

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GERRY STAMPER,	)	
	)	
Complainant,	)	CASE 21005-U-07-5362
	)	
vs.	)	DECISION 9915 - PSRA
	)	
WASHINGTON STATE UNIVERSITY,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	

*Gerry Stamper*, an employee, appeared on his own behalf.

Attorney General Rob McKenna, by *Donna Stambaugh*,  
Assistant Attorney General, for the employer.

On April 4, 2007, Gerry Stamper (Stamper) filed an unfair labor practice complaint with the Public Employment Relations Commission against Washington State University (employer) charging employer domination or assistance of a union, the Washington Federation of State Employees (WFSE), in violation of RCW 41.80.110(1)(b).

On January 24, 2007, WFSE filed three representation petitions seeking certification as exclusive bargaining representative of the employer's: (1) instrument shop employees; (2) maintenance and utility service employees; and (3) facilities operations employees. Stamper is a maintenance mechanic 2 with the employer and his position is included in the WFSE's representation petition.

A preliminary ruling was issued on April 27, 2007, finding that the complaint stated a cause of action. Pursuant to WAC 391-25-370, the complaint suspended the processing of the three representation petitions filed by WFSE. The hearing was held before Examiner Sally B. Carpenter on June 19 and 20, 2007. The parties filed post-hearing briefs to complete the record.

ISSUE PRESENTED

Did the employer dominate or assist the WFSE during a representation campaign by allowing it to use the employer's facilities and employee work time for organizing purposes?

Based on the evidence presented, the Examiner finds that the employer did not unlawfully dominate or assist the WFSE. The complaint is dismissed.

APPLICABLE LEGAL PRINCIPLES

RCW 41.80.110(1)(b) provides that it is an unfair labor practice for an employer:

To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay.

Domination or assistance can be found where the employer has involved itself in the internal affairs or finances of the union, has shown a preference between two unions or groups that are competing for the same bargaining unit, or has attempted to create, fund or control a "company union." *State - Labor and Industries*, Decision 9348 (PSRA, 2006).

The complaining party maintains the burden of proving the allegations of its complaint by a preponderance of the evidence. WAC 391-45-270(1)(a). In unfair labor practice complaints alleging domination or assistance violations, the complaining party must prove the employer intended to assist one union to the detriment of another. *Community College District 13 - Lower Columbia*, Decision 8117-B (PSRA, 2005).

In *Whatcom County*, Decision 8245-A (PECB, 2004), the Commission held that: "[O]nce a valid [representation] petition has been filed with the Commission, an employer must remain strictly neutral in rival union organizing situations. Exclusive use of employer facilities by one union cannot be permitted during the pendency of a representation proceeding . . . ." Such neutrality requires that if the employer permits the incumbent union to use its facilities for communication with employees during the representation election, it must then grant any rival union the same benefit of access granted to the incumbent. *Community College District 13 - Lower Columbia*, Decision 8117-B.

In *Community College District 13 - Lower Columbia*, Decision 8117-B, the Commission found insufficient evidence of employer intent to assist a union when the union used employer facilities, including e-mail, to communicate with bargaining unit members about the representation petition. The Commission concluded that: "All of the other examples of the use of employer facilities by WFSE sympathizers occurred after the WFSE filed its representation petition, and there was no evidence that the employer denied the [incumbent union] similar use of the employer's facilities in responding to that petition."

#### ANALYSIS

Stamper argues that the employer contributed financial assistance to the WFSE by allowing the WFSE to use its facilities and employee work time for organizing purposes. The following background information provides context for Stamper's allegations.

#### Background

The WFSE previously served as the exclusive bargaining representative for several of the employer's bargaining units, representing

approximately 1,300 employees. The first bargaining agreement negotiated by the employer and WFSE under the Personnel System Reform Act of 2002 (PSRA) was twice voted down by the membership. A third vote was conducted within each bargaining unit. Some units ratified the agreement and some did not. After what the employer described as a "long process of sorting out," including the decertification of some bargaining units, the WFSE represented approximately 128 employees. About nine of those employees worked at the employer's Pullman campus. The bargaining unit in which Stamper worked was decertified on November 10, 2005.

The WFSE commenced an organizing drive which became public by at least the fall of 2006. Stamper was involved at the same time with an organizing drive for the Carpenters' Union. Stamper testified that the efforts of the Carpenters' Union were internal and that they had intentionally not gone public. According to Stamper, the Carpenters' Union ceased its organizing efforts about the middle of December 2006. Another witness called by Stamper, Dwight Swanson, testified that the Carpenters' Union ceased its efforts within a few days after November 10, 2006. The employer was not aware of the Carpenters' Union's efforts to organize. The parties presented no evidence that any other union was engaged in an organizing campaign during the time in question.

