

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WA INTERPRETERS

Involving certain employees of:

WASHINGTON STATE LANGUAGE
ACCESS PROVIDERS

CASE 133171-E-20

DECISION 13344-B - PECB

DECISION OF COMMISSION ON
ELECTION OBJECTIONS

Juan Medina Bloise, President, for WA Interpreters.

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M. Kate Garcia, Assistant Attorney General, and *Cheryl L. Wolfe*, Senior Counsel, Attorney General Robert W. Ferguson, for the Washington State Language Access Providers.

This case comes before the Commission on timely election objections filed by WA Interpreters.

BACKGROUND

On November 23, 2020, WA Interpreters filed a petition with the Public Employment Relations Commission (PERC) to represent Language Access Providers (LAPs) within the definition of RCW 41.56.030(11)(a)(ii), who provide spoken language interpreter services for the Department of Labor & Industries. WA Interpreters filed a showing of interest in support of its petition. On November 25, 2020, Interpreters Rising filed a petition to intervene.¹ On November 25, 2020, the

¹ Interpreters Rising withdrew its petition on January 18, 2022.

Washington Federation of State Employees (WFSE) filed a petition to intervene and a showing of interest in support of its petition.

On December 17, 2020, the employer filed a list of employees. The list included approximately 1,177 employees.

On December 31, 2020, the Representation Case Administrator issued a deficiency notice finding WA Interpreters did not submit the required 30 percent showing of interest. WAC 391-25-110(1). The WFSE filed the required 10 percent showing of interest. WAC 391-25-190(1)(a). The Representation Case Administrator granted WA Interpreters time to cure the deficiency. On January 25, 2021, WA Interpreters responded disputing the accuracy of the list of employees.

WA Interpreters filed an unfair labor practice complaint (Case 133302-U-21) on January 25, 2021. The Unfair Labor Practice Administrator dismissed the complaint for failure to state a cause of action on March 25, 2021.

In February and March 2021, the parties worked with the Representation Case Administrator to clarify the list of employees. On February 8, 2021, the employer provided a new list of employees. Both WA Interpreters and the WFSE submitted employee names to be included in the list of employees. On March 4, 2021, the Representation Case Administrator requested additional information about which employees should be included on the eligibility list. The parties responded.

On May 6, 2021, the Executive Director determined that an LAP was eligible to be included in the bargaining unit if the LAP provided services on or after January 1, 2019. *Washington State Language Access Providers*, Decision 13344 (PECB, 2021). The parties did not appeal the Executive Director's decision. Therefore, Decision 13344 was a final agency decision defining which Language Access Providers were eligible to be included in the bargaining unit.

On May 25, 2021, the Representation Case Administrator determined that WA Interpreters submitted a sufficient showing of interest for the agency to process the petition. The

Representation Case Administrator determined that the WFSE also submitted a sufficient showing of interest. On May 27, 2021, the WFSE appealed the Representation Case Administrator's jurisdiction ruling that WA Interpreters had submitted a sufficient showing of interest. The Commission dismissed the appeal. *Washington State Language Access Providers*, Decision 13344-A (PECB, 2021).

WA Interpreters and the WFSE filed unfair labor practice complaints alleging the employer violated WAC 391-25-140(2).² The Commission denied WA Interpreters' motion for temporary relief. *Washington State Language Access Providers*, Decision 13355 (PECB, 2021). On July 1, 2021, the Executive Director invoked the blocking charge rule and suspended processing of the representation petition until the unfair labor practice complaints were resolved.

The unfair labor practice complaints filed by WA Interpreters and the WFSE were consolidated and heard before Examiner Michael Snyder who dismissed the complaints. *Washington State Language Access Providers*, Decision 13355-A (PECB, 2021). WA Interpreters appealed the decision to the Commission.³ The WFSE did not appeal.

After WA Interpreters filed its notice of appeal, WA Interpreters requested the agency lift the blocking charge and proceed with the representation petition. On January 6, 2022, the Executive Director lifted the blocking charge.

On January 10, 2022, the Representation Case Administrator contacted the parties to schedule a conference call. The purpose of the conference call included discussion of the eligibility list, including any changes, the cut-off date for employees to be included on the eligibility list, and the

² WA Interpreters filed its complaint on March 30, 2021. (Case 133420-U-21). The WFSE filed its complaint on June 22, 2021. (Case 134289-U-21).

³ The Commission affirmed the Examiner. *Washington State Language Access Providers*, Decision 13355-B (PECB, 2022). WA Interpreters appealed to Thurston County Superior Court. (Thurston County Superior Court 22-2-00619-34).

eligibility list's accuracy; the election process, including how challenged voters would vote; and other issues.

On June 16, 2022, the WFSE requested that it be identified by the name of its local affiliate, "Interpreters United (WFSE)," in the upcoming election. On June 23, 2022, the WFSE filed an amended representation petition to intervene in the election. In the amended petition to intervene, the WFSE explained it used the name of the local union, Interpreters United Local, 1671, in its organizing efforts. On June 27, 2022, WA Interpreters objected to the WFSE's amended petition.

