

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
CLASSIFIED PUBLIC EMPLOYEES)	
WASHINGTON)	CASE 9846-E-92-1622
Involving certain employees of:)	DECISION 4152-A - PECB
UNIVERSITY PLACE SCHOOL DISTRICT)	ORDER ON OBJECTIONS
_____)	

Faith Hanna, Attorney at Law, appeared on behalf of the petitioner.

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

Caroline Lacey, Attorney at Law, appeared on behalf of the incumbent intervenor, Public School Employees of Washington.

This case comes before the Commission on objections filed by the incumbent intervenor, claiming that the petitioner engaged in conduct improperly affecting the results of the election, under WAC 391-25-590(1), and claiming procedural error by the agency staff under WAC 391-25-590(2).

BACKGROUND

Public School Employees of Washington (PSE), is the incumbent exclusive bargaining representative of classified employees of the University Place School District, other than office-clericals.¹

¹ The "severance" of the office-clerical employees from what had been a "wall-to-wall" unit of classified employees was the subject of University Place School District, Decision 2584 (PECB, 1986).

PSE and the employer were parties to a three-year collective bargaining agreement which expired on August 31, 1992.

On June 16, 1992, the Classified Public Employees Association / Washington Education Association (CPEA), filed a petition for investigation of a question concerning representation with the Commission, seeking to replace PSE as the exclusive bargaining representative of the classified employees at the University Place School District.

A pre-hearing conference was concluded by July 28, 1992. The parties stipulated to the description of the bargaining unit, but framed several "eligibility" and "procedure" issues. The Executive Director issued a Direction of Election on September 8, 1992, ruling on the "procedure" issues,² and reserving "eligibility" issues for post-election determination.

Ballot materials were mailed to eligible voters, and ballots were tallied on September 25, 1992, with results as follows:

Approximate Number of Eligible Voters.....	163
Void Ballots.....	1
Votes Cast for "PSE".....	65
Votes Cast for "CPEA".....	52
Votes Cast for "No Representation".....	1

To have a conclusive result under RCW 41.56.070 and WAC 391-25-531, one of the choices would have needed 82 votes. A run-off election was thus necessary, with PSE and CPEA as the only choices on that ballot.

² The Executive Director determined that: (1) The "eligibility cut-off date" would be the date of the Direction of Election, in conformity with the Commission's rules; and (2) the election would be conducted by "mail ballot".

Ballots for the run-off election were mailed to eligible voters on October 14, 1992. The instructions mailed to each voter included:

Enclosed is an official secret ballot upon which you may indicate your desire regarding the question stated on the ballot. This ballot must be marked secretly by yourself, and should not be shown to any person either before or after you have voted.

Also enclosed are a small envelope marked "secret ballot envelope" and a stamped, addressed envelope bearing your name as a return address. To cast your ballot and to maintain secrecy, seal your marked ballot in the small envelope marked "secret ballot envelope" and then seal the envelope within the return envelope addressed to the Commission. Your name and address on the return envelope is necessary so that we may check you off on the official eligibility list as having voted, and any attempt to return a ballot in some other envelope or to eradicate your name from the return envelope will void the ballot. All return envelopes will remain sealed until the time established for the counting of ballots. After all return envelopes have been checked against the eligibility list, the envelopes marked "secret ballot envelope" will be removed, deposited in a ballot box and mixed to preserve secrecy. Finally, the ballots themselves will be removed from the envelopes marked "secret ballot envelope" and mixed again to preserve secrecy prior to being counted.

[Emphasis by underline in original; emphasis by **bold** supplied.]

It is now evident that the "secret ballot envelope" was not included in the ballot materials sent to many of the eligible voters. That error was not discovered, however, until Commission staff members received a number of telephone calls in the days following the mailing of the ballot materials.

On October 16, 1992, a representative of the CPEA filed a letter with the Commission, as follows:

The purpose of this letter is raise [sic] serious objection with the method by which PERC mailed ballots to eligible employees of the University Place School District and ask PERC to invalidate the ballots sent on October 14 and send new ballots with correct materials to each eligible employee as quickly as possible. Our Association has received numerous calls regarding the lack of inner secret envelop into which the ballot is to be placed.
 ...

That letter went on to allege "confusion", and asked for immediate issuance of correct ballot materials.

The instructions had established October 27, 1992 as the deadline for return of the ballots. The Executive Director declined to cancel the election or supplant the ballot materials prior to that date, and a tally of ballots was conducted as originally set. The results of that tally were as follows:

Void Ballots.....	3
Votes Cast for "PSE".....	61
Votes Cast for "CPEA".....	68

Thus, it appeared that CPEA had been selected on a majority of the valid ballots cast in the run-off election.³

PSE filed timely objections on November 3, 1992. The CPEA filed a written response to the objections on November 17, 1992, thus bringing the matter before the Commission for disposition.

³ Under RCW 41.56.070, a run-off election is required unless one of the choices on the initial election ballot receives a "majority of the eligible employees". For a run-off election, the test reverts to a "majority of the valid ballots cast". See, WAC 391-25-530(2).

DISCUSSIONThe Counting of Ballots

The tally of the ballots cast in the run-off election was conducted in the Commission's Olympia office, where mail ballot elections are normally tallied. The tally was conducted by two members of the Commission's staff, both of whom have previous experience with that procedure. No claimed improprieties concerning the tally procedure were called to the attention of the Commission staff at that time.

Among three objections filed by PSE, the third is limited to the following:

On or about October 27, 1992, when ballots were counted, the lack of privacy envelopes and seating arrangement permitted observers to see how some individuals voted.

There is no specification of the names of the "observers" involved. Moreover, there is no claim that the situation was called to the attention of agency staff members at the time of the tally.

Parties to an election are not allowed to sit silent when a perceived impropriety occurs which is curable at the time of its occurrence. The Commission has previously dismissed post-election objections to the physical arrangement of a polling place, where the claimed impropriety was not called to the attention of the Commission staff at the time of the election. Mount Vernon School District, Decision 1139-A (PECB, 1981). PSE's objection here relates to physical arrangements which could have been "curable" if the concern had been mentioned at the time of the tally. We find, therefore, no merit to this objection.

The "Secret Ballot Envelope"

The first of PSE's objections relates to the omission of the "secret ballot envelope" from some of the ballot materials sent out for the run-off election. PSE points to the letter sent by the CPEA to the Commission on the same subject, and alleges that the failure of the Commission to provide the envelopes and subsequent conflicting advice created confusion among eligible voters. Although the CPEA has not renewed or pursued its initial "objection" concerning the omission of the secrecy envelopes from some ballot materials, it does not contest the existence of an irregularity in the issuance of the mail ballots.

Under long-standing precedent, the function of the administrative agency is to maintain "laboratory conditions" under which employees may freely express their views on questions concerning representation. An error occurred in this case, so that the ballot materials the agency sent to some of the employees did not match the instructions provided to them. Commission staff members may not have been cognizant of the nature or extent of the error when responding to initial telephone calls about the missing "secret ballot envelope".⁴

In comparison to the physical arrangements at the tally of ballots, the omission of the "secret ballot envelope" was not "correctable" by the agency staff while the ballot materials were out to the

⁴ Missing or defective ballot materials are routinely replaced in individual cases, on the basis of telephonic requests to the Commission office. The "secret ballot envelope" is provided to enhance the comfort level of employees with the "mail ballot" procedure, but is not a requirement of any Commission rule. The failure of an employee to utilize a "secret ballot envelope", or their use of some other wrapper within the official return envelope, does not void the ballot. As detailed in the instructions sent to voters, only the use of the official return envelope containing their names is required to check off voter eligibility.

employees. Any attempt to substitute a new set of ballot materials for all or most of the employees in that time frame would certainly have created a potential for other confusion. The Executive Director properly refused to change the arrangements prior to the October 27 deadline for the return of ballots.

The turnout for the run-off election was better than for the initial election in this case. On the other hand, the CPEA's own letter of October 16, 1992 suggests to us that omission of the "secret ballot envelope" caused confusion among at least some eligible voters. The number of employees who did not cast **valid** ballots (33, constituting 20.4% of the total eligible voters) was far greater than the difference between the vote totals received by the two choices (7, constituting 4.3% of the total eligible). We are thus unwilling to assume that the error in this case was harmless.

The Commission overturned an election in Municipality of Metropolitan Seattle, Decision 131-A (PECB, 1977), where the election arrangements actually used deviated from the original notice given to the eligible voters. The omission of the "secret ballot envelope" had the same effect in this case. Now that the error is known, we find it appropriate to vacate the election result and conduct a new run-off election.

The Advertising of Membership Benefits

The second of PSE's objections relates to an information flyer sent by CPEA to eligible voters approximately one week before the run-off election ballots were mailed. PSE claims the information was false and misleading, and constituted coercion by promise of reward. The CPEA urges that the flyer was a legitimate campaign effort on its part. The issue raised is one which would normally require an evidentiary hearing. However, our conclusion that the

run-off election was affected by procedural error makes it unnecessary for the Commission to resolve that issue herein.

NOW, THEREFORE, it is

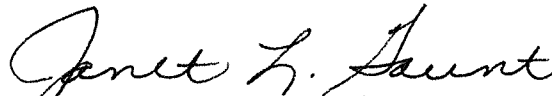
ORDERED

1. The objection filed by PSE as to the procedures used at the tally of the run-off election is OVERRULED, as insufficient on its face to constitute objectionable conduct.

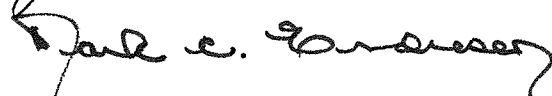
2. The objection filed by PSE as to the omission of the "secret ballot envelope" from the ballot materials issued to some, but not all, eligible voters is SUSTAINED. The results tallied on October 27, 1992 are VACATED, and the case is remanded to the Executive Director for the conduct of a new run-off election.

Issued at Olympia, Washington, the 22nd day of December, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. McCREARY, Commissioner