#### The Allegations and the Evidence

Stamper raised six alleged incidents in support of his claim of employer domination or assistance of the WFSE.

##### 1. Benefits Fair - November 9, 2006

Each year, the employer hosts a benefits fair for employees which includes representatives of health and wellness services, retirement programs, credit unions, insurance providers, and other such service providers. In advance of the November 9, 2006, benefits

fair, the WFSE sent a flier to employees' homes informing them that the WFSE would have a table at the fair and that they could get information on re-forming a bargaining unit and get their questions about representation issues answered. At the benefits fair, a WFSE representative provided cards and contract fliers.

The employer testified that the WFSE has had a table at the employer's yearly benefits fair for many years. The WFSE did not seek permission to have a table at the 2006 fair. Rather, the long-standing practice of the WFSE's participation simply continued. The evidence was undisputed that no other union requested to have a table at the benefits fair.

Stamper did not establish that the WFSE having a table at the benefits fair amounted to employer domination or assistance. The union was treated similarly to other service providers, such as credit unions and insurance providers. There was no evidence that the employer's intent was to support the WFSE or that any employee perceived that the employer was "taking sides" or endorsing the WFSE by allowing the long-standing practice to continue. Additionally, no other union was denied the opportunity to participate in the benefits fair.

## 2. The WFSE's Use of Employer's Premises

In the fall of 2006, the WFSE requested the use of meeting rooms from noon to 1:00 P.M. on November 14, 15, and 16, 2006. The employer's Human Resource Services department (HRS) received and processed the request, assigning available conference rooms for each of the requested days. The employer was not aware of why the WFSE requested use of the rooms. Through a flier sent to employees at their homes, the WFSE advertised information meetings on the requested dates and times in the Facilities Operations Conference

Room and the Housing and Maintenance Room 101, the rooms HRS assigned them.

The WFSE did not use the assigned rooms and, instead, used break rooms on each of the three days. On the afternoons of both November 14 and November 15, when the employer learned that the WFSE used break rooms instead of the assigned conference rooms, HRS contacted the WFSE and directed them to use the rooms that had been assigned. On the afternoon of November 15, the WFSE representative called HRS back and indicated they would not need the assigned room on November 16. The employer understood that the WFSE representatives would not be on campus that day. On the afternoon of November 16, the employer learned that the WFSE representatives were on campus and again used the break room instead of the assigned conference room.

The testimony reflected that the majority of the employees working in Facilities Operations take their lunch break from noon to 12:30 P.M., although projects may sometimes interfere with that schedule. Some Facilities Operations clerical staff members, approximately six to 12 employees, adjust their lunch times to maintain continuous office coverage. Other employees at the Pullman campus, including custodians, clerical staff, administrative professional staff, and others may take lunch at different times. The WFSE flier did not limit the information meetings to Facilities and Operations employees. There was no testimony concerning which employees received the fliers. Additionally, there was no testimony as to whether employees attended the meetings with the WFSE representatives and, if so, whether any of the meetings took place on the employees' work time.

Stamper's assertion that the WFSE's use of break rooms amounts to employer domination or assistance of the union is not supported by

the evidence or the law. No other union requested to use the employer's facilities during this time period, so there is no issue of the employer providing exclusive rights to one union. Under the circumstances present in this case, the WFSE did not run afoul of any rules or laws concerning a union's use of conference rooms in an employer's facilities.

When the WFSE failed to use the rooms assigned to it, the employer promptly tried to correct the situation. The union's failure to comply with the employer's direction on which room to use does not result in a finding of employer domination or assistance.

With respect to the timing of the conference room use, the employer was aware the WFSE scheduled the rooms from noon to 1:00 p.m. and that many employees at the work sites were scheduled for lunch from noon to 12:30 p.m. The employer did not, however, know the purpose of the meetings or which, if any, employees would potentially be meeting with the WFSE. There was no evidence presented that employees met with the union representatives on work time. Furthermore, there was no evidence that the employer intended to support the union or that any employee perceived that the employer was "taking sides" or endorsing the WFSE when the WFSE representatives were in a break room on the dates in question.

### 3. Conversations Among Employees on Work Time

Stamper alleges that five conversations regarding the WFSE took place between employees on work time and that as a result of those conversations, the employer dominated or assisted the WFSE. The evidence is briefly described below.

- Blowers and Fulbright - November 14, 15 or 16, 2006

Stamper requested a continuance of the hearing because Randy Knopes, an employee he wanted to call as a witness, was recovering

from surgery and was not able to testify. The request was denied and, over the employer's objection, Stamper was allowed to make an offer of proof.<sup>1</sup>

Through the offer of proof, Stamper stated that Knopes would have testified that two individuals he thought were Diane Blowers, a WFSE organizer, and Bob Fulbright, president of the local WFSE union, entered a shop on the employer's Pullman campus on November 14, 15 or 16, 2006, at approximately 12:40 P.M. and stayed for about 30 minutes while some employees were there. Stamper said that they "tied the shop up for any other employees to use the shop at the time."

