

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
ANDREA SHEAHAN	)	CASE 18802-E-04-2983
	)	
Involving certain employees of:	)	DECISION 9205 - PECB
	)	
KING COUNTY PUBLIC HOSPITAL	)	
DISTRICT 2	)	ORDER ON OBJECTIONS
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In the matter of the petition of:	)	
	)	
SERVICE EMPLOYEES INTERNATIONAL	)	
UNION, LOCAL 1199NW	)	CASE 19842-E-05-3106
	)	
Involving certain employees of:	)	DECISION 9206 - PECB
	)	
KING COUNTY PUBLIC HOSPITAL	)	
DISTRICT 2	)	ORDER ON OBJECTIONS
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*Andrea Sheahan*, the decertification petitioner, appeared *pro se*.

*Geoff Miller*, Attorney at Law, for Service Employees International Union, Local 1199NW.

*Dave Danielson*, Senior Vice President of Operations, for the employer.

*Roland Tuck*, for the intervenor, Kirkland Public Employees Association.

King County Public Hospital District 2 (employer) has filed election objections, claiming that Service Employees International Union, Local 1199NW, improperly affected the results of an election. Responding to a request from the Commission staff, Local 1199NW filed a written response opposing the objections, while the decertification petitioner and intervenor filed written responses supporting the employer's position.

ISSUE

The only issue before the Commission at this time is: Should the Commission issue a summary judgment on any or all of the objections (either dismissing them as insufficient on their face, or sustaining them on the basis of admitted misconduct) based on the responses filed by SEIU Local 1199NW? We remand this case to the Executive Director for an evidentiary hearing.

APPLICABLE LEGAL PRINCIPLES

The Commission staff conducted a representation election, based on separate petitions by Andrea Sheahan (Case 18802-E-04-2893, filed August 31, 2004, seeking decertification of Service Employees International Union, Local 6, as exclusive bargaining representative of certain clerical and service employees of the employer),<sup>1</sup> and by SEIU Local 1199NW (Case 19842-E-05-3106, filed October 7, 2005, seeking to replace SEIU Local 6 as exclusive bargaining representative of the same bargaining unit).<sup>2</sup> Processing of the first case was delayed for a time,<sup>3</sup> after which the two representation cases were consolidated.

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<sup>1</sup> The Kirkland Public Employees Association (KPEA) was granted intervention in this case under WAC 391-25-190, based on a motion and showing of interest filed on August 5, 2005, without objection from SEIU Local 6.

<sup>2</sup> SEIU Local 6 filed a motion for intervention in this case on October 27, 2005, but affirmatively stated that it did not wish to appear on the ballot.

<sup>3</sup> The processing of Case 18802-E-04-2983 was "blocked" for a time under WAC 391-25-370, pending the resolution of unfair labor practice charges filed by Sheahan and SEIU Local 6. On October 10, 2005, SEIU Local 6 filed a request to proceed notwithstanding the unfair labor practice case it still had pending as of that time.

Election conduct is regulated by the Commission's rules at WAC 391-25-470, which states:

WAC 391-25-470 MAIL BALLOT ELECTIONS PROCEDURES - ELECTIONEERING - OBJECTIONABLE CONDUCT. The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting. . . .

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(I) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning on the scheduled date for the issuance of ballots to employees and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

. . . .

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

WAC 391-25-630 outlines the procedure for processing election objections:

WAC 391-25-630 PROCEDURE WHERE CONDUCT OBJECTIONS ARE FILED. Where objections allege improper conduct under WAC 391-25-590(1)(a) or (2), other parties may be requested to respond to the objections within a period of time established by the agency. The period shall be seven days or more.

(1) *If the objections and any responses indicate there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law, the commission may issue a summary judgment in the matter.*

(2) *If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer.*

(a) Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

(b) The rules relating to hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

(3) The objections, any responses, and the record made at any hearing on the objections shall be referred to the commission.

(emphasis added). If the Commission orders a hearing, a staff member conducts the hearing but the record comes back to the Commission for issuance of any decision.

#### ANALYSIS

At an investigation conference, the parties stipulated to ballots being mailed to employees on November 9, 2005, with a due date of December 5, 2005. When the Commission staff tallied the ballots on December 6, 2005, the results were as follows:

Approximate Number of Eligible Voters . . . . .	555
Void Ballots . . . . .	2
Votes Cast for "KPEA" . . . . .	134
Votes Cast for "SEIU Local 1199NW" . . . . .	156
Votes Cast for "No Representation" . . . . .	36
Valid Ballots Counted . . . . .	326
Challenged Ballots Case . . . . .	9
Valid Ballots Counted Plus Challenged Ballots . . . . .	335
Number of Valid Ballots Needed to Determine . . . . .	278

To have a conclusive election result under RCW 41.56.070 and WAC 391-25-531, one of the choices needed to receive 278 votes. Thus, a run-off election was necessary in these cases, giving the employees a choice between Local 1199NW and the KPEA.

On December 13, 2005, the employer filed objections under WAC 391-25-470.<sup>4</sup> Specifically, the employer objected to the contents of campaign flyers issued by SEIU Local 1199NW on November 21 and 25, 2005, and to a campaign flyer issued by SEIU Local 1199NW on December 6, 2005. The parties were invited to submit written responses to the employer's objections, with a deadline of December 28, 2005. SEIU Local 1199NW filed its response on December 28, 2005.<sup>5</sup>

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<sup>4</sup> WAC 391-25-570 permits only the employer and any organization excluded from appearing on the run-off ballot to file election objections following an inconclusive election. Thus, only the employer and Sheahan (as the decertification petitioner) had standing to file objections at this time.

<sup>5</sup> Sheahan filed a response on December 28, 2005, agreeing in general with the employer's objection, but offering no further factual allegations. The KPEA filed a response on January 4, 2006, and Sheahan filed an additional response on January 10, 2006. Because they were late, the responses filed in January 2006 have not been considered in the preparation of this decision.

The November 21, 2005 Flyer

The employer asserts that 10 individuals named within this flyer did not authorize the union to use their names or likenesses in a campaign flyer. The union claims it had the authorization of the 10 individuals, or that they tacitly authorized use of their names by signing a petition supporting the union.

The November 28, 2005 Flyer

The employer claims that the union misrepresented material issues of fact when it referred to the KPEA as SEIU Local 6 in this campaign flyer. The union claims the statements contained within the flyer are truthful, or that the statements within the flyer are not so far from the truth as to be substantial misrepresentations.

The December 6, 2005 Flyer

The employer claims that statements contained within this flyer were substantial misrepresentations of fact. Specifically, the employer asserts that the results of the union did not "win" the election, and that the union once again misrepresented a salient issue of fact by misrepresenting the identity of the KPEA. The union denies its flyer misrepresented the outcome of the election.

A Hearing is Warranted in this Case

The Model Rules of Procedure permit administrative agencies to issue summary judgment in certain situations, as follows:

WAC 10-08-135 SUMMARY JUDGMENT. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In this case, the parties disagree about the facts concerning the impact of the three campaign flyers. The employer and decertifica-

tion petitioner allege that WAC 391-25-470 has been violated, while the union claims that no violation has occurred. Because parties disagree about the factual situation, the matter should be set for hearing.

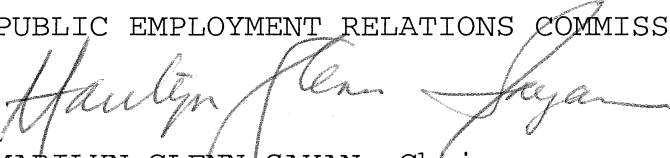
NOW, THEREFORE, it is


ORDERED

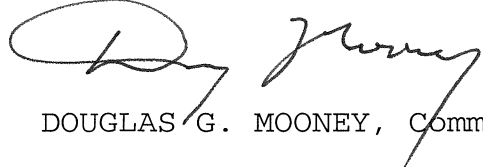
The objections filed by the employer concerning the campaign flyers issued by SEIU Local 1199NW on November 21, November 28, and December 6, 2005, are REMANDED to the Executive Director for an evidentiary hearing.

Issued at Olympia, Washington, the 13th day of January, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
DOUGLAS G. MOONEY, Commissioner