

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
WASHINGTON EDUCATION ASSOCIATION) CASE 11987-E-95-1975
Involving certain employees of:) DECISION 5319 - PECB
COLVILLE SCHOOL DISTRICT) ORDER VACATING ELECTION
AGREEMENT AND TALLY
_____)

This matter comes before the Executive Director on the basis of correspondence received from bargaining unit employees, calling attention to potential procedural defects and potential improper stipulations by the parties. Based on initial examination of the case file, it appears that further inquiry is warranted. The Executive Director has therefore withdrawn approval of the election agreement and vacated the tally of ballots for the resulting election, pending further inquiry into the matter.

BACKGROUND

On March 1, 1995, the Washington Education Association filed a petition for investigation of a question concerning representation pursuant to Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a bargaining unit described as:

All regular full-time and part-time office/ clerical employees including substitutes of the Colville School District excluding confidential employees, supervisors and all other employees of the employer.

That petition was docketed as Case 11619-E-95-1910. On March 20, 1995, Hearing Officer William Lang of the Commission staff

conducted a pre-hearing conference with representatives of the petitioner and the employer. During that conference it became apparent that the petitioner wanted to limit the bargaining unit to "building secretaries", and would have excluded the district office clerical staff from being represented. Hearing Officer Lang informed the parties that approval was unlikely for a unit configuration which would strand otherwise eligible office-clerical employees in the district office, and the parties decided to discuss the matter further. The WEA subsequently withdrew that petition, and it was dismissed by an order issued on April 5, 1995. Colville School District, Decision 5058 (PECB, 1995).

On August 18, 1995, the Washington Education Association (WEA) filed another representation petition with the Public Employment Relations Commission under Chapter 391-25 WAC, again seeking certification as exclusive bargaining representative of the office-clerical employees of Colville School District. That petition initiated the proceedings in the above-captioned case. Attached to the petition was a letter from WEA Field Representative Warren Henderson, stating the WEA had withdrawn the earlier petition on the basis of an agreement between the parties for an in-house election among the "eligible" employees, that the election results favored the union, that the union sought voluntary recognition from the employer, and that the employer's board of directors declined to extend voluntary recognition.

The initial processing of the above-captioned case was routine. The employer was asked for a list of the employees which it believed should be included in the bargaining unit described by the petitioner, and the employer forwarded such a list. The Commission verified the sufficiency of the showing of interest provided by the WEA, and a telephonic pre-hearing conference was conducted on September 20, 1995. During the pre-hearing conference, the employer and union stipulated to a bargaining unit described as follows:

All full-time and regular part-time office/ clerical employees of Colville School District excluding supervisors, confidential and all other employees.

The employer and union also purported to stipulate the list of employees eligible to vote in the election. There was apparently no mention at that time about a categorical exclusion of district office positions from the bargaining unit.

A notice of election was mailed on September 29, 1995, announcing an election to be conducted by mail ballot, with October 13, 1995 established as the deadline for return of ballots. Ballot materials were sent to eligible voters on the same day. The notice of election was received by the employer, and was posted on the employer's premises.

On October 12, 1995, the Commission received a letter from six of the eligible voters which called attention to the unit issue that was discussed in the earlier proceeding, protested the exclusion of office-clerical at the district office from the bargaining unit, and suggested a lack of notice of the stipulations made by the parties in this proceeding. The letter indicated that a copy was served on the employer, but there was no indication that a copy was served on the union.¹

The tally of ballots issued on October 13, 1995 indicated that nine valid ballots were cast for the WEA, and six valid ballots were cast for "no representation".

On October 17, 1995, the Commission received a telefacsimile transmission from the union which included a copy of an "election newsletter" issued by the union during the campaign.

¹ The Commission staff provided a copy when it was requested by a union official on October 13, 1995.

DISCUSSIONProcedural Error by Omission of Posting

The first of the present causes for concern is an apparent procedural error. WAC 391-25-230 calls for the posting of an election agreement and eligibility list on the employer's premises, to notify bargaining unit employees and potential intervenors of stipulations which will control the processing of a case. WAC 10-08-130 calls for the issuance of a statement of results of a pre-hearing conference. In the context of telephonic pre-hearing conferences and telefacsimile transmission of documents, recent Commission practice has been to have the pre-hearing statement posted on the employer's premises where an election is agreed upon, in lieu of an election agreement.

