STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 21440-U-07-05466 DECISION 10226 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Younglove, Lyman & Coker, by *Christopher Coker*, Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Jessica Russell*, Assistant Attorney General and *Helen Arntson*, Assistant Attorney General, for the employer.

On December 24, 2007, the Washington Federation of State Employees (union) filed an unfair labor practice complaint against the University of Washington (employer). The union alleged that the employer refused to provide information that the union had requested regarding the discipline of a bargaining unit member in the employer's Skilled Trades Bargaining Unit. The union is the exclusive bargaining representative of that unit. A preliminary ruling was issued on December 27, 2007. The employer's answer was not filed by the date specified in the Commission's preliminary ruling. Examiner Emily Martin held an evidentiary hearing on April 29, 2008, which was limited to the employer's affirmative defenses. Both parties filed post-hearing briefs.

ISSUES

1. Was the Examiner's decision to not accept the employer's late answer correct?

2. Did the employer commit an unfair labor practice through its initial response and eventual delay in fulfilling the union's request for information?

The Examiner's decision to not accept the employer's late answer was correct. The answer was filed only days before the hearing. The employer did not provide a good reason for the delay, and had thereby indicated a disregard for the Commission's procedures.

The employer committed an unfair labor practice with its unreasonably long delay in fulfilling the union's information request.

APPLICABLE LEGAL PRINCIPLES FOR THE LATE ANSWER

The answer in this matter was due on January 17, 2008, twenty-one days after the preliminary ruling was issued on December 27, 2007. The employer filed its answer on April 24, 2008, over three months after it was due and less than four working days before the scheduled hearing on April 29, 2008. The employer's answer was filed after the union moved for a default judgement based on the absence of a timely answer.

WAC 391-45-210 requires answers to "specifically admit, deny or explain each fact alleged in the portions of the complaint found to state a cause of action." If a respondent fails to file a timely answer, WAC 391-45-210(4) states:

> [T]he facts alleged in the complaint shall be deemed admitted as true, and the respondent shall be deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date shall only be granted for good cause.

A consideration in determining whether to allow a late answer is whether a waiver of the rule would prejudice the complainant. *Chelan-Douglas County Mental Health Center*, Decision 3886 (PECB, 1991). Another consideration is whether the respondent shows

disregard for the processes of the Commission. *City of Seattle*, Decision 7705 (PECB, 2002).

ANALYSIS OF THE LATE ANSWER

On April 21, 2008, one week before the hearing, the union requested a default judgement. However, even without an answer, the union was not yet entitled to a decision resolving the case in its favor. A respondent who fails to answer a complaint is still entitled to submit evidence on affirmative defenses. *Arlington School District*, Decision 3806 (PECB, 1991). The Examiner therefore denied the union's request for a default judgement by way of an April 24, 2008 letter which said she would be prepared to deal with the circumstances "as they exist at the hearing on April 28, 2008." On the afternoon of April 24, 2008, the employer filed its answer. The answer did not include an explanation or reason for its delay.

The Examiner began the hearing with arguments from the parties about whether the employer's late answer should be admitted. The employer argued that the unavailability of its attorney with labor law expertise should excuse its lateness in filing an answer. The employer also argued that a letter it submitted on January 17, 2008, satisfied the answer requirement. This letter questioned the appropriateness of the Commission's jurisdiction and asked for the matter to be dismissed and processed under the parties' collective bargaining agreement. It did not address the specific facts of the case as is ordered in the preliminary ruling, and so it does not satisfy the answer requirement. The Examiner maintained her denial of the employer's motion as the circumstances argued by the employer do not justify almost a three-month delay in filing its answer. The employer had sufficient time for its other attorneys to familiarize themselves with the Commission's procedures or to procure counsel with labor law expertise to enable them to file an answer.

Examiners have considered prejudice to the complainant when determining whether to accept a late answer. *Port of Tacoma*, Decision 4627-A (PECB, 1995) and *Chelan-Douglas County Mental Health Center*, Decision 3886 (PECB, 1991). Inherently, an answer submitted very close to the hearing date gives the complainant little time to incorporate the answer's information into the complainant's hearing preparation. The complainant does not know which facts will be contested and that could result in difficulty in determining which evidence and witnesses will be necessary for hearing. In this case, the answer arrived less than four working days before the hearing. Therefore the Examiner was correct in enforcing the Commission's rule that a late answer cannot be admitted unless there is good cause for the delay.

APPLICABLE LEGAL PRINCIPLES TO THE DUTY TO PROVIDE INFORMATION

The core issue in this case involves the union's requests for information regarding the discipline of an employee, Paula Lukaszak. Lukaszak faced allegations regarding a "sick out" which was an absence from work to protest a policy of the employer's. The union initially made an information request on June 29, 2007, as the parties were preparing for Lukaszak's pre-termination hearing, commonly called a *Loudermill* hearing.[1] The union reiterated its request on July 3, 2007. The hearing occurred on July 12, 2007. The union then made the same request again on August 7, 2007. On August 8, 2007, the employer notified Lukaszek that she would be terminated from her employment. On August 24, 2007, the union filed a grievance regarding the termination. The union again reiterated its request for information on September 25, 2007. The employer did not provide any of the requested information until

[1] The term refers to the United States Supreme Court decision in *Cleveland Board of Education v. Loudermill*. 470 U.S. 532 (1985) and gives an employee the opportunity to respond to allegations before a final decision is made.

October 2, 2007, and did not completely fulfill the union's request until around December 3, 2007.

The allegations in this case concern whether the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) and refused to bargain with the representative of the employees in violation of RCW 41.80.110(1)(e). Commission precedent has defined the duty to bargain in good faith, and it includes the duty to provide relevant information requested by the other party which is necessary to perform its collective bargaining responsibilities. *See City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd* 119 Wn.2d 3737 (1993). The duty to provide information is inherent to the collective bargaining relationship because parties often do not have equal access to the information necessary to perform their collective bargaining roles. Requests for information can be made in connection to grievance proceedings as well as contract negotiations. Grievance proceedings are part of contract administration duties and contract administration is a type of collective bargaining activity. *City of Bellevue*, Decision 4324-A (PECB, 1994).

When a party makes a request for relevant and necessary collective bargaining information, the other side is obligated to respond. *City of Bellevue*, Decision 4324-A (PECB, 1994). A responding party must respond to the information request in a reasonable and timely manner and may be found responsible for delays caused by its staff's failure to understand the employer's duty. *Seattle School District*, Decision 8976 (PECB, 2005). Even if the request is too vague or overly burdensome, a request cannot simply be ignored. Instead, the responding party must communicate any objections and allow the requesting party an opportunity to justify or modify the request. *Port of Seattle,* Decision 7000-A (PECB, 2000).

Commission precedent has made a distinction between the duty to provide information necessary for collective bargaining duties, such as the investigation and processing of grievances, and the

duty to provide information for a *Loudermill* hearing. *City of Bellevue*, Decision 4324-A (PECB, 1994). *Loudermill* hearings enforce the "due process" rights emanating from the federal and state constitutions rather than the state collective bargaining laws that the Commission administers. In *Bellevue*, the Commission noted that in one of its earlier decisions it had ruled that "The interests at stake in the *Loudermill* context are not within the realm of PERC jurisdiction." *Okanogan County*, Decision 2252-A (PECB, 1986).

ANALYSIS OF THE DUTY TO PROVIDE INFORMATION

The union reiterated its request for the information four times between June and September 2007. The first two requests were made before the *Loudermill* hearing. These requests occurred in June and July 2007 and were made by Lindsey Bruce, Senior Field Representative for the union. The third was made on August 7, 2007, after the hearing and before the union filed a grievance regarding Lukaszek's termination. The fourth was made on September 25, 2007, in the midst of the grievance proceedings.

The June and July requests were made before both the termination and the filing of the grievance. Therefore, the timing of these requests demonstrates that they were made to prepare for the *Loudermill* hearing rather than a grievance regarding the termination. As these requests were made exclusively in the context of a *Loudermill* hearing, these requests concerned rights beyond the scope of the Commission's jurisdiction. In contrast, the August and September requests were made after both the *Loudermill* hearing and the termination. These request were therefore made pursuant to the union's statutory collective bargaining obligation to investigate and process grievances and are within the Commission's statutory unfair labor practice jurisdiction.

The union addressed its August 7 request for information to Lou Pisano, the employer's director of labor relations. Pisano was the supervisor of Renni Bispham, the employer's labor relations staff

person who was assigned to work with the union. Throughout much of the summer of 2007, Bispham was unavailable. On August 8, 2007, the employer notified Lukaszak of her termination. On August 22, 2007, the union filed a grievance regarding the termination. Also on August 22, 2007, Pisano responded to the union's information request saying that the employer was gathering the requested information. On September 25, 2007, Bruce sent another e-mail to Pisano, again seeking the requested documents.

On October 2, 2007, Bispham sent the union some of the requested information. Bispham provided only the information that he obtained from Rick Cheney as he was still not finished determining whether other staff members had information. The parties then proceeded with a meeting about the grievance on October 17, 2007. Meanwhile, Bispham found that two other staff members had relevant information. He provided the union with the additional information on or about December 3, 2007.

The employer's extended delay in providing the information was not reasonable. The employer's long delay is especially unreasonable considering that the grievance involved a termination, where the employee was separated from her job. Most of the requested information presumably would have been gathered by the employer before the July *Loudermill* hearing, and the employer had extensive notice of the union's requests which began on June 29, 2007, and so, the employer should have been able to provide the information before October and certainly before December 2007.

The nature of the information provided also does not justify the long delay. The research needed to provide the information was limited to only a few sources, three staff members. Also, the amount of information collected was not large. The employer only provided the union with 132 pages of information. The Examiner finds that the employer should not have needed such an extensive amount of time to review, redact and copy such small packets of documents.

Bispham essentially admitted that he was not the only person who could have fulfilled the information request when he testified that "someone else could have done it, but it would have been more difficult." Even if it would have been more difficult for others to have gathered and processed the information, the employer's other staff members should have been involved in order to provide it in a timely manner. As the employer's delay was extensive, and as the delay occurred while the terminated employee was removed from her position, the employer failed to fulfill its obligation to provide the documents in a reasonably timely manner.

CONCLUSION

The facts of this case justify the determination that the employer committed an unfair labor practice. The employer's delay in fulfilling the information request was unreasonably long. By failing to provide the information in a timely manner, the employer interfered with the collective bargaining rights of Lukaszak and refused to bargain in good faith with the union.

The Examiner awards the usual remedy for this type of unfair labor practice, and denies the union's request for an enhanced remedy. The evidence does not indicate a pattern of similar unfair labor practice violations. Also, the harm caused by the employer's delay was mitigated. The employer offered the union another meeting about the grievance after the union received all of the requested information. Furthermore, the arbitrator who heard this grievance reinstated the employee. Therefore, an extraordinary remedy is not warranted in this case.

FINDINGS OF FACT

1. On December 24, 2007, the Washington Federation of State Employees filed an unfair labor practice complaint against the University of Washington. A preliminary ruling was issued on

December 27, 2007, and it ordered that an answer be filed by January 17, 2008.

2. The employer's answer was not filed on the date specified by the Commission's preliminary ruling.

3. The employer's answer was filed less than four working days before the hearing on April 29, 2008.

4. The Examiner denied the late answer and the facts alleged in the union's complaint were deemed true. The hearing was limited to evidence regarding affirmative defenses.

5. The Washington Federation of State Employees is the exclusive bargaining representative for Paula Lukaszak and other similarly employed classified staff employed by the University of Washington in the Skilled Trades Bargaining Unit.[2]

6. In or about late May 2007, the union was notified of a disciplinary employment action being contemplated against a member of its Skilled Trades Bargaining Unit at the University of Washington. The employee at issue was Lukaszek. The proposed disciplinary action was termination.

7. On or about June 29, 2007, in an attempt to accumulate relevant information and to be able to fully prepare to respond to allegations brought by the employer in Lukaszek's upcoming *Loudermill* hearing, Lindsay Bruce, Senior Field Representative for the union, contacted Rick Cheney, Director of Facilities Services, Maintenance & Alterations, requesting "all information that management used in determining the proposed action."

---

[2] Findings of Fact 5-16 are based the relevant portions of the Statements of Fact contained in the union's complaint. These facts have been incorporated into this decision because the employer defaulted with its untimely answer to the complaint.

8. On July 2, 2007, in response to the request made by Bruce for information, Cheney refused to provide the information as requested and suggested Bruce pursue the documents through public disclosure.

9. On July 3, 2007, Bruce again gave a reply to the e-mail from Cheney asking for all the documents that the employer used in determining Lukaszak's termination.

10. On July 12, 2007, the pre-termination *Loudermill* hearing was held. At this time no information had been provided to Bruce.

11. On August 7, 2007, Bruce again requested copies of all information that the employer used in determining to terminate Lukaszek by sending a letter to Lou Pisano, Executive Director of Labor Relations. Limited information was received by Bruce from the University on this date. However, the information was sparse at best.

12. On August 8, 2007, Lukaszek was notified in writing that she was terminated from her employment as a plumber with the employer, effective at the end of her shift on August 13, 2007.

13. On August 22, 2007, Pisano responded to Bruce's letter and indicated that the employer was in the process of gathering the requested information.

14. On August 22, 2007, even though limited information as requested had been provided, the union, per contract, filed its request to initiate the grievance procedure at Step 2 in the grievance process. The Step 2 hearing was held on October 17, 2007.

15. On September 25, 2007, Bruce sent a follow-up e-mail to Pisano again requesting documentation regarding the termination of Lukaszek.

16. The employer finally provided what it claimed to be all of the requested information on or about December 3, 2007, some four and one half months after the *Loudermill* hearing, and over one month after the request for PERC mediation had been made.

17. The later delays in providing information were because the person assigned to respond to the request was not available to gather the documents.

18. When the employer finished providing the requested information, it offered the union another opportunity to present its grievance.

19. An arbitrator has ruled on the grievance and reinstated the employee to her position.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-WAC.

2. The employer failed to demonstrate good cause for its late answer and the Examiner was correct in applying WAC 391-45-210 to reject the answer filed only three working days before the hearing.

3. The employer interfered with employee rights in violation of RCW 41.80.110(1)(a) and refused to bargain in violation of RCW 41.80.110(1)(e) with its delays in fulfilling to the union's request for information.

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to fulfill an informational request in a reasonably timely manner.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.80 RCW:

   a. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

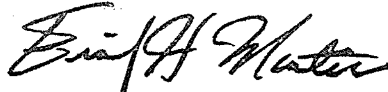
   b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Regents of the University of Washington and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

c. Notify the 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 complainant with a signed copy of the notice provided by the Compliance Officer.

d. Notify the Compliance Officer of the Public Employment Relations Commission, 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 Compliance Officer with a signed copy of the notice.

ISSUED at Olympia, Washington, this 21st day of November, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

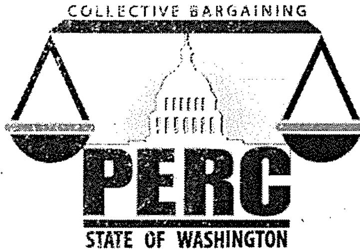


EMILY MARTIN, Examiner

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.

CASE 21440-U-07-5466
DECISION 10226 - PSRA

PUBLIC EMPLOYMENT RELATIONS COMMISSION



NOTICE

TO EMPLOYEES

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT *THE UNIVERSITY OF WASHINGTON* COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY delayed our fulfillment of a request for information made by the Washington Federation of State Employees with regard to the discipline of a bargaining unit member.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL be timely in responding to information requests made by the union.

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.

DO NOT POST OR PUBLICLY READ THIS NOTICE. AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.