

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
TEAMSTERS UNION, LOCAL 117)	CASE 9105-E-91-1506
Involving certain employees of:)	DECISION 3937-A - PECB
PORT OF SEATTLE)	DECISION OF COMMISSION
)	
)	
)	

Davies, Roberts & Reid, by Kenneth J. Pedersen, Attorney at Law, appeared on behalf of the union.

Preston, Thorgrimson, Shidler, Gates & Ellis, by J. Markham Marshall, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on timely objections filed by the union on February 3, 1992, citing irregularities affecting the outcome of an election conducted by the Commission.

BACKGROUND

On April 8, 1991, Local 117, International Brotherhood of Teamsters, AFL-CIO, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The union seeks certification as exclusive bargaining representative of clerical employees of the Police Department of the Port of Seattle. A pre-hearing conference was held in Seattle, Washington, on May 10, 1991, at which the parties stipulated to all matters except the propriety of the petitioned-for bargaining unit. A hearing was held on that issue on May 20, 1991, before Hearing Officer Walter M. Stuteville. The parties filed post-hearing briefs. On December 13, 1991, Executive Director Marvin L. Schurke issued a decision in the matter, concluding that a separate

bargaining unit consisting of office-clerical employees in the employer's Police Department could be appropriate if the desires of employees so indicated, and directing that both unit determination and representation elections be conducted.

The unit determination and representation elections were conducted by use of the mail ballot procedure, as follows:

1. Mailing labels were provided by the employer, on the basis of its employment records.

2. On Monday, January 13, 1992, ballot materials were issued to 13 eligible voters, using the mailing labels provided by the employer. The ballot materials listed the deadline for return of ballots as Monday, January 27, 1992 at 3:00 p.m., at the Olympia office of the Commission.

3. On Tuesday, January 21, 1992, two of the eligible voters requested duplicate ballots. Those duplicate materials were sent out on Tuesday, January 21, 1992.

4. On Wednesday, January 22, 1992, the Commission received back the original ballot materials that had been sent to one of the eligible employees who had requested a duplicate ballot. A "No Such Address - Return to Sender" mark had been affixed by postal authorities as of Saturday, January 18, 1992.

5. On Thursday, January 23, 1992, both of the duplicate ballots issued by the Commission were postmarked at Seattle in the return mail.

6. On Monday, January 27, 1992, at 3:00 p.m., ballots had been received from only 11 of the 13 eligible voters. The ballots were counted and the tally of the UNIT DETERMINATION ELECTION reflects five votes cast for the creation of a separate bargaining unit, while six votes were cast against the creation of a separate bargaining unit. In the absence of validation of the unit determination election, the ballots cast in the representation election were impounded without tally.

7. On Tuesday, January 28, 1992, the Commission received the two duplicate ballots postmarked in Seattle on January 23, 1992.

The union filed timely objections under WAC 391-25-590, based in part on the delay of the duplicate ballots in the mail. The employer responded to the objections in a letter filed on February 10, 1992, saying:

If PERC will verify, by sending us photocopies of the envelopes showing their mailing date, that the two ballots referred to in paragraph 5 of the Union's objections were, in fact, mailed on or before January 23, 1992, the Port will then have no objection to the ballots being counted, even though they were received after the established return date.

The employer's letter was considered by the participating Commission members during the regular Commission meeting held on that date. At the same time, the Commission was informed that the "State Mail Service" operated by the Department of General Administration is in the process of making a change of procedure, and that the Commission has had other recent experiences where mail took four to five days to reach the Commission's Olympia office from Seattle. The Commission thus approved the procedure suggested by the employer. Photocopies of the two late-arriving envelopes (with the names of the voters blanked out) were sent to the parties on February 11, 1992, and a deadline was established for any party to show cause why the late-arriving ballots should not be counted.

The Commission has subsequently received letters from groups of employees, both favoring and opposing the counting of the late-arriving ballots. Information brought out in that correspondence includes that the mailing labels provided by the employer contained errors for at least three employees in addition to those who requested duplicate ballots (for a total of 5 out of 13 voters).

The letters submitted by the employees have been read and considered. While RCW 41.56.040 provides employees a right to select their representative for the purposes of collective bargaining, it

must be noted that the voices of employees are to be heard through the secret ballots which they cast pursuant to RCW 41.56.060. The employer and union remain the sole parties to this proceeding, and their stipulations are entitled to substantial weight.

The Commission has considered this matter and concludes that good cause is shown to overturn the election result reflected in the tally of ballots issued on January 27, 1992. Under all of the circumstances here present, the five-day delay in delivery of first class mail over a distance of only 60 miles must be regarded as beyond the control of both the Commission and the employees.

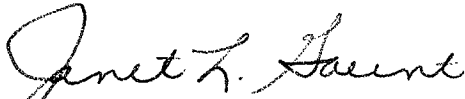
NOW, THEREFORE, it is

ORDERED

1. The tally of ballots issued on January 27, 1992 is VACATED for good cause shown, as indicated above.
2. The matter is remanded to the Executive Director for conduct of a new tally of ballots which includes the ballots received by the Commission on January 28, 1992.

Entered at Olympia, Washington, the 17th day of March, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANET L. GAUNT, Chairperson


DUSTIN C. McCREARY, Commissioner

Commissioner Mark C. Endresen
did not take part in the
consideration or decision of
this case.