

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	CASE NO. 6455-E-86-1136
UNITED CLASSIFIED WORKERS UNION	)	
OF WASHINGTON	)	DECISION 2685-A - PECB
	)	
Involving certain employees of:	)	
	)	
HIGHLINE SCHOOL DISTRICT	)	
	)	
In the matter of the petition of:	)	
	)	CASE NO. 6456-E-86-1137
UNITED CLASSIFIED WORKERS UNION	)	
OF WASHINGTON	)	DECISION 2686-A - PECB
	)	
Involving certain employees of:	)	
	)	DECISION OF COMMISSION
HIGHLINE SCHOOL DISTRICT	)	
	)	

John W. Peterson, Attorney at Law, appeared on behalf of the petitioner.

Joseph McKamey, Attorney at Law, appeared on behalf of the employer in the proceedings below.

Edward A. Hemphill, General Counsel, appeared at hearing on behalf of the incumbent intervenor, Public School Employees of Washington. Eric T. Nordlof, Attorney at Law, appeared in connection with the petition for review.

On May 13, 1987, Executive Director Marvin L. Schurke issued a decision on the above-captioned matters, directing an election in one of two petitioned-for bargaining units and dismissing the petition for the other of the petitioned-for bargaining units, finding in the latter case that a unit proposed for severance was inappropriate. A representation election and

runoff election have been conducted, and certain objections have been filed. The entire record in the matters has been transferred to the Commission for its review.

#### CHRONOLOGY

The United Classified Workers Union of Washington (UCWU) filed two representation petitions with the Public Employment Relations Commission on June 25, 1986. The subsequent procedural history of these cases is as follows:

In one of the petitions,<sup>1</sup> the UCWU sought to represent, and asserted the propriety of, an existing bargaining unit of operations, maintenance, custodial, transportation and food service employees of the Highline School District (hereafter referred to as the "existing" unit) theretofore represented by an affiliate of Public School Employees of Washington (PSE).

In the other petition,<sup>2</sup> the UCWU sought to carve out a separate unit of custodial, maintenance warehouse and delivery employees (hereafter referred to as the "severance" unit)<sup>3</sup> from the existing unit.

International Union of Operating Engineers, Local 609, intervened in both of these cases with the requisite showing of interest in each of the bargaining units, seeking a spot on the ballot(s).

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1 Case No. 6455-E-86-1136.

2 Case No. 6456-E-86-1137.

3 At the hearing, the UCWU amended its "severance" petition to exclude warehouse and delivery employees.

PSE intervened in the cases, seeking summary judgments or dismissals. In particular, PSE objected to the UCWU's attempt to process two petitions before the Commission at the same time involving overlapping bargaining units. After considering PSE's objections, the Executive Director assigned both matters for hearing.

A pre-hearing conference was held on October 31, 1986, and a statement of results was issued on November 7, 1986.

A consolidated hearing was held on the two petitions on January 8, January 26, February 3, and February 4, 1987. The transcript of the proceedings contains nearly 1000 pages. Each of the labor organizations involved filed a post-hearing brief. The UCWU specifically addressed the propriety of the existing bargaining unit at pages 8 - 10 of its brief, reviewing its origins and growth and taking the position that the UCWU "need only point out the inappropriateness of the existing unit, suggest an appropriate one, and ask PERC to determine one." PSE also addressed the propriety of the existing unit, noting at page 10 of its brief (with reference to page 24 of the transcript) its readiness to stipulate the propriety of the existing unit and the existence of a question concerning representation in that unit.

The Executive Director issued his decision on May 13, 1987. He dismissed the "severance" petition, and simultaneously directed an election in the "existing" unit, as requested by the UCWU in its petition in Case No. 6455-E-86-1136.

