

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

David Jones and David Hall,)
 Petitioners,)
 and)
Municipality of Metropolitan)
Seattle (METRO),)
 Employer,)
 and)
Public Service Employees)
Local No. 674,)
 Intervenor)
_____)

Case No. 426 E-76-88

Decision No. 131 PECB

CERTIFICATION OF REPRESENTATIVE

Representation proceedings, as indicated above, having been conducted under the supervision of the Public Employment Relations Commission, and it appearing from the results that a collective bargaining representative has been selected; and objections having been filed to the proceedings:
NOW, THEREFORE, it is:

ORDERED

That the objections filed in the above outlined matter be dismissed as legally insufficient; and it is:

CERTIFIED

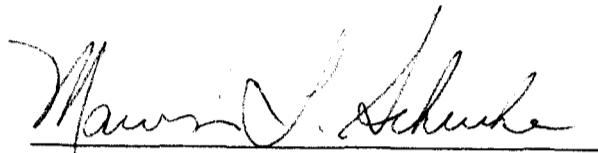
That Public Service Employees Local No. 674 has been designated and selected by a majority of the employees of the above-named Employer in the unit consisting of:

"All Maintenance and Operations Employees working within the Sewage Disposal Operations on a regular basis, including Senior Maintenance Clerks and the Maintenance Clerks, but excluding Supervisors, Professional Employees and Office Clerical Employees".

as their representative for the purpose of collective bargaining, and that the said organization is the exclusive representative

of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

SIGNED at Olympia, Washington 23rd day of November 1976.

A handwritten signature in cursive script, reading "Marvin L. Schurke", written over a horizontal line.

MARVIN L. SCHURKE
Authorized Agent

cc: Terrance O. Monahan
David Jones
David Hall
Gary Grant

MEMORANDUM ACCOMPANYING CERTIFICATION OF REPRESENTATIVES

The petition in this matter was filed on August 20, 1976 by two bargaining unit employees. It seeks to decertify Public Service Employees Local #674, SEIU, AFL-CIO as the representative of certain employees of the Municipality of Metropolitan Seattle (METRO). The two employee petitioners are described in their typewritten petition as "spokesmen", and they have sometimes used the words "Employees for Decertification" as part of their mailing address and signature identification. The certification under challenge resulted from a certification of representatives issued by the Washington State Department of Labor and Industries on January 31, 1973, following an election conducted on January 3, 1973 in a unit identical to that involved here.

On September 21, 1976, the incumbent union and the management executed a written stipulation for the conduct of a representation election. There was no stipulation as to the date of the election. It appears that, on or about September 27, 1976, an agent of the Commission made contact with an agent of the management to make arrangements for the use of the employer's facilities to hold the election on October 14, 1976. However, in drafting the notices of the election, the same agent inserted the date of the election as "Thursday, October 17, 1976", an obvious error since October 17, 1976 fell on a Sunday. The error was not noted or called to the attention of the agency until after the notices had been issued and posted by the employer. On October 5, 1976 the Commission agent then handling the case issued a letter to all parties taking responsibility for the error and setting the election for "Thursday, October 21, 1976."

Thereafter, the authorization of absentee ballot procedures was requested. The rules of the agency do not provide for absentee ballot procedures under Chapter 41.56 RCW, and the practice has been to count as valid ballots only those cast in person during the hours and at the place indicated in the Notice of Election. By contrast, the procedures of the agency under Chapter 41.59 RCW provide for the use of absentee ballots upon the agreement of all parties to the proceeding. See WAC 391-30-128. In the absence of the Commission agent originally assigned to the case, another member of the agency staff worked with representatives of all parties to develop a mutually agreeable procedure for absentee voting. On October 13, 1976 the representatives of all parties executed a supplemental stipulation as follows:

"STIPULATION OF AGREEMENT"

The undersigned parties, the Municipality of Metropolitan Seattle, Public Service Employees Local No. 674, and the Petitioners for Decertification agree that Absent Voters Ballots may be furnished to eligible voters in the Representation Election of October 21, 1976 for employees who are to be absent on the above date, in the manner set forth in the attached notice. The Employer agrees that the Special Notice regarding Absent Voters Ballots will be posted on or before October 14, 1976 as attachments to the election notices previously posted.

