

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL ASSOCIATION OF) CASE 8035-E-89-1359
MACHINISTS AND AEROSPACE WORKERS)
)
Involving certain employees of:) DECISION 3290 - PECB
)
BEN FRANKLIN TRANSIT) ORDER DISMISSING
) ELECTION OBJECTIONS
)
_____)

Critchlow & Williams, by Alex J. Skalbania, Attorney at Law, filed argument on behalf of the petitioner.

Menke & Jackson, by Anthony F. Menke, Attorney at Law, filed argument on behalf of the employer.

The Public Employment Relations Commission conducted a representation election in the above-entitled matter on August 29, 1989. The tally issued on the day of the election indicates that nine employees cast their votes in favor of the union and seven voted for "no representation". No objections were filed within seven days following the date the tally of ballots was issued.

On the date a certification would normally have issued, September 6, 1989, William Hale and five other employees filed a "petition" requesting a "revote" of the question, citing that:

During the voting period, a member of P.E.R.C. demanded that no Ben Franklin Management be present. As a result, Pete Toolson, Maintenance Manager, left the voting area. April Collette, Personnel Manager remained at the place of voting, which we feel allowed a preferential voting atmosphere to exist.

The document did not indicate, on its face, that a copy had been served upon the employer or the union.

The representation election in this matter was conducted pursuant to an election agreement signed by the parties at a pre-hearing conference where April Collett attended as a representative of the employer. From the outset of these proceedings, the employer took the position that one George P. Toolson should be excluded from the petitioned-for bargaining unit as a "supervisor", and Toolson was excluded from eligibility to vote by the stipulated list filed with the election agreement. April Collett served as observer at the election and signed the tally of ballots on behalf of the employer.

The Executive Director withheld issuance of a certification and issued a letter to the parties on September 12, 1989. Noting that the document filed by the employees appeared to be untimely as "objections" under WAC 391-25-590, the Executive Director nevertheless solicited written statements of position from the employer, the union and the employee whose signature headed the list of employee signatures on the September 6 "petition". Such statements have been filed and the Commission has reviewed the documents in the case file.

Bargaining unit employee William Hale submitted a letter on September 18, 1989, asserting that he mailed the "objections" letter from Kennewick, Washington, on September 1, 1989, based on advice obtained in a call to the Commission office. He indicates that he was not told that it was necessary to send copies (of the "petition") to anyone else.

The union's written response, filed on September 21, 1989, takes the position that the "objections" were not timely filed or served. The union enclosed an affidavit from its business representative, verifying that the union was not served with a copy of the "objections" document until it received a copy attached to the Executive

Director's letter to the parties. As to the substance of the "objections", the union points out that the presence of a management official would have been prejudicial, if at all, to the rights of the union, yet the union won the election, so that the objections should be dismissed.

The employer's written response, also filed on September 21, 1989, asserts that the employer was notified of the objection "orally immediately after the election", but the employer does not assert that any issue was raised with the Commission staff member who conducted the election, either before, during or after the period when the polls were open. The employer argues that the objections were timely filed to the extent that a certification had not yet been issued when they were filed. Finally, the employer opines, in essence, that each bargaining unit employee should be entitled to service of a copy of the tally in a representation case, or that there is a gap in the Commission's rules in that regard. The employer does not address the propriety of Ms. Collett's presence in the polling area.

The seven day period allowed by WAC 391-25-590 for the filing of election objections reflects the practices of the National Labor Relations Board, as well as the practices of labor relations agencies of other states. Both the Administrative Procedure Act, Chapter 34.05 RCW, and our rules, at WAC 391-08-120(4), define "filing" with the Commission to mean actual receipt during office hours at the office of the agency. Deposit in the mail is not, and never has been, deemed sufficient as "filing", no matter how long materials are delayed in the mails. The objections in this case were untimely.

Even if we were not to dismiss the objections as untimely, the Commission concludes, for multiple reasons, that these objections are properly disposed of by summary order pursuant to WAC 391-08-230:

1. There is no claim or evidence that either the employer or the union notified the Commission's election officer before or during the election period that it took issue with the presence of April Collett as observer for the employer.

2. WAC 391-25-490, which specifies election procedures, states, in part:

Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: PROVIDED, HOWEVER, That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer.

While that rule excludes a supervisory employee, such as Toolson, from serving as observer, the same cannot be said for every personnel official or "confidential" employee. Clover Park School District, Decision 905 (PECB, 1980). There is no claim or evidence here that Collett has "authority over bargaining unit employees" which would disqualify her from serving as observer for the employer.

3. The purpose of the limitation on who may serve as an election observer is to avoid the possibility that bargaining unit employees might feel coerced by the presence of their "boss" or of a union official at the polling place where they are to cast their ballot on union representation. There is no claim or evidence of prejudice to the rights of bargaining unit employees in this case, where the union won the election notwithstanding the presence of Collett as observer.

We note, in passing, that neither our rules nor those of the NLRB require service of a representation election tally upon individual employees, except where a person has previously been identified in the proceedings as the "agent"¹ or "principal representative"² of

¹ WAC 391-25-010.

a decertification effort supported by the required 30% showing of interest.³

NOW, THEREFORE, it is

ORDERED

1. The objections filed by William Hale and other employees in the above-entitled matter are dismissed.
2. The Executive Director shall issue a certification consistent herewith.

Dated at Olympia, Washington, on the 29th 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

² WAC 391-25-070(6).

³ RCW 41.56.070; WAC 391-25-110.