- Hosley and Parsons - December 10 or 12, 2006

On December 10 or 12, 2006, Edward Hosley, a facilities operation maintenance specialist, spent work time with three co-workers at the roof shop talking about the WFSE. The witnesses' estimates on the time spent in this conversation ranged from a low of ten minutes to a high of 45 minutes. Hosley and Eric Bashaw, one of the employees in the roof shop, recalled another occasion in December when the two talked about the union while in the parking lot; both testified that they believed the conversation took place prior to the start of their shifts. Stamper's complaint alleged employee Randy Parsons was part of the conversation in the roof shop. There was no evidence of Parsons' participation.

There was no evidence that Hosley had permission from the employer to go to the roof shop to talk about WFSE business or that the employer had knowledge of Hosley's conduct at the time it occurred.

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<sup>1</sup> It is unnecessary to address the appropriateness of taking the offer of proof as the proffered testimony does not change the outcome of this decision.

None of the employees asked Hosley to leave their work area and none of the employees reported the situation to their supervisor.

When Howard Gossage, one of the employer's supervisory employees, received a copy of Stamper's unfair labor practice complaint and learned of the accusation against Hosley and Parsons, Gossage met with each of them. In the meetings, Gossage reminded both employees that organizing efforts could not be conducted on work time.

- Congdon and Goose - December 13, 2006

On or about 9:00 A.M. on December 13, 2006, then-employee Ray Potter<sup>2</sup> observed colleagues Chad Congdon and David Goose going over what Potter believed to be employee lists in the sheet metal shop where they worked. Potter assumed the lists were related to union organizing. When Congdon looked up and saw Potter, he asked Potter about joining the union. Potter testified that this interaction took about two minutes. There was no evidence that Congdon or Goose had permission from their employer to engage in any activities in support of WFSE on work time or that the employer had knowledge of their conduct at the time it occurred.

Potter sent a letter dated December 20, 2006, to Lawrence Davis, Associate Vice President for Facilities Operations, expressing concern that the WFSE was recruiting on work time. Potter wrote, in part: "If the university is condoning this activity, then the other unions should have an equal chance to recruit during working hours." Upon receipt of the letter, Davis requested that Potter's direct supervisor, Howard Gossage, schedule a meeting for the three of them. The meeting was held on January 2, 2007. Both Davis and Gossage testified that Potter would not give specifics about his

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<sup>2</sup> Potter retired from the employer on June 1, 2007.

concerns and did not reveal the names of individuals he believed were engaging in organizing efforts on work time. Potter testified that he "threw out a couple of names I knew who was actually organizing."

By e-mail dated January 3, 2007, Davis communicated to the Facilities Operations managers and directors that he had received a complaint from an employee about organizing activities taking place on work time. Davis stated in the e-mail that "Supervisors and Managers should be alert to such activity and take appropriate corrective action if it is observed." He reminded them that organizing activities can only take place during break times and should not interfere with an employee's work. He also reminded them that the activities of union officials are subject to the same restrictions and noted that the presence of union officials on campus for organizing purposes should be coordinated and approved by HRS.

- Hosley and Maupin - February 20, 2007

On February 20, 2007, Hosley talked with a colleague, Jeff Maupin, at the water plant for approximately ten minutes. Maupin testified that they talked about their management and the need for a union. Stamper's complaint alleged employee Randy Parsons was part of the conversation. There was no evidence of Parsons' participation.

- Webb, Miller, Streva, Wilson - January 2007

Eileen Bishop, a control tech, testified about a conversation she overheard in the control shop in January of 2007. She believed the conversation took place at the end of the day. She was only there for five or ten minutes. She did not testify to anything specific. Stamper claims the employees, including Ralph Webb, Bud Miller, Greg Streva, and Eric Wilson, were discussing organizing issues. Streva was the chief steward for the WFSE.

This allegation was not included in Stamper's complaint and the employer objected to the admission of the testimony. Commission rules require that an unfair labor practice complaint contain a clear and concise statement of the facts, including times, dates, places, and participants in occurrences. WAC 391-45-050(2). Stamper's failure to include this allegation in his complaint precludes the examiner from considering this testimony. Even if the testimony were considered, it would not change the outcome of this decision.