On June 2, 1987, within the 20-day period allowed by WAC 391-25-390(2) to petition for review of an order of dismissal, the UCWU filed a petition for review of the Executive Director's decision dismissing the "severance" petition in Case No. 6456-

E-86-1137. That petition did not assign error to any specific findings of fact or conclusions of law.<sup>4</sup>

On June 11, 1987, while the petition for review of the "severance" matter was pending, an on-site election was conducted by the Commission staff in the "existing" unit, pursuant to the Direction of Election in Case No. 6455-E-86-1136. The UCWU, PSE and IUOE Local 609 were listed as choices on the ballot, along with a choice for "no representation." There were 324 eligible voters in the unit. Although PSE received 155 votes, constituting approximately 54.6% of the valid ballots cast, it did not receive the votes of a majority of the eligible voters.<sup>5</sup> The provisions of RCW 41.56.070 thus forced a runoff election. Results of that first election were issued on June 11, 1987.<sup>6</sup>

On or about June 22, 1987, the UCWU directed a letter to the Executive Director which stated:

Please find enclosed supporting Affidavits with regard to item 3., of our listed objections, which we filed June 17, 1987.

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- 4     The UCWU also stated that:  
      "... in consolidating two causes of action and ruling on them separately (dismissal and direction of election), [the Executive Director] failed to conduct a proper hearing in Case No. 6455-E-86-1136 ... and that Petitioner is entitled to such hearing ...."
- An accompanying letter expanded on the claim that the UCWU was entitled to additional hearing on the propriety of the "existing" unit.
- 5     The 155 votes cast for PSE constituted the ballots of approximately 47.8% of the eligible voters.
- 6     IUOE Local 609 was eliminated by the results of that initial election, and has not taken part in the further proceedings in the cases.

Copies of these Affidavits have not been sent to the other interested parties in this matter. The people making these Affidavits have expressed a concern that they might be subjected to retaliation by one or more of the other interested parties. Copies of this letter are being sent to the other interested parties, however.

No document dated or filed on June 17, 1987 is found in the record before the Commission, nor does a search of the case files reveal any document which is titled or could be construed as "objections" filed during this time period regarding PSE conduct affecting the results of the June 11, 1987 election.<sup>7</sup>

In a letter dated June 30, 1987, the UCWU objected to the holding of a runoff election by mail ballot during the summer months. Arguments against the use of a mail ballot were set forth. The letter inquired as to why a runoff election was even being considered, "in light of [the UCWU's] formal objections and appeals."

A runoff election was conducted by mail ballot in July. PSE received 168 votes, constituting 60% of the ballots cast. The

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<sup>7</sup> PSE demanded access to the affidavits in a letter dated June 25, 1987 and filed on June 29, 1987. The UCWU was then advised that filings with the Commission were a matter of public record and could not be held confidential. At the UCWU's request, the June 22 letter and the attached affidavits were returned to the UCWU, and were considered withdrawn. The UCWU submitted a letter under date of June 30, 1987 which indicated its understanding that the documents were being returned to preserve their confidentiality, and that they could be resubmitted at a later date. While subsequent correspondence received from the UCWU thus refers to the filing of "conduct" objections, nothing is found in the documents filed by other parties which indicates awareness of such objections having been filed on or about June 17, 1987.

UCWU received 110 votes. The tally of ballots was signed by John Peterson on behalf of the UCWU and by Ben Blackwell on behalf of PSE. The final, corrected tally of the runoff election was issued by the Commission on August 5, 1987.

On August 21, 1987, the UCWU filed a document entitled "OBJECTIONS TO CONDUCT OF REPRESENTATION ELECTION: MEMORANDUM IN SUPPORT THEREOF." That document makes reference to, but does not enclose, an appeal of "the executive director's decision to conduct an election (June 17th)." At page 3, the UCWU states:

Petitioner also filed affidavits with the commission prior to the run-off election whcih (sic) directly supported Petitioner's contention that the incumbent was engaging in coercive electioneering conduct. (See attached documents).

Enclosed with the August 21, 1987 document are only: The original of the Commission's July 1, 1987 letter covering return of the previously mentioned affidavits, originals of three affidavits dated June 20, 1987, a copy of a PSE publication dated July 1, 1987, a copy of a PSE publication dated May 14, 1987, copies of two letters from the UCWU to the Executive Director under dated of June 30, 1987 (both of which are detailed above), and a copy of the UCWU's June 22, 1987 letter to the Executive Director (also detailed above).

#### APPLICABLE REGULATIONS

**WAC 391-25-590. FILING AND SERVICE OF OBJECTIONS.** Within seven days after the tally has been served under WAC 391-25-410 or under WAC 391-25-550, any party may file objections with the commission. Objections may consist of:

(1) Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation of or threat of reprisal or promise of reward to eligible voters, and/or

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

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. 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 of 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.

Of the rules cited in WAC 391-25-590, WAC 391-25-550 applies here. That regulation specifies procedures for the tally of ballots. The final procedural requirements are:

After the subsequent resolution of challenged ballots affecting the results of the election, a revised tally shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive.

Although not directly controlling in this case, WAC 391-35-210, which applies to petitions for review in unit clarification cases, states:

The final order of the executive director shall be subject to review by the commission . . . at the request of any party made within twenty days after the date of the order. . . . The petition for review shall identify the actions or rulings claimed to be in error. . . .

Similarly, WAC 391-45-350, which applies to petitions for review of unfair labor practice decisions, states:

. . . Such petition for review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission.

All of the cited rules have been in effect since 1980.

#### DISCUSSION

##### The "Severance" Ruling.

Although the document filed by the UCWU on June 2, 1987 to seek review of the Executive Director's ruling on the "severance" petition was timely filed, the document states general, but not specific, grounds for review. We quote verbatim the grounds asserted:

1. Irregularity in the proceedings.
2. Violation of the "appearance of fairness" doctrine, as required under the Washington Administrative Procedures Act.
3. The decision unmistakably (sic) indicates it must have been the result of passion or prejudice.



4. There is no evidence or reasonable inference from the evidence to justify the decision.

5. The decision is contrary to existing Commission decisions that are directly pertinent to the case.

6. The decision fails to consider several relevant Commission decisions which support Petitioner's claim that the instant case is distinguishable from those cited to support the decision.

7. Substantial justice has not been done by the decision.

Petitioner asks that the Commission review, in particular the following portions of the decision:

a) Pages 15 - 20 entitled "DISCUSSION, The Proposed Severance."

b) Pages 20 - 21 entitled "DISCUSSION, The Existing Unit."

c) Pages 21 - 24 entitled "Findings of Fact; Conclusions of Law; and Direction of Election."

d) Pages 2 - 13 entitled "BACKGROUND."

The UCWU cites no specific act or evidence of irregularity in the proceeding, no specific action which might violate the "appearance of fairness" doctrine, no specific area in which any passion, prejudice or want of evidence lies,<sup>8</sup> no citations of contrary Commission precedent, and no clue as to where "substantial justice" has not been done. The document asks for review "in particular" of certain portions of the Executive

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<sup>8</sup> Similarly, later allegations that the Hearing Officer made remarks which showed he was biased were not accompanied by statements of what the allegedly biased remarks were or where they were made.

Director's decision, but then cites all of that decision except for the caption, appearances, introductory recitation of the history of the case, and two pages wherein the Executive Director disposed of a motion in the UCWU's favor.

Unlike the rules governing the review of Examiner decisions in unfair labor practice cases, the procedural rules for review of representation case and unit clarification case determinations do not require that each finding of fact and conclusion of law for which review is sought be specifically set forth in the petition for review. However, the representation and unit clarification rules do require the party to identify the "specific rulings" claimed to be in error. WAC 391-25-590; WAC 391-35-210. Reasonable specificity is a common-sense requirement. We cannot conduct our review in a vacuum. We cannot do justice where we have no clue as to what we are looking for. The petition for review filed in these cases is fundamentally insufficient and defective.

There is nothing about the procedure in this case that is manifestly improper. Even if we were to review the substance of this decision, it is necessary to bear in mind that the determination the Executive Director is called upon to make under RCW 41.56.060 is only an endeavor to ascertain an "appropriate" unit for collective bargaining, and not the most "appropriate" unit for bargaining purposes.

With respect to the application of "severance" criteria, we are guided by our recent decision in Auburn School District, Decision 2710-A (PECB, October 20, 1987). The Executive Director's ruling denying the petitioned-for severance flows logically from his analysis, and, on the face of it, appears correct.

To the extent that objections were raised (albeit prematurely) in the UCWU's June 2, 1987 letter and petition for review with respect to the related question of the propriety of the existing bargaining unit, we have considered those objections and find them to be without merit. The UCWU alleges that a proper hearing was not conducted on the "existing unit," and it repeatedly refers to the Commission's "failure to provide a hearing" on that issue. Yet, we have before us nearly 1000 pages of testimony on that very issue! The UCWU itself recognized that a determination on the propriety of the existing unit was a necessary part of the determination of its "severance" petition, and that its task in seeking the "severance" unit would be simplified if it were able to persuade that the existing unit was inappropriate. The fact that it failed to meet that burden on the merits does not eradicate the making of the unit determination. The UCWU's objection to the holding of an election in the existing unit is particularly frivolous in light of the fact that it was the UCWU that, in fact, petitioned for an election for that very unit!

#### The "PSE Conduct" Objections

The UCWU would apparently claim that it first filed objections to PSE conduct affecting the results of the (first) election on or about June 17, 1987. As noted above, we have no such document of record and no basis from which to infer that there ever was actual filing of such a document with the Commission. The UCWU and its attorney should have been well aware of the requirements of the Commission's rules in this regard, as the UCWU's representation petition involving another school district had been dismissed where a document had been delayed in the mails and so was untimely when actually filed with the Commission. Renton School District, Decision 2376 (PECB, 1986). By the time the UCWU's letter and affidavits were

received on or after June 22, 1987, they were untimely to independently constitute objections to the election conducted on June 11, 1987.

Assuming, arguendo, that the missing document and proof of actual filing could be produced, we nevertheless conclude that any such objections were withdrawn at the UCWU's request, in order to preserve the confidentiality of the supporting affidavits. The affidavits filed on June 22nd appear to have been an integral part of any "conduct" objections filed by the UCWU; at least, we perceive them to be based on the UCWU's August 21, 1987 "Memorandum." Without the supporting affidavits or a willingness to have disclosure of the identities and allegations of the employees involved, there would have been insufficient reason to hold a hearing on any issues raised in those affidavits, and the objections would have been disposed of summarily. The UCWU cannot have it both ways. It cannot seek to preserve its objections for later disposition by the Commission, while at the same time withholding the basis for its objections.

The UCWU next had an opportunity to file "conduct" objections after the tally of the runoff election. We note that the UCWU's business manager and attorney, John W. Peterson, had actual notice of the results of the runoff election as early as July 23, 1987, since he was a witness to the ballot count and signed the tally in the runoff election. Two corrections of the tally of ballots were necessitated by errors in completion of the form, but the results of the election were never in doubt. The UCWU did not make any effort to file (or refile) "conduct" objections until it attached materials from the June period to its "Memorandum" document dated and filed on August 21, 1987. However, that document was filed 16 days after the final corrected tally was mailed to the parties pursuant to WAC

391-25-550. The period of time allowed under WAC 391-25-590 for filing objections is seven days. The UCWU's filing was nine days late. Even allowing a reasonable time for the delivery of the corrected tally to the UCWU (which neither PERC's general procedural rules nor the Washington Uniform Procedural Rules<sup>9</sup> provides), the filing of the UCWU's objections was several days late.

We have consistently held that the period of time for filing objections to conduct affecting the results of an election is jurisdictional. The only occasion on which we allowed an exception was when a late filing was based on specific but erroneous information given a party by a Commission employee. City of Tukwila, Decision 2434-A (PECB, 1987). The National Labor Relations Board has a like rule and practice. NLRB Rules and Regs., sec. 102.69(a).<sup>10</sup> See generally, 2 Morris, The Developing Labor Law, 1613 (2nd ed. 1983). The salutary purpose of this filing period is most evident in this case, where the affected employees have not had a collective bargaining agreement or the opportunity to bargain since August

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<sup>9</sup> The uniform procedural rules for Washington, Chapter 10-08 WAC, and specifically WAC 10-08-110, do not provide for a grace period, three-day or otherwise, for service by mail. WAC 10-08-110(3) states that "service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed, . . .," but distinguishes "service" from "filing," which WAC 10-08-110(4) defines as "... actual receipt during office hours at any office of the agency ...."

<sup>10</sup> Washington's rule could be (and formerly was) stated as "five" days to match the NLRB's rule, but the one-week period would come out the same under Washington's Uniform Procedural Rules and the Commission's rules. WAC 10-08-080 and WAC 391-08-100 each provide that where a period of time is less than seven days, intervening Saturdays, Sundays and Holidays are excluded from the computation.

31, 1986. The right of an aggrieved party to pursue its objections to an election must be balanced against the importance of allowing the newly certified exclusive bargaining representative to expeditiously pursue a new contract with the employer. Weighing these competing interests against one another has resulted in our rule which, consistent with that of the NLRB, allows a relatively short time frame for the filing of objections to an election. For the foregoing reasons, we will not consider the UCWU's "conduct" objections to the election raised for the first time in its August 21, 1987 filing.

#### The "Procedure" Objections

The Executive Director proceeded with the conduct of the initial election over the objection of the UCWU filed on June 2, 1987, and then proceeded with the conduct of a runoff election by mail ballot over the UCWU's specific written objections filed in the letter dated June 30, 1987. We choose not to base our decision on the technicalities of which case number was used by the UCWU in its June 2, 1987 petition for review, for the same reasons that the UCWU's arguments about the propriety of the "existing" unit are rejected, above: These cases are inextricably intertwined and must be decided as one.

Our procedures differ, notably and intentionally, from those of the NLRB with respect to the appeal rights of parties following a direction of election (or direction of cross-check) issued by the Executive Director. The Commission considers the question of whether to hold up an election in order to process related matters such as eligibility issues or appeals to be discretionary with the Executive Director. Ordinarily, the need for an expedited determination of the question concerning represen-

tation outweighs (and takes precedence over) the need for the processing of objections and certain unit determination matters (including appeals). See WAC 391-25-390, where only limited rights of appeal are afforded to parties following a direction of election, and City of Redmond, Decision 1367-A (PECB, 1982), where the Commission admonished the Executive Director to be expeditious in moving forward with the determination of a question concerning representation in the presence of other contested issues. In the instant case, the bargaining rights of all of the employees in the "existing" unit were being held in abeyance pending the resolution of the question concerning representation in that unit. The UCWU had petitioned for an election, and PSE had acknowledged the existence of the question concerning representation. The Executive Director properly proceeded with the election in the existing unit, which involved employees who were not involved in the "severance" petition and which could have cleared the air entirely.

Other "procedural" objections raised by UCWU in its June 2 and June 30, 1987 filings are also without merit.

The UCWU objected to the holding of the runoff election by mail ballot procedures during the summer, yet the voter turnout in the runoff election (86.4%) was not significantly different from the voter turnout for the initial election (87.6%), which was held by on-site procedures during the school year.

The UCWU objected to the conduct of Commission employees, charging that there were "secret meetings" and that Commission staff consulted with other parties (but not the UCWU) about the date of the runoff election, yet the UCWU neither gave indication as to when these "secret meetings" or consultations took place, nor provided any other information as to why it believes such "secret meetings or improper consultations took

place. This UCWU allegation thus also fails for lack of specificity.

NOW, THEREFORE, it is

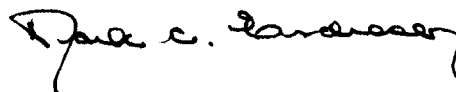
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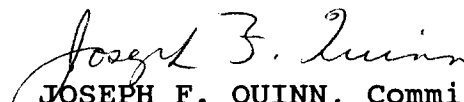
1. The findings of fact and conclusions of law of the Executive Director in Case Nos. 6455-E-86-1126 and 6456-E-86-1137 are affirmed and adopted as the findings of fact and conclusions of law of the Commission.
2. The objections filed by the UCWU and Case No. 6456-E-86-1137 are DISMISSED.
3. Case No. 6455-E-86-1136 is remanded to the Executive Director for issuance of the appropriate certification.

ISSUED at Olympia, Washington, this 20th day of November, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JANE R. WILKINSON, Chairman

  
MARK C. ENDRESEN, Commissioner

  
JOSEPH F. QUINN, Commissioner