

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON COMMUNITY  
CORRECTIONS ASSOCIATION

Involving certain employees of:

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS

CASE 136342-E-23

DECISION 13671 - PSRA

ORDER OF DISMISSAL

*Daniel E. Thenell and Paige Chrz, Attorneys at Law, Thenell Law Group, P.C., for the Washington Community Corrections Association.*

*Oliver T. Beatty and Jessica M. Erickson, Assistant Attorneys General, Attorney General Robert W. Ferguson, for the Washington State Department of Corrections.*

On March 28, 2023, the Washington Community Corrections Association (Association) filed a petition seeking to replace the Washington Federation of State Employees (WFSE) as the exclusive bargaining representative of the nonsupervisory Community Corrections employees bargaining unit at the Washington State Department of Corrections (employer or department). Representation Case Administrator Dario de la Rosa reviewed the showing of interest submitted by the Association against the list of employees in the petitioned-for bargaining unit provided by the employer. The showing of interest did not demonstrate the support of at least 30 percent of the employees in the petitioned-for bargaining unit as required by WAC 391-25-110. The Association was given an opportunity to show cause as to why the petition should not be dismissed. No cause has been shown. The petition is not supported by the requisite showing of interest. The petition is dismissed.

## BACKGROUND

The employer and the WFSE are parties to a collective bargaining agreement that expires on June 30, 2023. The statutory window period for the Association to file its change of representation petition opened on March 3, 2023, and closed on April 2, 2023.<sup>1</sup> RCW 41.80.080(4)(b); WAC 391-25-030(2)(a)(i). The Association filed its petition on March 28, 2023.

### *Initial Review for Compliance and Deficiency Notice*

On the same day the Association filed its petition, this agency sent the employer a routine request for a list of the petitioned-for employees in accordance with WAC 391-25-130. On March 30, 2023, the employer asked for clarification as to which bargaining unit the Association was seeking to represent because the petition described the bargaining unit as either the “Bargaining Units Represented by the Washington Federation of State Employees” or “Community Corrections Officers and Support Staff currently represented by AFSCME/WFSE.” The WFSE currently represents 1,228 employees in five separate bargaining units at the employer.

On March 31, 2023, the Representation Case Administrator informed the employer that it appeared the Association was seeking to represent the nonsupervisory Community Corrections bargaining unit described in *State – Corrections*, Decision 10429 (PSRA, 2009). The Association did not dispute the Representation Case Administrator’s response.

On April 5, 2023, the employer submitted the list of employees for the nonsupervisory Community Corrections bargaining unit as of March 29, 2023. The employer also provided lists of employees for the other bargaining units represented by the WFSE. The employer’s list indicated there were 1,047 employees in the nonsupervisory Community Corrections bargaining unit. Because WAC 391-25-110 requires a petition to be supported by at least 30 percent of the employees in the

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<sup>1</sup> April 2, 2023, the day the window period closed, was a Sunday. Under WAC 391-08-100, the last day for filing any petition would move to the next business day.

petitioned-for bargaining unit, the Association needed to submit 315 valid showing of interest cards.

The Representation Case Administrator reviewed the showing of interest cards against the list of employees to determine if the petition met the 30 percent threshold. The petition did not meet the requisite showing of interest. On April 7, 2023, the Representation Case Administrator issued a deficiency notice informing the Association that its petition was not supported by the requisite showing of interest.

Specifically, the Representation Case Administrator informed the Association that two showing of interest cards were rejected as duplicates. Also rejected were 12 cards signed by employees identified as being in other WFSE-represented bargaining units at the department and 16 cards signed by individuals whose names did not appear on any list provided by the employer. Finally, the deficiency notice provided the Association with an opportunity to show cause as to why the petition should not be dismissed.<sup>2</sup>

*The Association's April 21, 2023, Response*

The Association responded to the deficiency notice on April 21, 2023, and claimed that the employer had failed to submit an accurate list of employees. The Association identified three individuals who may have used different names. The Association identified 17 individuals whose names, it believed, should have appeared on the list of eligible employees. The Association also identified 16 employees on the list whom the Association believed were no longer employed by the employer. The Association further disputed the employer's list because the Association could not ascertain the date the employer used to pull the list of names. Specifically, the Association stated, "Because the signature cards are not valid if they are signed and dated during the one-year preceding the filing of the petition, it then follows that the employee list per WAC 391-25-130 would also be created during this timeline." Finally, the Association claimed that these disputes

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<sup>2</sup> Because the statutory window period for filing had closed by the time the deficiency notice was issued, the Association was precluded from supplementing its showing of interest with additional cards.

may only be resolved through hearing or further process. The Association also attempted to submit two additional showing of interest cards with its April 21, 2023, filing.

*Agency's April 25, 2023, Response and Request for Supplemental Information*

On April 25, 2023, the Representation Case Administrator responded to the Association's response to the deficiency notice. The Representation Case Administrator clarified that the list of employees should be those individuals employed as of the date the petition was filed, March 28, 2023. The Representation Case Administrator also rejected the Association's attempt to submit additional showing of interest cards as untimely under WAC 391-25-110(1).

With respect to the three individuals who signed cards but may have used different names, the employer was directed to provide any information it may have had regarding alternate names that they may have been using.<sup>3</sup>

With respect to the 17 individuals who submitted cards but were not on the employer's list of employees, the Representation Case Administrator pointed out that seven of them were included in other bargaining units represented by the WFSE and were therefore properly excluded from the list of eligible employees.<sup>4</sup> The Representation Case Administrator also pointed out that the agency recently issued *Washington State Department of Corrections*, Decision 13497 (PSRA, 2022), which moved certain employees from the nonsupervisory Community Corrections bargaining units to the WFSE's nonsupervisory records division bargaining unit. The Representation Case Administrator directed the employer to search its records to ascertain the employment status for the remaining 10 individuals.<sup>5</sup>

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<sup>3</sup> The various assertions regarding these individuals were identified by "Item." The Representation Case Administrator labeled this group of employees as "Item 1."

<sup>4</sup> The Representation Case Administrator labeled this group of employees as "Item 2b."

<sup>5</sup> The Representation Case Administrator labeled this group of employees as "Item 2a."

Finally, the Representation Case Administrator directed the employer to search its records to establish the employment status for the 16 employees whose employment status was questioned by the Association but who appeared on the eligibility list.<sup>6</sup>

*Employer's May 8, 2023, Response and Agency's Response*

On May 8, 2023, the employer responded to the request for supplemental information. The employer identified alternative names for the three individuals identified by the Association and where those individuals could be found on the original list of employees.

With respect to the 10 individuals who were not on the list of employees but identified by the Association as potential employees, the employer had no record of three of them ever working for the employer. The employer also indicated that five individuals are either included in bargaining units represented by Teamsters Local 117 or in positions not represented for purposes of collective bargaining. Finally, one position was properly included in the bargaining unit, and one individual retired as of April 1, 2023.<sup>7</sup>

The employer also provided the employment status for the 16 employees whose names appeared on the eligibility list but whose employment status could not be verified by the Association. The employer's response indicated that 13 of these employees are current employees, and the employer explained where each of them work. The employer also indicated that three employees in this category resigned effective April 1, 2023.<sup>8</sup>

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<sup>6</sup> The Representation Case Administrator labeled this group of employees as "Item 3."

<sup>7</sup> The position that was properly included in the bargaining unit was already on the eligibility list but under a different name. This individual was also identified by the Association as an employee who was improperly included in the bargaining unit.

<sup>8</sup> In his May 8, 2023, correspondence with the parties, the Representation Case Administrator incorrectly mentions that only one position had resigned as of the date of the employer's response. This error is harmless and does not affect the outcome of this proceeding.

*May 19, 2023, Conference Call*

On May 19, 2023, the Representation Case Administrator conducted a conference call with the parties. During that discussion, the Representation Case Administrator directed the employer to provide a list of employees in the petitioned-for bargaining unit as of March 28, 2023—the date the petition was filed. The Association asserted the date for the list of employees should be determined by a date other than the date the petition was filed. The parties were given the opportunity to brief on that issue.

On May 23, 2023, the employer submitted the supplemental list of employees. The employer's list once again indicated there were 1,047 employees in the nonsupervisory Community Corrections bargaining unit as of the date of the petition. Based upon this number, the Association still needed to submit 315 valid showing of interest cards. The Representation Case Administrator once again checked the showing of interest against this list, and the Association's petition remained deficient.

On May 30, 2023, the parties submitted responses on this issue. In its response, the Association asserted that pulling the list on the date the petition was filed is over-inclusive. Contrary to its prior assertions, the Association now asserted that the list should be pulled at the beginning of the month following the date the petition was filed. Both the WFSE and the employer asserted that both lists—the March 28 and March 29 lists—complied with WAC 391-25-110.

ANALYSISApplicable Legal Standard

The Public Employment Relations Commission is responsible for uniformly and impartially administering the collective bargaining laws concerning the selection and certification of exclusive bargaining representatives. RCW 41.58.005. *State – Health Care Authority*, Decision 12335 (PSRA, 2015). To ensure this right, this agency conducts secret ballot elections or confidential card checks to ascertain the preferred exclusive bargaining representative of the public employees who are included in an appropriate bargaining unit. RCW 41.80.070; 41.80.135. The conduct of representation elections and card checks are a state function impartially administered by the Commission. *State – Ecology*, Decision 9034-B (PSRA, 2005); RCW 41.80.080. The employer

and employee organizations participating in representation proceedings have a voice, but no vote, in the representation election process. *Tacoma School District*, Decision 4216 (PECB, 1992).

To proceed to an election or card check, a representation petition must be supported by a showing of interest. *State – Health Care Authority*, Decision 12335. A showing of interest consists of individual cards signed by the employees in the proposed or existing bargaining unit stating that they support the purpose of the representation petition. A representation petition filed by employees or an employee organization must be accompanied by a showing of interest indicating that the petition has the support of 30 percent or more of the employees in the proposed or existing bargaining unit. WAC 391-25-110(1). *State – Health Care Authority*, Decision 12335; *State – Labor and Industries*, Decision 9052 (PSRA, 2005). The 30 percent requirement provides evidence that at least a significant number of employees desire a change in order to invoke this agency's jurisdiction and resources. *State – Labor and Industries*, Decision 9052. The 30 percent requirement is mandatory, not discretionary. *Id.*

In ascertaining whether a petition is properly supported by a showing of interest, the agency requests a list of the petitioned-for employees from the public employer. WAC 391-25-130. The employer is required to provide that list within 10 days of the request. *Id.* Neither a petitioner, an intervening employee organization, nor the Commission has the records or resources to independently verify the list of employees and must rely on the accuracy of the information provided by the employer. *Franklin Pierce School District*, Decision 3371-A (PECB, 1991). An employer, on the other hand, is uniquely situated to know who its employees are and whether they are included in the petitioned-for bargaining unit. *See City of Selah*, Decision 1931 (PECB, 1984). If the showing of interest is met, the list of employees may change as the parties and agency work to develop an agreed list of eligible employees for purposes of election or card check. *City of Redmond*, Decision 1367-A (PECB, 1982).

#### Application of Standard(s)

The Association's petition must be dismissed because it is not supported by at least 30 percent of the employees in the petitioned-for bargaining unit. The lists of employees provided by the employer both demonstrate that there are 1,047 employees in the nonsupervisory Community

Corrections bargaining unit. Therefore, the Association needed to submit 315 valid showing of interest cards. It failed to do so.

The Association raised several concerns about missing employees and employees whom the Association could not verify were employed by the employer in the petitioned-for bargaining unit. Those concerns have been addressed. Individuals with different names were on the list, some employees on the list were not in the petitioned-for bargaining unit, and the employer verified the employees whom the Association could not verify. And still, the petition is deficient.

The Association now asserts that the list of employees should be from the beginning of the month following the filing of the petition because it might otherwise be over-inclusive. Specifically, it might include people who were employed on the date the petition was filed but who subsequently left. This is different from the Association's original assertion that the list of employees should comport with the time period during which signature cards are considered valid. Both assertions are without merit and rejected.

WAC 391-25-130 simply requires an employer to provide a list of employees in the petitioned-for bargaining unit within 10 days of the agency's request. The rule does not specifically require the list to be as of the date of the filing of the petition. The purpose of the list is to allow this agency to assess the showing of interest. The list or the later eligibility list for a representation election or card check is a snapshot of the employer's workforce as it exists at a particular point in time. *See e.g., City of Dupont*, Decision 4959-B (PECB, 1995). Given the initial deficiency of the showing of interest and concerns about whether the list contained all the employees in the petitioned-for



bargaining unit, this agency required the list to be as of the date the petition was filed. This would allow for the most accurate checking of the showing of interest.<sup>9</sup>

The Association's showing of interest—as compared to both the March 28 and March 29 lists—is deficient. The petition cannot move forward, and the petition is dismissed.<sup>10</sup>

#### FINDINGS OF FACT

1. The Washington State Department of Corrections (employer) is an employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (WFSE) represents 1,228 employees in five separate bargaining units at the employer.
3. The employer and WFSE are parties to a collective bargaining agreement that expires on June 30, 2023. The statutory window period for the Association to file its change of representation petition opened on March 3, 2023, and closed on April 2, 2023.
4. On March 28, 2023, the Washington Community Corrections Association (Association) filed a petition seeking to replace the Washington Federation of State Employees (WFSE) as the exclusive bargaining representative of the nonsupervisory Community Corrections employees bargaining unit at the employer.