Stamper's allegation that these various conversations amounted to employer domination or assistance of the WFSE is not supported by the evidence or the law. The evidence established that a few employees had conversations about the WFSE on work time. The conversation with Hosley at the roof shop took anywhere from 10 to 45 minutes. The conversation with Potter, Congdon and Goose took two minutes. The conversation with Hosley and Maupin took 10 minutes. There was no evidence that the employer authorized these conversations, knew of the conversations at the time they took place, or condoned such use of work time.

In fact, the employer took steps to ensure that if employees were engaged in organizing activities that they were doing so on non-work time. On November 1, 2006, the employer held training for supervisory employees which included guidelines on the "dos and don'ts" for employers during union organizing efforts. Additionally, in late December when Potter raised the concern about employees using work time for organizing activities, the employer held a meeting with Potter to try to get additional information. After the meeting, the employer followed up with an e-mail to supervisory staff reminding them of both the rules requiring that organizing activities take place on non-work time and their responsibility to enforce the rules.

#### 4. Concern of Unequal Standards

During the course of the hearing Stamper raised a concern that employees supportive of the WFSE were not held to the same standards as employees supportive of other unions or employees who did not want representation. Stamper and other witnesses testified about Stamper's disciplinary history which included a "counseling" in 1999, a three-day unpaid suspension in 2000, a reminder letter in 2002, and a six-day unpaid suspension in 2004. The bases for the disciplinary actions included Stamper's use of work time and/or resources for his representation activities and his union organizing activities on behalf of another union.

The evidence does not support Stamper's concern about different standards for different employees. As described above, when Gossage learned of the allegations against Hosley and Parsons contained in the unfair labor practice complaint, he addressed the concern with both employees and reminded them of the expectation that any organizing activities take place on non-work time. The employer testified that because neither employee had a disciplinary history, the "counseling" they received was consistent with Stamper's 1999 "counseling." Additionally, the evidence described above demonstrates the employer's efforts to keep organizing activities on non-work time, including the November 1, 2006 supervisory training and the January 3, 2007, e-mail reminder.

#### Conclusion

Stamper failed to prove employer intent to dominate or assist the WFSE. He failed to establish that the employer involved itself in the internal affairs or finances of the union, showed a preference between two unions or groups competing for the same bargaining unit, or attempted to create, fund or control a "company union."

The complaint is dismissed.

FINDINGS OF FACT

1. Washington State University is a public employer within the meaning of RCW 41.80.005(8).
2. Gerry Stamper, a public employee within the meaning of RCW 41.80.005(6), is employed by Washington State University as a maintenance mechanic 2.
3. Washington Federation of State Employees (WFSE) is an employee organization within the meaning of RCW 41.80.005(7).
4. The employer continued a long-standing practice of allowing the WFSE to have a table at the November 9, 2006, benefits fair, along with other service providers, such as health and wellness providers and insurance companies.
5. The employer did not intend to support the WFSE by allowing the union to have a table at the benefits fair.
6. No other union was denied the opportunity to have a table at the benefits fair.
7. In response to the WFSE's request, the employer assigned conference rooms for the WFSE's use from noon to 1:00 P.M. on November 14, 15, and 16, 2006.
8. Instead of using the assigned conference rooms, the WFSE used break rooms. The employer unsuccessfully redirected the WFSE to use the assigned conference rooms.
9. The employer did not intend to support the WFSE by allowing it to use rooms on November 14, 15, and 16, 2006.

10. No other union was denied the opportunity to use the employer's conference rooms.
11. A few employees had conversations about the WFSE on work time, including: the conversation with Edward Hosley at the roof shop on December 10 or 12, 2006, which took anywhere from 10 to 45 minutes; the conversation on December 13, 2006, with Ray Potter, Chad Congdon, and David Goose which took two minutes; and the conversation on February 20, 2007, with Edward Hosley and Jeff Maupin which took 10 minutes.
12. The employer did not know of the conversations described in Finding of Fact 11 at the time they took place, did not authorize the conversations, and did not condone the use of work time for organizing activities.
13. On November 1, 2006, the employer provided training for supervisors in the "dos and don'ts" for employers during union organizing efforts.
14. On January 3, 2007, the employer sent an e-mail to supervisory staff reminding them of the need to enforce the rules requiring that organizing activities take place on non-work time.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-45 WAC.
2. By the actions described in Findings of Fact 4, 7, and 11, the Washington State University did not contribute financial support or unlawful assistance to the WFSE and did not violate RCW 41.80.110(1)(b).


3. By the actions described in Findings of Fact 4, 7, and 11, the Washington State University did not demonstrate a preference for the WFSE over other unions and did not violate RCW 41.80.110(1)(b).
4. By the actions described in Findings of Fact 4, 7, and 11, the Washington State University did not control, dominate or interfere with the internal affairs of the WFSE and did not violate RCW 41.80.110(1)(b).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 29<sup>th</sup> day of November, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SALLY B. CARPENTER, 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.