

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
GRADUATE STUDENT EMPLOYEE ACTION)
COALITION, UAW) CASE 16288-E-02-2699
)
Involving certain employees of:) DECISION 8315-A - PECB
)
UNIVERSITY OF WASHINGTON) ORDER DENYING
) ELECTION OBJECTIONS
)
_____)

Theiler Douglas Drachler and McKee, by Paul Drachler, Attorney at Law, for the petitioner.

Christine Gregoire, Attorney General, by Judy Mims, Assistant Attorney General, and Summit Law Group by Otto G. Klein III, Attorney at Law, joined by Kristen D. Anger, Attorney at Law, on the brief, for the employer.

Jerusha Achterberg, Pauline Alokolaro, Christopher Barnes, Steve Bowles, Anne Carlson, Eric Y. Chan, Alvin Chang, Cameron Charles, Brian Cochran, Kimberley Craven, Walter Duncan, Michelle Fisher, Samuel D. Gale, Seth Goldenberg, Jesse Goldmark, Alan G. Goodman, Bradley Habenicht, Stephen Hawley, Rachel Howard-Till, Joshua Hunter, Susan Kloek, Shane Kruse, Gossamer Ching-Sue Kuik, Samarth Kulkarni, Mary Ann Leung, William Liu, Avery T. Luedtke, Todd Markle, Jesse McCann, Bree Mitchell, Abdi-Rizak Mohamed, Brian Morlan, Felix Nguyen, Lina Nilsson, Claire O'Neal, Jared W. Ragland, Christina Ramirez, Stephen Salipante, Blythe Duke Sather, Sonya Schuh, Elyse Shapiro, David Syphers, Zoltan Szuts, Umut Ulge, Amy N. Van Buren, Valdimir Vigdorovich, and Kimberly Wachter, each appeared pro se.

This case comes before the Commission on election objections filed by individuals, seeking to overturn the results of a representation election conducted by the Commission in the above-captioned matter.

After review of the various objections, the Commission concludes that the results of the election should stand.

BACKGROUND

Chapter 34, Laws of 2002, added a new section to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, as follows:

RCW 41.56.203 UNIVERSITY OF WASHINGTON-CERTAIN EMPLOYEES ENROLLED IN ACADEMIC PROGRAMS-SCOPE OF COLLECTIVE BARGAINING. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:

- (a) Predoctoral instructor;
- (b) Predoctoral lecturer;
- (c) Predoctoral teaching assistant;
- (d) Predoctoral teaching associates I and II;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;
- (h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

- (i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

(i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;

(ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of the University of Washington; and

(iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement of the affected provision.

(ii) The University of Washington may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature.

The legislation contained an emergency clause, and so took effect when it was signed by the Governor on March 14, 2002.

Shortly after the Governor signed the new legislation, the Graduate Student Employee Action Coalition, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO (GSEAC-UAW or union) filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the student/employees of the University of Washington (employer) covered by RCW 41.56.203.

An investigation conference was held, and issues were framed. Hearing Officer Kenneth J. Latsch conducted a formal hearing on 17

days between June and December of 2002, and the parties filed briefs on various dates into March of 2003. Executive Director Marvin L. Schurke issued his decision in the matter on December 16, 2003, ruling on various eligibility issues and directing that a representation election be conducted.¹

The representation election was conducted by mail ballot. The tally of ballots issued on March 18, 2004, stated:

Approximate number of eligible voters	4569
Void ballots	46
Votes cast for GSEAC / UAW	1391
Votes cast for NO REPRESENTATION	979
Valid ballots counted	2370
Challenged ballots cast	44
Valid ballots plus challenged ballots	2414
Number of valid ballots needed to determine election	1208
Challenged ballots: DO NOT affect the outcome of the election	
The results of the election appear to be: CONCLUSIVE, favoring [GSEAC / UAW]	

Thus, the union received 183 more votes than were needed for a conclusive result.

The tally of ballots was served on the employer and union on Thursday, March 18, 2004, so the deadline for filing objections under WAC 391-25-590 was at the close of business on Thursday, March 25, 2004.

Prior to the close of business on March 25, 2004, each of the 47 individuals listed above purported to file an "objection" with the Commission by e-mail attachment. The attachments to e-mail messages from three other individuals could not be opened.

¹ University of Washington, Decision 8315 (PECB, 2003).

On Friday, March 26, 2004, 10 additional individuals purported to file an "objection" with the Commission by e-mail attachment: Sarah F. Benki, Sanchali Bhattacharjee, Laura Flinn, Lindsay Alane Morse, Carol O'Hear, Thomas Robey, Deanna B. Rodovsky, Michael Shimogawa, David H. Spencer, and Patrick Thomas, Jr. There was a claim that statements by one or more members of the Commission staff led some or all of those individuals to believe that the deadline for them to file objections was at the close of business on Friday, March 26, 2004.

