

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of)	
CLASSIFIED PUBLIC EMPLOYEES)	CASE NO. 4691-E-83-873
ASSOCIATION/WEA/NEA)	
)	DECISION NO. 1790 - PECB
Involving certain employees of:)	ORDER DETERMINING
NAPAVINE SCHOOL DISTRICT NO. 14)	CHALLENGED BALLOTS
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Doc Dengenis, UniServ Representative, appeared on behalf of the petitioner.

Fred W. Lebhart, Labor Relations Specialist, appeared on behalf of the employer.

Les Hayes, Business Representative, appeared on behalf of the incumbent union.

On June 30, 1983, Classified Public Employees Association/WEA/NEA (CPEA) filed a petition with the Public Employment Relations Commission (PERC) for investigation of a question concerning representation involving a unit of classified employees of Napavine School District No. 14. Service Employees International Union Local 92 (SEIU) intervened as the incumbent exclusive bargaining representative of the unit.

The parties entered into an election agreement, which was filed with the signatures of all parties on September 2, 1983. The election agreement included a voter eligibility list stipulated to by all parties to the proceedings.

Notice of a mail ballot election was issued on September 8, 1983 with a tally of ballots scheduled for September 22, 1983. At the tally of ballots, the observer for the SEIU challenged two names appearing on the stipulated voter eligibility list, claiming the two were supervisors. The challenged ballots did not affect the outcome of the election, but no choice received a majority of the votes of the eligible voters in the bargaining unit, as required by RCW 41.56.070. A runoff election was scheduled. The parties were informed of the challenges by letter issued on September 23, 1983 with the notice of the mail ballot runoff election. Upon receiving that correspondence, the superintendent of the district notified the election officer that he challenged the eligibility of the SEIU observer, whose name also appeared on the stipulated voter eligibility list, based on a claim that the voter was on leave without pay from the district and was expected soon to be severed from his employment.

Ballots in the runoff election were tallied on October 6, 1983. The challenges were sufficient to affect the outcome of the election. By letter dated October 11, 1983, the Executive Director notified the parties of the election outcome, and invited their responses regarding the eligibility of the voters who had been challenged. All parties responded to that invitation.

SEIU's position is that Wilbur Thompson and Ted Kohler, the two employees challenged as supervisory, should be excluded from eligibility, but that their observer, Duane Harrietha, should be an eligible voter. The district reiterated its objection to Harrietha's eligibility, but took no position on the eligibility of the other two voters. CPEA's position is that Harrietha is an eligible voter. They took no position on the eligibility of Kohler and Thompson. None of the parties set forth changes of circumstances or other reasons for withdrawal from the stipulations previously made.

The collective bargaining agreement between the district and SEIU covering the bargaining unit herein involved describes a unit of all full-time and regular part-time classified employees of the district, excluding food service, supervisory, and confidential employees. Appendix A of that agreement includes the job title of "custodial/maintenance supervisor" as part of the unit. According to the employer, Kohler is classified as maintenance supervisor, and Thompson as custodial supervisor.

The stipulations made by parties to representation proceedings in the context of an election agreement are binding except for good cause shown. See: Community College District No. 5, Decision 448, (CCOL, 1978) and Issaquah School District, Decision 775 (PECB, 1979). SEIU's objections to the two "supervisory" employees not only contravene their stipulations in these proceedings, but differ from the recognition provision of its own negotiated agreement. Harrietha's employment relationship with the district appears to have been no different at the time of the runoff election than it was at the time the district entered into the election agreement, and there is no claim by the district that he has in fact severed his employment relationship. Prospective loss of employment is not a valid reason for voter disqualification. King County, Decision 1082 (PECB, 1981).

FINDINGS OF FACT

1. Classified Public Employees Association/WEA/NEA has filed a timely and properly supported petition in this matter, and a question exists concerning representation of certain classified employees of Napavine School District No. 14. Service Employees International Union Local 92 was granted status as an intervenor in the proceedings based upon its position as incumbent representative of the involved employees.

2. On or about September 2, 1983, in connection with the filing of an election agreement signed by representatives of all parties, a stipulated eligibility list was filed with the Public Employment Relations Commission. The names of Duane Harrietha, Ted Kohler and Wilbur Thompson were included on that list.
3. On or about October 6, 1983, Harrietha and Kohler cast challenged ballots in the runoff representation election conducted by the Commission pursuant to the election agreement identified in Finding of Fact 2.
4. No party has shown cause why the stipulations of the parties regarding voter eligibility should be vacated.

CONCLUSIONS OF LAW

1. The election agreement procedures of the Public Employment Relations Commission require the stipulation of all parties as to the list of employees eligible to vote in a representation election conducted pursuant to WAC 391-25-490.
2. No party has made a satisfactory showing why its stipulation including the individuals identified in Finding of Fact 2 as eligible to vote in the election in this case was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal of such stipulation at this time will not unjustly prejudice the rights of other parties to the proceeding. Pursuant to WAC 391-08-450, the stipulations of record made by parties in proceedings before the Commission are to be conclusively presumed against any party bound thereby, and no other evidence is to be received.
3. The individuals named in Finding of Fact 2 were eligible to vote in the representation proceedings conducted by the Commission on September 22 and October 6, 1983, and their positions are included in the bargaining unit.

ORDER

The challenges to the eligibility of Duane Harrietha, Ted Kohler, and Wilbur Thompson are overruled. An amended tally sheet is attached.

DATED at Olympia, Washington, this 7th day of November, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

TALLY SHEET

NAME OF EMPLOYER Napavine School District No. 14

CASE NUMBER 4691-E-83-873

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..... 16
2. Void Ballots..... --
3. Votes Cast For: NAPAVINE CLASSIFIED PUBLIC EMPLOYEES/WEA ... 7
4. Votes Cast For: ... --
5. Votes Cast For: ... --
6. Votes Cast For: NO REPRESENTATION..... 5
7. Valid Ballots Counted.(total of 3, 4, 5, and 6)..... 12
8. Challenged Ballots..... 0
9. Valid Ballots Counted plus Challenged Ballots (total of 7 and 8)..... 12
10. Number of Valid Ballots Needed to Determine Election..... 7

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

The results of the election appear to be inconclusive.
 conclusive favoring choice on line 3

DATE ISSUED November 7, 1983

PUBLIC EMPLOYMENT RELATIONS COMMISSION
By [Signature]

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 _____

For _____

For _____

For _____