

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WATERVILLE TEACHERS
LEADERSHIP COUNCIL

Involving certain employees of:

WATERVILLE SCHOOL DISTRICT

CASE 24894-E-12-3724

DECISION 11556 - EDUC

DECISION OF COMMISSION

Waterville Teachers Leadership Council, by *Eddie Dawson*, for the petitioner.

Washington Education Association, by *Shelby Hopkins*, for the incumbent.

On June 13, 2012, the Waterville Teachers Leadership Council (petitioner) filed a petition for investigation of a question concerning representation (QCR) with the Public Employment Relations Commission (Commission) under Chapter 321-25 WAC.¹ It sought to decertify the Waterville Association of Teachers (WAT/incumbent) (WEA/NEA) as the exclusive bargaining representative of the nonsupervisory, certified teachers in the Waterville School District (employer).² On August 14, the WAT/WEA filed a motion seeking dismissal of the petition for lack of proper or timely service.

ISSUE

Did the petitioner sufficiently serve each employee organization named in the petition? Yes. The incumbent local president had apparent authority to receive service of the petition for the WAT. The motion for dismissal of the petition is denied.

¹ All dates are 2012 unless otherwise indicated.

² The Waterville Association of Teachers is the local affiliate of the Washington Education Association (WEA). The WEA is affiliated with the National Education Association (NEA).

PROCEDURAL BACKGROUND

When the petition was filed, the incumbent was the exclusive bargaining representative for all nonsupervisory, certificated employees of the employer. The petition indicates that the bargaining unit/department or division involved is the "Waterville Association of Teachers (WEA/NEA)," and under incumbent bargaining representative, it states "Waterville Association of Teachers" and lists Damian Smith (Smith) as the contact person.

On July 9, Commission staff conducted an investigation conference. On this conference call, Eddie Dawson (Dawson) and Justin Grillo represented the petitioner. Catherine Nelson (Nelson) represented the employer. Smith represented the incumbent. Finally, Dario de la Rosa (de la Rosa), Representation Case Administrator, and Claire Nickleberry, Labor Relations Adjudicator/Mediator, attended on behalf of the Commission. Thereafter, an investigation statement was issued on July 19 by Commission staff. In relevant part, the statement indicated the following:

- 1) The addresses of the parties as printed on the case docket sheets are correct;
- 2) The QCR was timely filed;
- 3) That the following matters remain in dispute between the parties: None; and
- 4) Any objections to the foregoing must be filed at the Olympia office of the Commission, in writing, within 10 days following the date of this statement.

None of the parties filed objections to the investigation statement. The investigation statement was posted in conspicuous places on the employer's premises so that all eligible voters could view it.

Also on July 19, a notice of election was issued by the Commission asking the employer to post the notice in conspicuous places on the employer's premises and stating that ballots would be mailed to all eligible employees. Further, the notice indicated that the tally of ballots would be held on August 10.

The tally of election ballots indicated that there were twenty eligible voters, that there were fourteen valid ballots cast, that thirteen employees voted for the petitioner and that one employee voted for the incumbent. Thus, the petitioner was the conclusive choice of the eligible employees who cast ballots.

On August 14, Shelby Hopkins filed a notice of appearance on behalf of the WAT, and a motion to dismiss on the basis that the petition was not properly or timely served on the incumbent.

On August 21, the Executive Director asked the employer and petitioner to file and serve written responses to the motion to dismiss. On August 29, the petitioner filed an objection to the motion to dismiss. The employer responded that it did not have a written response to the motion.

ARGUMENTS

The WAT/WEA argues that WAC 391-25-050 requires the parties filing representation petitions to serve copies of the petition on each employee organization having an interest in the proceeding according to the service requirements found in WAC 391-08-120. It asserts that in this case the incumbent was not served a copy of the petition. Rather, WEA UniServ Director Terry Fitzpatrick (Fitzpatrick) learned of the filing by chance when he visited the Commission's website following an article in the Wenatchee World newspaper indicating that former members of the WAT were planning to file a representation petition.

Fitzpatrick's declaration, dated August 14, 2012, is attached to the motion to dismiss. In it he states that the WAT is one of the local associations he works with. He also states that during the Fall of 2011 he received "resignation notices" forwarded by the WEA that had been received from several members of the WAT. He asserts that "[o]ne of the members who resigned was Damian Smith, the former president of the Association." He also states that "several weeks ago" he read in the newspaper that former members of the WAT planned to file a representation petition. Because he had not been served with any petition, he checked the Commission's website and became aware of the at-issue QCR. He concludes by adding that to date he has not been served with a copy of the petition, nor to his knowledge has any current member of the bargaining unit.

The WEA/WAT argues that the petition incorrectly identifies Smith as the contact person for the incumbent. It asserts that Smith resigned his membership from the WAT and its affiliates as of December 16, 2011, and that because he resigned, service of the petition on him is not effective service on the WAT. Attached to the motion is a copy of the "2011/12 NEA/WEA/Uniserv Council/Local Association Agency Fee CHALLENGE" that Smith sent to the WEA. It is dated December 20, 2011, and states:

As a nonmember of the NEA/WEA/Uniserv Council/local association paying agency fees, I object to the use of my agency fees by all levels of the NEA/WEA/Uniserv Council/local association for nonchargeable activities, and the unions' characterization of items as chargeable or nonchargeable (option 3)....

The petitioner argues that on June 8 true copies of the petition were sent by first class mail, postage prepaid, to Nelson for the employer, Grillo for the petitioner, and Smith for the incumbent. It asserts that "[a]ll of these parties acknowledge receiving copies of the [p]etition."

The petitioner argues that Smith's agency fee challenge does not operate as a resignation from the WAT presidency, but only from membership in various organizations. It does nothing more than put the WEA on notice that he is challenging the use or misuse of his agency fees. The petitioner asserts that the WAT has regarded and continues to regard Smith as the president of the WAT and has never given him reason to believe that his authority to act in that capacity, including acceptance of documents such as the petition in the at-issue case, has been limited in any way.

The petitioner's objection has Smith's declaration attached. In it, Smith asserts that:

- 1) He is the president of the WAT and the current bargaining agent for certified employees of the employer;
- 2) On or about December 20, 2011, he resigned from the WEA;
- 3) At no time did he resign from his position as the president of the WAT;
- 4) Since December 20, 2011, he received routine communications from the WEA and from the local UniServ Council in his capacity as president; and
- 5) At no time was he advised that he was no longer recognized as the president of the WAT by any part of the WEA or the local UniServ Council.

He claims that absent any notice that his presidency had been terminated, curtailed or limited in any way, he continued his duties as president of the WAT in the same way he had throughout his presidency. He states that on or about June 15 he received a copy of the at-issue petition. He concludes by saying that at no time was he ever advised that he was required to communicate with the local UniServ Council regarding any matters relating to the nonsupervisory, certificated employees of the employer.

LEGAL PRINCIPALS

Service

Service of a representation petition upon other parties is specifically required by WAC 391-25-050, which includes: “The party filing the petition shall serve a copy of the petition (excluding any showing of interest) on the employer and on each employee organization named in the petition as having an interest in the proceedings...” Service of documents filed with the Commission is generally required by WAC 391-08-120(3), which states that a party that files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing by a variety of methods one of which is by first class mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. WAC 391-08-120(3)(b).

Apparent Authority

Chapter 41.59 RCW grants public employees the right to select a bargaining representative of their own choosing. RCW 41.59.060(1).³ In processing such representation cases, the Commission has espoused the common law principles of agency. *City of Lakewood*, Decision 10919 (PECB, 2010); *Community College District 13*, Decision 8117-B (PSRA, 2005).⁴

In adopting these principles, it has looked to the National Labor Relations Board (NLRB) for a definition of “apparent authority.” *Community College District 13*, Decision 8117-B (citations

³ On this point, cases applying Chapter 41.56 RCW generally apply to cases involving Chapter 41.59 RCW where the statutory language is similar.

⁴ *Community College District 13*, Decision 8117-B is an unfair labor practice case that addressed agency, but did not involve the issue of service.

omitted). The Board's test for determining whether an employee is an agent looks at all of the circumstances. *LVI, Inc.*, 2006 WL 2647512 (N.L.R.B. Div. of Judges, 2006).

An agent's authority to bind his principal may be of two types, either actual or apparent. *Community College District 13*, Decision 8117-B (citations omitted). With actual authority, the principal's objective manifestations are made to the agent. *Community College District 13*, Decision 8117-B (citations omitted). With apparent authority, they are made to a third person or party. *Community College District 13*, Decision 8117-B (citations omitted). Specifically, apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. *Tyson Foods, Inc.*, 311 NLRB 552 (1993), citing *NLRB v. Donklin's Inn*, 532 F.2d 138 (9th Cir. 1976) and *Alliance Rubber Co.*, 286 NLRB 645 (1987). Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such belief. *Tyson Foods, Inc.*, 311 NLRB 552, citing Restatement (Second) of Agency § 27 cmt. (1958).

In *City of Lakewood*, Decision 10919, the Executive Director applied the common law principle of agency, and explicitly addressed service. In that case, the incumbent union argued that because decertification efforts may have been spearheaded by local union officers, allowing service on the local president would cause the petition to be filed on the very individuals who spearheaded the decertification effort. The incumbent asserted that service was not proper because the local president was not an employee of the union, and the union, not the individual president, was certified as the exclusive bargaining representative. However, the Executive Director found that service on the local president as the agent of the incumbent union, as opposed to the union itself, was sufficient because the petitioner was privileged to rely upon the apparent authority vested in the local president.

ANALYSIS

The petition in this case indicated that the WAT is the incumbent, exclusive bargaining representative and that Smith is the contact person for the incumbent. The petitioner asserts that

it sent copies of the petition by first class mail, postage prepaid to Smith, president of the WAT. In his declaration, Smith acknowledges receiving the petition.

The common law principles of agency dictate whether Smith could properly receive service for the WAT, and we must look at all the circumstances of the particular case that is now before us. The WEA is the principal, Smith is the agent for the incumbent/WAT, and the petitioner is the third party. Here, there is evidence that the WEA at some point acknowledged Smith was the president of the WAT. There is no evidence that it later explicitly communicated to the membership or Smith that this was not the case. Although Smith was a nonmember and an agency fee payer, there is no evidence that anyone other than the WEA knew this or should have known this, or understood this to mean that Smith was no longer president of the WAT.⁵ Smith's declaration states that he never resigned from his position as the president of the WAT; since December 20, 2011, he received routine communications from the WEA and from the local UniServ Council in his capacity as president; and he was never advised that he was no longer recognized as the president of the WAT by any part of the WEA or the local UniServ Council.

Thus, at the time of service the WAT membership and petitioner could have reasonably believed that Smith was an agent of the WAT/WEA.⁶ It is also apparent that by serving the petition on Smith, the petitioner believed he had authority to receive service on behalf of the WAT. It was not until Fitzpatrick became aware of the decertification petition that Smith's actual or apparent authority was called into question by the WEA through a motion to dismiss.

CONCLUSION

Based on the foregoing, we conclude that Smith was acting with apparent authority for the WAT when he was served by the petitioner. Smith was the WAT president. If the WEA believed his agency fee challenge affected his office, it failed to timely notify any of the parties to this case. Thus, Smith continued to have at least apparent authority. In addition, the petitioner should not

⁵ The WAT's bylaws and constitution were not submitted into evidence.

⁶ Smith states in his August 23 declaration attached to the objection to the motion to dismiss that he participated in the July 19 investigation conference on behalf of the petitioner. However, the statement of results of the investigation conference, which is the official record of that investigation conference, states that Smith appeared and participated on behalf of the incumbent. Neither party, including Smith, filed objections or clarification to this official document.

be prejudiced for its reasonable belief that Smith had authority to receive service. Thus, we find under *City of Lakewood*, Decision 10919, that service on Smith as the incumbent's agent is sufficient service. The motion for dismissal of the petition is denied.

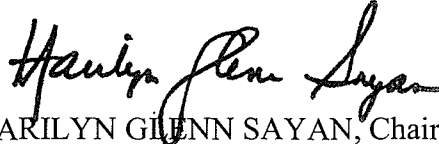
NOW, THEREFORE, it is

ORDERED

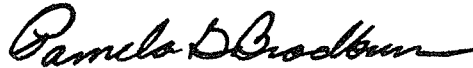
The motion for dismissal of the petition is DENIED. The case is remanded to the Executive Director for issuance of a final certification under Chapter 391-25 WAC.

ISSUED at Olympia, Washington, this 30th day of October, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

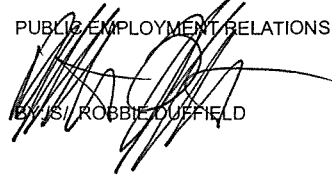
112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 10/30/2012

The attached document identified as: **DECISION 11556 - EDUC** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBB DUFFIELD

CASE NUMBER: 24894-E-12-03724 FILED: 06/13/2012 FILED BY: PARTY 2
DISPUTE: QCR RAID
BAR UNIT: TEACHERS
DETAILS: -
COMMENTS:

EMPLOYER: WATERVILLE S D
ATTN: CATHERINE L NELSON
200 E BIRCH
PO BOX 490
WATERVILLE, WA 98858-0490
Ph1: 509-745-8584 Ph2: 509-745-8585

PARTY 2: WATERVILLE TEACHERS LEADERSHIP COUNCIL
ATTN: JUSTIN GRILLO
PO BOX 112
WATERVILLE, WA 98858
Ph1: 509-745-8050

REP BY: ED DAWSON
ATTORNEY AT LAW
11500 NW 3RD AVE
VANCOUVER, WA 98685
Ph1: 360-450-1032

PARTY 3: WATERVILLE ASSOCIATION OF TEACHERS/WEA
ATTN: DAMIAN SMITH
1963 S LAKESHORE RD
CHELAN, WA 98816
Ph1: 509-899-3620

REP BY: SHELBY HOPKINS
WASHINGTON EDUCATION ASSN
PO BOX 9100
32032 WEYERHAEUSER WAY SO
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7081