

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
WASHINGTON EDUCATION ASSOCIATION ) CASE 9846-E-92-1622  
Involving certain employees of: ) DECISION 4152 - PECB  
UNIVERSITY PLACE SCHOOL DISTRICT ) DIRECTION OF ELECTION  
\_\_\_\_\_ )

Toni Graf, UniServ Representative, appeared on behalf of the petitioner.

John Loihl, Washington Employers, appeared on behalf of the employer.

Eric Nordlof, Attorney at Law, for the incumbent intervenor, Public School Employees of University Place.

On June 16, 1992, the Washington Education Association (WEA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain classified employees of the University Place School District. Public School Employees of University Place, an affiliate of Public School Employees of Washington (PSE), was granted intervention in the proceedings on the basis of its status as the incumbent exclusive bargaining representative of the petitioned-for employees.<sup>1</sup> A pre-hearing conference was conducted by telephone conference call, at which time the parties stipulated to the description of the bargaining unit and to the existence of a question concerning representation, but framed issues regarding the eligibility

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<sup>1</sup> The claim of incumbency was based on a collective bargaining agreement which expired on August 31, 1992. The petition in this matter was filed during the "contract bar window" period of that contract.

list, the eligibility cut-off date, and the details for holding an election. A statement of results of the pre-hearing conference was issued on July 28, 1992. None of the parties has filed any objection to the pre-hearing statement.

#### BACKGROUND

The initial processing of this case was routine. A letter was sent to the employer on June 26, 1992, providing notices for posting pursuant to WAC 391-25-140, and requesting a list of employees within seven days. PSE filed its motion for intervention on June 30, 1992. Although the Commission did not receive the requested list of employees from the employer until July 9, 1992, the pre-hearing conference had been concluded by July 28, 1992. The bargaining unit stipulated as appropriate in this matter is described as:

All full-time and regular part-time custodians, grounds maintenance employees, bus drivers, mechanics, food service employees, and learning assistants (teacher aides); excluding supervisors, confidential employees and all other employees of the employer.

The eligibility list discussed at the pre-hearing conference included 159 names, of which 5 were at issue as discussed below.

On August 17, 1992, the Commission received an affidavit signed by President Tobie L. Wheeler of the University Place Chapter of PSE, as well as a copy of an April 6, 1992 memo to Wheeler from Assistant Superintendent Don A. Krag of the University Place School District. The affidavit describes discussions held with certain employees as early as September of 1991 and continuing through four meetings between PSE and the employer until April of 1992. The subject of those discussions was the removal of the five employees from the bargaining unit represented by PSE, on the basis that they

perform "secretarial" duties. The April 6, 1992 memo purports to confirm an agreement between the PSE and the employer to remove the five "office assistants" from the PSE bargaining unit, effective September 1, 1992.<sup>2</sup>

## DISCUSSION

### The Eligibility Issue

The employer and petitioner maintained at the pre-hearing conference that the five employees classified as "office assistants" should be eligible to vote if the election were to be conducted prior to September 1, 1992, but that they should not be eligible if the election were to be held after that date. PSE argued at the pre-hearing conference that the "office assistant" positions should remain in the bargaining unit regardless of when the election is conducted, but that position seemed to be contradicted by the subsequent affidavit submitted by the PSE chapter president.

Under City of Redmond, Decision 1367-A (PECB, 1982), the preferred procedure where a small number of "eligibility" issues is raised in relation to the overall size of a bargaining unit is for the Commission to determine the question concerning representation promptly, while reserving the "eligibility" issues for supplemental proceedings. In this case, the petitioner and employer stipulated that the disputed positions should be resolved in supplemental proceedings conducted after the election, but PSE argued at the pre-hearing conference that the eligibility issue should be dealt with before the election. Apart from any change of position or

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The employees listed in the memo were Patti Adams, Karen Anderson, Melodie Gathwright, Cheryl Killenbeck, and Jan Luscombe. Similar names appear on the eligibility list discussed at the pre-hearing conference in this matter.

concession made by PSE in the subsequently filed affidavit, the election must go forward. Should any of the disputed individuals present themselves at the polls, any of the parties will be entitled to challenge their ballots to preserve their "eligibility" arguments for post-election determination. Unless challenged ballots are sufficient in number to affect the outcome of the question concerning representation, an interim certification will be issued to permit collective bargaining to go forward, if appropriate, for the large number of employees whose eligibility is not in question.<sup>3</sup>

#### The Eligibility Cut-Off Date

During the pre-hearing conference, the employer and petitioner stipulated to the use of that date (July 28, 1992) as the eligibility cut-off date for the election. PSE disagreed, arguing at the pre-hearing conference that the cut-off date for voter eligibility should be set after the 1992-93 school year begins.

As recently described in City of Federal Way, Decision 4088 (PECB, June 1, 1992),

An "eligibility cut-off date" is set in advance of a representation election, to provide stability for the list of eligible voters to be used in the election. ...

