

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
CLASSIFIED PUBLIC EMPLOYEES)	CASE NO. 4637-E-83-855
ASSOCIATION/WASHINGTON EDUCATION)	
ASSOCIATION)	
Involving certain employees of)	DECISION NO. 1744 - PECB
FREEMAN SCHOOL DISTRICT NO. 358)	DIRECTION OF ELECTION

Classified Public Employees Association/Washington Education Association (CEPA) filed a petition with the Public Employment Relations Commission on May 16, 1983 for investigation of a question concerning representation involving certain previously unrepresented employees of Freeman School District No. 358. The petition was supported by the required showing of interest. On July 18, 1983, Public School Employees of Washington (PSE) filed a motion for intervention which was also supported by the required showing of interest. The parties filed an Election Agreement in the matter on August 8, 1983. A representation election was conducted by the Commission on September 13, 1983, at which time nine ballots were cast in favor of CPEA, seven ballots were cast in favor of PSE and seven ballots were cast for no representation. One of the eligible employees did not cast a ballot.

The purpose of the representation election or cross-check under the procedures of Chapter 41.56 RCW and the administration of the Commission pursuant to Chapter 391-25 WAC is to determine which, if any, organization has the support of the majority of the employees in the bargaining unit. The representation election procedures administered by the National Labor Relations Board under federal law serve a similar purpose in the jurisdiction regulated by federal law. The draftsmen of RCW 41.56.070 anticipated the need for a run-off election in circumstances where three or more choices were submitted to employees in a representation proceeding:

RCW 41.56.070 Election to ascertain bargaining representative.

... Where more than one organization is on ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes ...

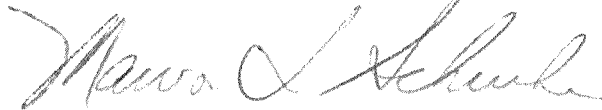
But they did not contemplate or provide for the specific circumstances existing in this case where there is a tie vote for second place. Indeed, this case presents the first occasion in the history of the Public Employment Relations Commission that a tie vote has precluded administration of the statute as written. The NLRB, however, has provided for such situations in its rules, at Section 102.70(d), and that provides guidance as to what should be done in this case.

DIRECTION OF ELECTION

The question concerning representation will be re-submitted to the employees with all three choices on the ballot. If the votes of the employees are again distributed in a manner which precludes narrowing the field as contemplated in the statute and Commission rules, certification will be issued indicating that the employees have failed to designate an exclusive bargaining representative and the "certification bar" period contemplated by RCW 41.56.070 and WAC 391-25-030(2) will be enforced.

DATED in Olympia, Washington this 22nd day of September, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director