

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of	)	
PATRICIA LAUTERBACH	)	CASE NO. 4081-E-82-762
	)	
For investigation of a question	)	DECISION NO. 1547 - PECB
concerning representation of	)	
employees of	)	
	)	DECISION OF COMMISSION
SNOHOMISH COUNTY PUBLIC TRANSIT	)	AND CERTIFICATION
BENEFIT AREA CORPORATION	)	

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Patricia A. Lauterbach, petitioner for decertification, appeared pro se.

Cabot Dow, management consultant, appeared for the employer. Hendricks and Schillberg, by Allen J. Hendricks, attorney at law, filed the brief on behalf of the employer.

Luis Moscoso, president, appeared on behalf of the intervenor, Amalgamated Transit Union No. 1576. Cogdill, Deno & Millikan, by W. Mitchell Cogdill, attorney at law, filed motions and brief on behalf of the intervenor.

These proceedings originated from a timely and properly supported petition for investigation of a question concerning representation filed by certain employees seeking decertification of Amalgamated Transit Union No. 1576 (union) as exclusive bargaining representative of a bargaining unit of inspector/dispatchers employed by Snohomish County Public Transit Benefit Area Corporation (employer). The parties filed an election agreement in the matter and a representation election was conducted by the commission staff. The tally of ballots issued pursuant to WAC 391-25-550 indicates that of four eligible voters, two voted in favor of representation by the union and two voted for no representation.

This decision by the Commission is in response to the request of the union that it be allowed to withdraw its stipulation in the election agreement that the number of employees in the bargaining unit is four (4), and to substitute its claim that the number of employees in the bargaining unit is five (5). Further, the union requests that the election results be set aside and that a new election be conducted with ballots being made available to all five individuals claimed to be within the bargaining unit. Finally, the union requests that the Commission enter an order finding that WAC 391-25-530(2), which provides:

"(2) Representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.",

does not apply to decertification elections.

The union bases its request to withdraw from the stipulation in the election agreement on a claim that the stipulation was a mistake, inadvertently made by the union, and that the correct number of bargaining unit employees is five, not four. The union maintains that the fifth employee, Leland Hull, was and is a regular part-time employee in the inspector/dispatcher bargaining unit.

The employer opposes the motion to withdraw from the stipulation, on the grounds that: (1) The fifth employee is not a regular part-time employee in the bargaining unit, and (2) The election agreement is a correct binding stipulation and should stand. The employer further contends that WAC 391-25-530(2) does apply to the present decertification proceeding.

The petitioner, joined by another bargaining unit employee, filed a letter in opposition to the union's motion. They aver that Hull is an intermittent employee only in the inspector/dispatcher bargaining unit and that he is a full-time bus driver employed by the employer in another bargaining unit represented by the union. They support the stipulations embodied in the election agreement and request a hearing if the motion to withdraw the stipulation is granted.

The Commission finds no good reason to allow the union to withdraw its stipulation at this late date. Election agreements made under WAC 391-25-230 are enforced as binding stipulations of the parties except for good cause shown. See: WAC 391-08-450 and Community College District No. 5, Decision 448 (CCOL, 1978); Issaquah School District, Decision 775 (PECB, 1979); and Clover Park School District, Decision 905 (PECB, 1980). If the union believed that Hull was or might have been an eligible employee, the correct procedure would have been to claim his eligibility at the pre-hearing conference and to proceed from there along established procedures for hearing or filing of a supplemental agreement.

Under NLRB procedure:

"An objection to the election cannot be based on the appropriateness of the bargaining unit or upon voter eligibility, for these questions must be raised in proper proceedings." (emphasis added) Morris, ed., The Developing Labor Law, (BNA, 1971), at p. 195.

Our rules permit the filing of objections to challenge rulings made by the Executive Director concerning the bargaining unit or voter eligibility, but there were no such rulings in this case. NLRB procedures approved by the Supreme Court of the United States also require that challenges to the eligibility of voters be made "prior to the actual casting of ballots". NLRB v. A.J. Tower Co., 329 U.S. 324 (1946).

RCW 41.56.080 provides for certification of the organization "which has been determined to represent a majority of the employees in a bargaining unit." (emphasis added). WAC 391-25-530(2) implements the statute. The results of the election conducted in this case indicate that the union failed to demonstrate majority support in the bargaining unit. See: Best Motor Lines, 82 NLRB 269 (1949).

#### FINDINGS OF FACT

1. The above-named petitioner timely filed with the Commission a petition for investigation of a question concerning representation of 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; and the employer declined voluntarily to extend recognition to the petitioner as the exclusive bargaining representative of its employees.
2. The organization listed above as intervenor timely moved for intervention in the captioned proceedings; and said motion for intervention was supported by a showing of interest which was administratively determined by the Commission to be sufficient.
3. These representation proceedings were conducted by the Commission in the bargaining unit described as:

ALL FULL-TIME AND REGULAR PART-TIME INSPECTOR/DISPATCHERS OF  
SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION  
EXCLUDING ALL OTHER EMPLOYEES OF THE EMPLOYER.

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 their bargaining representative, if any; a tally of the results was previously furnished to the parties and is attached hereto; and no meritorious objections have been filed with respect to these proceedings.

#### CONCLUSIONS OF LAW

The unit described in finding of fact number 3 is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56; and all conditions precedent to a certification have been met.

NOW, THEREFORE, it is

CERTIFIED

The majority of the employees of the above named employer employed in the appropriate collective bargaining unit described in finding of fact number 3 have chosen:

NO REPRESENTATION

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

Issued at Olympia, Washington, this 13th day of December, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JANE R. WILKINSON, Chairman

  
MARK C. ENDRESEN, Commissioner

  
MARY ELLEN KRUG, Commissioner