Kennewick General Hospital, Decision 10790 (PECB, 2010)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: OPEIU, LOCAL 8 and SEIU HEALTHCARE 1199 NW Involving certain employees of: KENNEWICK PUBLIC HOSPITAL DISTRICT 1	CASE 23131-E-10-3546 DECISION 10790 - PECB ORDER VACATING ELECTION RESULTS

Douglas Drachler McKee & Gilbrough, LLP, by *Paul Drachler*, Attorney at Law, for the union.

Davis Wright Tremaine, LLP, by *Mark Hutcheson*, Attorney at Law, for the employer.

On March 25, 2010, Office and Professional Employees International Union, Local 8 and Service Employees International Union Healthcare 1199 NW (jointly the union) filed a petition for investigation of a question concerning representation to determine whether certain employees at Kennewick Public Hospital District 1 (employer) wished to join an existing bargaining unit through the self-determination election procedure found at WAC 391-25-440. An investigation conference was held and it was determined that an election would be conducted.

On April 1, 2010, Representation Coordinator Sally Iverson issued a notice of election indicating that the tally of ballots would be held on April 22, 2010, at 9:00 a.m. at the agency's Olympia office. The notices posted in the employer's workplace informing employees about the representation election also indicated that the tally of ballots would occur on April 22, 2010, at 9 a.m. However, the instructions that accompanied the ballots sent to eligible voters indicated that the deadline for returning ballots was April 22, 2010, at 5 p.m. Neither party informed agency staff of the error when the notice of election was issued.

On April 22, 2010, Iverson conducted the tally of ballots, with following results:

Approximate Number of Eligible Voters	28
Void Ballots	2
Votes Cast for OPEIU, Local 8/SEIU Healthcare 1199NW	12
Votes Cast for No Representation	11
Valid Ballots Counted	23
Number of Ballots Needed to Determine Election	12

Iverson then determined that the tally demonstrated a conclusive result favoring representation.

On April 29, 2010, Mark Hutcheson, the employer's attorney, filed a timely election objection via e-mail. Hutcheson did not perfect his filing under WAC 391-08-120 by sending original copies of his filing to this agency or to the union.

The employer's objections claim that Iverson informed the employer that the deadline for returning ballots would be April 21, 2010, at 5:00 p.m., but the deadline stated on the voting instructions was April 22, 2010. The employer points out that the notices posted in its work place are inconsistent with the instructions sent to employees. The employer also alleges that employees were not sufficiently informed about which employees were to be included in the unit because the unit description included with the ballots and on the election notices was inaccurate. The employer sent the agency a "petition" signed by 34 employees asking for a new election.[1] Finally, on May 7, 2010, Lynne M. Gearhart, an eligible voter, sent a letter to the agency supporting the employer's position. She did not assert that she was precluded from voting.

DISCUSSION

We did not consider the "petition" signed by numerous employees asking for a new election or the letter submitted by Gearhart. Both the petition and Gearhart's letter were submitted well after April 29, 2010, the due date for filing improper conduct objections under WAC 391-25-590. Furthermore, no employee claimed they were precluded from voting in the representation election as required by WAC 391-25-590(2).

1 Curiously, there were only 28 eligible voters.

We disagree with the employer that the unit description set forth on the election materials created any confusion about who was eligible to vote. The employer, as part of the election agreement, submitted a list of eligible voters, and ballots were sent only to those employees. Accordingly, this objection does not form a basis for overturning this election.

Union Urges Dismissal of Objections on Procedural Grounds

The union argues that this Commission should disregard the employer's objections because the employer failed to perfect its filing. To support its argument as to why the employer's objections should be dismissed, the union cites *Mason County*, Decision 3108-A (PECB, 1991) and *City of Puyallup*, Decision 5460-A (PECB, 1996) as standing for the proposition that a failure to perfect service automatically means that an appeal should be dismissed.

The union's argument has some merit. Where a party elects to file papers with this agency by e-mail, WAC 391-08-120(2)(c)(ii) requires that party to mail an original copy of that filing on the same day it transmits the e-mail message. Additionally, WAC 391-08-120(3)(e) requires a party filing papers by e-mail to mail original copies of the filing to all other parties. Here, the record clearly demonstrates that the employer failed to mail original copies of its filing to the agency and did not include a certificate of service with its filing that might presumptively demonstrate that it mailed an original copy of its filing to the union.

Neither of the cases cited by the union is applicable here. In *Mason County*, the employer failed to serve a copy of its petition for review upon the union, so the union had no notice of its appeal. In *City of Puyallup*, the employer served its notice of appeal on the union five days after it filed that document with this agency. Here, the union had timely knowledge of the employer's appeal, and the union has not demonstrated how it suffered any prejudice. Accordingly, we will not dismiss the employer's objections based upon the cited precedent, but will consider them in the context of the agency's responsibility to protect the election process.

Commission Must Protect the Integrity of its Election Procedures

But for the fact that agency staff made a mistake, the election results would stand. It is the Commission's responsibility to ensure the integrity of the agency's election procedures, and in

this case, because the discrepancies between the date on the ballot instructions mailed to employees and the date on the election notices posted in the employer's workplace were made by agency staff, the election must be set aside. As the Commission stated in *Metro Transit*, Decision 131-A (PECB, 1977):

> It is of the upmost importance that the election procedures of the Commission command the respect and enjoy the confidence of all who may have occasion to invoke or participate in them. Ambiguities in the notices of balloting are intolerable, even when inadvertent.

Accordingly, the election results of April 22, 2010, are vacated and we direct agency staff to immediately conduct a new election.

NOW, THEREFORE, it is

ORDERED

The results of the representation election conducted in the above-captioned matter are VACATED. The case is remanded to the Executive Director to conduct a new election in the above-captioned matter.

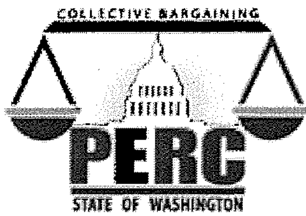
ISSUED at Olympia, Washington, this 18th day of June, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner



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BY: /S/ ROBBIE DUFFIELD

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COMMENTS:					

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