

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
UNITED STAFF NURSES UNION, LOCAL)
141, affiliated with the UNITED) CASE 8086-E-89-1369
FOOD AND COMMERCIAL WORKERS,)
AFL-CIO) DECISION 3317-B - PECB
)
Involving certain employees of:)
)
OLYMPIC MEMORIAL HOSPITAL) CERTIFICATION
)
)
)
)
)

Webster, Mrak and Blumberg, by Mark E. Brennan, Attorney at Law, appeared on behalf of the petitioner.

Harold Buck, Personnel Director, appeared on behalf of the employer.

MacDonald, Hoague and Bayless, by Harold H. Green, Attorney at Law, appeared on behalf of incumbent intervenor, Washington State Nurses Association.

Gibbs, Douglas, Theiler and Drachler, by Robert H. Gibbs, Attorney at Law, appeared on behalf of intervenor, District 1199NW, National Union of Hospital and Health Care Employees, SEIU, AFL-CIO.

This matter comes before the Commission on timely objections to rulings, filed by the Washington State Nurses Association (WSNA) under WAC 391-25-590(2). The petitioner and District 1199NW received the greatest numbers of votes in an inconclusive election conducted on November 3, 1989. The Commission ordered that the runoff election be conducted immediately and that certification be withheld pending a ruling on these objections.¹ District 1199NW

¹ Olympic Memorial Hospital, Decision 3317-A (PECB, 1989).

prevailed in the runoff election, and no additional objections have been filed by any party. WAC 391-25-650(1)(c) establishes the time for filing of briefs or written arguments on objections filed pursuant to WAC 391-25-590(2). No briefs or written arguments have been received from any party.

The rulings at issue are:

1. The Executive Director's rejection, in Olympic Memorial Hospital, Decision 3317 (PECB, 1989) of the WSNA's request for an indefinite delay of these proceedings pending the outcome of federal court litigation on the WSNA's claim that a "no raid" agreement exists between the parties; and

2. The Executive Director's rejection, in a letter to the parties, of the WSNA's request that the agency impound the ballots cast by employees in six different cases now pending before the agency, so that the election results in all such cases might be tallied simultaneously.

DISCUSSION

The Request for Indefinite Delay

The Commission has reviewed the motions and arguments advanced by the WSNA on the claimed "no raid agreement" prior to the election, the written statements filed by Local 141 and District 1199NW on that issue, and the objections themselves. We find no error.

The Direction of Election issued by the Executive Director reviews the language of the document at issue, the arguments advanced by the parties, the procedures followed by the National Labor Relations Board (NLRB) where it is asked to delay representation proceedings due to a "no raid" agreement, and the procedures followed by this Commission up to this time in such cases.

The "no raid" agreement was, at most, a contractual arrangement between its parties. The prevailing federal precedent in the 9th Circuit holds that "treaties between two unions cannot override the Section 7 rights of workmen to select their own bargaining representative". Local 1547, International Brotherhood of Electrical Workers v. Local 959, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, 507 F.2d 872 (9th Circuit, 1974). Like Section 7 of the National Labor Relations Act, RCW 41.56.040 assures public employees the right to select representatives of their own choosing. Thus, labor organizations cannot contract among themselves to deprive this Commission of its statutory authority to conduct representation proceedings.

The 9th Circuit precedent, supra, also leaves the decision on whether to conduct representation proceedings in such situations to the discretion of the agency administering the collective bargaining statute. The document relied upon by the WSNA does not contain any expeditious procedure for resolving the WSNA's claims. The Executive Director properly exercised discretion to go forward with the processing of this representation case.

In claiming that "predatory conduct" by the USNU (and/or by certain former WSNA officials) destroyed the "laboratory conditions" for the conduct of a fair election, the WSNA relies upon events that occurred prior to the filing of the petition in this case. The scope of "objections" under WAC 391-25-590 is limited to the period that the representation petition is pending before the agency. During the election campaign period that is subject to scrutiny here, the WSNA had an opportunity to fully apprise bargaining unit employees of its claims of misconduct by the USNU or former WSNA officials. Given these facts, we do not find that grounds existed for the requested indefinite delay of the election. Indeed, as the 9th Circuit has suggested, the right of bargaining unit members to select a representative of their own choosing is appropriately protected by allowing the election to proceed while any issue of

the WSNA's contractual rights vis-a-vis the USNU and/or District 1199NW is resolved in federal court. (Id, 87 LRRM 3065).

The "Simultaneous Tally" Issue

With respect to the "simultaneous tally" issue, the Commission has reviewed the WSNA's motion, the Executive Director's letter ruling and the post-election objections. Again, we find no error.

The Executive Director detailed resource limitations which preclude conducting elections in six hospitals at the same time. He went on to state multiple reasons for rejecting an impound and simultaneous tally: (1) Provisions of WAC 391-25-550 calling for the issuance of a tally "upon the closing of the polls"; (2) the refusal of the NLRB to order a simultaneous tally on similar cases then pending before it, so that the influence of one election result upon others could not be avoided; (3) the delay necessary to bring a recently filed seventh case and any additional cases that might be filed up to the same point in the procedure; (4) the delay which would occur at Olympic Memorial Hospital while elections in larger units were being conducted; (5) the likelihood of a need for runoff elections; and (6) the absence of direct effect of one election result on the result in another case.

The delay inherent in the procedure suggested by the WSNA would have contravened our long-standing and recently re-affirmed policy favoring prompt conduct of representation elections. See: City of Redmond, Decision 1367-A (PECB, 1982) and Olympic Memorial Hospital, Decision 3317-A (PECB, 1989).

Finally, there could have been no prejudice of the type feared by the WSNA in this case. The initial election was conducted and tallied on the first day that the Commission held elections among the six cases involved here. One other election was held on that day. All of the other elections came later.

FINDINGS OF FACT

1. The above-named petitioner timely filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the above-named employer. Said petition was accompanied by a showing of interest which was administratively determined by the Commission to be sufficient.
2. The organization listed above as intervenor timely moved for intervention in the proceedings, and said motion for intervention was granted.
3. These representation proceedings were conducted by the Commission in the bargaining unit described as:

All registered nurses employed by Olympic Memorial Hospital as registered nurses at its hospital in Port Angeles, Washington, excluding nurses employed as supervisors, or in management, or as a CRNA, and all other employees.

4. All proceedings were conducted under the supervision of the Commission in a manner designed to afford the affected employees a free choice in the selection of an exclusive bargaining representative. A tally of the results was previously furnished to the parties and is attached hereto.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The authority to conduct representation proceedings that is conferred upon the Commission by RCW 41.56.050 through .080 is not subject to limitation by contractual arrangements among labor organizations, so that the objection filed by the Washington State Nurses Association concerning its request for a delay of the proceedings is without merit.
3. The authority to conduct representation proceedings that is conferred upon the Commission by RCW 41.56.050 through .080 is to be implemented by the expeditious conduct of elections under Commission policy and precedent, so that the objection filed by the Washington State Nurses Association concerning its request for impounding and simultaneous tally of ballots is without merit.
4. The unit described in paragraph 3 of the foregoing findings of fact is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and all conditions precedent to a certification have been met.

NOW, THEREFORE, it is

CERTIFIED

The employees of the above-named employer in the appropriate bargaining unit described in paragraph 3 of the foregoing findings of fact have chosen:

District 1199NW, National Union of Hospital
and Health Care Employees, Service Employees
International Union, AFL-CIO

as their exclusive representative for the purposes of collective bargaining with their employer with respect to wages, hours and

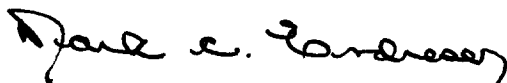
conditions of employment.

ISSUED at Olympia, Washington, this 29th day of January, 1990.

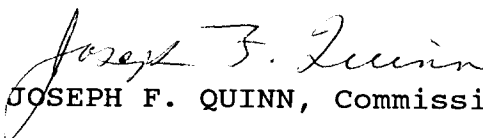
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TALLY SHEET

NAME OF EMPLOYER OLYMPIC MEMORIAL HOSPITAL CASE NUMBER 8086-E-89-1369

PART 1 - CROSS-CHECK OF RECORDS

The undersigned agent of the Public Employment Relations Commission certifies that he/she has conducted a cross-check of records in the above case, and that the results were as follows:

Number of Employees in Bargaining Unit.....

Number of Employee Records Examined.....

Number of Employee Records Counted as Valid Evidence of Representation...

PART 2 - SECRET BALLOT ELECTION

The undersigned agent of the Public Employment Relations Commission certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated below, were as follows:

1. Approximate number of eligible voters..... 161

2. Void Ballots..... 0

3. Votes Cast For: UNITED STAFF NURSES UNION, LOCAL 141, NECW, AFL-CIO .. 61

4. Votes Cast For: DISTRICT 1199NW, NAT'L UNION OF HOSP. & HEALTH CARE EMPLOYEES, SEIU, AFL-CIO ... 72

5. Votes Cast For:

6. Votes Cast For: NO REPRESENTATION..... -

7. Valid Ballots Counted.(total of 3, 4, 5, and 6)..... 133

8. Challenged Ballots..... 0

9. Valid Ballots Counted plus Challenged Ballots (total of 7 and 8)..... 133

10. Number of Valid Ballots Needed to Determine Election..... 67

Challenges are are not sufficient in number to affect the results of the election.

The results of the election appear to be inconclusive. conclusive favoring choice on line 4

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DATE ISSUED December 1, 1989

By Kenneth J. Futch

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Olympic Memorial Hosp
Harold Buck

For 1199 NW Laurie A. Elmer

For USNU
Mary Bay

For _____