On June 27, 2022, the Representation Case Administrator conducted a video conference with the parties. On June 28, 2022, the Representation Case Administrator issued an investigation statement. The investigation statement recognized WA Interpreters and Interpreters United (WFSE) as bargaining representatives. The investigation statement identified Interpreters United (WFSE) as an intervenor and a qualified bargaining representative. The Representation Case Administrator orally granted Interpreters United (WFSE)'s amended petition, which was an issue in dispute. On July 8, 2022, WA Interpreters filed timely objections to the investigation statement.

The agency conducted an electronic election. There were two voting periods. Voting period 1 opened June 29, 2022, at 9:00 a.m. and closed July 8, 2022, at 11:59 p.m. Voting period 2 opened July 12, 2022, at 9:00 a.m. and closed July 22, 2022, at 9:00 a.m. On July 22, 2022, the agency issued the tally of election. The bargaining unit contained 1,097 eligible voters. Of the eligible voters, 512 ballots were cast; 1 ballot was void; 73 ballots were cast for WA Interpreters; 408 ballots were cast for Interpreters United (WFSE); 20 votes were cast for No Representation; 501 valid ballots were counted; 11 ballots were challenged; and 555 valid ballots were needed for union representation. The election was inconclusive. A runoff election between WA Interpreters and Interpreters United (WFSE) was required by RCW 41.56.070. *See also* WAC 391-25-531.

The voting period for the runoff election opened on August 15, 2022, at 9:00 a.m. and closed August 30, 2022, at 9:00 a.m. The agency issued a tally of ballots on August 30, 2022. In the runoff election, the majority of those voting in the election determined the outcome of the election. WAC 391-25-530. There were 1,115 eligible voters. Of the eligible voters, 429 total ballots were

cast; 215 valid ballots were needed to certify a representative; 418 valid ballots were counted; 11 ballots were challenged; 77 votes were cast for WA Interpreters; and 341 votes were cast for Interpreters United (WFSE).

On September 6, 2022, WA Interpreters filed timely election objections.

ISSUES

The election objections present two issues. First, should the election be vacated because of agency errors? Second, should the election be vacated because of conduct by Interpreters United (WFSE)? We conclude that the agency did not commit errors that impacted the election and dismiss those objections.

Interpreters United (WFSE) violated WAC 391-25-480(5)(b) when it communicated to eligible employees that WA Interpreters could cancel the runoff election and when it implied that Interpreters United (WFSE) would be certified as the exclusive bargaining representative. Interpreters United (WFSE) violated WAC 391-25-480(5)(b) when it communicated with eligible employees that they needed to sign the Vote Yes petition to participate in the election. Because these campaign practices impermissibly involved the Commission and its procedures, we vacate the election. The remaining objections are dismissed. The case is remanded to the Executive Director to conduct a new election.

ANALYSIS

Applicable Legal Standards

All election objections are decided by the Commission; however, the procedure varies from case to case. *City of Yakima*, Decision 11638 (PECB, 2013). 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); *Clallam County Parks and Recreation District*, Decision 6285 (PECB, 1998).

Election objections are due seven days after the tally has been served. WAC 391-25-590. Objections may be filed with respect to specific conduct the party claims improperly affected the results of the election. WAC 391-25-590(1)(a). Following the tally, objections may be filed to the direction of election, direction of cross-check, or other interim rulings. WAC 391-25-590(1)(b). A party that moves from the initial election to the runoff election must wait until after the runoff election to file its objections. *See generally King County Public Hospital District 2*, Decision 9205-B (PECB, 2006). Objections to the investigation statement are due within ten days of issuance of the investigation statement. WAC 391-25-220(2)(b).

The Commission has adopted rules to “assure appropriate conditions for employees to cast their ballots[.]” WAC 391-25-480(5). WAC 391-25-480(5) provides in relevant part:

The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

. . . .

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

. . . .

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occur at a time which prevents others from effectively responding;
and

(iv) Be reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

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).

Application of Standards

Does the conduct of the agency warrant vacating the election?

WA Interpreters objects to the “late issuance of the investigation statement,” which it alleges prevented the agency from resolving disputes; to the agency finding the WFSE to be a bargaining representative; to the agency granting the WFSE’s amended petition to intervene; to the agency allowing the WFSE to appear on the ballot as “Interpreters United (WFSE);” to, what WA Interpreters characterizes as, agency administrative errors; and, to the inclusion on the eligibility list of 129 LAP who were eligible to vote as a result of registering through the interpretingWorks online scheduling program.

The timing of the agency issuing the investigation statement is not conduct that improperly affected the election in violation of WAC 391-25-590(1)(a).

WA Interpreters asserts that it was prevented from objecting to inaccuracies in the investigation statement until after the election began because the statement was issued late. WA Interpreters further complains that it did not receive a checklist of questions as identified in WAC 391-25-220(1). The WFSE counters that the rules do not require the investigation statement to be posted. Therefore, there is no requirement for a certain amount of time to elapse between when the agency issues the investigation statement and when the election commences.

A review of the administrative record reveals that the parties had a video conference on June 27, 2022. On June 28, 2022, the Representation Case Administrator issued the investigation statement in accordance with WAC 391-25-220. Objections to the investigation statement were due by July 8, 2022. WAC 391-25-220(2)(b). The election began on June 29, 2022, at 9:00 a.m. WA Interpreters filed timely objections to the investigation statement on July 8, 2022.

The agency should issue investigation statements sufficiently in advance of an election to allow the objections period to pass and the Executive Director to rule on any objections “relating to specific conduct affecting the results of an election.” WAC 391-25-220(3). While the investigation statement was issued on the eve of the election, WA Interpreters failed to show how the timing of the issuance of the investigation statement prejudiced it in the election process. Some of WA Interpreters’ objections to the investigation statement, such as which union bore responsibility for

the delay caused by the blocking charge, did not need to be resolved before the election. Similarly, WA Interpreters' objection to the inclusion of 129 LAPs on the eligibility list was a matter settled by the parties earlier in the proceeding. While the language of the investigation statement was imprecise, it did not change the list of agreed-upon eligible voters.

In this case, the agency issuing the investigation statement the day before the election is not conduct that would affect the results of the election. The objection is dismissed.

In representation cases, "the agency routinely conducts conferences with the parties, to investigate a representation petition according to a checklist provided to the parties." WAC 391-25-220(1). Some of the discussion points outlined in WAC 391-25-220(1), such as, but not limited to, the existence of blocking charges and the list of eligible voters were addressed throughout the processing of the representation petition.⁴ For example, a blocking charge existed and was resolved by the June 27, 2022, conference call.⁵ WA Interpreters has not shown that not receiving the checklist was conduct that affected the results of the election.

The agency's determination that the WFSE is a bargaining representative within the meaning of RCW 41.56.030(2) is not conduct that improperly affected the results of the election in violation of WAC 391-25-590(1)(a).

WA Interpreters objects to all agency decisions and interim orders treating the WFSE and Interpreters United as a bargaining representative within the meaning of RCW 41.56.030(2). In

⁴ The Public Employment Relations Commission publishes a guide to representation petitions on its website. The list of six questions to be discussed during the investigation phase of case processing can be found at <https://perc.wa.gov/elections-organize-employees/#tve-jump-17658a0912c>.

⁵ Aside from the withdrawal filed by Interpreters Rising on January 18, 2022, the administrative record does not include correspondence between the Representation Case Administrator and the parties between January 10, 2022, and the issuance of the investigation statement on June 28, 2022. As a result, we are unable to identify what issues the parties discussed via email or when the parties had conferences to discuss issues in the case.

response, the WFSE argues that the agency has recognized the WFSE as a bargaining representative in the past.

Whether an organization is a bargaining representative is a jurisdictional issue. *King County*, Decision 5910-A (PECB, 1997). When investigating a representation petition, the agency asks if the parties agree on the status of all petitioners as bargaining representatives.⁶ A party objecting to the bargaining representative status of another party should make its objection known *at the earliest opportunity during* the investigation process. Otherwise, a late objection appears only to obfuscate and delay the proceedings.

WA Interpreters had numerous opportunities before the agency issued the investigation statement to object to the WFSE's status as a bargaining representative. The WFSE has been involved in the proceedings since November 25, 2020. Throughout the processing of the petition and the unfair labor practice complaints, the agency treated the WFSE as a bargaining representative.⁷ The Examiner found WA Interpreters and the WFSE to be bargaining representatives within the meaning of RCW 41.56.030(2). *Washington State Language Access Providers*, Decision 13355-A, *aff'd*, Decision 13355-B (PECB, 2022). Notably, WA Interpreters did not appeal the Examiner's finding that the WFSE was a bargaining representative. WA Interpreters should not now be heard to raise an issue at this late stage of the proceeding. Nonetheless, we will determine whether the WFSE is a bargaining representative.

Washington law imposes few requirements to find an organization is a "bargaining representative." *King County*, Decision 5910-A. A bargaining representative is "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." RCW 41.56.030(2). RCW 41.56.070 refers to a "prospective bargaining representative." *King County*, Decision 5910-A. The Commission has broadly interpreted the

⁶ See WAC 391-25-220(1)(a), identifying issues that "may properly arise in representation cases."

⁷ As early as the March 4, 2021, email to the parties, the agency referred to all three unions as "bargaining representatives." WA Interpreters was on notice that the agency considered WA Interpreters, Interpreters Rising, and the WFSE to be bargaining representatives.

definition of bargaining representative. *Id.* Thus, an organization need not meet all the requirements to be a “bargaining representative” at the time it files the petition. *Id.* (citing *Franklin Pierce School District*, Decision 78-B (PECB, 1977)). Provided an organization allows employee participation, is established to represent employees, and intends to carry out its representation function, it is a bargaining representative. *Southwest Washington Health District*, 1304 (PECB, 1981).