/s/ Terrence O. Monahan
Municipality of Metropolitan Seattle (METRO)

/s/ Gary Grant
Public Service Employees Local No. 674

/s/ David M. Jones
Petitioner for Decertification

/s/ David H. Hall
Petitioner for Decertification"

and approved a supplemental notice, as follows:

"SPECIAL NOTICE
ABSENT VOTERS BALLOTS
FOR THE
REPRESENTATION ELECTION
of October 21, 1976
For certain employees of

Municipality of Metropolitan Seattle (METRO)
Who are to be absent from work on the above date,
May be cast in the following manner:

- 1) Ballots will be available between the hours of 8:00 a.m. and 5:00 p.m. at the Public Employment Relations Commission office, on the 4th floor, 300 West Harrison, Seattle, Washington for eligible voters.
- 2) Two items of identification will be required before a ballot is provided.
- 3) Voters must sign the register.
- 4) Eligible voters will cast their ballots in person in a locked ballot box."

The notices were posted on the same day.

During the period between October 13 and October 20, seven eligible voters presented themselves and cast absentee ballots in accordance with the procedure agreed to by the parties. The election was conducted on October 21, 1976 with the following result:

| | |
|----------------------------------|-----|
| Approximate number eligible | 137 |
| Void ballots | 0 |
| Votes cast for PSE Local 674 | 63 |
| Votes cast for no representation | 61 |

The certification of the results of this election was withheld upon the filing of a "notice of protest" by the petitioners. The matter is being handled as objections to the election to be ruled on initially at the staff level within the agency.

Position of Petitioners

The petitioners premise their objections on Washington State law guaranteeing each and every citizen the right to vote. They contend that at least three eligible voters contacted the agency for absentee ballots before leaving on vacation and were told that there were no arrangements for absentee voting, only to

find out later that absentee voting did become available following their departure. The petitioners assert that these votes could change the outcome of the election and that the election should be re-run.

Position of PSE Local 674

The incumbent Union claims no knowledge of or participation in the aborted effort to hold the election on October 14, 1976, but points out that the corrections were made well in advance of October 21, 1976 so as to provide adequate notice of the election date. It contends that the petitioners signed the stipulation giving rise to the absentee ballot procedures and are now bound by that stipulation.

Position of the Employer

The employer believes that the election should be re-run, citing only the confusion as to the scheduling of the election.

Discussion

The undersigned has transferred the matter to himself and has reviewed the entire file prior to making any ruling. This decision is, therefore, rendered in the capacity of "authorized agent" as used in WAC 391-20-060.

Upon review of the entire file, it is apparent that there was an error and some resulting confusion in connection with the setting of the date for the election. While this is unfortunate, human error is subject to correction in a situation such as this. The election date was moved back, thereby increasing the period of notice given to the parties and to the voters. That period of notice was clearly adequate under agency rules and the previous error cannot be regarded as grounds for setting aside the election, no matter what the results of the balloting.

Contrary to the position of the petitioners, absentee voting in collective bargaining representative elections is not mandated by Chapter 41.56 RCW. Absentee voting has not been a part of the standard practices of the Commission or its predecessor

agency, and the absence of enough eligible voters to alter the outcome of the election has never been regarded as adequate grounds for setting aside the results of an election. Absentee voting was provided in this case because of the express written consent of all parties, including those now objecting to the procedure. As such, the absentee procedure added to, rather than detracted from, the opportunity to vote in this election. WAC 391-08-003 and 391-20-005 permit the agency to waive any requirement of its rules unless a party shows prejudice. Here the additional voting opportunity was made available to all eligible voters upon the consent of all parties. It is concluded that there is no factual issue to be heard since, as a matter of law, the objecting party is now estopped from challenging the procedures which they participated in creating.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over a horizontal line.

MARVIN L. SCHURKE, Authorized Agent