Although a pre-hearing statement was prepared in this case, close examination of the case file fails to disclose a copy of the computer-generated "record of service" format which would normally be attached to the file copy upon its issuance to the parties. In fact, nothing in the file indicates the statement was served on the parties. The employer's director of finance/personnel, Frederick B. McCurdy, informed the Commission on October 16, 1995, and confirmed in writing on October 19, 1995, that the employer did not receive a copy of the Statement of Results of the Pre-hearing Conference conducted on September 20, 1995. Thus, the posting requirement imposed by WAC 391-25-230 has not been satisfied in this case.

Unsupported Stipulations

The second of the present causes for concern is that the agency is now in receipt of information which raises questions about the list of eligible voters stipulated by the employer and union in this case. The Legislature has assigned the task of determining

appropriate bargaining units to the Commission. RCW 41.56.060. While the Commission encourages agreements between parties in representation cases, and is generally receptive to stipulations made by the parties on eligibility issues, unit determination is not a subject of bargaining in the usual mandatory/permissive/illegal sense. The fact that parties have agreed on a unit issue does not assure that the agreed-upon arrangements are or will continue to be appropriate. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Occasionally, the Commission finds it necessary to reject a unit structure agreed upon by the parties.² Scrutiny is indicated where it appears that one or more stipulations offered by the parties are at odds with Commission precedent. See, City of Federal Way, Decision 4088 (PECB, 1992), where mischief affecting the rights of individual employees was found a sufficient basis to reject a stipulated eligibility cut-off date.

The "election newsletter" issued by the union in this case uses "building-level secretaries" repeatedly to describe the bargaining unit involved. Although there is mention of a "confidential" basis, the same document can be read as implying an ongoing exclusion from the bargaining unit of all office-clerical employees working at the district office. Such a categorical division of the employer's office-clerical workforce would fly in the face of Commission precedent, and the advice provided by the Commission staff during the processing of Case 11619-E-95-1910. Further

² For example: In Skagit County, Decision 3828 (PECB, 1991), an agreement by the employer and union to exclude certain part-time "flagger" employees from a public works bargaining unit yielded a potential for work jurisdiction issues, and so was invalidated by the Commission. In South Kitsap School District, Decision 1541 (PECB, 1983), agreements and stipulations by the parties had led to a fragmentation of the employer's office-clerical workforce that yielded a legacy of work jurisdiction disputes, and the Commission found both units were inappropriate.

scrutiny is thus warranted, to determine whether the stipulations made by the employer and union were designed to conceal facts from the Commission or to circumvent Commission policy and precedent.

Close examination of the employee lists submitted by the employer provides basis for additional questions. In a letter filed with the Commission on September 20, 1995, the employer proposed that the following employees be excluded from the bargaining unit:

Frederick B. McCurdy, Business Manager (Supervisor & Confidential) ...

Trudy Hull, **Executive Services Officer (Confidential)** ...

Sharon Carr, **Personnel/Payroll Officer (Confidential)** ...

Karen Harris, Food Service Director / **Fiscal Officer (Supervisor)** ...

Carroll Ferguson, **Executive Assistant (Supervisor & Confidential)** ...

[Emphasis by **bold** supplied.]

The original list of eligible voters filed by the employer on September 18, 1995, included the following:

District Office

Rawline Taylor, Specialist

Robin Sphuler, Specialist

TBA (Sheryl Clark, Specialist - One (1) year leave of absence)

Nevertheless, the parties purported to stipulate during the pre-hearing conference that Taylor, Sphuler and Clark (or her replacement) were all "confidential" employees. When added to the four titles on the employer's original list of exclusions which sound like they are or could be within the "office-clerical" generic occupational type (highlighted in **bold**, above), that would leave the employer with a total of seven "confidential" exclusions out of a total office-clerical workforce numbering about 22 positions.

The exclusion of "confidential" employees under RCW 41.56.030(2)(c) is narrowly interpreted:

We hold that in order for an employee to come within the exception of RCW 41.56.030(2), the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, **including formulation of labor relations policy**. General supervisory responsibility is insufficient to place an employee within the exclusion.

IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978) [emphasis by **bold** supplied].

It appears that the employer and union should be called upon to provide support for their purported stipulation that this relatively small employer has and needs seven employees to perform its "labor nexus" work.

Conclusions

It is necessary to (at least temporarily) withdraw approval of the election agreement and vacate the results of the mail ballot election, in order to determine a proper course of action. The case will be assigned to a Hearing Officer for further proceedings consistent with this order.

NOW THEREFORE, it is

ORDERED

The approval of the election agreement and the results of the election conducted by mail ballot on October 13, 1995, are VACATED,

and the matter remanded for such further pre-hearing conferences and/or hearings as may be necessary for the proper processing of the petition filed in this matter.

Entered at Olympia, Washington, on the 20th day of October, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director