WA Interpreters points to the WFSE’s constitution and bylaws to support its contention that the WFSE is not a bargaining representative. While we agree that the constitution and bylaws are evidence of an organization’s purpose, those documents are not dispositive of whether the organization is a bargaining representative. There is no requirement in statute or rule for an organization to have a constitution, bylaws, or level of formality to qualify as a bargaining representative. *King County*, Decision 5910-A (quoting *Kitsap County*, Decision 2116 (PECB, 1984)).

We agree with the WFSE that the agency has in the past found the WFSE to be a bargaining representative.⁸ Agency records reflect that the WFSE individually has represented employees before the agency.⁹ Moreover, as noted below, the WFSE and Interpreters United, Local 1671, are affiliated, worked jointly to organize LAPs, and both are parties to this proceeding. Interpreters United and the WFSE together also constitute a bargaining representative. The objection is dismissed.

⁸ *Washington State Language Access Providers*, Decision 13355-A, *aff’d*, Decision 13355-B; *State – Language Access Providers*, Decision 10871-A (PECB, 2011), *aff’d*, Decision 10871-B (PECB, 2012), *aff’d on other grounds*, *Office of the Governor v. Public Employment Relations Commission*, 183 Wn. App. 758 (2014).

⁹ Notice is taken of the Commission case files 134469-G-21, 132538-G-20, 132939-E-20, 131391-G-19, 131955-E-19 in which the WFSE represented employees.

Granting the WFSE's motion to amend its petition to intervene and allowing the WFSE to appear on the ballot as Interpreters United (WFSE) was not an error.

WA Interpreters asserts that the agency erred when it granted the WFSE's June 23, 2022, amended petition. WA Interpreters argues that the rules do not allow an intervenor to amend its petition to intervene. According to WA Interpreters, WAC 391-25-051(4) prohibits the amendment of a petition to intervene because rule requires motions to intervene must be filed "no later than ten days following receipt of the petition for investigation of a question concerning representation." WA Interpreters argues allowing the WFSE to appear on the ballot as "Interpreters United (WFSE)" is an error meriting vacating the election. WA Interpreters asserts that the WFSE and Interpreters United are separate organizations. Therefore, Interpreters United should have filed a timely motion to intervene with an appropriate showing of interest to be allowed to appear on the ballot.

In response, the WFSE argues that "petition" as used in WAC 391-25-150 is not limited to the original petition. The WFSE argues that Interpreters United is the name under which the WFSE has organized. The WFSE asserts the agency did not err in granting the amended petition.

Applicable Legal Standards

WAC 391-25-150 provides that "[a] petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election and the mailing of the ballots, or under such conditions as the executive director or the commission may impose."

A motion to intervene shall not be considered "if made: (a) After the close of the hearing on the petition; (b) More than seven days after the filing and posting of an election agreement or cross-check agreement; or (c) More than seven days after the posting of an investigation statement." WAC 391-25-190(2).

Application of Standards

In this case, the Executive Director accepted the amendment, which was made before the agency issued the investigation statement. We agree with the WFSE that the rule does not limit amendment to the original petition. The WFSE's motion to amend its petition is permissible under

WAC 391-25-190(2). The evidence submitted by WA Interpreters in support of its objections shows Interpreters United is a local affiliated with the WFSE¹⁰ and shows the WFSE and Interpreters United worked in conjunction during the organizing campaign.¹¹

The Executive Director did not err when he exercised his discretion to allow the motion to amend when it was made before the investigation statement was filed. Allowing the WFSE to appear as Interpreters United (WFSE) on the ballot was not conduct that improperly affected the election. The objections are dismissed.

The agency administrative errors do not improperly affect the election in violation of WAC 391-25-590(1)(a).

WA Interpreters objects to various aspects of the agency's administration of the election that "inhibited the ability of LAPs to cast ballots and that produced a confusing telephonic ballot"

First, WA Interpreters argues that the telephonic voting system incorrectly stated its name. WA Interpreters asserts that its name is pronounced "Washington Interpreters." The telephonic system read its name phonetically as "wAh Interpreters," the name it used throughout the proceeding. WA Interpreters argues this would have caused confusion. The WFSE asserts the objection is frivolous and the agency used the name WA Interpreters chose for itself.

WA Interpreters and Interpreters United (WFSE) are distinct names. WA Interpreters did not introduce any evidence of voter confusion and we find that none was likely. We dismiss the objection.

Next, WA Interpreters argues the discrepancies between the notice of election the agency directed the employer to post on the employer's website and the voter instructions "may have confused or

¹⁰ Election Objections (EO) Exhibits (Ex.) at 19, Constitution for Interpreters United Local 1671 Article II Affiliations.

¹¹ EO Ex. at 292–351; 359–76.

prevented some eligible voters” from obtaining voter information. WA Interpreters is correct that the Commission has set aside elections when the agency makes an error in an election. *Municipality of Metropolitan Seattle (METRO)*, Decision 131-A. We agree that the information conflicted. However, in this case we do not find the error merits vacating the election because the discrepancies were curable.

Voter instruction letters were mailed on August 4, 2022. The voting instructions mailed to eligible voters provided the phone number and hours that an eligible voter could contact the voter help line. According to the voter instructions, the voter help line operated “Weekdays (Excluding Holidays) from 8:00am to 4:00pm (PDT) from August 15 - 30, 2022.”¹²

On August 11, 2022, the Representation Case Administrator emailed the parties and asked the employer to post information about the runoff election on its website. The posting explained eligible voters could contact the agency “during regular business hours, Monday through Friday, between 8:00 a.m. – 5:00 p.m.” It further stated, “If no one answers, please leave a message with your name and your best available telephone number. Inquiries will be responded to in the order they are received. You may also send inquiries to info@perc.wa.gov.”¹³ The posting mailed to parties stated that the agency could be contacted until 5:00 p.m. rather than 4:00 p.m. stated in the mailed voter instruction letters.

“Parties to an election are not allowed to sit silent when a perceived impropriety occurs which is curable at the time of its occurrence.” *University Place School District*, Decision 4152-A (PECB, 1992). The Representation Case Administrator sent the language of the proposed posting to the parties before the employer posted the information on its website. The WFSE raised a concern with how it was identified, and the Representation Administrator corrected the error.

¹² EO Ex. at 286–87.

¹³ EO Ex. at 285.

By contrast, WA Interpreters waited until after the election to assert its objection and point out the discrepancy. After considering the arguments, the discrepancy in the information provided in the voting instructions and the information posted on the employer's website does not justify setting aside the election. A posting was not required by the rules. WAC 391-25-051(12). The parties had the opportunity to raise the discrepancies, but no party expressed concern. No employee filed objections asserting that the discrepancy between the posting on the employer's website and the voting instructions prevented them from voting. Nor did WA Interpreters provide any evidence that the election was negatively affected by the discrepancy. We dismiss the objections.

WA Interpreters waived its right to object to the inclusion of LAPs who registered through the interpretingWorks scheduling system when WA Interpreters requested to lift the blocking charge.

WA Interpreters objects to votes cast by 129 LAPs who were included on the eligibility list after taking an appointment through the interpretingWorks scheduling system and cast votes in the election. In response, the WFSE argues that WA Interpreters waived its right to object to the inclusion of these LAPs in the bargaining unit when it requested to lift the blocking charge and proceed with the election.

On March 30, 2021, WA Interpreters filed an unfair labor practice complaint alleging the employer violated the status quo when it implemented the interpretingWorks scheduling system. The Executive Director invoked the blocking charge rule because the outcome of the unfair labor practice complaint could have impacted the election. After a hearing, the Examiner concluded the employer did not change the status quo when it implemented the interpretingWorks scheduling system. *Washington State Language Access Providers*, Decision 13355-A. Because implementation of the new scheduling system did not violate the status quo, LAPs who took appointments through interpretingWorks after January 1, 2019, were included in the bargaining unit.

After WA Interpreters appealed Decision 13355-A to the Commission, WA Interpreters requested the Executive Director lift the blocking charge. In its request to lift the blocking charge, WA Interpreters "waive[d] its 'right to file objections under WAC 391-25-590(1)(a) based on

conduct alleged in the unfair labor practice' in PERC Case No. 133420-U-21.” When lifting the blocking charge, the Executive Director explained “WA Interpreters would be precluded from raising election objections based upon the allegations in its unfair labor practice complaint.” We dismiss the objection.

Does the conduct of Interpreters United (WFSE) warrant vacating the election?

WA Interpreters alleges the WFSE engaged in the following objectionable conduct: (1) the WFSE falsely claimed WA Interpreters could cancel the runoff election; (2) the WFSE erroneously told LAPs they must complete a WFSE petition to participate in the election; (3) the WFSE campaign materials implied agency support for the WFSE; (4) the WFSE made false statements about WA Interpreters delaying the election; (5) the WFSE misrepresented to employees that if the employee signed a dues deduction card, the WFSE would not deduct dues until after a collective bargaining agreement was effective; (6) the WFSE made promises of benefits to the employees during the election; and (7) the WFSE exaggerated the numbers of individuals in its membership.

Interpreters United (WFSE)'s statement that WA Interpreters could cancel the runoff election was a deceptive campaign practice that improperly involved the Commission and its processes.

WA Interpreters objects to Interpreters United (WFSE) communications to eligible employees that WA Interpreters could cancel the runoff election. WA Interpreters alleges these communications improperly involved the Commission and its processes in the election. WA Interpreters asserts that the claim that it could cancel the runoff election is false and misrepresented the Commission's rules and its processes. In response, the WFSE argues that the statements that WA Interpreters could withdraw were correct statements of the law. The WFSE asserts that its inquiry did not involve misstatements or misconduct. The WFSE argues that its communication did not suggest the agency approved of or desired either party withdraw its petition.

At many stages during the election, Interpreters United (WFSE) communicated with eligible voters about what could happen as a result of the election; specifically, a runoff election could result. Interpreters United (WFSE) told voters that WA Interpreters could cancel the runoff election, encouraged voters to tell WA Interpreters to cancel the runoff election, and implied that the

Commission would certify Interpreters United (WFSE) as the exclusive bargaining representative of the employees if WA Interpreters withdrew from the election.

On June 16, 2022, Interpreters United (WFSE) emailed eligible voters.¹⁴ The email explained that the union would meet with the agency on Friday, June 16, 2022, “to work out the last details before interpreters receive their ballots for the upcoming union election.” Next, the email explained that the collective bargaining agreement must be submitted by October 1, 2022, for the legislature to approve economics. The timeline for the election would give Interpreters United (WFSE) “just two months to bargain a contract before the October 1st deadline.” However, the email continued, the likelihood of a runoff election would delay bargaining. **“The only realistic way to avoid this is if WA Interpreters agrees that whoever wins the first election will become the union for L&I interpreters.”** The email encouraged eligible employees to “demand no runoff election.”¹⁵

On or around June 24, 2022, Interpreters United (WFSE) sent a text message.¹⁶ The message stated, “if Juan Bloise does not agree to cancelling the run off, interpreters will have little to no chance of making the Oct. 1st deadline.” The text message encourages the recipient to “tell him to do the right thing for all interpreters” implying that Bloise and WA Interpreters could cancel the runoff election.

On July 22, 2022, Interpreters United (WFSE) sent eligible voters an email with the tally of ballots.¹⁷ Interpreters United (WFSE) explained that a runoff election was required because they did not receive a majority of the votes in the initial election. The email further stated that WA Interpreters wasn’t “going to win in a runoff, but it may prevent all L&I interpreters from being able to bargain a contract” before the October 1 deadline. The email went on, **“We think**

¹⁴ EO Ex. at 487–90.

¹⁵ EO Ex. at 488–89.

¹⁶ EO Ex. at 524. The text message does not include a date.

¹⁷ EO Ex. at 499–500.

that's unacceptable. L&I interpreters have spoken. WA Interpreters needs to withdraw from the election immediately. Tell WA Interpreters to Withdraw from Election[.]" This information was additionally included the WFSE's webpage.¹⁸

On August 4, 2022, Interpreters United (WFSE) sent eligible voters an email stating, "According to PERC's rules, they *can* drop out and allow L&I interpreters to move forward with their union."¹⁹

On August 10, 2022, Interpreters United (WFSE) emailed eligible voters:

Interpreters United (WFSE) won the first L&I election with a whopping 81% of the vote! Unfortunately WA Interpreters chose to not concede from a run-off election they will undoubtedly lose. Here's why and how this is damaging for interpreters.

Why will this hurt interpreters?

Interpreters will not make the October 1st deadline to submit a ratified contract to the Office of Financial Management because of the time wasted on a runoff election.²⁰

Applicable Legal Standards

A runoff election is required by statute. In relevant part, RCW 41.56.070 provides:

In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he or she does not desire to be represented by a bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public

¹⁸ EO Ex. at 512–13.

¹⁹ EO Ex. at 501.

²⁰ EO Ex. at 504.

employees within the bargaining unit, a runoff election shall be held. The runoff ballot shall contain the two choices which received the largest and second-largest number of votes.

The statutory requirement that the successful candidate receive a majority vote of the public employees within the bargaining unit is different than the requirement under the rules when there are two choices on the ballot. *Cf.* RCW 41.56.070, WAC 391-25-531, and WAC 391-25-530(1).

As required by the statute, there were three options on the initial ballot: WA Interpreters, Interpreters United (WFSE), and No Representation. For the election to be conclusive, one of the options must have received “a majority vote of the public employees within the bargaining unit. . . .” RCW 41.56.070. If an election is inconclusive, a runoff election is held providing a choice “between the two choices receiving the largest number of valid ballots cast in the inconclusive election.” WAC 391-25-570. Under RCW 41.56.070 and WAC 391-25-531, the parties could not agree to a procedure that did not provide for a runoff election.

Application of Standards

The Commission does not involve itself in the day-to-day campaigning of the parties appearing before it. It is the responsibility of the parties to accurately state the Commission’s processes during representation campaigns. There is no room in the administration of fair elections for incorrect and inaccurate descriptions of the Commission’s rules and processes. The Commission’s role is to determine, after the fact and when brought to its attention, whether a party has engaged in deceptive campaign practices that improperly involve the Commission and its processes.

