

Washington State University, Decision 12143 (PSRA, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON

Involving certain employees of:

WASHINGTON STATE UNIVERSITY

CASE 26522-E-14-3875

DECISION 12143 - PSRA

DECISION OF COMMISSION
ON ELECTION OBJECTIONS

Jason K. MacKay, Attorney at Law, for the union.

Attorney General Robert W. Ferguson, by *Cheryl L. Wolfe*, Senior Counsel, for the employer.

On June 11, 2014, the Public School Employees of Washington (union) filed a representation petition to represent certain employees of Washington State University (employer). On July 11, 2014, Representation Case Administrator Dario de la Rosa conducted an investigation conference. The union and employer agreed to the description of an appropriate bargaining unit as: "All full-time and regular part-time non-supervisory employees in Facilities Operations, Custodial Services Unit, at the Pullman campus of Washington State University, excluding supervisors, confidential employees, and all other employees."

The Representation Case Administrator conducted a cross-check on July 21, 2014. On July 28, 2014, the employer filed election objections. As is material to the outcome of this case, the employer's objections asserted that in the circumstances of this case, namely, that the minimum number of cards necessary for certification based upon a card check were submitted, the short period the notice to employees was posted, and the limited time provided in the notice for employees to notify the agency that they wished to revoke their authorization cards, improperly

interfered with the employees' right to decide whether to be represented through a secret ballot election, rather than a card check.

In response, the union argued the employer did not demonstrate that the agency failed to follow its own rules and procedures. The parties agreed to the timeline in the investigation statement. The rules do not require the agency to wait for seven days after the employer has posted the investigation statement to conduct a cross-check. The rules do not require that employees be given a specific amount of time to revoke authorization cards. The employer has failed to demonstrate that any irregularities improperly affected the outcome of the cross-check.

The issue in this case is whether the employer's objections state a reason to set aside the results of the cross-check. Due to the timeline established by the agency and the timing of when the investigation statement was received by the employer for posting, we grant the employer's objections. The case is remanded to the Executive Director for further processing.

ANALYSIS

Legal Standards

Representation Case Procedures

Investigation conferences are conducted with parties to identify and discuss issues in the case. WAC 391-25-220. Stipulations made during the investigation conference may be set forth in the investigation statement. WAC 391-25-220(2). "Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days." WAC 391-25-220(2)(a). The investigation statement is binding upon the parties unless written objections are filed within ten days following the issuance of the statement. WAC 391-25-220(2)(b).

After determining all conditions precedent to an election or cross-check are met and the bargaining unit is appropriate, the agency shall proceed with the determination of the question concerning representation. WAC 391-25-220(3). When a cross-check of records is conducted,

the agency “shall honor a valid revocation of authorization contained in an individual card or letter signed by the employee and furnished to the agency by the employee. WAC 391-25-410(2).

Election Objections

All objections are decided by the Commission, but the process for doing so varies from case to case. *City of Seattle*, Decision 11413 (PECB, 2012). 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 may be made to specific conduct that has improperly affected the results of the election or “the direction of election, direction of cross-check or other interim rulings which the objecting party desires to appeal to the commission.” WAC 391-25-590(1)(a) and(b).

Application of Standards

The Representation Case Administrator issued an investigation statement on July 11, 2014, and mailed the investigation statement to the parties the same day. The investigation statement stated:

The Commission will honor an employee’s written request to revoke their authorization card for the purposes of the cross-check provided such request is submitted before July 18, 2014. (WAC 391-25-410). The cross-check will occur **no sooner than July 21, 2014**. The employer is instructed to provide the Commission with employment records that bear the employees names and signatures on or before July 18, 2014.

On July 21, 2014, the Representation Case Administrator conducted a cross-check of records. There were 109 eligible employees in the bargaining unit, and one employee whose inclusion in the bargaining unit was challenged. The total number of employees to be considered for purposes of the cross-check was 110. A majority of authorization cards, or 56 cards, were required for the union to be certified. The Representation Case Administrator examined 57

cards, one was rejected as invalid and 56 cards supported the union. The result of the cross-check was the union would be certified as the exclusive bargaining representative.

