

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

AMALGAMATED TRANSIT UNION
LOCAL 758

Involving certain employees of:

SOUND TRANSIT.

CASE 138328-E-24

DECISION 13992-A - PECB

DECISION OF COMMISSION ON
ELECTION OBJECTIONS

Christopher Bangs, Associate General Counsel, for Amalgamated Transit Union
Local 758.

Darrah Hinton, Attorney at Law, Davis Wright Tremaine, for Sound Transit.

STATEMENT OF THE CASE

Sound Transit filed election objections after 5:00 p.m. on December 20, 2024, the day the election objections were due. Amalgamated Transit Union Local 758 (ATU) moved to dismiss the election objections as untimely. The election objections filed by Sound Transit were untimely. However, to effectuate the purposes of the collective bargaining statute, the Commission provides a limited waiver to allow consideration of the objection that certain employees are supervisory and should not be included in the same bargaining unit as non-supervisory employees. All other objections are dismissed.

BACKGROUND

On February 5, 2024, ATU filed a representation petition to add unrepresented maintenance department employees to an existing bargaining unit at Sound Transit. The existing bargaining unit was described as follows:

All full-time and regular part-time Tacoma Link Light Rail Operators employed by Central Puget Sound Regional Transit Authority, excluding supervisors, confidential employees and all other employees.

Sound Transit, Decision 9878 (PECB, 2007). The petition sought to add all maintenance department employees, including Maintenance Supervisors, to the existing bargaining unit. From the early stages of processing the petition, Sound Transit argued that the petitioned-for employees did not share a community of interest with the existing bargaining unit. Sound Transit also contended that Maintenance Supervisors were supervisors and should not be included in the same unit as non-supervisors. Following an evidentiary hearing on those issues, the Executive Director concluded that the petitioned-for employees shared a community of interest with the existing bargaining unit, that the proposed bargaining unit was appropriate, and that the Maintenance Supervisors were not supervisors under the standard established by the Commission. *Sound Transit*, Decision 13992 (PECB, 2024).

After the Executive Director's decision, the Representation Case Administrator resumed processing the petition. On December 13, 2024, the agency issued the tally of election. The election was conclusive in favor of ATU.

Sound Transit filed its election objections via both email and the agency's e-filing system. The email sent by Sound Transit's attorney showed the sent time as "Friday, December 20, 2024 5:00 PM." The agency's email system identified the date and time of receipt as "Friday, December 20, 2024 5:00:53 PM."

When a party submits a document through the agency's e-filing system, the system generates an automatic Notice of Document Filing. In this case, the Notice of Document Filing states, "This document was submitted to PERC on December 20, 2024, at 5:03 pm"

On December 23, 2024, the ATU filed a motion to strike and dismiss Sound Transit's election objections as untimely. Both parties filed arguments as to whether the election objections should be dismissed as untimely.

ANALYSIS

When election objections are filed before the Commission, the initial questions for consideration are (1) whether the objections are properly before the Commission, (2) whether the party that filed the objections has standing to object, and (3) whether the objections state a claim for relief available under WAC 391-25-590. *City of Seattle*, Decision 11413 (PECB, 2012) (citing *Clallam County Parks and Recreation District 1*, Decision 6285 (PECB, 1998)). ATU's motion to dismiss puts the first question squarely before us, and we must decide whether Sound Transit's election objections were timely filed.¹

To be timely, election objections must be filed within "seven days after the tally has been served The time for filing objections cannot be extended." WAC 391-25-590. Although the timing of filing objections is not a jurisdictional requirement, *Mason County*, Decision 3108-B (PECB, 1991); *King County*, Decision 6064-B (PECB, 1999), the Commission has been strict in its enforcement of the time limits for filing election objections and petitions for review. *Valley Communications Center*, Decision 6097-A (PECB, 1998).

A party may use e-filing, email, or one of the other methods listed in WAC 391-08-120(2) to file documents with the agency. If the party files by e-filing, "[f]iling is complete when a legible copy of the document is successfully uploaded to the e-filing system. . . . The metadata created by the successful transmission of the email will serve as the record of the time of service." WAC 391-08-120(4)(a). If a party chooses to file by email, "[f]iling or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service." WAC 391-08-120(4)(b). "A document uploaded to the agency's e-filing system or an email

¹ ATU argues that Sound Transit did not serve it with the election objections by 5:00 p.m. Sound Transit served ATU with the election objections simultaneously with its email filing of the objections with the agency. WAC 391-08-120(3) requires that service must be made "on the same day" as filing. In light of our decision to dismiss all but one objection because filing was untimely and to provide a waiver for the remaining objection, we need not decide whether service complied with the rules.

received by the agency *after 5:00 p.m.* is considered filed on the following business day.” WAC 391-08-120(5) (emphasis added).

Filing is not complete until the document is received by the agency. WAC 391-08-120(4)(a)-(b). Sound Transit’s email was received before its e-filing and is therefore the determinative filing. The Commission has not yet faced the question whether “after 5:00 p.m.” means only once the clock strikes 5:01 p.m. or also means any time after 5:00:00 p.m., even if a computer clock still shows “5:00 p.m.” We conclude that “5:00 p.m.” means when the clock strikes 5:00 p.m. and that any filing received on or after 5:00:01 will be considered filed the following business day. This is the commonsense definition of “after 5:00 p.m.” In particular, PERC’s offices close at 5:00 p.m., effective when the clock strikes 5:00 p.m. PERC staff may not be available to receive or process filings received after that time. Accordingly, Sound Transit’s election objections were filed after 5:00 p.m. and not within the seven-day period and are therefore untimely.

Sound Transit argues that if the Commission concludes that the election objections were not timely filed, the Commission should waive the timing requirement of its rule and consider the objections. The Commission has discretion to waive its rules. WAC 391-08-003; *DeLacey v. Clover Park School District*, 117 Wn. App. 291, 298 (2003). To determine whether it is appropriate to waive the timeliness requirement for filing the election objections, we “consider[] whether waiver would effectuate the purposes and provisions of the applicable collective bargaining statute.” *Id.*; *City of Puyallup*, Decision 5460-A (PECB, 1996) at 5.

The threshold question is whether ATU would be prejudiced by the requested waiver. WAC 391-08-003. In this case, the election objection was less than one minute late, and there is no evidence of bad faith, game playing, or purposeful dilatory conduct by Sound Transit. It would be difficult to establish prejudice, and ATU has understandably not attempted to do so.

The absence of prejudice does not mandate a waiver; it is a necessary condition for waivers but not sufficient by itself. *City of Tacoma*, Decision 5634-B (PECB, 1996) at 4. The harder question is whether a waiver would effectuate the purposes and provisions of RCW 41.56. *DeLacey v. Clover Park School District*, 117 Wn. App. at 298 (recognizing that the Commission’s

rules should be liberally construed to effectuate the statute). This judgment is entrusted to the Commission's discretion. *Mason County*, Decision 3108-B (stating that the Commission *has the option* to waive any requirement of the rules).

In this case, the question of waiver finds tension between important statutory principles. On one hand, the Commission's rules are intended to allow representation cases to be resolved expeditiously. Further, "[c]onsistency in the application of our rules fulfills the charge of the Legislature that the Commission be 'uniform' in its administration of public sector collective bargaining." *Valley Communications Center*, 6097-A; *see* RCW 41.56.010. Waivers are not granted freely; generally, the Commission has waived the time for filing when agency error contributed to late filing or when the rules were unclear. *City of Tukwila*, Decision 2434-A (PECB, 1987) (waiving the seven-day time limit for filing election objections when agency staff erroneously advised the filing party about the due date); *Island County*, Decision 5147-C (PECB, 1996) (waiving the time requirement to file the appeal because the employer substantially complied with filing requirements and the rules were not clear). *Cf. Mason County*, Decision 3108-B (refusing to waive the service requirement when doing so would not effectuate the purposes of the rule and the failure to meet requirements was due only to the employer's lack of due diligence).

On the other hand, the Commission must stay focused on our governing purpose: to improve the relationship between public employees and public employers by implementing the right of public employees to join and be represented by labor organizations of their choice. RCW 41.56.010; *International Association of Firefighters v. Yakima*, 91 Wn.2d 101, 109 (1978). The legislature established the Commission "to decide the appropriate bargaining unit when there is a disagreement between the public employer and employees regarding the selection of a bargaining representative. *International Association of Fire Fighters Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599, 601 (1981); RCW 41.56.050. Both the statute and our rules should be liberally construed to effect the purposes of the statute. *International Association of Firefighters v. Yakima*, 91 Wn.2d 101 at 109; WAC 391-08-003.

Since its earliest days, the Commission has recognized that including supervisors in the same bargaining unit as non-supervisory employees can create conflicts of interest that do not

improve the relationships between employees and employers. “The collective bargaining process would best be served by generally excluding supervisory personnel from a unit composed of subordinate employees.” *City of Richland*, Decision 279 (PECB, 1977) (discussing the conflicts inherent in comingling supervisors in a bargaining unit with their subordinates), *aff’d*, Decision 279-A (PECB, 1978), *aff’d International Association of Fire Fighters Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599; WAC 391-35-340. These potential conflicts can influence collective bargaining, contract administration, and internal union matters. As a result, this core tenet has been integrated as a presumption in our representation rules. WAC 391-35-340(1).²

In the case before us, we find that the importance of avoiding the disruption of collective bargaining and the parties’ relationship outweighs the importance of strict timeliness. We conclude that it will effectuate the central purpose of the statute to consider Sound Transit’s objections regarding the inclusion of Maintenance Supervisors in the bargaining unit. Accordingly, we exercise our discretion to waive the timeliness requirement for filing Sound Transit’s objections regarding the inclusion of Maintenance Supervisors in the bargaining unit. In exercising our discretion, we note that our decision is very narrow and fact-based and considers the extremely short delay in filing, the novel question about timing discussed above, the consistency of Sound Transit’s position, and the potential risk of including supervisors in an already existing bargaining unit. Waivers will continue to be rarely granted, and not all claims of supervisory status will warrant a waiver. We also emphasize that by providing this waiver, the Commission is not deciding the merits of Sound Transit’s objections, only that it may be heard.

In contrast, Sound Transit’s other objections regarding bargaining unit composition and community of interest issues do not bear the same risk to the collective bargaining relationship. Accordingly, we grant ATU’s motion to dismiss all other objections.

² Supervisors enjoy collective bargaining rights in autonomous units. *International Association of Fire Fighters Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. at 606-608.

CONCLUSION

Sound Transit filed its election objections outside the period for filing objections. However, to ensure proper unit placement, we waive the timeliness requirement for the filing to decide the election objections regarding supervisory status. Specifically, the Commission will allow the appeal of whether the Supervisor Light Rail Maintenance System employees are supervisors.

ORDER

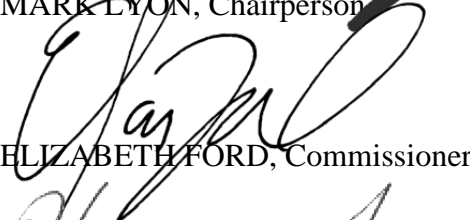
The motion to dismiss is granted in part and denied in part. The parties are instructed to file briefs in accordance with WAC 391-25-650 on only Sound Transit's objections 1, 2, and 7 in response to the Executive Director's Decision 13992 (PECB, 2024) with respect to supervisory status.

ISSUED at Olympia, Washington, this 4th day of February, 2025.

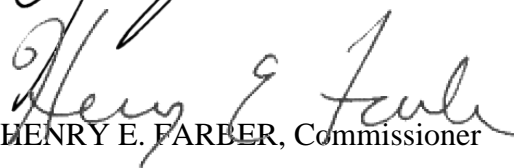
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK LYON, Chairperson



ELIZABETH FORD, Commissioner



HENRY E. FARBER, Commissioner