

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON EDUCATION
ASSOCIATION

Involving certain employees of:

GLENWOOD SCHOOL DISTRICT

CASE 134219-E-21

DECISION 13415 - EDUC

DECISION OF COMMISSION ON
ELECTION OBJECTIONS

Michael Gawley, Attorney at Law, for the Washington Education Association.

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for the Glenwood School District.

BACKGROUND

On May 25, 2021, the union filed a petition to represent certain employees working for the Glenwood School District, located in rural Klickitat County, Washington. The petition described the proposed bargaining unit as follows:

All non-supervisory full time and regularly employed part-time certificated employees employed by the Glenwood School District excluding supervisors, confidential employees, classified employees, and all other employees.

On June 9, 2021, Representation Case Administrator Dario de la Rosa sent the parties an investigatory email confirming that the union provided a sufficient showing of interest. De la Rosa included this bargaining unit description in his email:

All certificated *teachers* employed by the Glenwood School District, excluding supervisors, confidential employees, classified employees, and all other employees.

(emphasis added). In a June 15, 2021, email, counsel for the union objected to de la Rosa's bargaining unit description, contending that the description should include "non-supervisory, regularly employed part-time certificated employees" as set out in the union's petition.

Without responding to union counsel's June 15 objection, de la Rosa issued a June 23, 2021, "Investigation Statement" stating that the parties had stipulated to the following bargaining unit description during an investigation "held by email:"

All full-time and regular part-time nonsupervisory certificated *teachers* employed by the Glenwood School District, excluding supervisors, confidential employees, classified employees, and all other employees.

(emphasis added). Also on June 23, the agency issued a "Notice of Election by Mail Ballot," again limiting the bargaining unit to "certificated teachers."

Union counsel responded to the investigation statement by email on June 23, 2021, contending that limiting the unit to certificated *teachers* was contrary to RCW 41.59.080(1). That statute provides that a unit including nonsupervisory educational employees is not appropriate unless it includes "all such nonsupervisory educational employees of the employer." Thus, union counsel contended, a unit including only "certificated *teachers*" would be inconsistent with the statute in that it would exclude "speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, school social workers, school behavior analysts, and school orientation and mobility specialists," all of whom should be considered "nonsupervisory educational employees" under the statute. The union requested that the agency employ the unit description set forth in its petition for representation.

On July 5, 2021, de la Rosa wrote to union counsel and the employer representatives acknowledging that the unit description in the investigation statement and notice of election contained "a mistake on our part" in that it limited the unit to "certificated teachers" rather than "certificated employees." He wrote that in order for the election to proceed as scheduled, "the unit description will be corrected for the final certification."

Ballots were mailed to ten employees on June 29, 2021. Ballots were due to be returned to the agency by 5:00 p.m. on July 20, 2021.

On July 21, 2021, de la Rosa tallied the election. Four ballots were cast, two for the union and two for no representation. Because the tally of ballots resulted in a tie, the normal result would be certification of no representative. WAC 391-25-530(2).

On July 28, 2021, the union filed election objections pursuant to WAC 391-25-590. The gravamen of the union's objections was the contention that several of the addresses the employer provided the agency were inaccurate and, as a result, some employees did not receive ballots. The union requested the employer provide an updated list of employees' addresses and the agency conduct a new election. On September 7, 2021, the employer responded to the union's objections, taking "a neutral position" on whether a new election should be conducted. The employer did not think a new hearing was necessary.

The issue before the Commission is whether the election should be vacated and a new election held.

ANALYSIS

Applicable Legal Standard

Election Objections

When the objections can be resolved on the undisputed facts before the Commission, a hearing is not necessary. WAC 391-25-630(1); *Municipality of Metropolitan Seattle (METRO)*, Decision 131-A (PECB, 1977). The pertinent facts here are undisputed and the employer did not request a hearing.

Application of Standard

We do not reach consideration of the union's objections because we find that the error made by the agency in describing the bargaining unit in the posted notice of election as including only "certificated teachers" requires that the election be rerun.

It is the Commission's responsibility to ensure the integrity of the agency's election procedures. *City of Seattle*, Decision 11413 (PECB, 2012). As we stated in *Municipality of Metropolitan Seattle (METRO)*:

It is of 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.

The Commission has vacated the results of elections and ordered new ones when ambiguities were found to exist in notice postings and ballot materials. *See Washington State University*, Decision 12143 (PSRA, 2014) (vacating an election when the Representation Case Administrator did not provide the notices of election for posting in a timely way); *City of Seattle*, Decision 11413 (PECB, 2012) (vacating an election when the notice of election incorrectly identified the employer as King County rather than the City of Seattle); *Port of Seattle*, Decision 3937-A (PORT, 1992) (vacating tally of ballots and directing new tally to include two ballots received late due to irregularities in state mail service).

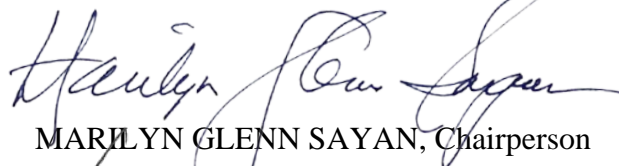
The Commission's oversight role requires us to intervene when the agency error potentially impacts a representation election. Agency errors, including inaccurate bargaining unit descriptions, are significant enough to vacate an election. The description of the unit as including only certificated *teachers* had the potential to mislead certificated *employees* into believing they were ineligible to cast a ballot. To preserve the integrity of the process, we vacate the results of the election and order a new one.

ORDER

1. The results of the election conducted in the above-captioned matter are VACATED.
2. The case is remanded to the Executive Director to conduct a new election. The notices for the new election in the above-captioned matter shall explain the reasons for the new election, including that the bargaining unit description was inaccurate.

ISSUED at Olympia, Washington, this 12th day of October, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner



RECORD OF SERVICE

ISSUED ON 10/12/2021

DECISION 13415 - EDUC has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 134219-E-21

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