The employer did not object to the investigation statement within 10 days of the issuance of the statement. WAC 391-25-220(2)(b). Thus, under the rule, the investigation statement was binding on the parties. While WAC 391-25-220(2)(b) was the employer's opportunity to object to the stipulations in the investigation statement, WAC 391-25-590 provided the employer an opportunity to object to conduct improperly affecting the results of the election or "[t]he direction of election, direction of cross-check or other interim rulings..." The employer filed timely election objections on July 28, 2014. WAC 391-25-590.

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 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.

With this in mind, the Commission seriously considers all allegations that its processes impact employees' abilities to select and designate a representative of their own choosing for purposes of collective bargaining. In this case, we find compelling the assertion that the timeline established by the agency may have impacted employees' ability to meaningfully participate in the process and undercut the confidence of the employees engaged in the process.

The timing in this case is significant. On July 11, 2014, the Representation Case Administrator conducted the investigation conference and issued the investigation statement. The investigation statement established relevant timelines for the proceedings. First, the notice had to be posted for a period of at least seven days. Second, employees had to revoke their authorization cards "**before** July 18, 2014." (Emphasis added). Third, the employer had to supply employment records before July 18, 2014. WAC 391-25-220. Finally, the cross-check would not be conducted before July 21, 2014.

Under the rules, an investigation statement must be posted for at least seven days. WAC 391-25-220(2)(a). In this case, the employer received the investigation statement in the late afternoon on Monday, July 14, 2014, and posted the statement early in the day on July 15, 2014.¹ The seventh day of the posting was July 21, 2014, the date the cross-check was conducted. The seven day posting period was not complete when the cross-check was conducted.

The union argued that the agency was not required to wait for the investigation statement to be posted for seven days prior to conducting the cross-check. The rule is silent as to whether an election or cross-check can be conducted before the seven day posting period is completed. The purpose of the rule requiring the investigation statement to be posted for at least seven days is to adequately inform employees of the Commission's procedures. If the agency did not wait for the posting period to expire prior to conducting an election or cross-check, the seven day posting period would be meaningless and could reduce confidence in the Commission's procedures. We reject the union's argument that the agency can conduct a cross-check prior to the posting period expiring. Doing so would make the requirement that the notice be posted for seven days inconsequential.

The language of the investigation statement required an employee who wanted to revoke his or her card for purposes of the cross-check to do so "**before** July 18, 2014." The employer argued that providing three days for employees to revoke authorization cards undermined the requirement that the investigation statement be posted for at least seven days. The union correctly points out that there is no timeline established by rule as to the deadline for employees to revoke their authorization cards. In this case, the shortened timeline created by the delay in delivery of the investigation statement and the posting, significantly reduced the amount of time the employees had to receive notice, consider revoking an authorization card, and submit, in writing as required by the rule, a revocation.

Finally, the investigation statement established the date of the cross-check to be no sooner than July 21, 2014. This timeline did not take into consideration potential delays that may have

¹ The employer was required to post the investigation statement immediately. While no explanation has been offered for the delay in posting the investigation statement until the next day, the brief delay is not paramount to our decision in this matter.

resulted outside of the control of any party to this proceeding, including the Commission. In the future, such deadlines should take into consideration the time necessary for processing mail and a minimum of seven days for an investigation statement to be posted before a cross-check is conducted.

NOW, THEREFORE, it is

ORDERED

The results of the representation cross-check conducted in the above-captioned matter are VACATED. The case is remanded to the Executive Director. The notice of election must be posted for a minimum of seven days. Employees shall be given until the end of the seven day notice posting period to revoke their authorization cards for purposes of the cross-check. After the notice has been posted for a minimum of seven days, then a cross-check or election shall be conducted according to the rules.

ISSUED at Olympia, Washington, this 21st day of August, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner