

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, LOCAL 1983)
Involving certain employees of:)
CITY OF MOUNT VERNON)
CASE 9526-E-91-1580
DECISION 4199-D - PECB
ORDER ON OBJECTIONS

James L. Hill, International Vice-President, appeared on behalf of the petitioner.

Mark Knowles, Finance Director, Linford C. Smith, City Attorney, and Heller, Ehrman, White & McAuliffe, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

Aitchison, Hoag, Vick & Tarantino, by James M. Cline, Attorney at Law, appeared on behalf of the intervenor, Mount Vernon Police Services Guild.

On December 18, 1992, Executive Director Marvin L. Schurke issued a decision on the above-captioned matter, directing an election to determine a question concerning representation in a bargaining unit of emergency services dispatchers employed by the City of Mount Vernon.¹ The election was conducted by the Commission staff, under mail ballot procedures. When the ballots were tallied on January 25, 1993, a question arose as to the number of eligible voters, and the results were deemed to be "inconclusive" pending resolution of that matter. After all parties stipulated that there were only 17 eligible voters, a second amended tally of ballots issued on

¹ Decision 4199-B (PECB, 1992). A previous direction of election issued as Decision 4199 (PECB, 1992) had been withdrawn by the Executive Director by Decision 4199-A (PECB, 1992), upon discovery of error prior to the conduct of an election.

February 8, 1993 indicated a conclusive election result, as follows:

Approximate number of eligible voters.....	17
Ballots cast for IAFF Local 1983.....	10
Ballots cast for Mt. Vernon Police Services Guild.....	3
Ballots cast for "No representation".....	0
Challenged Ballots.....	3
Number of valid ballots needed to determine election..	9
Challenged ballots "do not affect the outcome of the election".	

The results of the election appear to be "conclusive, favoring [IAFF, Local 1983]"

No objections were filed by the close of business on February 16, 1993, and the Executive Director issued a certification in the matter, designating IAFF Local 1983 as the exclusive bargaining representative of the employees in the bargaining unit involved.²

On February 17, 1993, the Mount Vernon Police Services Guild filed a purported "appeal" of the direction of election issued by the Executive Director. The entire record in the matter has been transferred to the Commission for its review.

THE APPLICABLE REGULATIONS

The parties to a representation proceeding before the Commission are not entitled to pursue an interlocutory appeal of a direction of election issued by the Executive Director. Our rules provide:

WAC 391-25-390 PROCEEDINGS BEFORE THE EXECUTIVE DIRECTOR. The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may

² Decision 4199-C (PECB, 1993).

be appropriate. The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election. Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues. **Such actions shall be subject to review by the commission only as follows:**

(1) Except for rulings as to whether the employer is subject to the jurisdiction of the commission, **a direction of election and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590.**

(2) An order of dismissal shall be subject to review by the commission on its own motion or at the request of any party made within twenty days following the date of the order. Briefs or written arguments shall be submitted as provided in WAC 391-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission. [Emphasis by bold supplied.]

...

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 specifies procedures for the issuance of a tally of ballots. The final procedural requirements of that rule 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.

DISCUSSION

The Sufficiency of the "Objections"

The document filed by the Mount Vernon Police Services Guild on February 17, 1993 states general, but not specific, grounds for review. We quote verbatim the grounds asserted:

1. A Direction of Election order was issued on October 26, 1992 by Executive Director Marvin Schurke. The Guild contends that an Election [sic] as directed was not appropriate.

The order referred to was subsequently withdrawn by the Executive Director, as noted above, and the election was conducted under the Direction of Election issued on December 18, 1993. Even if that were to be disregarded, the Mount Vernon Police Services Guild has cited 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,³ no citations of contrary Commission precedent, and no clue as to what error is claimed.

The requirements for filing objections to a direction of election have been included in WAC 391-25-590 since that rule was adopted in 1980, and were enforced according to their terms in Highline School District, Decision 2685-A, 2686-A (PECB, 1987). 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 case 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 objection filed in this case is fundamentally insufficient and defective.

The Timeliness of the Objections

The filing and service of documents is regulated by the Administrative Procedure Act (APA) and rules adopted as Chapter 10-08 WAC by

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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.

the Chief Administrative Law Judge. The "service" of a document, such as the second amended tally of ballots issued in this case on February 8, 1993, is complete upon deposit in the mail. The "filing" of a document with an agency is complete only upon actual receipt by the agency during business hours. In this case, the seven-day period for filing of objections would have ended on a holiday, February 15, 1993, and so was extended to the close of business on the next business day, February 16, 1993. The Mount Vernon Police Services Guild filed its objections in this case on February 17, 1993, one day after the close of the period specified in WAC 391-25-590.

The Commission has consistently held that the period of time for filing objections to conduct affecting the results of an election is jurisdictional. Highline School District, supra; Renton School District, Decision 2376 (PECB, 1986). The only occasion on which an exception was allowed involved a late filing 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).⁴ See generally, 2 Morris, The Developing Labor Law, 1613 (2nd ed. 1983). The salutary purpose of this filing period is evident in this case, where the affected employees have not had a collective bargaining agreement or the opportunity to bargain since January 1, 1992. 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

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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.

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.

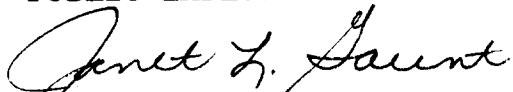
NOW, THEREFORE, it is

ORDERED

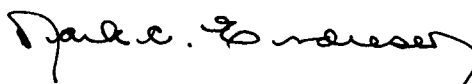
The objections filed by the Mount Vernon Police Services Guild are overruled as procedurally deficient.

Issued at Olympia, Washington, the 22nd day of February, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. MCCREARY, Commissioner