STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VANCOUVER EDUCATION ASSOCIATION,	)	
	)	
Complainant,	)	CASE 20441-U-06-5210
	)	
vs.	)	DECISION 9844 - EDUC
	)	
VANCOUVER SCHOOL DISTRICT,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the Vancouver Education Association (union) on June 7, 2006. The complaint alleged that the Vancouver School District (employer) refused to bargain in violation of RCW 41.59.140(1)(e), by its unilateral change in training days, without providing an opportunity for bargaining.

The complaint was reviewed under WAC 391-45-110.[1] A preliminary ruling and deferral inquiry was issued on July 14, 2006, finding a cause of action to exist for the refusal to bargain allegation, as well as a cause of action for derivative interference in violation of RCW 41.59.140(1)(a). The employer was provided the opportunity

[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

to file an answer to the complaint and was asked to specify in its answer whether it requested deferral to arbitration. In an answer filed on August 4, 2006, the employer requested that the complaint be deferred to arbitration.

The Commission's policy concerning deferral to arbitration is contained in the following provisions of WAC 391-45-110(3):

> WAC 391-45-110 Deficiency notice — Preliminary ruling — Deferral to arbitration.
>
> . . . .
>
> (3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.
>
> (a) Deferral to arbitration may be ordered where:
>
> (i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;
>
> (ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and
>
> (iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.
>
> (b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:
>
> (i) The contractual procedures were not conducted in a fair and orderly manner; or
>
> (ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

The complaint and answer were reviewed under WAC 391-45-110(3). On August 8, 2006, the complaint was deferred to arbitration in a ruling that stated as follows:

> 4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:
>
> a. If the arbitrator finds the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union's right to bargain the matter will have been waived by the language of the collective bargaining agreement, and the union should anticipate dismissal of the unfair labor practice allegation based on the "waiver" conclusion.

On May 18, 2007, the Commission received a copy of an arbitration award of Arbitrator David W. Stiteler regarding the dispute. The award denied the union's grievance, finding that the employer did not violate the collective bargaining agreement when it canceled TRI in-service days in August 2006.

The award has been reviewed under WAC 391-45-110(3). As the award found that the employer's conduct was protected by the parties' agreement, the union's right to bargain on the issue was waived by

the agreement. *City of Spokane*, Decision 2398 (PECB, 1986). The complaint must be dismissed.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 24th day of August, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

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

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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The attached document identified as: DECISION 9844 - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	20441-U-06-05210	FILED:	06/07/2006	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	TEACHERS				
DETAILS:	August 2006 Tri Days				
COMMENTS:					

EMPLOYER: VANCOUVER S D
ATTN: JOHN ERICKSON
PO BOX 8937
VANCOUVER, WA 98668-8937
Ph1: 360-313-1200 Ph2: 360-313-1000

REP BY: LELAND GOEKE
VANCOUVER S D
PO BOX 8937
VANCOUVER, WA 98668-8937
Ph1: 360-313-1000 Ph2: 360-313-1094

REP BY: JOHN H BINNS JR
VANDEBERG JOHNSON & GANDARA
5398 NIGHT HERON DRIVE
BLAINE, WA 98230
Ph1: 360-371-7066 Ph2: 360-371-7510

PARTY 2: WASHINGTON EDUCATION ASSN
ATTN: JERRY PAINTER
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7020 Ph2: 253-946-7232