STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: | ) | |
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| WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES | ) | CASE 7971-E-89-1347 |
| | ) | |
| involving certain employees of: | ) | DECISION 3293 - PECB |
| | ) | |
| KITSAP COUNTY | ) | ORDER DISMISSING ELECTION OBJECTIONS |
| | ) | |

Chris Dugovich, Deputy Director, W.S.C.C.C.E., filed argument on behalf of the petitioner.

Danny Clem, Prosecuting Attorney, by Reinhold P. Schultz, filed argument on behalf of the employer.

Donna L. Price, Joseph A. Brusic, Warren K. Sharpe, and Ione S. George filed objections to the election.

The Public Employment Relations Commission conducted a representation election in the above-entitled matter on August 18, 1989, between the hours of 9:00 a.m. and 10:00 a.m. The bargaining unit involved consists of non-supervisory attorneys in the office of the Kitsap County Prosecuting Attorney. The tally of ballots issued on the day of the election indicates that seven employees cast their votes in favor of the union and six employees voted for no representation. There were no challenged ballots.

On August 24, 1989, four bargaining unit employees filed objections with the Commission, and at the same time served copies thereof on the parties. Two bases for the objections were set forth: (1) That two of the employees eligible to vote, Donna L. Price and Joseph A. Brusic, were unable to vote in the election because they

were involved in criminal matters in District Court that were not concluded until 10:00 a.m. and 10:15 a.m.; and (2) That union representatives misrepresented the actual effect of union representation when they informed employees at the meeting that if a majority of the deputy prosecutor's voted to accept union representation, those parties in opposition to union representation at the time of voting would not be required to become union members.

The representation election in this matter was conducted pursuant to an election agreement signed by the employer and union at a prehearing conference held on July 7, 1989. The parties agreed that the election should be held in "Law Library Conference Room 'A'", between the hours of 9:00 a.m. and 10:00 a.m. The parties suggested August 14, 1989 as the date for the election, but a typographical error was made in the notice of election issued for that date. The election was thus rescheduled for August 18, 1989. A review of the record reveals that two of the four employees who signed the objections document actually voted in the election.

After the objections were filed, the Executive Director withheld certification and issued a letter to the parties on August 30, 1989, soliciting written statements of position from the employer, the union, and the employees whose signatures appear on the objections to the election. The union and the employer filed written responses, the employees who filed the objections did not file any additional statements.

## DISCUSSION

The Commission has reviewed the documents in the case file, and concludes, for multiple reasons, that these objections are properly disposed of by summary order pursuant to WAC 391-08-230.

The "Insufficient Poll Time" Issue

The employees who filed objections contended therein that the "disregard for the District Court criminal calendar in the scheduling of voting periods" precluded the employees from voting. There is no claim that the rescheduling of the election from Monday to the following Friday had any effect on the matter.

The union's written response, filed on September 5, 1989, takes the position on Objection 1, above, that both of the individuals who claim to have been deprived of the opportunity to vote knew that the election was being held from 9:00 a.m. to 10:00 a.m. on August 18, 1989, and that they could have made arrangements with the District Court to vote in the election being conducted in the room next to the courtroom. Additionally, the union asserts that an employee who was on vacation at Lake Chelan drove 5 hours each way in order to cast his ballot.

The employer's written response on Objection 1, filed on September 6, 1989, takes the position that, while it agreed to a one hour voting period because it appeared to be an appropriate length of time, the perfect vision of hindsight discloses that the one-hour election period was inappropriate, so that the election should be rescheduled.

We find that the objections fail to state a claim for relief. As with the right of citizens to abstain from voting on elections for public office, any employee can choose for any reason to vote, or not to vote, in a representation election conducted by the Commission. Those who put a higher priority on their assigned job duties will not be heard later to complain because their votes might have affected the outcome.[1]

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[1] See: Lewis County, Decision 368 (PECB, 1978)

The employer's change of heart concerning the sufficiency of a one-hour voting period is not persuasive. The Commission's representation procedures, spelled out in Chapter 391-25 WAC, have remained essentially constant for more than 10 years. Those procedures permit the parties to a representation case to make suggestions on the date, time, and place for the Commission to conduct a secret ballot election to determine a question concerning representation. The record is this case indicates that, after a false start which is not challenged, the election was held in the location, and during the time frame, recommended by the employer and union. All 17 eligible employees apparently work in close proximity to the site recommended by the parties, so that a one-hour period was a sufficient period of time for all of the affected employees to cast their ballots.

There is no claim or evidence that Pierce and Brusic notified the employer in advance of the election that they had a scheduling problem, that they notified the Election Officer of their dilemma, that they asked the District Court to be excused long enough to cast their ballots in an adjacent room, or that their request to the District Court for such a brief recess was denied by the court. They did nothing, which indicates they did not consider the issue to be of importance until after they learned the result.

## The "Misleading Statement" Issue

The objecting employees state in their objections filed on August 24, 1989:

> (9) It has come to the attention of the aforementioned eligible voters, that [the alleged] statement was a misrepresentation of the actual effect of Union implementation. Once a Union has been accepted by a majority of the voters, all deputy prosecuting attorneys are required to become members.

The union's written response on Objection 2 takes the position that the union representative who met with interested employees on May 24, 1989 explained that a union security clause in a collective bargaining agreement is not a creature of a representation election, and that it was further explained that union security was a subject for negotiations in the initial contract between the parties. The union contends that, in that context, several scenarios were outlined explaining different methods for resolving the issue, including grandfathering current employees out of any union security obligations, the "religious" exemption, and an agency fee agreement.

The employer's written response on Objection 2 takes the position that the issue of misrepresentation is a serious issue. The employer asserts that a deputy prosecutor who is a "confidential employee" recalls the statement being made by the union representative who met with the employees. The employer defers to the Commission to determine the gravity of the misrepresentation in this case.

The "misrepresentation" objection is founded upon a fundamental misunderstanding of the statutory provisions governing union security clauses in collective bargaining agreements. While allegations concerning misrepresentation can, indeed, be a serious matter in "objections" cases before the Commission, the statute which controls union security provides:

> RCW 41.56.122 A collective bargaining agreement may:
>
> (1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to

> regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail. (emphasis supplied)

Thus, a contract imposing union security obligations is, in actual fact, only a possible result of the collective bargaining process which would commence after an exclusive bargaining representative is certified. Union security is certainly not an automatic result of a representation election.

In the context of the bargaining unit involved here, we are unable to credit the alleged union statement as a serious misrepresentation, even if made. The alleged statement was made months in advance of the election, and the employees were certainly capable of looking up the statute for themselves, and learning its true effect.

NOW, THEREFORE , it is

ORDERED

1. The objections filed by Donna L. Price, Joseph A. Brusic, 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, CHAIRMAN

MARK C. ENDRESEN, COMMISSIONER

JOSEPH F. QUINN, COMMISSIONER