

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
UNITED FOOD AND COMMERCIAL)	CASE 15922-E-01-2646
WORKERS, LOCAL 44)	
)	
Involving certain employees of:)	DECISION 7785-C - PECB
)	
SKAGIT COUNTY PUBLIC HOSPITAL)	
DISTRICT 1/304, d/b/a AFFILIATED)	DECISION OF COMMISSION
HEALTH SERVICES)	
)	
)	

Kirk S. Bond, Attorney at Law, for the union.

Matthew Halliday, Assistant Administrator for Human Resources, for the employer.

This case comes before the Commission on an appeal filed by the employer, seeking to overturn a certification issued by the Executive Director.¹ The appeal is dismissed as untimely.

BACKGROUND

On July 23, 2001, United Food and Commercial Workers, Local 44 (union), filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as the exclusive bargaining representative of certain employees of Skagit County Public Hospital District 1/304 d/b/a Affiliated Health Services (employer). Following an investigation conference held

¹ *Affiliated Health Services*, Decision 7785-B (PECB, 2002).

under WAC 391-25-220, the sole issue remaining for hearing concerned the propriety of the petitioned-for bargaining unit.

After a hearing held on October 5, 2001, the Executive Director concluded that the petitioned-for bargaining unit limited to kidney dialysis technicians was an appropriate unit for the purposes of collective bargaining, and he directed a cross-check.² A direction of election was issued on July 16, 2002, after information was discovered indicating that a cross-check was not the appropriate method to determine the question concerning representation.³

On July 24, 2002, the union appealed the direction of election. The Executive Director pointed out that the appeal was premature and directed the parties' attention to WAC 391-25-390(3), which expressly precludes appeals from orders directing elections until after the question concerning representation has been determined and a tally has been issued.

The election ballots were counted on September 25, 2002, and a tally of ballots was issued. The results of the election were conclusive and indicated that the employees in the bargaining unit chose the union as their exclusive bargaining representative. There was one challenged ballot.⁴

No objections were filed under WAC 391-25-590 within the seven days following the issuance of the tally. On October 3, 2002, the Executive Director certified the union as the exclusive bargaining

² *Affiliated Health Services*, Decision 7785 (PECB, 2002).

³ *Affiliated Health Services*, Decision 7785-A (PECB, 2002).

⁴ One challenged ballot out of eight valid ballots was not sufficient to affect the outcome of the election.

representative of the at issue employees. The case was closed upon issuance of that certification. See WAC 391-25-610.

The employer filed a purported appeal on October 23, 2002, which was 28 days after the issuance of the tally of ballots.

DISCUSSION

The processing of representation cases is governed by Chapter 391-25 WAC. Specifically, WAC 391-25-390 states:

(1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate.

(a) The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

.
(3) *A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election.*

(4) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

(emphasis added). Similarly, WAC 391-25-590 states:

The due date for objections is *seven days after the tally has been served* under . . . WAC 391-25-550, . . ., regardless of whether challenged ballots are sufficient in number to affect the results of the election. The time period for objections cannot be extended.

(emphasis added). Cases where no timely objections are filed, such as this case, are governed by WAC 391-25-610 which reads:

If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having the same force and effect as if issued by the commission.

Thus, a certification issued by the Executive Director under WAC 391-25-610 constitutes the final order of the agency, rather than an opportunity to exercise appeal rights within the agency.

In this case, no objections were filed within seven days following the tally, the challenged ballots were not sufficient in number to affect the outcome of the question concerning representation, and no run-off election was to be held. The Executive Director properly certified the union as the exclusive bargaining representative of the employees involved.

Because the employer purported to appeal 20 days after the issuance of the certification, the Commission has considered whether the employer could have thought that WAC 391-25-660 was applicable here. That rule provides:

An order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended. . . .

WAC 391-25-660 only applies to appeals from orders dismissing or making other disposition of cases under WAC 391-25-390 or a ruling on challenged ballots under WAC 391-25-510, neither of which is applicable in this case. The certification was issued under WAC 391-25-610, rather than either WAC 391-25-390 or 391-25-510. Therefore, we must dismiss the appeal as untimely.

NOW, THEREFORE, it is

ORDERED

1. The notice of appeal filed by the employer on October 23, 2002, is dismissed as untimely.
2. The findings of fact, conclusions of law, and certification issued by the Executive Director stand as the final order of the agency on the above-captioned case.

Issued at Olympia, Washington, on the 10th day of December, 2002.

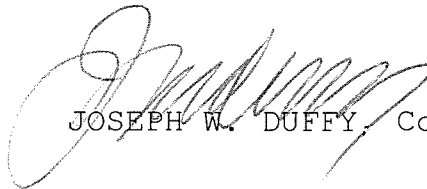
PUBLIC EMPLOYMENT RELATIONS Commission



MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner