Clark Community College District 14 (Clark), Decision 9009 (CCOL, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON EDUCATION ASSOCIATION,	)	
	)	
Complainant,	)	CASE 18623-U-04-4736
	)	
vs.	)	DECISION 9009 - CCOL
	)	
COMMUNITY COLLEGE DISTRICT 14 (CLARK COMMUNITY COLLEGE),	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	

Eric R. Hansen, Attorney at Law, for the union.

Attorney General of Washington Christine Gregoire, by *Michael J. Shinn*, for the employer.

On June 11, 2004, Washington Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission naming Community College District 14 d/b/a Clark Community College (employer) as respondent. The union represents all full-time and part-time academic employees of Clark Community College.

The controversy concerns alleged employer refusal to bargain the wages, hours, and terms and conditions of employment related to a new "outcomes assessment project" (assessment project). The project was designed to help faculty members measure the effectiveness of their curriculum and instruction. The assessment project provided compensation for faculty who participated.

The Public Employment Relations Commission issued a preliminary ruling on July 12, 2004, finding a cause of action existed under

RCW 28B.52.073(1)(a) and (e) concerning the implementation of the assessment project. Examiner Karyl Elinski conducted a hearing on November 3, 2004. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer fail to fulfill its obligation to bargain the terms of the assessment project?

2. Did the employer commit an unfair labor practice by failing to reduce the terms of agreement over the assessment project to a written document?

Based on the record presented as a whole, the Examiner holds that the employer did not fail to engage in bargaining over the terms of the assessment project. The employer did commit an unfair labor practice, however, when it refused to reduce the terms of the agreement concerning a portion of the assessment project to writing.

ANALYSIS

Issue 1: Did the employer fail to fulfill its obligation to bargain the terms of the assessment project?

Applicable Rules -

The statutory responsibility of parties engaged in collective bargaining is contained in RCW 28B.52.020(8)as follows:

> 'Collective bargaining' and 'bargaining' mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours and other terms and conditions of employment . . .

In 1938, the NLRB declared:

> Interchange of ideas, communication of facts, particularly within the knowledge of either party, personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is the essence of the bargaining process.

Hanson-Whitney Machine Co., 8 NLRB 153 (1938), *cited with approval*, *City of Poulsbo*, Decision 2068 (PECB, 1984).

A party to a bargaining relationship commits an unfair labor practice if it fails to give notice of a change affecting a mandatory subject of bargaining or fails to bargain in good faith upon request. *NLRB v. Katz*, 369 U.S. 736, *Green River Community College*, Decision 4008-A (CCOL, 1993).

Even when parties deny that bargaining took place, bargaining can occur "regardless of whether the meetings were formal or informal, or whether the usual trappings of contract bargaining were in place . . ." *Mukilteo School District 6*, Decision 3795 (PECB, 1991).

Analysis -

The parties agree that the wages, hours and working conditions of the assessment project were mandatory subjects of bargaining. The employer first presented the terms of the assessment project on January 27, 2004, by letter to all faculty members. The employer attached a draft budget for the project that reflected flat stipends ranging from $200.00 to $3,000.00 (most falling in the $1,500 range). The stipends were to be paid for various tasks to be performed by faculty participants in the assessment project. The parties' collective bargaining agreement provided for an "other assignment rate" of $20.00 per hour.

On February 9, February 18, and March 2, 2004, union president Barbara Simpson wrote three letters to college President Dr. Wayne Branch. In those letters, the union demanded to bargain "all wages, hours and working conditions" related to the assessment project. The union further demanded that the college suspend the assessment project until the parties could reach agreement. Branch responded to the letters on February 13 and March 9, 2004, requesting clarification of the union's demands, and stating his belief that the terms of the assessment project were consistent with the existing collective bargaining agreement. On at least two occasions, Branch encouraged the union to raise questions regarding the assessment project in ongoing interest-based bargaining sessions.[1]

Executive Human Resources Director Katrina Golder responded to the union's February 18, 2004, letter by phone, clarifying that the stipend for the assessment project was based on the $20.00 per hour "other assignment" rate contained in the collective bargaining agreement. By e-mail, Golder arranged a meeting with the parties for March 17, 2004, to discuss the union's demand to bargain.[2] In his March 9, 2004, letter, Branch agreed to delay implementation of the assessment project until the March 17 meeting.

Documentary evidence presented at the hearing confirms that the union believed the March 17, 2004, meeting was scheduled for the purpose of negotiating the assessment project. Nevertheless, at the outset of the meeting, Branch declared that the meeting was not a bargaining session. By the end of the meeting, all of the

---

[1] The parties held over fifteen interest-based bargaining sessions between January and June 2004.

[2] There was no contention that the meeting was delayed in any way.

union's questions regarding the assessment project were answered. The union sought no changes to the project as clarified during the meeting.

At the meeting, the parties discussed the terms of the assessment project and exchanged information of particular concern to the union. The employer clarified that the other assignments rate of $20.00 per hour contained in the collective bargaining agreement applied to the assessment project. The union accepted this rate. The union's questions regarding selection criteria for faculty participation were also answered during that meeting. Though the written provisions of the budget referencing faculty participation appeared to place limits on the number of faculty participants, the employer assured the union that there would be enough funding for all faculty members to participate in the assessment project. The union was satisfied with that response.

Conclusion -

The parties did exchange crucial information, present concerns and resolve outstanding issues during the March 17 meeting. The employer delayed implementation of the project until after the meeting. At the end of the meeting, the union sought no changes to the project. Thus, despite the parties' denial that they were engaged in bargaining on March 17, bargaining did take place.[3] As

---

[3] Because the Examiner concludes that the parties did bargain at the March 17 meeting, there is no need to address the "waiver by inaction" defense raised by the employer. It is notable, however, that the union repeatedly failed to raise its concerns during ongoing interest based bargaining sessions, though invited to do so. The union's claim of the "futility" is unpersuasive given its repeated failure to raise the issues in the ongoing interest-based bargaining, and its corresponding failure to identify its issues of concern with the assessment project.

the result of this bargaining, the union sought no additional changes to the project. The employer did not refuse to bargain, and did not commit an unfair labor practice by failing to bargain a mandatory subject of bargaining.

Issue 2: Did the employer commit an unfair labor practice by failing to reduce the terms of agreement over the assessment project to a written document?

Applicable Rules -

RCW 28B.52.020(8) provides that a "written contract incorporating any agreements reached shall be executed if requested by either party." A refusal to enter into a signed written agreement is a per se refusal to bargain. *South and East Columbia Basin Irrigation District*, Decision 1404 (1982).

There is no duty to bargain a reiteration of an established policy, or changes having no material effect on employee wages, hours, or working conditions. *City of Wenatchee*, Decision 6517-A (PECB, 1999); *Green River Community College*, Decision 4008-A (CCOL, 1993). The parties must maintain the status quo regarding all mandatory subjects of bargaining, except where changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991)

Analysis -

The draft budget for the assessment project specified a "stipend" for work completed on the assessment project. The employer later modified the budget to reflect the other assignment rate of $20.00 per hour, with projections for the amount of time for completion of

work.[4] The parties agreed that the applicable rate was contained in the contract. The union offered no further objections concerning the pay rate. Thus, the employer did not commit an unfair labor practice by failing to commit this aspect of the project into a signed, written agreement.

The issue of the selection criteria for participants in the project is more troublesome for the employer. The assessment project reflects a specified number of participants. At the March 17 meeting, the employer assured the union that any faculty member who wished to participate in the project could do so. Although Branch offered to write a letter capturing the concerns addressed in the March 17 meeting, the employer flatly refused the union's demand to enter into a written, signed agreement. The employer's refusal to enter into a written contract reflecting this agreement constitutes a per se unfair labor practice.

Conclusion -

The evidence in this case demonstrates the employer did not refuse to bargain the terms of the assessment project, and thus did not commit an unfair labor practice. The employer did commit an unfair labor practice when it unlawfully failed to enter into a signed written agreement concerning the selection criteria for faculty participation in the project, and must execute a signed written agreement reflecting its agreement with the union allowing any and all faculty to participate in the assessment project.

---

[4] The employer's method for determining the rate was somewhat backward. First, it determined the amount of compensation for the work, then it divided it by the 'other assignment' rate. The resulting figure constituted a projected number of hours for completion of the work. The participants did not keep time sheets, but this was consistent with past participation in projects of similar scope and nature.

Any facts or arguments presented at hearing that are not cited within this decision are immaterial or not persuasive.

FINDINGS OF FACT

1. Clark Community College District 14 is a public employer within the meaning of Chapter 28B.52 RCW.

2. Washington Education Association is a bargaining representative within the meaning of RCW 28B.52.020 of an appropriate bargaining unit of full and part-time academic employees of Clark College.

3. The parties engaged in bargaining on March 17, 2004, concerning the terms of the Outcomes Assessment Project.

4. The parties reached full agreement on March 17, 2004, concerning the terms and working conditions of the Outcomes Assessment Project.

5. At the March 17, 2004, meeting, the parties agreed that the contractual rate of pay would apply to the Outcomes Assessment Project.

6. At the March 17, 2004, meeting, the parties reached agreement that all faculty members who wished to participate in the Outcomes Assessment Project could do so at the agreed upon rate of pay.

7. The employer refused to enter into a signed written contract concerning faculty selection criteria for the Outcomes Assessment Project.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 28B.52 RCW.

2. The parties fully bargained the terms and conditions of the Outcomes Assessment Project during the March 17, 2004, meeting consistent with RCW 28B.52.030.

3. The employer committed an unfair labor practice when it refused to enter into a signed written agreement concerning faculty selection criteria for the Outcomes Assessment Project. RCW 28B.52.020(8) and RCW 28B.52.073.

ORDER

1. The union's complaint claiming unfair labor practices are DISMISSED in part, and AFFIRMED in part. COMMUNITY COLLEGE DISTRICT 14 (CLARK COMMUNITY COLLEGE) shall immediately take the following affirmative actions to remedy its unfair labor practice:

   a. Execute a written agreement concerning criteria selection for the outcomes assessment project.

   b. Reimburse any affected employees for the amount of improperly denied wages, if any, in connection with the Outcomes Assessment Project.

   c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix."

Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for a period of sixty (60) days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, on the 27th day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL execute a written agreement concerning criteria selection for the outcomes assessment project.

WE WILL reimburse any affected employees for the amount of improperly denied wages in connection with the Outcomes Assessment Project.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

Community College District 14
(Clark Community College)

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.