Clearly, the establishment of an eligibility cut-off date will tend to preclude tactics

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The affidavit received by the Commission on August 17, 1992 is subject to the interpretation that PSE now agrees that the five "office assistants" should not be considered as eligible employees in this bargaining unit after September 1, 1992. If that is, in fact, the position of PSE, the passage of time may have eliminated the need for supplemental proceedings. The challenges to any ballots cast by the "office assistant" employees could be sustained by stipulation of all parties, and a final certification could then be issued.

such as an employer's artificial hiring of large numbers of new employees on the day before an election. Just as clearly, the establishment of an eligibility cut-off date is not a device for employers and unions to disenfranchise otherwise eligible voters.

Thus, the purpose of the eligibility cut-off date is to neutralize, rather than to become a part of, any "nose counting" strategies of the employer and union "parties" to a representation case. Indeed, the result of the Federal Way decision was to vacate an election agreement and stipulated eligibility cut-off date which appeared to disenfranchise eligible voters.

Under WAC 391-25-230, the "default" cut-off date for voter eligibility is the date on which the election agreement is filed with the Commission. Where an election must be ordered by the Executive Director, WAC 391-25-390 provides:

Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in the election shall be the date of issuance of the direction of election.

That rule provides some room for discretion, if there is a basis in fact for using some other date. In this case, however, there is no evident reason to either disenfranchise employees hired during the month of August, or to further delay the conduct of an election. The eligibility cut-off date will be the date of this order.

#### The Election Methodology

At the pre-hearing conference, the petitioner requested that an election be conducted by mail ballot, as soon as possible. PSE sought an on-site election to be conducted after the start of the 1992-93 school year. The employer did not take a position on the election arrangements.

The petition in this matter claimed that there were 167 employees in the petitioned-for bargaining unit, and there were 167 names on the list of employees originally supplied by the employer. Those employees work varying shifts in buildings scattered across the school district. The Commission routinely conducts elections by mail ballot, including conducting elections involving school district employees over the summer months. With three choices on the ballot, there is a distinct possibility of need for a run-off election. September is traditionally a busy time for the Commission staff with mediation of contract negotiations involving school districts and "uniformed personnel". State agencies are operating in an "expenditure reduction" mode. The Commission ended the month of August, 1992 with an all-time high of 399 pending cases. For any or all of those reasons, it would not be feasible for the agency to conduct an on-site election promptly without effectively depriving some eligible voters of their opportunity to vote. Under the authority delegated by WAC 391-25-390 and WAC 391-25-490, the Executive Director directs that the election be conducted promptly by mail ballot procedures.

#### FINDINGS OF FACT

1. University Place School District is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Washington Education Association, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely and properly supported petition, seeking certification as exclusive bargaining representative of certain classified employees of the University Place School District.
3. Public School Employees of University Place, an affiliate of Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), has been

granted intervention in these proceedings as the incumbent exclusive bargaining representative of the petitioned-for employees.

4. During a telephonic pre-hearing conference conducted by a member of the Commission staff on July 28, 1992, the parties stipulated to the existence of a question concerning representation in an appropriate bargaining unit described as:

All full-time and regular part-time custodians, grounds maintenance employees, bus drivers, mechanics, food service employees, and learning assistants (teacher aides); excluding supervisors, confidential employees and all other employees of the employer.

Issues were framed during the pre-hearing conference as to the eligibility of five employees working as "office assistant", as to the eligibility cut-off date for the election, and as to the methodology for conducting an election.

5. There were 167 names on the original list of employees provided by the employer in this proceeding, and the parties stipulated the eligibility of 159 employees, so that the number of employees whose eligibility is at issue is small in relation to the overall size of the bargaining unit.
6. There is no evident reason to deviate from the eligibility cut-off date provided for in the Commission's rules.
7. The employees involved work various shifts in a number of buildings across a large geographic area. Considering the current caseload of the Commission, the backlog of cases pending before the Commission, and the limited resources currently available to the Commission, holding an election by on-site procedures would delay the determination of the

question concerning representation and/or would effectively disenfranchise eligible voters.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter, pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The bargaining unit stipulated by the parties, as described in paragraph 4 of the foregoing findings of fact, is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060, and a question concerning representation currently exists in that unit.
3. An election conducted by mail ballot, with an eligibility cut-off date established as the date of this order, will properly implement the rights of the employees involved under RCW 41.56.070 and WAC 391-25-490.

DIRECTION OF ELECTION


A representation election shall be conducted by secret ballot, using mail ballot procedures, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 4 of the foregoing findings of fact, for the purpose of determining whether a majority of the employees in that unit as of the date of this order, and who remain employed in that unit as of the date of the tally, desire to be represented for the purposes of collective bargaining by the Washington Education Association or by Public School Employees of University Place, an



affiliate of Public School Employees of Washington, or by no representative.

Entered at Olympia, Washington, on the 8th day of September, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-25-590.