

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

MARY GIBBONS

Involving certain employees of:

OLYMPIA SCHOOL DISTRICT

CASE 27267-E-15

DECISION 12394 - PECB

DECISION OF COMMISSION ON  
ELECTION OBJECTIONS

*Mary Gibbons*, the decertification petitioner.

*Michael J. Gawley*, Attorney at Law, for the Olympia Technical Professional Administrative Association/Washington Education Association.

*Laura Emmil*, Human Resources/Classified Contracts Coordinator, for the Olympia School District.

On June 3, 2015, Mary Gibbons filed a petition to decertify the Olympia Technical Professional Administrative Association/Washington Education Association (union) as the exclusive bargaining representative for certain employees of the Olympia School District (employer). Representation Case Administrator Dario de la Rosa conducted an investigation conference by e-mail and issued an investigation statement on June 19, 2015. The investigation statement contained notice that objections to the investigation statement were due within 10 days following the date of the investigation statement. The agency did not receive objections to the investigation statement. The agency conducted a mail ballot election and tallied the ballots on July 10, 2015. On July 15 and 16, 2015, Gibbons filed election objections.<sup>1</sup>

The election objections allege that an employee was left off of the eligibility list. The issue is whether the election objections alleged conduct that meets the standard for setting aside the election. Issues of whether an employee was erroneously excluded from the eligibility list must

<sup>1</sup> The parties were given until July 31, 2015, to file responses to the objections. The union filed a response on July 31, 2015. Gibbons filed a response on August 6, 2015. Gibbons' late filing was not considered in reaching this decision.

be filed within 10 days of the issuance of the investigation statement. The alleged error in the eligibility list was not timely filed.

## ANALYSIS

### Legal Standards

As part of processing a representation petition, the Representation Case Administrator conducts an investigation conference. WAC 391-25-220(1). The eligibility list is a topic covered in the investigation conference. WAC 391-25-220(1)(a)(viii). Stipulations made by the parties during an investigation conference are outlined in an investigation statement. WAC 391-25-220(2). "An investigation statement shall be binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ten days following the issuance of the statement." WAC 391-25-220(2)(b).

Election objections must be filed no later than seven days after the tally of election. WAC 391-25-590. A petitioner has standing to object to conduct which has improperly affected the outcome of the election. WAC 391-25-590(1)(a).

### Application of Standards

On June 4, 2015, de la Rosa e-mailed the parties to obtain the investigation conference stipulations. De la Rosa sought stipulations from Gibbons and the union that the eligibility list the employer provided was correct.<sup>2</sup>

On June 4, 2015, Gibbons responded to de la Rosa's e-mail with an updated list of bargaining unit employees. Gibbons indicated one employee was no longer employed by the employer and that another employee should be included. Gibbons did not indicate that Katherine Anderson should have been included in the list.

---

<sup>2</sup> Previously, Gibbons filed an untimely petition to decertify the union. In response to that petition, on May 12, 2015, the employer submitted an eligibility list. That eligibility list was used in this case.

On June 18, 2015, de la Rosa sought clarification as to whether one employee continued to be employed or if another employee replaced her. The employer responded that day.

On June 19, 2015, de la Rosa issued an investigation statement. Included in the investigation statement was a stipulation that the employer provided the correct eligibility list, and the list of employees eligible to vote in the election and who would receive ballots was attached. No party objected to the investigation statement or eligibility list.

The agency conducted the election by mail ballot. Elections are determined by a majority of those voting. WAC 391-25-530(2). On July 10, 2015, de la Rosa tallied the ballots. Of 24 eligible voters, 21 cast ballots: 11 ballots were cast for the union, and 10 ballots were cast for no representation. The union continued to represent the employees.

On July 16, 2015, Gibbons filed an objection alleging that an employee was improperly excluded from the eligibility list. As the decertification petitioner, Gibbons had standing to object to conduct which improperly affected the outcome of the election. Gibbons' objection is not to conduct which affected the outcome of the election. Rather, Gibbons' objection is that the eligibility list was incorrect.

The June 19, 2015, investigation statement included the eligibility list. Issues as to whether an employee was properly included or excluded from the eligibility list should have been filed by June 29, 2015. WAC 391-25-220(2)(b). No party filed objections to the investigation statement. Thus, the investigation statement was binding on the parties. WAC 391-25-220(2)(b).

### CONCLUSION

The election objections concerned whether an employee was improperly excluded from the eligibility list. Issues with the investigation statement must be raised within 10 days following the issuance of the investigation statement. The eligibility list was attached to the investigation statement. As part of the pre-election procedures, the petitioner stipulated to the correct eligibility

list. Gibbons did not object to the eligibility list within 10 days of the issuance of the investigation statement; therefore, the election objections are untimely.

NOW, THEREFORE, it is

ORDERED

The election objections are DISMISSED.

ISSUED at Olympia, Washington, this 7th day of August, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
THOMAS W. McLANE, Commissioner

  
MARK E. BRENNAN, Commissioner



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARILYN GLENN SAYAN, CHAIRPERSON  
THOMAS W. McLANE, COMMISSIONER  
MARK E. BRENNAN, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 08/07/2015

DECISION 12394 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



BY: VANESSA SMITH

CASE NUMBER: 27267-E-15

EMPLOYER: OLYMPIA SCHOOL DISTRICT  
ATTN: DICK CVITANICH  
1113 LEGION WAY SE  
OLYMPIA, WA 98501-1967  
dcvitanich@osd.wednet.edu  
(360) 596-6117

PARTY 2: MARY GIBBONS  
1113 LEGION WAY SE  
OLYMPIA, WA 98501  
megibbons@osd.wednet.edu  
(360) 596-6122

PARTY 3: OLYMPIA EDUC ADMIN PROF ASSOCIATION/WEA  
ATTN: DAN CUOMO  
5220 CAPITOL BLVD  
TUMWATER, WA 98501  
dcuomo@washingtonea.org  
(360) 943-1776

REP BY: MICHAEL GAWLEY  
WASHINGTON EDUCATION ASSOCIATION  
32032 WEYERHAEUSER WAY S  
PO BOX 9100  
FEDERAL WAY, WA 98063-9100  
mgawley@washingtonea.org  
(253) 941-6700