Neither WA Interpreters nor Interpreters United (WFSE) garnered enough employee support to merit certification as the exclusive bargaining representative in the initial election. As a result, the agency was statutorily required to conduct a runoff election. We will not speculate on what the Executive Director *might* have done had WA Interpreters attempted to withdraw between the initial election and the runoff election.

Interpreters United (WFSE) communications implied to eligible voters that the Commission would certify Interpreters United (WFSE) if WA Interpreters withdrew from the election. Implying that

the Commission will undertake a certain action in contravention of the statute and rules imply the Commission favors one party over the other. In this case, Interpreters United (WFSE)'s campaign statements that WA Interpreters could withdraw and the implication that automatic certification of Interpreters United (WFSE) would occur was a deceptive campaign practice that improperly involved the Commission's processes in violation of WAC 391-25-480(5)(b).

Interpreters United (WFSE)'s statements to LAPs that they must complete a WFSE petition to participate in the election was a deceptive campaign practice that improperly involved the Commission and its processes.

WA Interpreters objects to Interpreters United (WFSE) campaign materials urging eligible voters to sign the "Vote Yes petition." WA Interpreters asserts Interpreters United (WFSE) falsely suggested LAPs needed to complete the Vote Yes petition to participate in the representation election. WA Interpreters asserts that these statements violate WAC 391-25-480(5)(b) and improperly involved the Commission and its processes. WA Interpreters argued the form made "false and unfounded claims about what LAPs needed to do" to participate in the election, the WFSE used the names of LAPs without authorization, and the WFSE misrepresented the number of employees that would vote for the WFSE.

The WFSE responds that the form stated it was a pledge of support and ballots would be mailed later. The WFSE points out that when LAPs submitted the form they consented to publicization of their support for the WFSE. The WFSE asserts that the campaign material cannot reasonably be interpreted as conditioning the right to participate in the election on the employee signing the petition.

Alleged Objectionable Conduct

On January 13, 2022, Interpreters United (WFSE) sent a campaign email stating,²¹

If we want to have an LNI union, we have to act now.

²¹ EO Ex. at 440.

That's why everyone who is supportive of forming a union is signing the Vote Yes petition.

Together, we can make sure everyone working LNI appointments has a voice and rights.

According to the objections, the email linked to a page on the WFSE's website, "I'm Voting for Interpreters United (WFSE)." ²² The form states,

I'm Voting for Interpreters United (WFSE)

By voting for Interpreters United (WFSE), you are voting for a union that has a proven history of delivering for interpreters, including:

- Doubling interpreter pay for interpreters taking Medicaid and social services appointments
- Reimbursement for late cancellations and no-shows
- Protection against claw backs
- Fair appointment distribution

Now L&I interpreters are joining together to fight for the same benefits. Will you join us?

The form had a field for the individual's email address. Below the box the form stated, "By providing my email address, I am opting in to receive emails from Interpreters United (WFSE)."

The next section asked for a signature and the signer's name. The form had a section for the signer to upload a picture. The form stated, "**Why a picture?** We win by showing our fellow interpreters that we are the union fighting for a fair system for ALL interpreters from all language groups and backgrounds. Giving us permission to use your picture will help us do that."

²²

EO Ex. at 509.

The next section on the form was an address section. Above the address field, the form stated, **“Address (Election ballot confirmations will come via mail. Ensure you can participate in the union election!)”**

The fields required to be filled in to submit the form were the signer’s first and last name, address 1, city, state, zip code, and Permission to Use Name and Signature (and picture/video if you provide one). Below the box to grant permission to use the name, signature, and picture was the statement, “I hereby authorize Interpreters United (WFSE) to use my name, signature and picture/video in communications including direct mail, leaflets, website content, print or electronic media advertising, press releases or other medium.”

According to the objections, on April 1, 2022, WFSE organizer Ben Sercombe sent the following text message to eligible employees:²³

This is Ben with Interpreters United. This is the last chance to register to vote for the L&I Union election with IU. *Everyone who wants IU as their union and wants to vote needs to fill out the Vote Yes Petition.* Almost 600 other interpreters have signed. Can I send you the link? It must be submitted by the end of the day to register.

(emphasis added). On April 7, 2022, Interpreters United (WFSE) sent an email claiming, “Over 600 L&I interpreters that are eligible to vote in the upcoming election have publicly committed to vote for Interpreters United (WFSE).”²⁴ Interpreters United (WFSE) included a picture and the names of the individuals who signed the petition.

On May 3, 2022, Interpreters United (WFSE) sent an email stating, **“Great news, L&I Interpreters: 625 interpreters have pledged to vote for us in the upcoming election.”**²⁵ Interpreters

²³ EO Ex. at 521. The text message does not include a date.

²⁴ EO Ex. at 472.

²⁵ EO Ex. at 477.

United (WFSE) continued to communicate these numbers throughout the election on June 16, 2022, July 8, 2022, July 12, 2022, and August 10, 2022.

Application of Standards to Alleged Objectionable Conduct

The Commission will closely scrutinize campaign statements that misrepresent the Commission's process, procedure, and legal requirements.

The April 1, 2022, text message explicitly misrepresents the Commission's process and erroneously told employees they must register to vote in the representation election. Unlike in our governmental elections that require eligible voters to register to vote, the Commission's representation elections do not require employees to register to vote. Employees are eligible based on their employment status during the election period. Thus, the April 1, 2022, text message violated WAC 391-25-480(5)(b) by implicating and misrepresenting the Commission's processes.

We could charitably read Interpreters United (WFSE)'s Vote Yes petition as an effort to obtain the correct addresses for eligible voters in this broad, decentralized bargaining unit. However, the language used in the petition conditioned voting in the election on completing the petition. In its effort to obtain accurate voter information, Interpreters United (WFSE) engaged in deceptive campaign practices improperly involving the Commission and its processes. The plain language of the petition was deceptive and could have caused eligible voters to conclude that the only way to vote in the election was to complete the petition. The Vote Yes petition improperly involved the Commission and its process in the election campaign.

Campaign materials including a replicated ballot instructing eligible voters how to fill out their ballot did not imply agency support for Interpreters United (WFSE).

WA Interpreters objects to campaign material used by Interpreters United (WFSE) implying that the agency preferred or endorsed Interpreters United (WFSE). In support of its objection, WA Interpreters submitted "How to Vote for Interpreters United (WFSE)"²⁶ from the WFSE's

²⁶

EO Ex. at 511.

website. The “Step by Step Instructions” included a sample of the voting instructions sent by the agency for the first election. These instructions included detailed steps and pictures on how to request a ballot if an employee did not receive one, how to access the voting portal, and how to cast a ballot in favor of Interpreters United (WFSE). The step-by-step instructions included a picture of a ballot with the Commission’s logo and an “X” selecting Interpreters United (WFSE). The replication of the ballot does not imply agency support for Interpreters United (WFSE) in violation of WAC 391-25-480(5)(a). Rather, it is a clearly labeled step-by-step instructional guide on how to cast a ballot. We dismiss the objection.

WA Interpreters’ remaining objections were not deceptive campaign practices involving the Commission or its processes.

WA Interpreters asserts other WFSE campaign communications were deceptive campaign practices involving the Commission and its processes. The objected-to-conduct includes: in a series of phone calls to LAPs in May 2022, WFSE organizers falsely accused WA Interpreter’s president Juan Bloise of intentionally delaying the election and advocating for an inaccurate voter list; the WFSE asserted the unfair labor practice complaint filed by WA Interpreters delayed the election; the WFSE told LAPs they would receive certain benefits by voting for and becoming members of the WFSE; and, WA Interpreters alleges the WFSE exaggerated the number of members the WFSE represents.

In response, the WFSE asserts that Bloise haggled over the list, that WA Interpreters had time to respond, and that its communications were neither deceptive nor involved the Commission and its processes. The WFSE argues that it chose not to collect dues though it legally could. The WFSE asserts its campaign materials regarding its number of members was not deceptive.

The Commission will not be the judge or arbiter of every statement made in the campaigns preceding representation elections. *King County Public Hospital District 2*, Decision 9205-B. The complained of statements fall into the category of campaign puffery and are not deceptive practices involving the Commission and its processes.

The WFSE's statements were not promises of benefits to the employees during the election. WA Interpreters asserts the WFSE told LAPs they would receive certain benefits by voting for and becoming members of the WFSE. In response, the WFSE asserts it did not make promises; rather, it stated the types of benefits the union offered.

Interpreters United (WFSE) sent an email to employees stating, “They want the benefits of belonging to a powerful, member-run union—benefits like free college for themselves and their family members.”²⁷ WA Interpreters cited the WFSE’s website listing member benefits. These representations by Interpreters United (WFSE) are not promises of benefit to eligible voters. Rather, these are statements of the types of benefits an individual might receive if they join the WFSE. The objection is dismissed.

CONCLUSION

After considering the arguments of WA Interpreters and Interpreters United (WFSE), we conclude that the objections that the WFSE falsely claimed WA Interpreters could cancel the runoff election and that the WFSE erroneously told LAPs they must complete a WFSE petition to participate in the election were deceptive campaign practices improperly involving the Commission and its processes. Accordingly, we dismiss the other objections, vacate the election, and remand to the Executive Director to conduct a new election.

ORDER


1. The election objections alleging Interpreters United (WFSE) stated that WA Interpreters could cancel the runoff election are SUSTAINED.
2. The election objections alleging statements by Interpreters United (WFSE) that LAPs must complete a WFSE petition to participate in the election are SUSTAINED.

²⁷ EO Ex. at 419.

3. The remaining election objections are DISMISSED.
4. The runoff election in the above captioned matter is VACATED. The case is remanded to the Executive Director for further processing.

ISSUED at Olympia, Washington, this 16th day of December, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



RECORD OF SERVICE

ISSUED ON 12/16/2022

DECISION 13344-B - PECB 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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