On March 29, 2004, five individuals purported to file objections with the Commission by e-mail attachment: Chris Barnes (again), Travis Biechele, Alexandra P. Few, Cindy L. Reiner, and Cristi L. Stoick. On March 30, 2004, Neva Cherniavsky purported to file an objection by e-mail attachment.

ANALYSIS

Applicable Legal Standards

The Filing and Service Obligation -

WAC 391-08-120 permits the filing of documents with the Commission by e-mail attachment, subject to additional requirements that must be completed on the same day the e-mail message is sent:

First, a conforming copy of the document filed as an e-mail attachment must be sent to the Commission; and

Second, a copy of the document must be served on each of the other parties in the proceeding.

The Commission strictly enforces those requirements, in furtherance of the good communications inherently required in the collective bargaining process. *Mason County*, Decision 3108-B (PECB, 1991).

Legal Standing to File Objections -

Objections filed under WAC 391-25-590 are the exclusive means for parties to a representation case or affected employees to appeal from actions or rulings of the Commission staff. That rule provides:

WAC 391-25-590 FILING AND SERVICE OF OBJECTIONS TO IMPROPER CONDUCT AND INTERIM ORDERS. The due date for objections is seven days after the tally has been served under WAC 391-25-410 or 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.

(1) Objections by the petitioner, the employer or any intervenor shall set forth, in separate numbered paragraphs:

(a) The specific conduct which the party filing the objection claims has improperly affected the results of the election; and/or

(b) The direction of election, direction of cross-check or other interim rulings which the objecting party desires to appeal to the commission.

(2) *Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot.*

(3) Any objections shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and the party filing the objections shall serve a copy on each of the other parties to the proceedings as required by WAC 391-08-120(3) and (4).

(emphasis added). That rule and the limited appeal rights embodied in it date back to at least 1980, and reflect the long-standing concern of the Commission for expeditious resolution of questions concerning representation.²

The determination of appropriate bargaining units is normally a function delegated by the Legislature to the Commission. RCW

² See *City of Redmond*, Decision 1367-A (PECB, 1982).

41.56.060. In the case of teaching assistants, research assistants, and other student-employees of the University of Washington, however, the Legislature required a single, campus-wide bargaining unit in RCW 41.56.203. The union petitioned for such a unit. The Executive Director properly rejected the employer's request for categorical exclusion of certain departments, and there was no possibility of conducting a unit determination election or considering any other bargaining unit configuration in this case. The employer would have had legal standing to file objections under WAC 391-25-590(1), but has not filed any objection to the Executive Director's rulings on the scope of the bargaining unit.

Application of Standards

Insufficient Filing and/or Service -

Most or all of the objections filed in this case could potentially be denied for insufficiency of filing:

- The attachments to the e-mail messages sent by Christine M. Isborn, Dawn E. Cohen, and Steven M. Powell could not be opened, and so cannot be considered for any purpose.³
- By the close of business on Tuesday, March 30, 2004, the third business day after the objections were due, none of the individuals who filed objections by e-mail attachment on or before March 25 had filed the required conforming copies of their objections with the Commission.

We do not waive those defects, but we decline to implement the "show cause" process that would be needed to pursue any procedural defects here because we find it more expeditious to deny the objections on the basis of other evident defects.

³ Under WAC 391-08-120(1)(c)(iv) a party filing by e-mail bears the risk if the attachment cannot be opened.

Lack of Standing to Object -

All 47 of the clearly-timely objections now before the Commission were filed by individuals, whose legal standing to object is limited to "prevented . . . from casting a ballot" issues.

Several objectors cast unchallenged ballots that are already included in the tally of ballots. Those individuals are:

1. Pauline Alokolaro
2. Steve Bowles
3. Eric Y. Chan
4. Walter Duncan
5. Seth Goldenberg
6. Bradley Habenicht
7. Susan Kloek
8. William Liu
9. Avery T. Luedtke
10. Brian Morlan
11. Todd Markle

The objections filed by those individuals must be denied for lack of legal standing. That reduces the number of clearly-timely objections remaining under consideration to 36.

Several objectors cast challenged ballots that are already included in the tally of ballots. None of the individuals in this group were on the eligibility list for the election, but any individual who requested a ballot was permitted to vote by challenged ballot.⁴ Those individuals are:

1. Alvin Chang
2. Kimberley Craven
3. Mary Ann Leung

⁴ None of the objections filed by these individuals include any facts supporting the existence of an employment relationship with the employer.

4. Bree Mitchell⁵
5. Claire O'Neal
6. Vladimir Vigdorovich

The objections filed by those individuals must also be denied for lack of legal standing. That reduces the number of clearly-timely objections remaining under consideration to 30.

Individuals Not On Eligibility List -

Several of the objections now before the Commission were filed by individuals who were NOT on the eligibility list for the election and who did NOT vote by challenged ballot. In the context that not all graduate students were included in the bargaining unit or eligible to vote, that none of the individuals in this group have claimed to have requested a ballot, and that none of the individuals in this group have provided any information about an employment relationship with the employer except as detailed below, those were:

1. Jerusha Achterberg⁶
2. Anne E. Carlson
3. Cameron Charles
4. Michelle Fisher
5. Samuel D. Gale
6. Jesse Goldmark
7. Stephen Hawley
8. Rachel Howard-Till
9. Lina Nilsson
10. Jared W. Ragland

⁵ The objection filed by this individual asserts that no ballot was received.

⁶ The self-identification of this individual as a "CSDE Fellow" in the e-mail message covering transmittal of the objections attachment suggests he may be a fellowship student that the Executive Director specifically excluded from the bargaining unit.

11. Christina Ramirez⁷
12. Stephen Salipante
13. Elise Shapiro
14. David Syphers
15. Zoltan B. Szuts
16. Umut Ulge
17. Amy N. Van Buren
18. Kimberly Wachter

Even if all 18 of those individuals had cast challenged ballots (thereby increasing the number of challenged ballots from 44 to 62), the union would still have had 174 more unchallenged "yes" votes than it needed to win the election. Reiterating our recent holding in *State - Social and Health Services*, Decision 8459-A (PSRA, 2004), it is appropriate to proceed with certification of the union as exclusive bargaining representative, and to leave non-affecting eligibility issues for resolution through negotiations between the parties and/or proceedings under Chapter 391-35 WAC.

Eligible Voters Who Did Not Cast Timely Ballots -

Several of the objections now before the Commission were filed by individuals who were on the eligibility list for the election, and were sent ballots on February 25 at the addresses originally provided by the employer. None of the individuals in this group cast ballots before the deadline of March 17, 2004. In the context that notices of the election were posted on the employer's premises, and that eligible voters have a right to abstain from voting, those are:

1. Christopher Barnes was sent a duplicate ballot on February 26, 2004, based on corrected addresses provided by the employer

⁷ The self-identification of this individual as "an RA in the Department of Molecular and Cellular Biology [who] will be impacted by the outcome of this vote," in the objection document does not provide sufficient facts to form an opinion as to the eligibility of the individual.

- and/or union. Although the individual claims not to have received a ballot, there is no claim of a personal request for a duplicate.
2. Brian Cochran was sent a duplicate ballot on February 26, 2004, based on corrected addresses provided by the employer and/or union. Although the individual claims not to have received a ballot, there is no claim of a personal request for a duplicate.
 3. Alan G. Goodman was sent a duplicate ballot on February 26, 2004, based on corrected addresses provided by the employer and/or union. Although the individual claims not to have received a ballot, there is no claim of a personal request for a duplicate.
 4. Joshua Hunter was sent a duplicate ballot on February 26, 2004, based on corrected addresses provided by the employer and/or union. Although the individual claims not to have received a ballot, there is no claim of a personal request for a duplicate.
 5. Shane Kruse claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.
 6. Gossamer Ching-Sue Kuik claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.
 7. Samarth Kulkarni claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.
 8. Jesse T. McCann was sent a duplicate ballot on March 8, 2004, based on his personal request to the Commission staff. The individual claims to have mailed it back to the Commission on

March 16, 2004, but did not set forth any facts explaining the delay. The ballot was received after the tally, on March 18, 2004.

9. Abdi-Rizak Mohamed claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.
10. Felix Nguyen was sent a duplicate ballot on February 26, 2004, based on corrected addresses provided by the employer and/or union. Although the individual claims not to have received a ballot, there is no claim of a personal request for a duplicate.
11. Blythe Duke Sather claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.
12. Sonya M. Schuh claims not to have received a ballot, but there is no claim of a personal request for a duplicate ballot.

Accepting their allegations as true for purposes of this analysis, these 12 objections still do not warrant overturning the election result or even holding a hearing before issuance of a certification. If all of these individuals had voted against the union, it would have only reduced the union's margin of victory. *State - Social and Health Services*, Decision 8459-A.

Objections Filed Late -

There could be a basis for considering the additional objections filed on Friday, March 26, 2004, if the objecting individuals were able to prove that they relied to their detriment upon erroneous advice from the Commission staff. See *City of Tukwila*, Decision 2434-A (PECB, 1987). It is unnecessary to decide an "erroneous advice" claim in this case, however, because the potentially-

affected objections would not provide a basis for overturning the results of the election. Even if all 12 of the individuals who filed objections on March 26 had voted against the union, that would merely have reduced the union's margin of victory.

The objections filed on March 29, 2004, and on March 30, 2004, were clearly untimely, and must be denied on that basis.

Absence of Misconduct Allegations -

None of the objections now before the Commission allege any campaign misconduct that would be a basis for overturning the results of the election under WAC 391-25-590.

NOW, THEREFORE, it is

ORDERED

1. The election objections filed by the above-named individuals are DENIED.
2. The matter is remanded to the Executive Director for issuance of the appropriate certification.

Issued at Olympia, Washington, on the 6th day of April, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


JOSEPH W. DUFFY, Commissioner


PAMELA G. BRADBURN, Commissioner