

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
WASHINGTON EDUCATION ASSOCIATION) CASE 11987-E-95-1975
Involving certain employees of:) DECISION 5319-B - PECB
COLVILLE SCHOOL DISTRICT) ORDER DISMISSING
ELECTION OBJECTIONS

Warren Henderson, UniServ Representative, appeared on behalf of the union.

Winston, Stevens & Clay, by Robert W. Winston, Jr., appeared on behalf of the employer.

This case comes before the Commission on election objections filed by various bargaining unit employees pursuant to WAC 391-25-590 on June 14, 1996, and on election objections filed by the employer on June 17, 1996.

BACKGROUND

On August 18, 1995, the Washington Education Association (WEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC. The WEA sought certification as exclusive bargaining representative of office-clerical employees of the Colville School District. The Executive Director vacated the results of an election, based on indications that the parties' stipulation concerning an eligibility list was contrary to Commission policy, and remanded the matter for a hearing.¹ A hearing was held on January 23 and 24, 1996, and a new election was

¹ Colville School District, Decision 5319 (PECB, 1995).

directed in an order issued by the Executive Director on May 14, 1996.²

The election was conducted under the mail ballot procedure authorized by WAC 391-25-470. On May 24, 1996, ballot materials were mailed to the employer and union, and to the 18 employees named on an eligibility list supplied by the employer on May 23, 1996. The notice supplied to each eligible voter stated:

If you desire to vote, please mark your ballot and return it as soon as possible. Your ballot will be counted only if it is received by the Commission at the address stated on the return envelope on or before:

FRIDAY, JUNE 7, 1996 AT 3:00 P.M.

The Commission receives its last mail delivery each day at 1:00 p.m., and uses the 3:00 p.m. time for election tally purposes to assure that all mail received by the deadline date can be counted.

Review of the case file indicates the list submitted by the employer on May 23, 1996 included Sandie Wollan. Ballot materials were sent to Wollan at the address indicated on that list.

Through an exchange of communications on May 29 and June 3, 1996, the union requested that a challenged ballot be mailed to Jerilene Symmes, and the employer supplied a statement verifying that it had recently hired Symmes. The word "Challenged" was imprinted on the return envelope sent to Symmes.³

² Colville School District, Decision 5319-A (PECB, 1996).

³ Any person presenting themselves at the polling place for an on-site election conducted by the Commission will be permitted to cast a challenged ballot if their name does not appear on the official eligibility list. In mail balloting, the agency will supply a ballot and a return envelope marked "challenged" to any person claiming eligibility to vote.

The ballots were opened and counted after 3:00 p.m. on June 7, 1996. No ballot was received from Sandie Wollan, so the mailing of ballot materials to that individual had no effect on the outcome of the election. A union representative was present, and he withdrew the union's challenge to the eligibility of Jerilene Symmes.⁴ The tally of ballots issued at that time reflected:

APPROXIMATE NUMBER OF ELIGIBLE VOTERS	19
VOID BALLOTS	0
VOTES CAST FOR <u>WASHINGTON EDUCATION ASSOCIATION</u>	8
VOTES CAST FOR <u>NO REPRESENTATION</u>	7
VALID BALLOTS COUNTED	15
CHALLENGED BALLOTS CAST	0
VALID BALLOTS COUNTED PLUS CHALLENGED BALLOTS	15
NUMBER OF VALID BALLOTS NEEDED TO DETERMINE ELECTION.	8

In the absence of an employer representative, a copy of the tally was duly served upon the employer by mailing on June 7, 1996.

The tally of ballots in this case does not include three ballots received by the Commission on June 10, 1996. Two of those return envelopes were postmarked at Spokane, Washington "PM 6 Jun 1996"; the third was postmarked at Spokane "PM 7 Jun 1996".

DISCUSSION

The procedures for challenging the results of a representation election conducted by the Commission are as follows:

⁴ In both on-site and mail ballot settings, any challenged ballots are reviewed prior to the counting of unchallenged ballots. Where a challenge is sustained, the envelope identifying the voter is marked "void", is set aside unopened, and is accounted for on the "void ballots" line on the tally form. Where a challenge is withdrawn, the envelope identifying the voter is removed and the ballot is deposited and mixed in the ballot box to preserve secrecy. Any unresolved challenges are accounted for on the tally and are determined later, under WAC 391-25-510.

WAC 391-25-590 Filing and service of objections. **Objections must be filed within seven days after the tally has been served** under WAC 391-25410 or under WAC 391-25-550.

(1) Objections filed by the petitioner, the employer or any intervenor may consist of:

(a) Designation of specific conduct improperly affecting the results of the election; and/or

(b) Designation of one or more previous rulings or directions in the matter which the objecting party desires to have reviewed by the commission.

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

(3) Objections shall contain, in separate numbered paragraphs, statements of the specific conduct, if any, alleged to have improperly affected the results of the election and, in separate numbered paragraphs, the specific rulings or directions, if any, which the party filing the objections desires to have reviewed.

