

City of Yakima, Decision 11638 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 760

Involving certain employees of:

CITY OF YAKIMA

CASE 25246-E-12-3753

DECISION 11638 - PECB

DECISION OF COMMISSION

Sharon Kroes, appeared pro se.

Colleen Brezo, appeared pro se.

Reid, Pedersen, McCarthy & Ballew, LLP, by *David W. Ballew*, Attorney at Law,
for the union.

On October 25, 2012, Teamsters Local 760 (union) filed a petition to represent six unrepresented employees of the City of Yakima (employer). On November 16, 2012, Representation Case Administrator Dario de la Rosa (de la Rosa) conducted an investigation conference. On December 26, 2012, de la Rosa issued an investigation statement and scheduled a cross-check of records.

On January 4, 2013, de la Rosa conducted the cross-check. Seven employees were eligible to be included in the bargaining unit. Four authorization cards were required for the union to be certified. Five valid authorization cards were examined and in support of the union. On January 4, 2013, de la Rosa issued a Tally of Cross-Check in favor of the union.

On January 11, 2013, Sharon Kroes (Kroes), an eligible voter, filed an Election Objection. Kroes objected to the union's conduct. Kroes alleged that union representative Wayne Johnson told her that a majority-rules election would be conducted among the Legal Assistant IIs. Kroes was under the impression she would receive a ballot. Kroes learned that she was in the union as a result of a change on her pay stub. In Kroes's objection, she details her communications with

certain employees. The basis of Kroes's objection is that she was not involved in the process, that the bargaining unit did not include all Legal Assistants, that the union's recruitment was unacceptable, and the union did not communicate with her regarding membership or any other matter. Kroes requested that union dues not be withheld from her paycheck, that the process be conducted anew, that the union hold an informational meeting with potential members, and that the employer and potential members be made aware of the rules for discussing and sharing union-related information.

On January 15, 2013, Colleen Brezo (Brezo), an eligible voter, filed an Election Objection. Brezo requested that an investigation be conducted into the election, that union dues not be withheld from her paycheck, and that she not be required to join the union based on her religious and moral beliefs.

On February 4, 2013, the union filed a response to the election objections. The union asserted that neither Kroes's nor Brezo's objections meet the criteria of WAC 391-25-590(2). The union alleged that neither objection raised an issue with the Commission's election process that prevented either Kroes or Brezo from casting a ballot.

Election Procedures

A petition to represent employees may be filed by an employee, a group of employees, an employee organization, an employer, or their agents. WAC 391-25-010. A petition filed by an employee or an employee organization must be accompanied by a showing of interest of thirty percent or more of the employees in the proposed bargaining unit. WAC 391-25-110(1). The showing of interest may be accomplished by submitting authorization cards or letters signed and dated by the employees. WAC 391-25-110(1).

The employer is required to submit a list of the names and last known addresses of the employees in the petitioned-for bargaining unit. WAC 391-25-130. Agency staff reviews the filing to determine whether the petitioner has a sufficient showing of interest to proceed. WAC 391-25-110(2)(b). Following the determination that a sufficient showing of interest exists, the employer is required to post a copy of a notice informing the employees of the proceeding under Chapter 391-25 WAC. WAC 391-25-140(1).

The agency conducts an investigation conference with the petitioner and employer. WAC 391-25-220. During the investigation conference, whether the employees will vote in a representation election or whether a cross-check will be used to determine representation is decided. WAC 391-25-220(1)(a)(ix). The results of the investigation conference are posted for at least seven days. WAC 391-25-220(2). The investigation statement contains the date of the election or cross-check.

The Executive Director or his designee determines whether the proposed bargaining unit is an appropriate bargaining unit. WAC 391-25-220(3). The agency then proceeds with the determination of the question concerning representation. WAC 391-25-220(3).

Cross-Check

Bargaining units may be certified without an election. WAC 391-25-391(1). If the union is successful in obtaining authorization cards from seventy percent or more of the petitioned-for bargaining unit, then the Executive Director may issue a direction of cross-check in lieu of an election. WAC 391-25-391(1). The union is required to submit original or legible copies of authorization cards or letters signed and dated by employees in the bargaining unit. WAC 391-25-410(1). Employees have the right to revoke their authorization card. WAC 391-25-410(2). The posted investigation statement informs employees of this right. The right to revoke authorization cards allows employees to change their preference and could result in an election.

The employer is required to provide employment records containing the names and signatures of the employees in the bargaining unit. WAC 391-25-410(3). Agency staff compares the authorization cards with the employment records. After comparing the records, the agency furnishes the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined, and the number of valid employee records in favor of representation. WAC 391-25-410(6).

Objections

All election objections are decided by the Commission, but the procedure varies from case to case. The questions before the Commission are whether: (1) the objections are properly before it; (2) the filing party had standing to object; and (3) the objection states a claim for relief

available under WAC 391-25-590. *City of Seattle*, Decision 11413 (PECB, 2012); *Clallam County Parks and Recreation*, Decision 6285 (PECB, 1998).

Election objections must be filed within seven days of the issuance of the tally. WAC 391-25-590. Employees have standing to object only “to conduct or procedures which prevented them from casting a ballot.” WAC 391-25-590(2). The Commission will not be the judge or arbiter of each and every statement made in campaigns preceding representation elections. *King County Public Hospital District 2*, Decision 9205-B (PECB, 2006).

The objections filed in this case are properly before the Commission. Both Kroes and Brezo would have been eligible voters had an election taken place. Neither Kroes nor Brezo cast a ballot in an election or submitted an authorization card in support of the union. The objections, however, do not state a claim for relief under WAC 391-25-590.

Kroes objected that she was not involved in the process, that the recruitment of the bargaining unit was unacceptable, and that the union has not communicated with her about membership or any other matter. Kroes attended a meeting at which her co-workers raised the issue of joining a union. Kroes contacted union representative Wayne Johnson. After talking with Johnson, Kroes was under the impression that she would receive a “voting card.” A co-worker periodically updated Kroes about the union. Kroes never received a voting card. She found out she was represented by the union when she received her pay stub.

Kroes knew that the union was attempting to organize the employees in her workplace. Kroes’s co-workers invited her to meetings at which union organizing was discussed. Kroes took steps, such as calling the union, to inform herself about the process. While Kroes objected to not being included in the process, the steps for notifying the petitioned-for bargaining unit employees about the representation proceeding were followed. The employer posted the notice of the representation petition.

The employees in the petitioned-for bargaining unit were not afforded an opportunity to vote in a representation election. Kroes was not provided an opportunity to vote in a representation election because the union met the criteria under WAC 391-25-410 to forgo an election and be

certified based upon the showing of interest submitted with the representation petition. Kroes's objection does not state a claim for relief under WAC 391-25-590. In her objection, Kroes confirmed that the employer posted the notice of the representation proceedings on the employee bulletin board. While at the time Kroes did not appreciate the import of the notice, the employer complied with the posting requirement and employees were on notice of the cross-check. The cross-check procedure inherently prevents employees from casting a ballot in favor or opposition to the bargaining unit.

Brezo's election objection requested that she not be required to join the union due to her religious and moral beliefs. An employee with a religious objection to union membership may assert a right of nonassociation by filing a petition under Chapter 391-95 WAC. Brezo's objection does not constitute a filing of a nonassociation petition. If Brezo wishes to pursue her right of nonassociation, she may discuss her objection with the union and seek to reach a resolution that complies with RCW 41.56.122(1) or file a petition under Chapter 391-95 WAC.

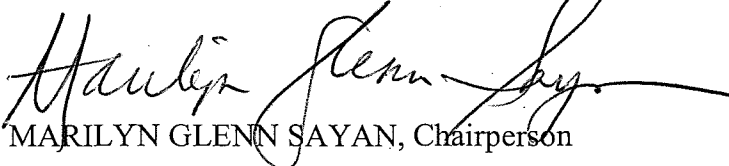
NOW, THEREFORE, it is


ORDERED

The election objections are DISMISSED.

ISSUED at Olympia, Washington, this 12th day of February, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


THOMAS W. McLANE, Commissioner



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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

[Handwritten Signature]
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