

State - Ecology (Washington Federation of State Employees),
Decision 9243-B (PSRA, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE - ECOLOGY,)	
)	
Employer.)	
-----)	
KENNETH KOCH,)	CASE 19114-U-05-4859
)	
Complainant,)	DECISION 9243-B - PSRA
)	
vs.)	
)	
WASHINGTON FEDERATION OF)	
STATE EMPLOYEES,)	DECISION OF COMMISSION
)	
Respondent.)	
_____)	

Kenneth Koch, appeared pro se.

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

This case comes before the Commission on a timely appeal filed by Kenneth Koch (Koch) seeking review and reversal of certain findings of fact, conclusions of law, and order or dismissal issued by Examiner Karl E. Nagel.¹ The Washington Federation of State Employees (union) supports the Examiner's decision.

ISSUES PRESENTED

The only issue before this Commission is whether the union interfered with Koch's protected rights by failing to adequately inform other bargaining unit employees of their right to vote in the ratification election.

¹ *State - Ecology, Decision 9243 (PSRA, 2006).*

For the reasons set forth below, we affirm the Examiner's findings and conclusions that, with respect to Koch, the union did not commit an unfair labor practice by failing to adequately inform bargaining unit employees of the ratification election regarding the 2005-2007 collective bargaining agreement. Additionally, Koch's allegations that the union's failure to inform other bargaining unit employees about the ratification election impacted his protected rights also fails to state a cause of action.

ANALYSIS

Standard of Review

In *Clark County*, Decision 9127-A (PECB, 2007), we clarified our standard of review that this Commission applies when reviewing cases on appeal. We reiterate that standard here for our Chapter 41.80 RCW clientele.² Generally, appeals to the Commission present mixed questions of law and fact. This Commission reviews an examiner's interpretation of law *de novo* under the error of law standard. *City of Pasco v. Public Employment Relations Commission*, 119 Wn.2d 504, 507 (1992). Thus, an examiner's determination of the present state of the law does not bind the Commission.

With respect to the findings of fact issued by an examiner, the scope of our review is to determine whether those findings are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if

² This Commission is charged with the uniform administration of the state's collective bargaining laws. To that extent, cases interpreting Chapter 41.56 RCW are applicable to cases decided under Chapter 41.80 RCW where similarity exists between the statutes. See *State - Natural Resources*, Decision 8458-B (PSRA, 2005).

the record contains sufficient evidence of quantity to persuade a fair-minded, rational person of the truth of the declared premise. *PERC v. City of Vancouver*, 107 Wn. App. 694 (1991); *Renton Technical College*, Decision 7441-A (CCOL, 2002). The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).

However, it is not enough for an appealing party to merely disagree with an examiner's findings of fact as contrary to a version of events proffered by the appealing party. Rather, the party pursuing an appeal must demonstrate how the examiner's findings are not supported by substantial evidence through the evidence presented at hearing.³ As long as an examiner applies the correct legal standard to facts supported by substantial evidence, that decision should be upheld.

Factual and Legal Framework for Jurisdiction

This case arises out of the contract ratification process regarding the master 2005-2007 collective bargaining agreement negotiated between the union and the State of Washington. This Commission previously upheld three decisions, *Community College District 7 (Washington Federation of State Employees)*, Decision 9094-A (PSRA, 2006); *Community College District 19 (Washington Public Employees Association)*, Decision 9210-A (PSRA, 2006); and *Western Washington*

³ Although Koch's notice of appeal identifies the Findings of Fact and Conclusions of Law he wishes this Commission to review, his appeal brief fails to cite the pertinent part of the record demonstrating how the Examiner's decision is not supported by substantial evidence. To the extent that Koch's brief provides this Commission with insight as to how his challenged findings and conclusions are unsupported by the record, we will utilize his brief.