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<sup>9</sup> For example, employees may be added or removed from the eligibility list during the investigatory process for a variety of reasons, including employees hired shortly after the representation petition was filed, employees who leave employment prior to the issuance of a tally of election or card check, or the agreements of the parties to include or exclude certain employees for supervisory, confidential, or community of interest reasons.

<sup>10</sup> Although a party may dispute the accuracy of the eligibility list submitted by the employer, the sufficiency of the showing of interest cannot be litigated. RCW 34.05.010(3)(b); WAC 391-25-110.

5. On March 28, 2023, this agency sent the employer a routine request for a list of the petitioned-for employees in accordance with WAC 391-25-130.
6. On April 5, 2023, the employer submitted the list of employees for the nonsupervisory Community Corrections bargaining unit as of March 29, 2023. The employer also provided lists of employees for the other bargaining units represented by the WFSE. The employer's list indicated there were 1,047 employees in the nonsupervisory Community Corrections bargaining unit.
7. Representation Case Administrator Dario de la Rosa reviewed the showing of interest cards against the list of employees to determine if the petition met the WAC 391-25-110 30 percent threshold. On April 7, 2023, the Representation Case Administrator issued a deficiency notice informing the Association that its petition was not supported by the requisite showing of interest.
8. The Association responded to the deficiency notice on April 21, 2023, and claimed that the employer had failed to submit an accurate list of employees. The Association identified three individuals who may have used different names. The Association identified 17 individuals whose names, it believed, should have appeared on the list of eligible employees. The Association also identified 16 employees on the list whom the Association believed were no longer employed by the employer. The Association further disputed the employer's list because the Association could not ascertain the date the employer used to pull the list of names. The Association also attempted to submit two additional showing of interest cards with its April 21, 2023, filing.
9. On April 25, 2023, the Representation Case Administrator responded to the Association's response to the deficiency notice. The Representation Case Administrator clarified that the list of employees should be those individuals employed as of the date the petition was filed, March 28, 2023. The Representation Case Administrator also rejected the Association's attempt to submit additional showing of interest cards as untimely under WAC 391-25-110(1). The Representation Case Administrator directed the employer to search its records

to ascertain the employment and/or bargaining unit status for disputed employees identified by the Association.

10. On May 8, 2023, the employer responded to the request for supplemental information. The employer identified alternative names for the three individuals identified by the Association and where those individuals could be found on the original list of employees.
11. With respect to the 10 individuals who were not on the list of employees but identified by the Association as potential employees, the employer had no record of three of them ever working for the employer. The employer also indicated that five individuals are either included in bargaining units represented by Teamsters Local 117 or in positions not represented for purposes of collective bargaining. Finally, one position was properly included in the bargaining unit, and one individual retired as of April 1, 2023.
12. The employer also provided the employment status for the 16 employees whose names appeared on the eligibility list but whose employment status could not be verified by the Association. The employer's response indicated that 13 of these employees are current employees, and the employer explained where each of them work. The employer also indicated that three employees in this category resigned effective April 1, 2023.
13. On May 19, 2023, the Representation Case Administrator conducted a conference call with the parties. During that discussion, the Representation Case Administrator directed the employer to provide a list of employees in the petitioned-for bargaining unit as of March 28, 2023—the date the petition was filed. The Association asserted the date for the list of employees should be determined by a date other than the date the petition was filed. The parties were given the opportunity to brief on that issue.
14. On May 23, 2023, the employer submitted the supplemental list of employees. The employer's list once again indicated there were 1,047 employees in the nonsupervisory Community Corrections bargaining unit as of the date of the petition. Based upon this number, the Association still needed to submit 315 valid showing of interest cards. The

Representation Case Administrator once again checked the showing of interest against this list, and the Association's petition remained deficient.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter under chapter 41.80 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 3 through 14, the Washington Community Corrections Association failed to support its petition with at least 30 percent of the employees in the petitioned-for bargaining unit as required by WAC 391-25-110.

ORDER

The representation filed by the Washington Community Corrections Association is DISMISSED.

ISSUED at Olympia, Washington, this 2nd day of June, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.



# RECORD OF SERVICE

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ISSUED ON 06/02/2023

DECISION 13671 - PSRA 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 136342-E-23

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