

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
EMPLOYEES, LOCAL 17

Involving certain employees of:

CITY OF SEATTLE

CASE 24625-E-12-3705

DECISION 11413 - PECB

DECISION OF COMMISSION

Jill Watson, appeared pro se.

Rao & Pierce, P.L.L.C., by *Tom Bao Pierce*, Attorney at Law, for Lan Pham.

International Federation of Professional and Technical Employees, Local 17. by
Nikola H.L. Davidson, Special Projects Coordinator, for the union.

David Bracilano, Director of Labor Relations, for the employer.

On March 1, 2012,¹ the International Federation of Professional and Technical Employees, Local 17 (union), filed a petition seeking to include certain unrepresented employees of the City of Seattle (employer) in an existing bargaining unit as permitted under WAC 391-25-440. On April 6, Representation Case Administrator Dario de la Rosa (de la Rosa) conducted an investigation conference and scheduled a mail ballot election.

Ballots were mailed to employees eligible to vote in the election on April 17, and were due in the Commission's Olympia office by 5:00 p.m. on May 1. The ballots were tallied at the Commission's Olympia office at 9:00 a.m. on May 2. On May 2, de la Rosa issued a Tally of Election Ballots.

¹ All dates are in 2012 unless otherwise noted.

Representation elections with two choices on the ballot are determined by the majority of employees voting in the election. WAC 391-25-530(2). Sixty-four voters were eligible to vote in the election. Thirty-five eligible voters cast ballots in the election. Twenty-eight ballots were cast in favor of the union. Seven ballots were cast for no representative. Pursuant to WAC 391-25-530(2), eighteen ballots were necessary to determine the election. The majority of votes cast were in favor of the union. The result of the election was conclusive in favor of the union.

On May 9, two eligible voters, Lan Pham (Pham) and Jill Watson (Watson), filed election objections in accordance with WAC 391-25-590. On May 15, the Executive Director invited the employer and union to respond to the objections by May 25. On May 15 and May 25, the union filed responses to the objections. On May 25, through an attorney, Pham filed an additional statement in support of her objection. On May 29, the union responded to Pham's May 25 letter. On May 30, the employer responded to the objections. The election objections were forwarded to the Commission for determining whether the election objections were sufficient to set aside the election.

All objections are decided by the Commission, but the procedure for doing so varies from case to case. The first questions before the Commission are whether: (1) the objections are properly before it; (2) the filing party had standing to object; and (3) the objections state claims for relief available under WAC 391-25-590. *Clallam County Parks and Recreation*, Decision 6285 (PECB, 1998).

Election objections must be filed within seven days of the tally of ballots. WAC 391-25-590. "Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot." WAC 391-25-590(2). Individual employees do not have standing to object on behalf of other employees. *City of Puyallup*, Decision 5639 (PECB, 1996). If an employee casts a ballot in an election, they do not have standing to object. *Colville School District*, Decision 5319-B (PECB, 1996). WAC 391-25-470 states:

Mail ballot election procedures – Electioneering – Objectionable conduct. The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting. . . .

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(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.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning on the scheduled date for the issuance of ballots to employees and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

(2) Each party may be represented by observers of its own choosing at the tally of ballots. Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

The Commission will not be the judge or arbiter of each and every statement made in the campaigns preceding representation elections. *King County Public Hospital District 2*, Decision 9205-B (PECB, 2006).

Watson Objection

Watson filed an election objection on May 9. Watson met with union supporters who informed her that if she did not sign a card there would not be an election. Watson received a ballot for the election. Watson thought the mailing, which stated it was from the State of Washington, was junk mail. The mailing included a notice for an election for King County. Watson contacted de la Rosa with questions.

After the tally of ballots, Watson received a communication from the union announcing the election results. In her objection, Watson states, “My concern is that of those who did not vote, how many others were misled as I was if they had not signed a signature card, and were told that a vote could not be held?” Watson expressed her concern that the process felt deceptive.

Watson’s objection was timely filed within seven days of the tally of ballots. Individuals only have standing to object to conduct or procedures that prevent them from casting a ballot in the election. Watson does not have standing to object on behalf of other employees. Commission records indicate that Watson cast a ballot in the election. Watson does not have standing to object to the election because she cast a ballot in the election.

Pham Objection

Pham filed an election objection on May 9. Pham’s objection contains the following information:

- The union contacted her and asked her to attend a meeting, which she did not attend. Pham alleges the union called her during her work hours.
- Pham met with employees who supported the union.
- The union told her it needed her to sign a card “to reach a 60% majority vote” for the employees to unionize.
- Pham was never told about a mail ballot election or that the mail ballot election would determine whether the employees would be unionized.
- Other employees did not vote in the election because they did not know there was a mail ballot election.
- Other employees thought the ballot was junk mail or a ballot for King County.
- Pham questions why the union would not inform employees about the mail ballot election.

Pham’s objection raises only one matter that is within the Commission’s jurisdiction to consider. That is whether the notice identifying King County as the employer had a significant impact on the election.

Commission Must Protect the Integrity of its Election Procedures

In considering the objections, it has been brought to our attention that the Notice of Election posted in the workplace and accompanying the ballots contained an error. The notice stated that the Commission was conducting a secret-ballot election among employees of King County. The

notice then identified the bargaining unit as “All employees of the City of Seattle in the following classifications:” The ballot sent to employees correctly identified the City of Seattle as the employer.

It is the Commission’s responsibility to ensure the integrity of the agency’s election procedures. As the Commission stated in *Metro Transit*, Decision 131-A (PECB, 1977):

It is of the utmost 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 notices of balloting are intolerable, even when inadvertent.

The election results here would stand had the notice of election not erroneously identified the employer as King County. Because of that error, the results of the May 7 election must be vacated and a new election conducted to ensure that the integrity of our election procedures is maintained.

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 11th day of July, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


THOMAS W. McLANE, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24625-E-12-03705 FILED: 03/01/2012 FILED BY: PARTY 2
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