(4) The original and three copies of the objections shall be filed with the commission at its Olympia office, and the party filing the objections shall serve a copy on each of the other parties to the proceedings. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election.

[Emphasis by **bold** supplied.]

All objections are decided by the Commission, but the specific procedures for doing so vary from case to case depending upon the circumstances. The first questions before the Commission are: (1) Whether objections are timely; (2) whether the party filing the objections has standing to object; and (3) whether the objections state claims for relief available under WAC 391-25-590.

The Objections Filed by Rawline Taylor

On June 14, 1996, Rawline Taylor filed a letter with the Commission, stating various concerns about an organizing campaign that

commenced prior to her becoming an employee, and questioning the inclusion of her position in the bargaining unit. While Taylor's letter is "timely", the list of employees used to check voter eligibility at the tally indicates that Taylor cast a ballot. The fact that her vote was counted precludes her from having legal standing to object under WAC 391-25-590(2).

The Objections Filed by Robin Sphuler

On June 14, 1996, Robin Sphuler filed a letter with the Commission, stating concerns about being excluded from the organizing which preceded the filing of the petition, and questioning the inclusion of her position in the bargaining unit. As with Taylor, the list of employees used to check voter eligibility at the tally indicates that Sphuler cast a ballot. While Sphuler's letter is "timely", the fact that her ballot was received and counted precludes her from having legal standing under WAC 391-25-590(2).

The Objections Filed by Six Employees

On June 14, 1996, Rawline Taylor, Robin Sphuler, Laura Moody, Rose Quimby, Leslie Armes, and Marlene Holden jointly filed a letter with the Commission, stating concerns about the issuance of ballot materials to Sandie Wollan, about the three late ballots, and about the mail ballot procedure generally. The list of employees used to check voter eligibility at the tally indicates that Moody, Quimby, Armes, and Holden each cast a ballot. While this joint letter is "timely", the fact that ballots were received and counted from each of the authors precludes them from having legal standing under WAC 391-25-590(2).

None of the three employees who cast the late ballots have filed timely objections in this case, so we have no basis to inquire into their delay in the mailing their ballots until the day before ballots were due or the day that ballots were due in Olympia. We

note, however, that the late mailing of those ballots appears to have constituted a forfeiture of their right to vote.⁵

The Employer's Objections

On June 17, 1996, the employer filed objections concerning "electioneering/deceptive campaign practices" (related to a mailing sent out by the union), "violation of eligibility cutoff" (impliedly related to the issuance of ballots to Sandi Wollan and/or Jerilene Symmes), "receipt of ballots" (related to the ballots received after the deadline), and "mail balloting" (expressing a preference for an on-site election). Those objections were not timely filed, however. A cover letter written on June 13, 1996 expressly indicates an understanding that the objections were due within seven days, but the employer apparently did not take steps to assure filing by the close of business on June 14, 1996.⁶ Thus, even though the employer would have had legal standing to raise the matters asserted, they are not properly before the Commission.

⁵ The deadline for return of ballots here 14 days after mailing conformed to WAC 391-25-490, and gave employees a much wider window of opportunity to vote than the polling times for an on-site election. For a small bargaining unit such as this, the polls in an on-site election would have been open for no more than one or two hours. Employees who fail to present themselves at the polling place for an on-site election during the hours when the polls are open forfeit their right to cast ballots. Similarly, employees who delay mailing their ballots until normal mail service could not be expected to effect timely delivery of the ballots forfeit their right to vote.

⁶ The filing of documents with the Commission is regulated by the Administrative Procedure Act, at RCW 34.05.010(6), and by WAC 391-08-120 (which was recently amended to clarify that "filing" is only accomplished upon actual receipt by the Commission). In contrast to the employer's forwarding of its objections in this case by regular mail, the three letters filed by employees were forwarded to the Commission via a commercial parcel delivery company, marked "Extremely urgent ... priority overnight".

NOW, THEREFORE, it is

ORDERED

1. The objections filed in the above-captioned matter by Rawline Taylor, Robin Sphuler, Laura Moody, Rose Quimby, Leslie Armes, and Marlene Holden are dismissed for lack of standing to file objections on the matters asserted.
2. The objections filed in the above-captioned matter by the Colville School District are dismissed as untimely.
3. It is hereby CERTIFIED that the employees in the appropriate bargaining unit described as:


All regular full-time and regular part-time office-clerical employees of the Colville School District, excluding confidential employees, supervisors, and all other employees of the employer

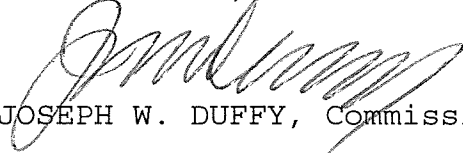
have chosen the Washington Education Association as their exclusive bargaining representative for the purposes of collective bargaining under Chapter 41.56 RCW.

Issued at Olympia, Washington, the 19th day of July, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner