement was reached between the parties on October 31, 2002.

6. The procedures utilized by the union in conducting its ratification vote among the members of the bargaining unit are set forth in the collective bargaining agreement. Ballots received by noon on December 20, 2002 were counted at the Seattle Labor Temple, 2800 First Avenue, Seattle, Washington, 98109.

7. The results of the contract ratification vote were 89% in favor of contract ratification, 11% rejected the contract. The ballots have been stored in a secured location.

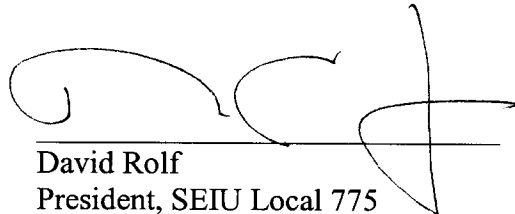
8. That evening I notified representatives of the Home Care Quality Authority,

Rick Hall, chief negotiator; Charley Reed, chairperson, and Mindy Schaffner, Executive Director, of the results of the voting.

9. On January 13, 2003, following the signing of the collective bargaining agreement by the parties, the Executive Director of the HCQA informed me that the contract had been duly transmitted to Governor Gary Locke, as required by law. The fiscal portions of the cba remain to be approved for funding by action of the 2003 Legislature.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

DATED at Seattle, Washington, this ____ day of May 2003.

A handwritten signature in dark ink, appearing to be 'DR', written over a horizontal line.

David Rolf
President, SEIU Local 775
151 S. Lander St., Ste. A
Seattle, WA 98134
Phone: (206) 838-3206