University (Washington Public Employees Association), Decision 8849-B (PSRA, 2006), where Commission examiners found that unions representing state employees failed to adequately inform bargaining unit employees of the contract ratification elections. In all three cases the union challenged this Commission's jurisdiction, and in all three cases the Commission found that because the unions agreed during collective bargaining negotiations to allow all bargaining members to vote on ratification of the agreement, this Commission had jurisdiction over complaints alleging the unions failed to provide adequate notice of those elections. Although the union in this case has not appealed its original challenge to our exercise of jurisdiction over Koch's complaint, we nevertheless incorporate that discussion by reference as the legal basis for our continued exercise of jurisdiction in these types of cases.⁴

Koch's complaint contains a significant factual twist that did not appear in the three previous contract ratification cases that we reviewed. In the three earlier cases, none of the complainant employees voted in the ratification elections. Furthermore, the evidence established that those respondent unions failed to provide

⁴ The Washington Public Employees Association petitioned the superior courts for review of our decisions in *Community College District 19* and *Western Washington University*. Those petitions, filed under Chapter 34.05 RCW, are still pending before the courts. The Washington Federation of State Employees was the respondent union in *Community College District 7*, and following our decision in that case affirming the examiner's decision that this Commission had jurisdiction and the union committed an unfair labor practice, it did not petition the superior court for review. Until instructed otherwise by an appellate court of this state, our decision to assert jurisdiction in these types of cases stands. See *Bauman v. Turpen*, 139 Wn. App. 78 (2007) (findings of fact and conclusions of law of a superior court have no precedential value):

non-member bargaining unit employees adequate notice that they were permitted to vote in the ratification election.

In the case before us, Koch received notice of the contract ratification vote and in fact voted in that election. Thus, the Examiner applied Commission precedent and found that the union did not commit an unfair labor practice by failing to inform him of the ratification election. Because Koch voted in the ratification election, the Examiner disagreed with Koch's assertion that he suffered actual harm and dismissed Koch's complaint. The Examiner also found that Koch did not have standing to raise an unfair labor practice on behalf other employees. Koch did not appeal the Examiner's legal conclusion that he did not have standing to assert rights on behalf of other employees.

Did the Union Interfere With Koch's Protected Rights?

We apply the same law to this case as we did in *Community College District 7 (Washington Federation of State Employees)*, Decision 9094-A, and incorporate that discussion by reference. Although Koch spends a considerable amount of time focused on the impact that the union security provision negotiated in the collective bargaining agreement has on him, our jurisdiction in these cases is limited to a single issue of whether the union provided the complainant adequate notice of the ratification election. From this record, one fact is clear: Koch received notice of the ratification election for the 2005-2007 collective bargaining agreement and, in fact, voted in that election. Because Koch actually voted, the Examiner correctly concluded that, with respect to Koch, the notice of the ratification election provided by the union did not interfere with his protected rights.

Turning to Koch's claim that the union's lack of notice to other bargaining unit employees impacted his rights, that theory fails to state a cause of action that can be redressed by this Commission. The failure in Koch's legal theory is that he attempts to bootstrap the rights of other bargaining unit employees onto his own rights. In cases such as this, where an exclusive bargaining representative permits all bargaining unit employees to vote in a ratification election, the right of the employee to vote in that election is an individual right. Our jurisdiction in cases such as this is limited to claims that the union's failure to inform an individual employee of the ratification election precluded that employee from voting.

With respect to Koch's claims that the union permitted union members to vote by absentee ballot while forcing non-members to vote on-site at specific locations, we first note that unions, as private organizations, are free to proscribe the method by which bargaining unit members vote in ratification elections. Second, based upon the timing of the contract negotiations, and the fact that the union and employer reached agreement that permitted all bargaining unit employees the opportunity to vote on September 13, 2004, we find support for the union's assertion that there was simply not enough time for a mail election. The union, as the administrator of the election, was in the best position to know what method of balloting would best fit the circumstances.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order of Dismissal issued by Examiner Karl E. Nagel are AFFIRMED and adopted as the

Findings of Fact, Conclusions of Law, and Order of Dismissal of the Commission.

Issued at Olympia, Washington, the 21st day of December, 2007.

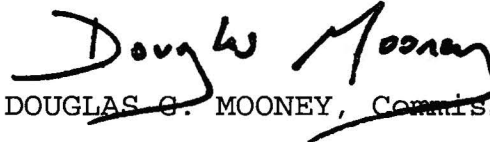
PUBLIC EMPLOYMENT RELATIONS COMMISSION



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DOUGLAS G. MOONEY, Commissioner