

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
STARR ELLIOT ) CASE 15011-E-00-02498  
Involving certain employees of: ) DECISION 7018-C - PECB  
PIERCE COUNTY ) DECISION OF COMMISSION  
\_\_\_\_\_ )

*Starr Elliot*, decertification petitioner, pro se.

Schwerin Campbell Barnard LLP, by *Lawrence Schwerin*,  
Attorney at Law, for the incumbent intervener, Teamsters  
Local 599.

This case comes before the Commission on election objections filed by Starr Elliot, seeking to overturn the results of the representation election.<sup>1</sup> The Commission vacates the results of the election and orders that it be re-run with a correct eligibility list limited to the Human Services positions that were in the existing unit at the time the decertification petition was filed.

BACKGROUND

On January 28, 2000, Starr Elliot (petitioner) filed a petition under Chapter 391-25 WAC, seeking decertification of Teamsters Local 599 (union) as the exclusive bargaining representative of certain employees of Pierce County (employer). The petition

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<sup>1</sup> *Pierce County*, Decision 7018-B (PECB, 2001), directed that an election be conducted.

described the affected employer entity as, "Human Services Department," and described the bargaining unit as:

All Office Assistants 1 and 2; all Grant Accounting Assistants; and all Grant Accountants 1 employed in the Pierce County Human Services Department.

In response to a routine request from the Commission staff, the employer supplied a list of employees on February 17, 2000. That list included the names of 21 Human Services employees.

The union responded with an assertion that the petitioner was seeking an inappropriate "severance decertification" from a bargaining unit of 150 Pierce County employees represented by the union. On April 7, 2000, the Executive Director dismissed the petition on severance decertification grounds.<sup>2</sup> The petitioner appealed the dismissal to the Commission.

In August 2000, while the case was pending before the Commission, the employer purchased Puget Sound Hospital, a facility previously operated by a private company that had filed for bankruptcy. In late 2000 or early 2001, the employer and union added more than 20 office-clerical employees working at Puget Sound Hospital to the Human Services bargaining unit following an election process that was not conducted or sanctioned by the Commission.

On May 8, 2001, the Commission reversed the Executive Director's dismissal and ordered further proceedings in this case.<sup>3</sup> We concluded that the Commission had not ruled previously on the

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<sup>2</sup> *Pierce County*, Decision 7018 (PECB, 2000).

<sup>3</sup> *Pierce County*, Decision 7018-A (PECB, 2001).

precise configuration of the bargaining unit and that our previous decision was ambiguous in that regard.

In August 2001, a hearing was held on the key issue remanded by the Commission. On December 13, 2001, the Executive Director ruled that the petition concerns a separate bargaining unit limited to the positions in the Human Services Department. A representation election was directed to determine whether a majority of employees in that separate unit desired to be represented by Teamsters Local 599, or by no representative.<sup>4</sup>

In response to the direction of election, the employer supplied a list of 49 employees on December 27, 2001. The Commission staff did not notice the 133% increase in the size of the bargaining unit, and did not question the sufficiency of the showing of interest for the greatly enlarged bargaining unit.<sup>5</sup>

The notice of election mailed to the parties on January 7, 2002, included the following statement: "Any challenges or changes in the eligibility list must be made before the tally of ballots . . . ." The election was conducted by mail ballot, and the ballots were counted on January 23, 2002. The results were as follows:

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| Approximate number of eligible voters          | 49 |
| Votes cast for Teamsters, Local 599            | 26 |
| Votes cast for no representation               | 16 |
| Valid ballots counted                          | 42 |
| Number of ballots needed to determine election | 22 |

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<sup>4</sup> *Pierce County, Decision 7018-B, supra.*

<sup>5</sup> While seven authorization cards would have been sufficient to support a decertification petition for a unit of 21 employees, 15 authorization cards would have been required for a unit of 49 employees.

A tally sheet was issued under WAC 391-25-550 on January 23, 2002, indicating that a majority of employees desired to be represented by Teamsters Local 599. The petitioner timely filed objections under WAC 391-25-590, bringing this case before the Commission.

Other facts are fully detailed in the preceding decisions in this case, and are only addressed here in relevant part.

#### POSITIONS OF THE PARTIES

The petitioner argues that there was a change in unit configuration during the pendency of this matter, calling into question the scope of the eligibility list used for the election. The petitioner contends the Puget Sound Hospital employees should not have been included in the bargaining unit during the pendency of this case, and that the unit placement of those employees was not litigated in the underlying proceedings "since acquisition of the hospital was not even under consideration when petitioners initially filed these proceedings and that the hospital employees were not included in the showing of interest documents." The petitioner asserts: (1) that the first inkling the Puget Sound Hospital office assistants may be placed in the separate unit of Human Services employees was just a few days before the "runoff" election,<sup>6</sup> (2) that the petitioner objected to the election in an e-mail message sent to the Executive Director before that election, and (3) that it was

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<sup>6</sup> The references to a "runoff" election apparently relate to a procedure conducted by Teamsters Local 599 and Service Employees International Union, which were rival organizations competing for the right to represent the Puget Sound Hospital employees after the takeover by Pierce County. It is clear that any such election would have occurred during the pendency of this proceeding.

physically impossible to get anything filed to stop the "runoff" vote.<sup>7</sup>

The union argues that the unit placement of the Puget Sound Hospital employees was fully litigated in the underlying proceedings and that consequently the petitioner waived any objections to the unit when she failed to raise the issue at hearing or any other Commission proceeding or appeal the decision directing the election.

The employer did not file a brief and has not taken a position on the matters at issue in this case.

## DISCUSSION

### Change in Configuration of Bargaining Unit

We find that the bargaining unit was improperly modified by Teamsters Local 599 and Pierce County during the pendency of this decertification proceeding, in violation of WAC 391-25-210(1) and previous Commission precedents codified by that rule. Although the petitioner could properly have objected at the hearing to the inclusion of the Puget Sound Hospital employees in the Human Services bargaining unit, and could have challenged the ballots cast by the Puget Sound Hospital employees individually, those missed opportunities did not constitute a waiver of her rights.

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<sup>7</sup> The petitioner's reply to the union's brief on these objections notes a recent discovery that some "County designated mental health professionals" may also have been added to the bargaining unit at issue in this case. Any such addition would also be inappropriate, for the reasons explained in this decision.

Unit Determination -

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. Unions and employers may agree on units, but their agreements do not guarantee that the unit agreed upon is or will continue to be appropriate. Parties' agreements are not binding upon the Commission. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Thus, any "runoff" election conducted by the employer or unions is not determinative in this case because the results of such an election are not binding on the Commission.<sup>8</sup>

Decertification Unit Determined at Time of Filing -

WAC 391-25-070(6)(c) limits the inquiry in decertification cases to "the bargaining unit" so that parties to decertification cases must take the existing unit as they find it. *Pierce County*, Decision 7018-B, *citing*, *City of Seattle*, Decision 2612 (PECB, 1987). WAC 391-25-210(1) expressly prohibits changes of bargaining unit configurations during the period of time a decertification petition is pending before the agency:

In proceedings on a petition for "decertification" under WAC 391-25-070(6)(c) or 391-25-090(2), the parties *shall not be permitted to remove positions from or add positions to the existing bargaining unit;*

. . . .

(emphasis added).

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<sup>8</sup> Inasmuch as the "runoff" election process was not being conducted or sanctioned by the agency, there would have been no basis for the Executive Director to take any action even if the petitioner had filed a formal objection under WAC 391-08-120 (instead of merely sending an informal message to the Executive Director by e-mail).

WAC 391-25-140(2) puts further limitations on employer actions during the period a representation petition is pending before the Commission, stating:

*Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that the petition is pending before the Commission under this chapter.*

. . . .

(emphasis added).

These rules are absolute. The Puget Sound Hospital employees could not be added to the bargaining unit during the pendency of this decertification petition.

Review of the record in this case clearly establishes that the employer and union altered the status quo during the pendency of this case, by holding the "runoff" election and by adding Puget Sound Hospital employees to the bargaining unit at issue. They then proceeded with the hearing and representation election processes in this case while failing to explicitly inform the agency of the changes they had made in the bargaining unit.

#### Objections not Raised at Hearing -

We reject the union's argument that the petitioner waived any objection to the unit by failing to raise an issue concerning the Puget Sound Hospital employees at hearing.<sup>9</sup> In our previous decision in this case and in the Executive Director's decision directing an election, the key issue was limited (and described as)

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<sup>9</sup> At the time of the hearing, the petitioner was aware that Puget Sound Hospital employees had voted to be represented by the union.

whether the Human Services employees were part of the single, 150-person unit claimed by the union.<sup>10</sup> Thus, although a unit determination issue was considered at the hearing, the choices presented did not include (and could not have included) an enlargement of the Human Services bargaining unit that would have directly contravened WAC 391-25-210(1).

#### Challenged Ballots -

We also reject the union's assertion that the petitioner waived any objection by failing to challenge the ballots cast by the Puget Sound Hospital employees individually. WAC 391-25-510 states that any observer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. Although the petitioner could have challenged the ballots cast by individuals in the election, her inaction was not fatal to her case. The rule violation should have been detected and acted upon independently by the Commission staff.

#### Appeal of Decision vs. Election Objection -

Finally, we reject the union's argument that the petitioner waived any objection by failing to "appeal" the direction of election. Under WAC 391-25-390(3), a direction of election may only be appealed by filing objections under WAC 391-25-590. In turn, WAC 391-25-590 states that the due date for objections is seven days *after* the tally has been served. Thus, our rules did not provide the petitioner with any earlier opportunity to appeal the decision directing the election.

Our rules allowed the petitioner to advance her claims at various points in the proceeding. Because the list provided by the

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<sup>10</sup> *Pierce County*, Decision 7018-A, *supra*; *Pierce County*, Decision 7018-B, *supra*.



employer after the direction of election was inherently defective, the petitioner's failure to challenge the ballots of Puget Sound Hospital employees individually under WAC 391-25-510 did not preclude her from filing timely objections under WAC 391-25-590 once the results of the election were known. Consistent with the rules of statutory interpretation, under which it is presumed that the legislature does not engage in unnecessary or meaningless acts and that there is some significant purpose in every legislature enactment,<sup>11</sup> we give meaning to all of the rights and procedures prescribed in the agency rules. Therefore, the failure of a party to act under one of two or more alternative rules does not necessarily waive the right of that party to act under another of the alternative rules. To hold otherwise would, in effect, render meaningless an "objections" rule that intentionally distinguishes our representation case processing from the procedures used by our counterpart agencies in the federal government and other states.<sup>12</sup>

#### Electioneering

The petitioner has also requested that the results of the election be set aside on grounds of improper electioneering in violation of WAC 391-25-470(d) and (f). The union asserts that the electioneering letter made no material misrepresentations or threats.

Because we find that the Puget Sound Hospital employees were improperly added to the separate bargaining unit of Human Services employees after the filing of the decertification petition, the

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<sup>11</sup> See *Recall of Pearsall-Stipek*, 141 Wn.2d 756 (2000).

<sup>12</sup> Our rules and precedents emphasize getting the ballots of employees cast at the earliest possible time, while leaving litigation of issues and even appeals for post-election proceedings. *City of Redmond*, Decision 1367-A (PECB, 1981).

electioneering issue is moot, and we will not make a ruling on that issue.

NOW THEREFORE, it is

ORDERED

1. The results of the above-referenced representation election are VACATED.
2. The case is remanded to the Executive Director for conduct of a new representation election by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in Conclusion of Law 3 in *Pierce County*, Decision 7018-B, *supra*, with the eligibility list limited to the separate bargaining unit that existed at the time the petition was filed to initiate this proceeding, for purposes of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 599, or by no representative.

Issued at Olympia, Washington, on the 17th day of June, 2002.

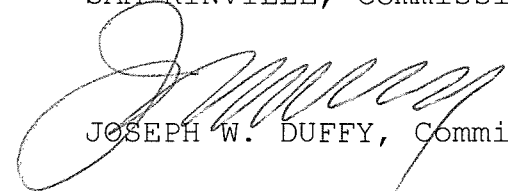
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



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