

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
TEAMSTERS LOCAL UNION No. 58 ) CASE 11582-E-95-1902  
Involving certain employees of: ) DECISION 5080 - PECB  
CITY OF LONG BEACH ) ORDER ON OBJECTIONS  
\_\_\_\_\_ )

John Silva, Business Representative, represented the union.

Perkins Coie, by Michael T. Reynvaan, Attorney at Law, represented the employer.

This case comes before the Commission on election objections filed by the City of Long Beach pursuant to WAC 391-25-590. The Commission has considered the objections, and finds that, on their face, they are insufficient to warrant vacating the results of the election.

BACKGROUND

The initial processing of this representation case was routine. The parties agreed to have the question concerning representation determined by a secret-ballot election. Consistent with recent Commission practice, the election was conducted by mail balloting procedures. The ballot materials were mailed to eligible voters on March 7, 1995, using the employee home addresses supplied by the employer. The deadline for receipt of the ballots was clearly indicated as March 22, 1995.

The address provided by the employer for Nick Crawford was incorrect, and the ballot materials for that employee were returned

to the Commission by postal authorities on March 14, 1995. On that date, Commission staff inquired as to Crawford's correct address, and remailed the ballot materials to him.

The objections filed by the employer focus on Crawford, and allege:

- (4) On the evening of Friday, March 17, 1995, the employee received a ballot from the PERC;
- (5) On or about March 21, 1995, the employee mailed the completed ballot to the PERC;
- ...
- (7) At least one employee was not able to vote in the election because the PERC's mail ballot procedures and/or delays in the mail resulted in that employee failing to get a ballot in sufficient time. To [sic] return the ballot in a timely manner and thus prevented at least one vote from being counted.

The ballots received by the deadline established in the notice were counted on March 22, 1995. A tally issued on that date indicates that four employees cast ballots for the union, while three employees cast ballots for "no representation".

#### DISCUSSION

Employees have a right to vote in a representation election conducted by the Commission, but they also have a right to abstain from voting. The fact that some employees did not cast ballots is not a basis for overturning the results of a close election. Lewis County, Decision 368 (PECB, 1978).

There was a delay in this case caused by the employer providing an erroneous address, but that is not the direct cause of the late arrival of the employee's ballot. The employee received the ballot

on March 17, 1995, but waited four days, until March 21, 1995, to return it. The Commission received Crawford's ballot on March 24, 1995. The late arrival of the ballot cast by the affected employee is directly attributable to his four-day delay. Employees who desire to cast a ballot must take the steps necessary to do so under the election arrangements set by the Commission. At an on-site election, an eligible voter must present himself or herself at the polling place within the hours of voting established in the Commission's notice. An employee who does not take steps to return a mail ballot in a timely manner, when a timely return is possible, must be likened to an employee who waits to vote at an on-site election until after the polls have closed.

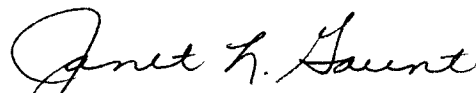
NOW, THEREFORE, it is

ORDERED

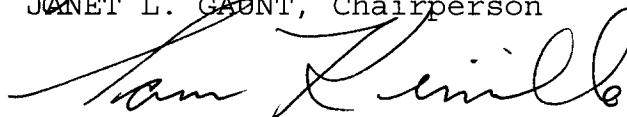
1. The objections filed by the employer shall be, and hereby are, OVERRULED as insufficient on their face.
2. The matter is remanded to the Executive Director for issuance of a certification.

Issued at Olympia, Washington, the 9th day of May, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner