South Kitsap School District, Decision 5676-A (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: | ) | |
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| JOHN CHALLMAN | ) | CASE 12605-E-96-2114 |
| | ) | |
| Involving certain employees of: | ) | DECISION 5676-A - PECB |
| | ) | |
| SOUTH KITSAP SCHOOL DISTRICT | ) | DECISION OF COMMISSION |
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| | ) | |

John Challman appeared pro se.

Perkins Coie, by Charles N. Eberhardt, Attorney at Law, appeared on behalf of the employer.

Tom Leahy, Attorney at Law, appeared on behalf of the incumbent intervenor, Service Employees International Union, Local 6.

This matter comes before the Commission on election objections filed by the decertification petitioner, John Challman, and by the South Kitsap School District.[1]

## BACKGROUND

The South Kitsap School District (employer) and Service Employees International Union (SEIU) have been parties to collective bargaining agreements for two bargaining units: (1) a "maintenance" unit consisting of approximately 180 nonsupervisory maintenance, food service, transportation and other employees, and (2) a

[1] In South Kitsap School District, Decision 5676 (PECB, 1996), the Commission dismissed certain objections filed by individual employees, and remanded objections of the employer and specified objections of petitioner John Challman for a hearing.

"supervisors" unit consisting of 10 operations managers, who serve as first level supervisors of the maintenance employees.[2]

Irene Eldridge was the union's representative and negotiator for the 1995 contract negotiations for both collective bargaining agreements:

- Eldridge was heavily involved in the negotiations for the maintenance unit, and attended approximately 20 negotiation sessions. On November 20, 1996, negotiations on a three year contract for that bargaining unit were concluded, and the parties signed a final agreement. Eldridge, president of Local 6 Marc Earls, and SEIU Chapter President Leo Nunley signed that contract for the union.

- Negotiations for the operations managers bargaining unit began in September of 1995 for a one year contract covering the period September 1, 1995 to June 30, 1996. Sherrie Evans, Executive Director for Personnel, served as the employer's representative for negotiations. John Challman, Local Chapter President, drafted the union's contract proposal, served as the spokesperson for the bargaining unit, and took the major role for the union during negotiations. Eldridge attended about four or five negotiation sessions between September, 1995 and February, 1996. Other negotiations sessions were held without Eldridge.

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[2] Prior to 1995, SEIU Local 6 served as the exclusive bargaining representative of the maintenance employees, and SEIU Local 123 served as exclusive bargaining representative of the bargaining unit of operations managers. The two locals merged in early 1995, so that Local 6 now serves both bargaining units.

During a meeting in October, it was decided to conduct a survey comparing the operations managers to similar positions in other school districts. Based on new job descriptions, the employer was to develop a survey and submit it to benchmark school districts. As of December 4, 1995, the personnel office was still missing two job descriptions from operations managers. The survey was sent out during January, completed on January 31, 1996, and the results were tallied and shared with the operations managers.

On March 4, 1996, Eldridge contacted Evans to establish a negotiation date. Evans was not in her office, so Eldridge left a message regarding available dates in March. Eldridge informed Challman of her call to Evans, and suggested that Challman contact Evans to establish the next meeting and that they proceed without her. Challman contacted Evans regarding scheduling dates for negotiation sessions.

Challman assumed from Eldridge's call that he had the authority on behalf of the union to negotiate the agreement to completion. Eldridge did not attend a session on March 13, 1996, at which a tentative agreement with a 5.4% salary increase was reached. The increase was greater than was received by any other group of employees. Evans asked who would be signing the final agreement for the union, and Challman told her that he would be signing.

Evans submitted the agreement to the board for approval. On March 18, 1996, the agreement was signed by the president of the board, the superintendent, and Evans for the employer. Challman signed for the union as SEIU local chapter president. On March 25, Eldridge learned through a voice mail message from Evans that Challman had signed the contract.

On April 19, 1996, Eldridge spoke with Evans by telephone regarding concerns that one of the bargaining unit members signed the

contract instead of the legal signator for the union, Marc Earls, SEIU Local 6 president. By letter to Evans of April 24, 1996, Eldridge documented the telephone conversation and observed certain clauses had been omitted from the contract.

On May 6, 1996, Eldridge and Evans met to review the agreement for the operations managers unit. Eldridge expressed concerns that the contract contained no reference to (1) seniority, (2) arbitration, (3) part-time positions, and (4) compensation for telephone calls occurring after regular work hours. One sentence relating to final binding arbitration had been omitted by oversight, and Evans agreed to correct the error.

By letter of May 22, 1996, Eldridge advised Evans that the union was willing to forego its requirement that Earls sign the agreement, if the employer would accommodate the union's concerns relating to the remaining issues. By letter of May 28, 1996, Evans agreed to accommodate most of the union's concerns.

On July 18, 1996, Challman filed a petition for investigation of question concerning representation to initiate this proceeding before the Public Employment Relations Commission. Challman sought decertification of the SEIU from its status as the incumbent exclusive bargaining representative for the operations managers. An investigation conference held on Thursday, August 15, 1996, resulted in arrangements for a mail ballot election, with ballots to be mailed the following Wednesday, August 21, 1996.

On Friday, August 16, 1996, Eldridge mailed a pamphlet consisting of nine question and answer couplets to bargaining unit employees. On Monday, August 19, 1996, Eldridge mailed a second pamphlet containing nine additional question and answer couplets. The union did not mail copies of the two pamphlets to the employer.

On August 20 or 21, 1996, Evans learned that some employees were upset about the content of the union's pamphlets. The employees thought the pamphlets contained false information.

On August 22, 1996, ballot materials were mailed to the 11 employees named on the stipulated eligibility list. Votes were tallied on September 4, 1996, and results of the election showed six votes cast for SEIU and four votes cast for no representation. One challenged ballot was not counted. Five employees and the employer filed objections.

On October 2, 1996, the Commission dismissed objections filed by employees Thomas M. Reidel, James Beveridge, Jeffrey Phillips, and Stephen M. Pratt, along with two objections filed by petitioner Challman. The following matters were remanded to the Executive Director for further proceedings:

- Objections filed by Challman, claiming that two publications mailed by the union contained unsubstantiated information,

- Objections filed by the employer, claiming that the union's publications contained substantial misrepresentations of fact in violation of WAC 391-25-470(1)(f), and

- Objections filed by the employer, claiming that the alleged misstatements were issued at a time and manner that prevented the employer from effectively responding.

Hearing Officer Paul Schwendiman held a hearing on February 19, 1997 and May 16, 1997. The employer and union filed post-hearing briefs.

POSITIONS OF THE PARTIES

Petitioner Challman did not put on a case at hearing and did not file a post hearing brief.

The employer argues that the challenged passages from the union's pamphlets contain substantial misrepresentations of facts regarding salient issues. It argues that the pamphlets falsely imply the employer encouraged the decertification drive, misrepresent the actions and motives of the employer during negotiations, and depict the 1995-96 contract unfairly and inaccurately. The employer contends that the misrepresentations were communicated in a manner calculated to give them maximum impact, and were timed to preclude an effective response by the employer. The employer claims that employees could reasonably be expected to attach significance to the representations and that the representations had a significant impact on the election. It asks the Commission to set aside the election results and conduct a new election.

The union claims the employer had adequate time to respond to the first pamphlet mailed on August 16, 1996. It acknowledges that the employer did not have an adequate opportunity to respond to the second pamphlet mailed on August 19, 1996, but claims the lack of opportunity is not sufficient grounds to overturn the election. The union argues that none of the questions in the pamphlets can be substantial misrepresentations, because they were questions from bargaining unit members. It contends that the disputed statements include truth, opinion, speculation, interpretation, or ambiguity, that they do not rise to the level of substantial misrepresentations of fact or law on salient issues, and that they had no impact on the election. In the alternative, the union argues that the Commission should decline to probe into the truth or falsity of campaign statements, and use a "fraud" or "forged document"

standard. The union requests the Commission to set aside the objections and certify the election results.

## DISCUSSION

### Standards for Misrepresentations during Elections

Misrepresentations of fact or law are prohibited during election campaigns. WAC 391-25-470(1)(f) defines objectionable conduct as including:

> (f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:
> (i) Be a substantial misrepresentation of fact or law regarding a salient issue:
> (ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;
> (iii) Occurring at a time which prevents others from effectively responding; and
> (iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

Changes to this rule, effective April 20, 1996, codified standards adopted by the Commission in Tacoma School District, Decision 4216-A (PECB, 1993). In that case, the Commission reviewed the precedent of the National Labor Relations Board (NLRB), which has taken varied paths on the issue of campaign representations. In Hollywood Ceramics Company, 140 NLRB 221 (1962), the NLRB held that an election should be set aside only:

> [W]here there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so

> that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election.

The NLRB sought to maintain laboratory conditions for its elections in Hollywood Ceramics, and considered gross misrepresentation about material issues in elections one of the factors that interfere with employees' free choice. The NLRB overruled Hollywood Ceramics in Shopping Kart Food Market, Inc., 228 NLRB 1311 (1977), deciding to "no longer probe into the truth or falsity of the parties' campaign statements". The Board overturned Shopping Kart and reinstated the Hollywood Ceramics standard in General Knit of California, Inc., 239 NLRB 619 (1978). With Midland National Life Insurance Company, 263 NLRB 127 (1982), the Board reversed itself again, and decided to return to the Shopping Kart standard of not probing into the truth or falsity of campaign representations.

The union urges the Commission to follow Midland, the NLRB's current standard.[3] The Commission already confronted the issue in Tacoma School District and declined "to follow the wanderings of the NLRB into a policy which undermines both the 'laboratory conditions' for the conduct of representation elections and the integrity of proceedings". Instead, the Commission chose to adopt the policy of Hollywood Ceramics. We are satisfied that the guidelines set forth in Tacoma School District and now codified in WAC 391-25-470(1)(f) are better reasoned and more consistent with the Commission's statutory responsibility for ensuring fair elections. We see no reason for deviating from our precedent or waiving the rule in this case.

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[3] The union argues that Midland better reflects current employee sophistication, and that parties would have a more clear formula to follow during the election process. It argues that Midland would provide a more efficient finality to election results and would prevent delay such as occurred in the case at hand.

## The Claims of the Petitioner

In a letter to Commission staff on September 10, 1996, decertification petitioner Challman objected to the union's actions,[4] stating:

> [T]he two publications mailed contained unsubstantiated information. In our opinion this information was blatant electioneering by Irene Eldridge, SEIU Local 6 representative, possibly swaying the results of the vote.

The Commission remanded this objection for further proceedings. Challman provided no supporting documentation with the letter or at the hearing to show how unsubstantiated information in the brochures constituted misrepresentations or how the union's pamphlets may have swayed the results of the vote. "Blatant electioneering" is not unlawful. The lack of evidence and argument leaves us with the employer's objections.

## Application of the Standards

The employer objected to various statements the union made in campaign brochures. The statements are each analyzed under the standards for misrepresentations under WAC 391-25-470(f). The burden of proof rests with the party, in this case the employer, urging that an election be set aside.

Criteria 2 - Knowledge/Authority of Party -
The pamphlets at issue in this case were distributed by the incumbent exclusive bargaining representative. While the negotiations were carried on to a large extent by bargaining unit members, Eldridge was involved in several negotiation sessions and maintained contact with the members until the signing of the agreement.

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[4] Challman and four other employees signed this letter.

Eldridge met with four employees, who posed the questions that she answered with the pamphlets. Under these conditions, employees may be expected to attach added significance to the assertions Eldridge made in the documents. Thus, the disputed statements meet the second criterion set forth in WAC 391-25-470(f). See, Intercity Transit, Decision 4648 (PECB, 1994). In that case, the Commission found statements made by the exclusive bargaining representative were made by a party having intimate knowledge of the subject matter, inasmuch as the bargaining representative had negotiated the contract to which reference was made.

Criteria 3 - Timing of Campaign Material -

The purpose of a representation election is to allow employees the choice of whether they wish to be represented for the purposes of collective bargaining. As stated in Lake Stevens-Granite Falls Transportation Cooperative, Decision 2462 (PECB, 1986),[5] the Commission's function is to provide "laboratory conditions" under which employees can make an uncoerced decision on the question of representation. "Laboratory conditions" means "a concept that to us calls for a high degree of purity approaching ideal conditions". The closer disputed conduct of a party is to the actual balloting, the more likely a violation of "laboratory conditions" will be found. The Commission views the period within 24 hours of the commencement of the election as particularly critical in an examination of whether laboratory conditions have been violated. Lake Stevens, supra.

During the investigation conference on Thursday, August 15, 1996, the parties agreed that mail ballots would be mailed the following

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[5] Lake Stevens was decided prior to the adoption of WAC 391-25-470(f), but the decision remains useful from the perspective of an overall guideline.

Wednesday, August 21, 1996.[6] Eldridge mailed the first pamphlet on the day after the investigation conference. Presuming that employees would have received the pamphlet on Saturday, August 17th, the employer could have been notified by Monday, the 19th or at the latest on the 20th. WAC 391-25-470(1)(g) would have prohibited the employer from giving an election speech to a massed assembly of employees on the 20th, but the employer could have responded in another way on the 19th or 20th. The employer's argument that Evans did not see the pamphlets until after balloting had commenced is not determinative. The critical issue is whether the timing of the union's actions prevented the employer from responding, not the timing of the employer's work schedule. We thus dismiss the objections to the first pamphlet, because the employer had an opportunity to respond to the representations.

The union does not dispute that the second pamphlet was mailed at a time that prevented the employer from effectively responding. The earliest that employees could have received the pamphlet mailed on Monday, August 19, 1996, would have been Tuesday, August 20th. Since the pamphlets were not mailed to the employer, the earliest the employer could have learned of the representations would have been August 21st, the day the ballots were mailed. Any response by the employer clearly would have strained the "laboratory conditions" required for the holding of elections.[7] Criteria 3 is met for the representations contained in the pamphlet mailed on August 19, 1996.

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[6] The parties also agreed the ballots would be counted on September 4, 1996.

[7] For examples of cases in which the timing of campaign literature was held to have precluded effective response, see, City of Seattle, Decision 5159 (PECB, 1995), and Tacoma School District, supra, and Intercity Transit, supra.

Criteria 1 - Misrepresentations -

Five question and answer couplets from the leaflet mailed on August 19, 1996 remain in dispute.

The First Couplet disputed by the employer states as follows:

> **Q. What is the advantage to the District having us not represented by a union?**
>
> **A.** The District is then free to deal with each of you as individuals. Rumor has it that the District has approached at least two of the bargaining unit members to tell them that if they are not represented by the union, they will be able to have salaries much higher than they currently have (an illegal action when there is a question of representation, by the way). The District has not approached every bargaining unit member with that "carrot." Such behavior does not make the District appear too trustworthy and could be a sign of things to come.

[Emphasis by **bold** in original.]

The employer argues that this couplet refers to an unsubstantiated and false rumor, which Eldridge did not investigate or otherwise confirm before printing, and that the union's characterization of the rumor as "behavior" of the district is a misrepresentation. On the other hand, the union argues that since the statements include opinion and rumor, they do not constitute substantial misrepresentation. It cites National Labor Relations Board v. Chicago Marine Containers, Inc., 745 F.2d 493 (7th Cir. 1984), and National Labor Relations Board v. S. Prawer & Company, 99 LRRM 3008 (1st Cir. 1978) to support its contentions.

The first sentence of the answer contains sufficient truth so as not to be a misrepresentation. It is clear that employees become unrepresented upon a decertification, and the employer is then free

to deal with employees as individuals. See, City of Seattle, supra.

The remaining portion of the answer was written in the context of a rumor. The NLRB has found the effect of rumor "ambiguous" at best, and not cause for setting aside an election.[8] In this case, we agree. The record contains sufficient evidence to support a finding a rumor existed. Unrebutted testimony at hearing showed that Eldridge had been informed of a rumor. In addition, the employer provided no support to show that votes were changed because of the rumor, so any effects of the rumor, as represented by Eldridge in the campaign literature, are ambiguous. The third sentence is also ambiguous and sufficiently connected with the rumor as to not constitute a misrepresentation. See, Intercity Transit, Decision 4648 (PECB, 1994). The employer would probably agree that it "has not approached every bargaining unit member with that 'carrot'". The employer reasonably interprets the union's statements as implying that the employer behaved in accordance with the rumor. The union's representations could also be interpreted, however, as meaning that if the rumor is true, such actions of the employer would not appear too trustworthy. The employer's view is only one way of interpreting the union's statement. The fact that a statement can be interpreted as an implication is not sufficient to warrant considering the statement a misrepresentation and overturning an election.

The Second Couplet disputed by the employer in the August 19, 1996 brochure states as follows:

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[8] See, National Labor Relations Board v. S. Prawer & Company, supra. The Court did not consider the effect of the Shopping Kart standard, since it found the company in that case would not prevail under either Shopping Kart or Hollywood Ceramics.

> **Q. Why was SEIU Local 6 bypassed during the conclusion of the 1995-96 negotiations and not included in proofing and finalizing the contract prior to the contract vote of operations managers and the contract being signed by a bargaining unit member?**
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> **A.** It was to the advantage of the District and those interested in decertifying to exclude the one party (SEIU Local 6) whose interest is in providing support and protection to all bargaining unit members equally.

[Emphasis by **bold** in original.]

The employer argues that this couplet falsely asserts that the employer "bypassed" the union in negotiations, and implies that the employer manipulated the bargaining process to gain an advantage over the union. The union argues that the question explains what transpired during negotiations, and that the answer is an opinion, which cannot be a material misrepresentation of fact. It cites National Labor Relations Board v. Chicago Marine Containers, Inc., supra, for its contentions.[9]

While we recognize the question was based on inquiries from employees, it also contains sufficient truth, so that any implication cannot be a misrepresentation. The question refers to Local 6 being "bypassed". While the employer may not have intentionally excluded Eldridge from the finalizing of the contract, it actually did so. The collective bargaining agreement for the maintenance employees and earlier collective bargaining

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[9] In finding the employer's objections to union campaign literature without merit, partly on the basis the statements were "only the opinion of the leaflet writers", the Court applied the Midland standard, but noted that the outcome would be the same if the Hollywood Ceramics rule was applied.

agreements were signed by the president of the union.[10] The president of the union did not have the opportunity to sign the 1995-96 contract for the operations manager unit, because Eldridge was not included in finalizing the agreement. The answer contains the opinion of the writer, and would be a common belief for a union to have of any employer, no matter how or why a union's head office was excluded. We conclude this question and answer couplet contains no substantial misrepresentation.

The Third Couplet at issue here states as follows:

> **Q. Why didn't the District understand that SEIU Local 6 should be involved in negotiations and the finalizing of the contract?**
>
> **A.** Given the experience of the staff in personnel, it should have known. However, the District's experience could have been used to take advantage of the inexperience of the bargaining unit members, thus putting them at a disadvantage compared to the District.

[Emphasis by **bold** in original.]

The employer claims the answer is false, that it is abnormal to have a signature of a Seattle or headquarters office on a document. Evans testified that Eldridge was highly involved with the negotiations sessions for the maintenance agreement, and at the end of that bargaining, there was a distinct communication with regard to a request to proof the document. The union argues that both the question and answer are opinion and thus not misrepresentations.

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[10] The record shows that supplemental agreements may not have been signed by the union president, but initial collective bargaining agreements were always signed by the president.

The employer attempts to justify its actions, but the fact that it can provide some reasons for Evans' actions does not make a misrepresentation out of the question and answer couplet. A reasonable interpretation from the record is that the same process used for signing the maintenance contract could (or should) have been followed for the operations manager contract. The union's statement that the "District's experience could have been used to take advantage of the inexperience of the bargaining unit members, thus putting them at a disadvantage compared to the District," could be true for any employer in the same situation. A higher salary was gained for this group of employees than for others, and it is clear the employer did not take advantage of the members in that regard. On the other hand, the four items that were in the "cut and paste" proposal Eldridge provided to Evans on February 29, 1996, but left out of the final agreement, could have been the basis for the union's speculation that the employer could have taken advantage of the inexperience of the bargaining unit members. If this question and answer couplet contains misrepresentation, it is insubstantial.

The Fourth Couplet at issue here states as follows:

> **Q. Did SEIU Local 6 attempt to have errors and omissions in our recently expired contract corrected even though the contract had already been signed by a bargaining unit member and the District Board?**
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> **A.** Yes, SEIU Local 6 staff communicated with the personnel director, who refused to correct such errors and resubmit the contract to the Board for signature. The reason given was that "some board members are not too supportive of having unions (in the district)." Perhaps the real reason was that the board was not aware that the entire process had not been conducted properly.

[Emphasis by **bold** in original.]

The employer argues that this couplet implies the contract did not accurately and completely reflect the terms agreed upon by the negotiators and that Evans refused to correct such errors. It argues that the final contract only had a single "error", an inadvertent omission of a sentence from the grievance procedure, which was corrected by a side agreement between Evans and Eldridge. The employer claims that all other items called errors and omissions by Eldridge were actually union contract proposals that the negotiators expressly rejected at the March bargaining session.

It is clear that Eldridge is referring to her own interpretation of events, which is a reasonable interpretation. In fact, the final contract did not contain four items Eldridge considered important, and Evans did refuse to submit the contract to the board after discussion with Eldridge. Therefore, the question and the first sentence of the answer contain sufficient truth as to not be a substantial misrepresentation.

The answer also asserts that Evans, in refusing to resubmit the contract, told Eldridge that "some board members are not too supportive of having unions." At hearing, the parties disputed whether Evans made such a statement. The employer had the burden to show the statement was not made, and Evans did credibly testify that she did not make the statement. We find the union's evidence insufficient to rebut the employer's objections and find the statement a substantial misrepresentation for the following reasons:

- At the time of the alleged statement, on May 6, 1996, the collective bargaining agreement had already been approved by the school board and signed by the president of the board. The contract was expiring on June 30, 1996. The employer and union were working to accommodate the union's concerns about the omissions and appear to have been satisfactorily resolving

the issue. Eldridge testified that Evans did not want to take the contract to the board repeatedly, that Evans had told her it would be more realistic to assume the board would ratify the contract if it simply went once. It was clear that Eldridge understood Evans' approach when she asked Evans to reopen the contract and renegotiate certain substantive terms. On cross-examination, the employer's attorney asked Eldridge:

> And so you were asking her – and so she said: Listen up, I don't want to go back to the board. And it was in the context of reopening the contract, going back to the board, asking them to approve new language, and new terms and a new deal. That after – so far as the board was concerned this contract was already settled?

Eldridge replied, "Right. And a new signature."[11] Eldridge admitted that the reasoning was logical, as Evans was going to be requesting a larger pay raise than other employees and was going to have to sell the contract to the board.

- Eldridge took notes as the May 6, 1996, meeting transpired. Among other things, Eldridge wrote, "She doesn't want to take agreement to Bd. again, as Board not too sure of having unions (?)". At an indeterminate time, Eldridge changed the wording to reflect the following[12]: "She doesn't want to take agreement to Bd. again as some Board members not too ~~sure~~ supportive of having unions (?)". Eldridge also wrote in the margin, "Note:

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[11] Transcript, p. 263.

[12] Additions are underlined and deletions are stricken.

Is not actual concern what Bd. will think of Sherries actions?" Eldridge testified that she did not know whether all three of the additions or changes were done at the same time, and did not know when she crossed out the word "sure" and added the word "supportive". While she testified that she was sure Evans' statement included the words "not too supportive of having unions", the "?)" at the end of the line could indicate that she did not take down the rest of the statement, or it could indicate that in the rush of taking verbatim notes in longhand, she missed something. Evans may have referred to herself as not being sure that the board would want unions to come in after an agreement is already signed and bring forward more issues.

- Eldridge did not contemporaneously confront Evans about a statement that would have indicated an unlawful anti-union animus, or ask her to explain it, which seems an unlikely response.

- The record does not support representations that the employer expressed anti-union sentiments. Such comments could have been reason to file an unfair labor practice, which the union did not do.

- The record shows Evans approached her tasks with some sophistication, making it unlikely she would have attributed such statements to board members. Evans was very careful during the decertification process not to comment about the issue to employees. Eldridge testified that she had been working with Evans since at least early 1994 and considered the relationship good, that Evans had a great deal of integrity, and was candid in her dealings with unions, and that there was a level of trust between them. She testified that she had no reason to believe that Evans had encouraged a decertification effort,

and that Evans has been "willing to go to bat for employees on something she considers to be fair to employees".

- The statement in the pamphlet refers to "the" reason given. This would lead the reader to conclude the only reason that Evans declined to resubmit the contract to the board was because of the anti-union animus of board members. In fact, the record shows that other reasons existed, and even predominated.

Taken in context, Eldridge's notes do not support the representation in the fourth couplet that some board members were not supportive of unions. Whether we apply the substantial misrepresentation test to the claimed statement of the personnel director or to potential views of board members, the result is the same.

The last sentence of the couplet is pure conjecture by Eldridge, who was understandably disappointed that the final contract was signed without Local 6's blessing.

The Fifth Couplet at issue here reads as follows:

> **Q. If it is true that Local 6 aims to match bargaining unit members' salaries to their positions, why didn't that occur in these recent negotiations?**
>
> **A.** Several months went by waiting for salary survey information and waiting for the personnel director to decide the time was "right" to approach the Board with a tentative agreement. By March, 1996, the operations managers who were involved in negotiations wanted some increase to be implemented. Thus we agreed to increase the managers' salaries to maintain the same "spread" between the managers and the journeymen in the other bargaining unit (to which the managers have been benchmarked). The union's goal (not included in the final contract) was to

> have a comprehensive salary survey done in the near future.

[Emphasis by **bold** in original.]

The employer argues that this couplet falsely implies the employer delayed the bargaining process and the salary survey in order to gain concessions from the union. It asserts the salary survey results were delayed until January due to lack of cooperation by unit members, not by any fault of the employer, and that Evans took the tentative agreement to the board immediately after it was reached, two weeks after the union presented a complete contract proposal on February 29, 1996. The union argues that it is true that Evans wanted to approach the board at the proper time. It asserts that the part of the answer that refers to a comprehensive salary survey is ambiguous, and that ambiguous statements are not material misrepresentations.

The record shows that the statements are not substantial misrepresentations. Each statement is supported by facts in the record. Months did go by between the decision to do a salary survey and the time when Evans approached the board with a tentative agreement. While the actual reasons may have been more complex than what is set forth in the pamphlet, the statement still contains a great deal of truth. By March of 1996, the operations managers did want a pay increase implemented, and wanted to maintain the same differential between the managers and the journey level employees in the other bargaining unit. The last sentence refers to only a goal of the union and cannot be considered a misrepresentation.

Criteria 4 - Significant Impact on the Election -

We are dismissing all but one of the statements on the basis of the lack of substantial misrepresentation of fact or law of a salient issue. Therefore, we are only concerned whether the statement, "The reason given was that "some board members are not too

supportive of having unions (in the district)" could be reasonably viewed as having had a significant impact on the election.

The employer argues that a single swing vote determined the outcome of the election, and at least one of the employees who voted for the union has since joined in objections charging that the pamphlets were misleading.[13] The union argues no bargaining unit members testified to having been influenced by the pamphlets, and that the employer did not meet its burden to show a significant impact on the election.

The questions were questions that employees had asked of the union in relation to the decertification drive.[14] The issues were of concern to employees during the campaign. The record contains little evidence, however, that suggests employees may have been swayed as a result of the statement. We cannot deduce with any degree of certainty that a person who files objections to union campaign literature would have voted any differently had it not been for the literature. Without testimony from employees to show the union's pamphlets influenced their voting in this case, we are unable to conclude that the statement, found to comprise a misrepresentation, can be reasonably viewed as having had a significant impact on the election. The impact of the statement is ambiguous at best.

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[13] The decertification effort failed by one vote, but five members of the bargaining unit signed objections to the election. Five votes would have been enough to decertify the union.

[14] In City of Seattle, supra, and Intercity Transit, supra. Representations in documents were found to have had a substantial impact on elections, because the documents made reference to issues that were of critical concern to employees during the election campaigns.

## FINDINGS OF FACT

1. The South Kitsap School District is a "public employer" within the meaning of Chapter 41.56 RCW.

2. Service Employees International Union, Local 6 is the certified exclusive bargaining representative of a bargaining unit consisting of 10 employees in operations manager positions, first level supervisors in maintenance, food service, transportation, and other functions. SEIU is also the exclusive bargaining representative of a unit consisting of approximately 180 nonsupervisory employees who report to the operations managers, called the "maintenance" unit.

3. During the 1995 contract negotiations, Irene Eldridge, the union's representative and negotiator, attended close to 20 negotiation sessions for the maintenance employees contract. On November 20, 1995, the parties signed the final contract for the maintenance unit. The president of the school board, the superintendent, and Sherrie Eggen, the chief negotiator, signed for the employer. Leo Nunley, SEIU Chapter President, Irene Eldridge, SEIU Representative, and Marc Earls, President of Local 6, signed for the union.

4. Negotiations for the September 1, 1995 to June 30, 1996 collective bargaining contract for the operations managers began in September of 1995. John Challman, local chapter president, took the major role in the negotiations. During a meeting in October, it was decided the employer would survey similar positions in other school districts to compare salaries. As of December 4, 1995, the personnel office was still missing two job descriptions from operations managers. The survey was completed on January 31, 1996, and the results were tallied and shared with the operations managers.

5. Eldridge attended approximately four or five sessions of the operations managers negotiations between September and February. On March 4, 1996, Eldridge contacted Sherrie Evans, Executive Director for Personnel, to establish a date for the next session, and left a message regarding available dates. On the same date, Eldridge suggested to Challman that the operations managers continue without her. Challman contacted Evans and scheduled a date for the next negotiation session.

6. An agreement was reached at the last session on March 13, 1996. Eldridge did not attend that meeting. Agreement was reached on a 5.4% salary increase, more than any other group of employees. Evans asked who would sign the final agreement for the union, and Challman told her that he would be signing. Evans submitted the agreement to the board for approval. On March 18, 1996, Kenneth Ames, president of the board, Bill Lahmann, superintendent, and Sherrie Evans, chief negotiator, signed for the employer, and John Challman, SEIU local chapter president, signed for the union.

7. On March 25, 1996, Eldridge learned the contract had been signed. On April 19, 1996, Eldridge spoke with Evans by telephone regarding concerns that one of the bargaining unit members signed the contract, and expressed concern that the agreement had not been signed by the legal signator for the union, Marc Earls. Eldridge documented the telephone conversation with a letter of April 24, 1996 to Evans, in which she also indicated that some important matters were left out of the agreement.

8. On May 6, 1996, Eldridge and Evans met to review the agreement between the union and the employer for the operations managers. Eldridge expressed concerns that the contract contained no reference to (1) seniority, (2) arbitration, (3) part-time

operations managers positions, and (4) compensation for telephone calls occurring after regular work hours. One sentence relating to final binding arbitration had been omitted by oversight, and Evans agreed to correct the error.

9. Eldridge took notes as the May 6, 1996 meeting transpired, including "She doesn't want to take agreement to Bd. again, as Board not too sure of having unions (?)". At an indeterminate time Eldridge changed the wording to reflect the following [with additions underlined and deletions stricken]: "She doesn't want to take agreement to Bd. again as some Board members not too ~~sure~~ supportive of having unions (?)". Eldridge also wrote in the margin, "Note: Is not actual concern what Bd. will think of Sherries actions?"

10. During May and June of 1996, Eldridge and Evans attempted to work out the union's concerns relating to the signing of the contract and the remaining issues. Evans expressed a reluctance to take the contract back to the board for new signatures, but tried to accommodate most of the other issues.

11. Challman filed a petition for investigation of question concerning representation on July 18, 1996, seeking to decertify Service Employees International Union, Local 6 as the exclusive bargaining representative of operations managers. On Thursday, August 15, 1996, an investigation conference was held which established procedures for a mail ballot election. Parties agreed that the mail ballots would be mailed the following Wednesday, August 21, 1996.

12. On August 16, 1996, Eldridge mailed a pamphlet with nine question and answer couplets to bargaining unit employees. The August 16, 1996 pamphlet was issued at a time which did not prevent the employer from effectively responding, and

therefore, does not meet the criteria to set aside an election under WAC 391-25-470(1)(f).

13. On August 19, 1996, Eldridge mailed another pamphlet with nine other question and answer couplets to bargaining unit employees. That pamphlet contained five question and answer couplets later claimed by the employer to contain misrepresentations. The August 19, 1996, pamphlet was issued at a time that prevented the employer from responding. The first, second, third, and fifth challenged question and answer couplets in the brochure mailed to employees on August 19, 1996 contained no substantial misrepresentation of fact or law regarding a salient issue.

14. The fourth challenged question and answer couplet on the union's brochure mailed to employees on August 19, 1996, contained a substantial misrepresentation of fact regarding a salient issue, was made by a person having intimate knowledge of the subject matter, so that employees could be expected to attach added significance to the assertion, but is not reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By the mailing of its pamphlets to bargaining unit employees on August 16, 1996, and August 19, 1996, Service Employees International Union, Local 6, did not violate the laboratory conditions required for the conduct of a valid representation election under RCW 41.56.070, and did not engage in conduct

improperly affecting the results of the election under WAC 391-25-590.

NOW, THEREFORE, it is

ORDERED

1. The objections filed by John Challman in the above-entitled matter are DISMISSED.

2. The objections filed by South Kitsap School District in the above-entitle matter are DISMISSED.

3. The Executive Director shall issue a certification consistent with the tally of ballots and this order.

Issued at Olympia, Washington, on the 31st day of October, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner