

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	CASE 16436-E-02-2726
)	DECISION 7932 - PECB
PUBLIC SCHOOL EMPLOYEES)	
OF WASHINGTON)	CASE 16509-E-02-2738
)	DECISION 7933 - PECB
Involving certain employees of:)	
)	
YELM SCHOOL DISTRICT)	DECISION OF COMMISSION
)	
)	

Eric T. Nordlof, Attorney at Law, for the petitioner,
Public School Employees of Washington.

Alan Burke, Superintendent, for the employer.

Jan McIntyre, President, for the incumbent intervenor,
Yelm Association of Educational Office Professionals.

This matter comes before the Commission on election objections filed by the Public School Employees of Washington (PSE), seeking to overturn the results of a representation election. Prior to the issuance of a decision on those objections, the Commission received information that the cross-petitioner, the Yelm Association of Educational Administrative Assistants (YAEAA), was defunct or never existed as a functioning labor organization. The YAEAA failed to respond to a directive that it show evidence of its continued existence and activity. Thus, the election results are vacated; the proceedings are rolled back to omit the YAEAA; and the election will be re-run with choices limited to PSE, YAEOP, and no representation.

BACKGROUND

On June 10, 2002, the PSE filed a petition under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of "all full-time and regular part-time office clerical employees, excluding supervisors, confidential employees and all other employees" of the Yelm School District (employer). Case 16436-E-02-2726. The Yelm Association of Educational Office Professionals (YAEOP) was granted intervention in the proceedings, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees.

On June 27, 2002, the YAEAA cross-petitioned for the same bargaining unit sought by PSE. Case 16509-E-02-2738.

An investigation conference was conducted under WAC 391-25-220, and all of the parties stipulated that the YAEAA was a lawful labor organization qualified for certification as an exclusive bargaining representative under RCW 41.56.030(3).

A representation election was conducted by mail ballot to determine the question concerning representation. Ballots were mailed to eligible voters on July 9, 2002, and notices of that election were posted on the employer's premises. When the ballots were tallied in the Commission's office on July 30, 2002, the results were as follows:

Approximate number of eligible voters.22
Votes cast for PSE of Washington	9
Votes cast for YAEAA	9
Votes cast for YAEOP	0
Votes cast for no representation	0
Challenged ballots	1
Number of valid ballots needed to determine election.12

Thus, the results of that election were inconclusive, and a run-off election was necessary.

Ballots for the run-off election were mailed to eligible voters on August 13, 2002, and notices of that election were also posted on the employer's premises. The tally of ballots issued on August 28, 2002, indicated:

Approximate number of eligible voters.	22
Votes cast for PSE of Washington	6
Votes cast for YAEAA	8
Challenged ballots	1
Number of valid ballots needed to determine election	8

Thus, it appeared that the results of the election were conclusive and that the YAEAA would be entitled to certification as the exclusive bargaining representative of the employees involved.

In the objections it filed on September 3, 2002, under WAC 391-25-590, PSE alleged that three ballots that would have favored PSE were mailed by the voters in a timely manner, but were not counted. It noted that those ballots were sufficient in number to change the outcome of the election, and it submitted affidavits from the three eligible voters each attesting that they mailed their completed ballot to the Commission well in advance of the tally date. Those affidavits include, "None of the three ballots reached [the Commission] in time to be counted, or at least none of the ballots reached the file in which the remaining ballots were stored."

Prior to issuing a decision on those objections, the Commission received a declaration from Janice McIntyre, YAEOP president, on

November 7, 2002.¹ The relevant portion of her declaration stated as follows:

7. Recently, my co-workers and I became concerned because we had encountered no evidence, in the intervening months, that YAEAA continued to, or ever had, existed. Jennie Jenks, the original petitioner for YAEAA, is no longer employed by Yelm School District, and Sharon Carr, who signed the YAEAA petition, is a teacher in our district, and not an employee of any labor organization.

8. Because we are concerned about the viability of our labor representation if YAEAA is certified as our representative, I made inquiries of Heidi Prince, who is a member of our bargaining unit, and who was a friend of Jennie Jenks, when Jennie worked in our district.

9. I essentially asked Heidi how to make contact with YAEAA, or if it even existed as an organization, in the wake of the departure of Jennie Jenks from the district. Heidi responded to me by e-mail. . . .

10. Heidi recounted information she received from Jennie Jenks which states that YAEAA *never existed as an independent organization*, but was a new name for the people who wanted to stay with YAEOP. This information is consistent with the results of my general inquiries into the existence of YAEAA; that is, the organization simply doesn't exist. Neither myself, nor other former officers of YAEOP, have been able to discover any organizational structure for YAEAA whatsoever. We have not been able to identify any officers, bylaws, constitutions or other organizational documents, nor any individual claiming to be a representative of YAEAA, other than Sharon Carr, who, as I mentioned, is not a member of our bargaining unit.

. . . .

(emphasis added).

¹ It is not clear from the record if Ms. McIntyre is the current or former president of YAEOP.

Acting at the direction of the Commission, the Executive Director sent a letter to Ms. Jenks on November 15, 2002, inquiring as to whether the YAEAA was defunct or ever existed, and giving the YAEAA 14 days to respond. Other parties were provided copies of that letter, and were given another 14 days following the service of any response by the YAEAA to respond.

The only reply to the Executive Director's letter was in the form of a letter filed by Ms. Jenks on November 19, 2002, as follows:

As of August 22, 2002, I am no longer a Yelm Community Schools employee or am affiliated with any organization or union in Yelm. . . . Therefore, I do not feel comfortable responding to your letter.

I have forwarded this letter to Heidi Prince of Yelm. If you have further questions, or there is further correspondence regarding any Yelm organizations or Yelm Community Schools, please contact either Heidi Prince, Ann Keller or Susan Croy.

The letter from Ms. Jenks does not indicate, on its face, that it was served on any other parties.

DISCUSSION

In the absence of anybody stepping forward with an assertion that YAEAA continues to be a viable organization, it is appropriate to vacate the election results that favored the YAEAA and to dismiss the petition filed by the YAEAA. See *Riverside School District*, Decision 7098-A (PECB, 2001). The processing of the case filed by PSE is rolled back to omit the YAEAA, and the election process must be re-run with choices limited to PSE, YAEOP, and no representa-

tion. The objections filed by PSE concerning the undelivered ballots are moot and will not be decided by the Commission.

FINDINGS OF FACT

1. The Yelm School District is a school district of the state of Washington and is a public employer within the meaning of RCW 41.56.020 and .030(1).
2. Public School Employees of Washington (PSE) filed a petition to initiate a proceeding under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of the Yelm School District.
3. Yelm Association of Educational Office Professionals (YAEOP) was granted intervention, based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees.
4. The Yelm Association of Educational Administrative Assistants (YAEAA) filed a petition to initiate a proceeding under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the same bargaining unit sought by PSE.
5. During the preliminary processing of the petitions filed by PSE and YAEAA, the parties stipulated that the YAEAA was a bargaining representative within the meaning of RCW 41.56.030(3).
6. Prior to the issuance of the final order in the matter, it has come to the attention of the Commission that the YAEAA either

never existed as a functioning organization, or has become defunct upon the departure of one of its leaders from the employer's workforce.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. In the absence of a timely response and ongoing participation by the Yelm Association of Educational Administrative Assistants (YAEAA) in this proceeding, that organization does not qualify as a bargaining representative within the meaning of RCW 41.56.030(3), and does not qualify for certification as an exclusive bargaining representative under RCW 41.56.080.
3. The election and run-off election conducted in these matters have been prejudiced by the inclusion of the YAEAA as a choice on the ballot.

ORDERED

1. The petition filed by Yelm Association of Educational Administrative Assistants (YAEAA) in Case 16509-E-02-2738 is DISMISSED.
2. The results of the election and run-off election conducted in the above-captioned matters are VACATED, and Case 16436-E-02-2726 is remanded to the Executive Director for conduct of a new representation election process (with choices limited to Public School Employees (PSE), the Yelm Association of Educational Office Professionals (YAEOP) and "no representa-

tive") together with a run-off election and such supplemental proceedings under WAC 391-25-510 as may be necessary and appropriate.

3. The objections filed by Public School Employees relating to the vacated run-off election are DISMISSED as moot.

Issued at Olympia, Washington, on the 20th day of December, 2002.

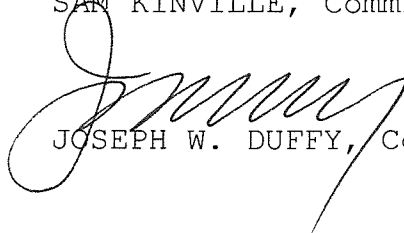
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner