

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
ASSOCIATION OF BREMERTON)	CASE 8005-E-89-1352
ADMINISTRATORS)	
)	
Involving certain employees of:)	DECISION 3288 - PECB
)	
BREMERTON SCHOOL DISTRICT)	ORDER SUSTAINING
)	ELECTION OBJECTIONS
)	

Marilee Hansen, Principal, filed argument on behalf of the petitioner.

Manijeh Vail, Director, Employee Relations/Personnel, filed argument on behalf of the employer.

The Public Employment Relations Commission conducted unit determination elections in the above-entitled matter on August 31, 1989. The tally issued on the day of the election indicates that a majority of those eligible in a voting group of principals and assistant principals cast their votes in favor of a bargaining unit of principals, assistant principals and supervisors, but that only three of six eligible voters in a voting group of supervisors cast ballots in favor of the petitioned-for bargaining unit. The ballots cast simultaneously on a question concerning representation in the petitioned-for bargaining unit were thus impounded.

On September 6, 1989, the petitioner and one Mariwyn Tinsley filed objections pursuant to WAC 391-25-590, asserting that Tinsley's name had been inadvertently left off the list of supervisors eligible to vote, that the petitioner had been misled by a "procedures" document which (it appears) was understood by it to have been authored by the Commission, and that the overwhelming

vote in favor of the creation of a separate unit justifies the conduct of a new election. The document indicated, on its face, that a copy had been served upon the employer and upon the Bremerton Education Association, which is the incumbent exclusive bargaining representative of the petitioned-for individuals.

At the outset of these proceedings, the employer took the position that Mariwyn Tinsley should be excluded from the petitioned-for bargaining unit as a member of the Superintendent's Council. Tinsley's name was omitted from a subsequent list provided by the employer. The representation election in this matter was conducted pursuant to an election agreement signed by the parties at a pre-hearing conference, and Tinsley's name was excluded from the stipulated eligibility list filed with the election agreement. The elections were conducted by mail ballot, and ballot materials were not sent to Tinsley.

The Executive Director issued a letter to the parties on September 12, 1989, soliciting written statements of position from the employer, the petitioner and the incumbent exclusive bargaining representative. Such statements have been filed by the petitioner and the employer. Tinsley also filed a letter on the matter. The Bremerton Education Association has not submitted a statement of its position.

Mariwyn Tinsley asserts in her letter filed on September 20, 1989 that she was a member of the Bremerton Education Association during the 1988-89 school year, that she is a supervisor, and that she should have been eligible to vote in these proceedings. She represents that she learned of the election on August 30, 1989 and took steps to inquire about voting on the same date, but was not able to come to the Commission's Olympia office to cast a challenged ballot.

The petitioner re-asserts in its letter filed on September 21, 1989, that Tinsley was "inadvertently" left off the list of those eligible to vote. It alleges, further, that it consulted with an official of the Association of Washington School Principals, and received information from that person on the subject of representation case procedures, in the form of a document entitled "Public Employment Relations Commission (PERC) Procedures for Changing from One Bargaining Unit to a New Unit Classification". It contends that the referenced document was silent, or misleading, on the subject of unit determination elections. Further, it contends that there was no discussion of unit determination elections during the pre-hearing conference in this matter. Finally, it re-asserts that the "overwhelming" vote in favor of the petitioned-for bargaining unit should justify conducting a new election.

The employer asserts in its letter filed on September 21, 1989 that the procedures for counting of ballots in the unit determination elections were not made clear at the pre-hearing conference held in this matter. The employer represents that Mariwyn Tinsley has been a member of the Bremerton Education Association bargaining unit, and that her name was inadvertently left off the list of eligible voters.

The Commission has reviewed the documents in the case file, and finds that the objections can properly be disposed of by summary order pursuant to WAC 391-08-230.

The "overwhelming vote" arguments are completely without merit. The employees involved are "certificated" employees covered by the Educational Employment Relations Act, Chapter 41.59 RCW. The structure of units for collective bargaining is closely regulated under that statute by RCW 41.59.080, which requires that:

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a

majority of the employees in each category indicate by vote that they desire to be included in such a unit. (emphasis supplied)

Neither the parties, nor the Commission are in a position to re-write or ignore that statute. To the contrary, our rule on unit determination elections provides:

WAC 391-25-530 VOTES NEEDED TO DETERMINE ELECTION. (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

Parties seeking to implement their rights under the statute, and to process cases before the Commission, are expected to make themselves aware of the provisions of the applicable statute, and of the Washington Administrative Code rules duly adopted by the Commission pursuant to the Administrative Procedures Act, Chapter 34.05 RCW. Copies of the statutes and rules are readily available from the Commission, by a simple telephonic request.

The objection based upon the "Procedures" document referred to by the petitioner must also be dismissed. The document attached to the election objections in this case was not published by the Commission. In fact, it contains a number of specific dates (e.g., the dates of an "existing agreement" ending August 31, 1989), specific references (e.g., "PERC will come to Bremerton"), and serious errors (e.g., that authorization cards constituting the showing of interest in support of a petition "should be sent to the district superintendent and the WEA local") that clearly indicate that the document was prepared in contemplation of this case, by someone other than the Commission.

The claim of "inadvertence" in the omission of Mariwyn Tinsley's name from the eligibility list presents a more difficult question. The stipulations made by parties in proceedings before the Commis-

sion, including stipulations on voter eligibility made in election agreements, are binding upon the parties except for good cause. Community College District 5, Decision 448 (CCOL, 1978). We do not condone any form of mischief, sloppiness or concealment by parties in the pre-election period, are we concerned about establishing a precedent that would permit or encourage abuse of the procedures and limited resources of this agency.

If there was inadvertence here, it has to have been on the part of the employer in the preparation of the eligibility list used at the pre-hearing conference. Mariwyn Tinsley was not new to the employer's workforce, or to her job. Indeed, the employer's letter in response to the objections indicates that she has worked for the employer since 1965. Nor was Tinsley's exclusion from the petitioned-for bargaining unit an obvious error on the part of the employer, which had specifically proposed such an exclusion at an earlier stage of these proceedings. While it can be observed, on the one hand, that the petitioner offers no explanation for its failure to raise an issue concerning Tinsley's eligibility during the pre-hearing conference or at any time during the month-and-a-half that it had the eligibility list available to it prior to August 30, 1989, it is difficult to hold the petitioner to having "stipulated" concerning Tinsley when it appears that her name may never have been discussed during the pre-hearing conference. On these particular facts, we find good cause to relieve the employees of the effects of the employer's error.

NOW, THEREFORE, it is

ORDERED

1. The results of the unit determination elections conducted in this matter are vacated.

2. The matter is remanded to the Executive Director for the conduct of new unit determination and representation elections.

Dated at Olympia, Washington, on the 28th day of September, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, CHAIRMAN

Mark C. Endresen

MARK C. ENDRESEN, COMMISSIONER

Joseph F. Quinn

JOSEPH F. QUINN, COMMISSIONER