

Community College District 3 (Olympic) (Washington Public Employees Association), Decision 9486 (PSRA, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 3)		
(OLYMPIC),)		
)		
Employer.)	<u>CASE</u>	<u>DECISION</u>
-----))	19128-U-05-4862	9486 - PSRA
JAMES STUART, DAVID)	19136-U-05-4863	8899-A - PSRA
BARTELHEIM, JEANNE GARDNER,)	19157-U-05-4869	8900-A - PSRA
CATHRYN GRAY, WILLIAM OLDMAN,)	19158-U-05-4870	8901-A - PSRA
SHIRLEE WILFORD AND)	19159-U-05-4871	8902-A - PSRA
JACQUELINE BAKER)	19204-U-05-4880	9487 - PSRA
)	19214-U-05-4883	9488 - PSRA
)		
Complainants,)		
)		
vs.)		
)		
WASHINGTON PUBLIC EMPLOYEES)	CONSOLIDATED	
ASSOCIATION, UFCW LOCAL 365)	FINDINGS OF FACT,	
)	CONCLUSIONS OF LAW,	
Respondent.)	AND ORDER	
)		

The employer did not appear.

Schwerin Campbell Barnard LLP, by *Lawrence Schwerin*, Attorney, for the union.

James Stuart, David Bartelheim, Jeanne Gardner, Cathryn Gray, William Holdman, Shirlee Wilford, and Jacqueline Baker, appeared on their own behalf.

Between January 18 and February 18, 2005, James Stuart, David Bartelheim, Jeanne Gardner, Cathryn Gray, William Holdman, Shirlee Wilford, and Jacqueline Baker (complainants) filed separate complaints charging unfair labor practices, naming Washington Public Employees Association, UFCW Local 365 (union) as respondent. Complainants Bartelheim and Wilford occupy positions in a supervisory classified bargaining unit at Community College District 3,

also known as Olympic Community College (employer), which operates an institution of higher education; the remaining complainants occupy positions in a non-supervisory bargaining unit therein. The complaints concern an alleged failure to notify bargaining unit members adequately of their right to vote on a proposed collective bargaining agreement.

On March 29, 2005, agency staff consolidated these cases and found that the complaints stated causes of action based on allegations that the union had failed to provide adequate notice to allow all bargaining unit employees to participate in a contract ratification vote; misrepresented that employees had to join the union to be eligible to vote, and had failed to include the union security clause in a summary of the new contract. Examiner Carlos R. Carrión-Crespo held a hearing on October 5 and 6, 2005. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Does the Commission have jurisdiction over these complaints concerning notice and opportunity to vote on the ratification of these particular collective bargaining agreements?
2. If the Commission has jurisdiction, did the WPEA fail to fulfill its duty of fair representation by failing to provide adequate notice and opportunity to vote in the ratification election?
3. If the Commission has jurisdiction, did the WPEA fail to fulfill its duty of fair representation by failing to include the union security clause in a summary of the new contract?

The Examiner rules that the Commission has jurisdiction to adjudicate claims asserting breach of the duty of fair representation owed by unions to all bargaining unit employees, with respect to situations where a union agrees to allow all bargaining unit employees to vote on ratification of a collective bargaining agreement. The Examiner finds that the union breached its duty of fair representation by its conduct during the ratification of the 2005-2007 collective bargaining agreement at Olympic Community College, but did not fail to include the union security clause in a summary of the new contract.

ANALYSIS

Issue 1: Does the Commission have jurisdiction over these complaints?

On September 17, 2004, the union and the employer concluded negotiations for a collective bargaining agreement which covering the period from July 1, 2005, to June 30, 2007. It included a memorandum of agreement which specified that "the Union agrees that ratification votes will be taken by institution, and that all bargaining unit employees will be allowed the opportunity to vote." The agreement did not specify the voting process or procedures (including notification) that the union would follow. Other than agreeing that the union would allow all bargaining unit members the opportunity to vote, there were no other discussions on the matter. The complainants are bargaining unit members who have not joined the union, but pay the union a representation fee under RCW 41.80.100(1). The complainants allege that the union did not notify them adequately of their right to vote in the election that the union conducted on September 25, 2004, to ratify the two-year collective bargaining agreement.

An agreement to allow all bargaining unit members the opportunity to vote exposes the union that signs it to scrutiny regarding any allegation that it restrained employees from the right to vote granted to them by the agreement. *Community College 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A (PSRA, June 20, 2006). The aforementioned "memorandum of agreement" created voting rights for employees who have not joined the union and obligated the union to provide fair representation to them in the ratification process. Therefore, the Commission has jurisdiction in this case to determine whether the union restrained employees in the exercise of rights protected by RCW 41.80.050 and RCW 41.80.080(3), in violation of RCW 41.80.110(2)(a). *Community College 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A.

Issue 2: Did the WPEA fail to provide adequate notice and opportunity to vote in the ratification election?

If the terms of a contract require that all affected employees ratify it, a union breaches its duty of fair representation if it fails to submit the contract to a meaningful vote of those employees. Once the union agrees in collective bargaining to allow all bargaining unit employees the opportunity to vote, it had an obligation to unambiguously notify all employees of their rights. *Community College 7 (Shoreline) (Washington Federation of State Employees)*, Decision 9094-A (PSRA, June 20, 2006). A union must treat all factions and segments of the bargaining unit without hostility or discrimination, exercise its discretion to assert the rights of individual members in good faith and honesty, and avoid arbitrary conduct. The legislative mandate to submit collective bargaining agreements to the legislature for funding by October 1, 2004, does not allow parties to circumvent the other responsibili-

ties that Chapter 41.80 RCW imposes. The complainant who alleges that the union failed to meet its duty of fair representation must show:

[T]hat the union behaved irrationally, invidiously, fraudulently, deceitfully, dishonestly, or indifferently as to the rights of bargaining unit employees, or that the union's conduct was so grossly deficient as to be properly equated with arbitrary action. The complainant must also demonstrate a causal nexus between the breach of the union's duty of fair representation and the harm suffered by the employee.

Community College 19 (Columbia Basin) (Washington Public Employees Association), Decision 9210-A. Thus, the complainants in this case will succeed if they prove indifference on the part of the union, that is, "no interest, concern, or feeling." WEBSTER'S NEW WORLD DICTIONARY 716 (2d College ed. 1976). The results of such a ratification vote will be annulled if they demonstrate that they could have affected the outcome of the ratification election. *Community College 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A.

The complainants maintain that the union did not notify them adequately of the vote. They testified that they did not receive notice of the vote and that they do not routinely search for union information in bulletin boards, that they did not receive the electronic message that the union sent, and that the message incorrectly stated that bargaining unit members had to pay union dues if they wished to vote. The complainants expressed frustration that the union did not identify its bulletin boards clearly and did not use the postal service and flyers to inform them about the process, like the union had done when it held a vote to approve a union security clause 10 or 15 years ago. They also state that many employees did not have access to a personal computer with

which to search for the union's internet website and that the voting place and date was not published on the website until four days before the vote. Lastly, they point out that holding the vote on a Saturday afternoon excluded most employees. Their claim rests mainly on the lack of adequate information on the ratification process, not on the union's insistence on membership before voting.

The record demonstrates the union's actions and inactions concerning the ratification of the 2005-2007 contract at Columbia Basin Community College precluded the complainants from having a meaningful opportunity to vote on ratification of the contract. The following summarizes the efforts that the union made to notify bargaining unit members of the ratification vote.

On September 18, 2005, the union sent an electronic message to some bargaining unit members which announced that the parties had reached a tentative agreement, summarized some economic provisions, and directed readers to the union's website. The message also announced that an information meeting would take place on September 21, 2005, a ratification vote would occur the following weekend, and both would take place in undetermined locations. It also advised readers that the contract would establish a "closed shop," and that "[c]lassified staff not a member [sic] of the union who wish to vote may do so by submitting a green card (membership application) with 1 month membership dues (\$32) at the voting location." The union was aware that the employer's electronic mail system did not deliver messages to all of the bargaining unit employees. As a result, the system did not transmit the message to all of the employees of the bargaining unit.

Although the membership requirement to vote was contrary to the "memorandum of agreement," the union attributes the incorrect information to a union secretary who had apparently presumed that

only members would vote to ratify the contract, as had occurred in several contracts signed under the preceding statute. The union was not responsible for the distribution deficiency and sent the message the day after the parties reached a tentative agreement, which distinguishes this set of facts from those in *Community College 7 (Shoreline) (Washington Federation of State Employees)*, Decision 9094-A (PSRA, June 20, 2006).¹ However, the union relied erroneously on the employer's communications method, which the union did not control, and communicated mistaken information which the union had to correct through affirmative action.

On September 20, 2004, the union placed the draft agreement and the "memorandum of agreement" on its website. It included a notice announcing the schedule of the ratification vote, which stated that "All WPEA bargaining unit members have an opportunity to vote on ratifying the contract that pertains to your work group - at one of the following polling sites . . ." All voting would take place on Saturday, September 25, 2004, and Sunday, September 26, 2004. The voting in Olympic College would take place on September 25, 2004, from 3:00 P.M. to 6:00 P.M. at the Bremer Student Center. However, every bargaining unit member could vote in any polling site. The locations and times were subject to change, and the document directed bargaining unit members to check for changes on Friday, September 24, 2004.

On September 21, the union held a meeting with bargaining unit members in which union officials discussed the tentative agreement, including the union security clause and pointed out that all

¹ In *Shoreline*, employees had to register on a mailing list affirmatively and voluntarily in order to receive updates sent through that method of communication; also, the union "wasted" a week, in the Commission's words, waiting to get employer authorization before sending an electronic message to employees.

bargaining unit members would have an opportunity to vote on the contract. Between 15 and 20 persons attended the meeting, out of more than 140 members of the bargaining units.

On September 23, 2004, the union restated an earlier announcement that it would hold the ratification vote on September 25, through notices posted in bulletin boards on the first floor of the College Service Center building, in the Bremer Student Service Center building, and in the mail center located in the Facilities Service Center Building. The union assumed that all employees would be aware of the effects of the PSRA, that all employees would look at the bulletin boards, and that bargaining unit members would know about the date and place of the vote through word of mouth. Also on September 23, the union sent an electronic message to union members with the same content, plus an introductory paragraph which announced the opportunity to vote and encouraged employees to join the union.

On Saturday, September 25, 2004, from 3:00 P.M. until 6:00 P.M., the union conducted an election for all bargaining unit employees to vote on whether they accepted or rejected the tentative agreement in the Bremer Student Center in Olympic College. The record does not show whether the members of the supervisory and non-supervisory bargaining units voted separately. Only 24 bargaining unit employees voted. The complainants did not vote.

Contrary to the complainants' allegations, the Examiner will not infer that the union was negligent by holding the election on a Saturday, because such a date avoided restrictions based on work schedule. Neither will the Examiner evaluate what the union could have done, but only whether its efforts showed that it was not indifferent to the rights of the complainants.

It is evident that the union was unable to meet the goal of mobilizing a large number of bargaining unit members to vote. The union's efforts were more extensive than what the Commission described in *Community College 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A and *Community College 7 (Shoreline) (Washington Federation of State Employees)*, Decision 9094-A, but they could not reach enough bargaining unit members to include the complainants. The one electronic message that could have reached many bargaining unit members did not reach the complainants and contained misleading information on eligibility to vote, which the union did not correct in another electronic message.

The union used two other methods of communication and stated unambiguously that all bargaining unit employees regardless of union membership were eligible to vote on ratification of the contract. However, the union could not reasonably expect that any of these methods would reach bargaining unit employees who received the incorrect information contained in the September 18 electronic message, or who otherwise were accustomed to the previous practice of allowing only members of the union to vote. The union assumed at its own peril that "word of mouth" would reach the targeted audience, and its assumption did not prove true. In conclusion, the union's means were so deficient as to signal that the union had no real interest in promoting the rights of the complainants. This finding meets the "indifference" standard set by the Commission.

The crucial element in this conclusion is that the union had an obligation to let each bargaining unit member, including the eight complainants, know that the terms of the agreement with the employer provided them an opportunity to vote on the contract. This was particularly true in this case because this right

represented an abrupt change in past practice. The complainants showed that the union was indifferent to this obligation, and thus discharged their burden of proof. The union committed the unfair labor practice alleged in the complaint.

Issue 3: Did the union fail to include the union security clause in a summary of the new contract?

The tentative agreement signed on September 17 contained a "union security" provision, which required employees to pay an agency shop fee to the exclusive bargaining representative, as RCW 41.80.100 allows. The union had the duty to inform bargaining unit members of this fact because it represented a new element in collective bargaining.² The complainants allege that the overview of the contract that was published on the union's website on September 20 did not include the union security clause. However, it was discussed at the top of the fourth page of the document. Therefore, the evidence does not sustain the allegation.

Remedies

The fashioning of remedies is a discretionary action of the Commission, based on a liberal construction of the statute to accomplish its purpose. The Commission has the remedial powers which may be necessary to effectuate the purposes of the collective bargaining statute to make the Commission's lawful orders effective. The Commission will not relieve complainants of their union security obligation nor order a second ratification election unless the complainants show that they could have affected the outcome of

² The union had attempted to organize a separate vote for union security under case number 18580-R-04-0225. However, the petition was filed too late for the Commission to comply with legal requirements before the statutory deadline.

the election, because such a remedy "would allow numerous other individuals who did not file complaints to benefit from the efforts of these two complainants." *Community College 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A.

This Examiner directs the union to cease and desist from failing to properly notify the complainants and all bargaining unit employees of their contract ratification rights. The Examiner also directs the union to read into the record at its next state-wide convention the attached notice and to permanently append such notice to the official minutes of that meeting. Additionally, the union shall publish a copy of the notice in its next issue of the "WPEA Sentinel."

However, the complainants did not present evidence regarding the results of the ratification election, and thus the record does not show that they could have affected its outcome. Given this fact and that they continue to benefit from the negotiated contract, this Examiner declines the complainants' requests to vacate the result of the ratification vote and to relieve them of their union security obligation.

FINDINGS OF FACT

1. Community College District 3, also known as Olympic College, is an institution of higher education of the state of Washington within the meaning of RCW 41.80.005(10).
2. The Washington Public Employees Association, an employee organization within the meaning of RCW 41.80.005(7), is the exclusive bargaining representative for all supervisory and non-supervisory classified employees and is the exclusive

bargaining representative for two classified bargaining units certified by the Public Employment Relations Commission at Olympic Community College, which at all pertinent times included more than 140 members.

3. James Stuart, Jeanne Gardner, Cathryn Gray, William Holdman, and Jacqueline Baker occupy positions in a non-supervisory bargaining unit at Olympic Community College, have not joined the Washington Public Employees Association, and are complainants in five of the present cases.
4. David Bartelheim and Shirlee Wilford occupy positions in the supervisory bargaining unit at Olympic Community College, have not joined the Washington Public Employees Association, and are complainants in two of the present cases.
5. Olympic Community College and the Washington Public Employees Association are parties to a collective bargaining agreement covering all bargaining units certified by the Public Employment Relations Commission at Olympic Community College, with an effective date of July 1, 2005, through June 30, 2007.
6. On September 17, 2004, the Washington Public Employees Association and the State of Washington reached a tentative agreement on the collective bargaining agreement described in paragraph 5 of these findings of fact, under the Personnel System Reform Act, Chapter 41.80 RCW. The agreement included a "memorandum of understanding" that would allow all bargaining unit employees to vote to accept or reject the tentative agreement, regardless of affiliation with the Washington Public Employees Association.

7. The memorandum of understanding described in paragraph 6 of these findings of fact did not specify the voting process or procedures (including notification) that the Washington Public Employees Association would follow.
8. On September 18, 2004, the union notified members of the bargaining unit through the Olympic Community College's electronic mail system that they would have the opportunity to vote and directed them to the union website for more information.
9. The Olympic Community College's electronic mail system that the Washington Public Employees Association used on September 18, 2004, did not transmit messages to all of the members of the bargaining unit. For that reason, the message described in paragraph 8 of these findings of fact did not reach any of the complainants.
10. On September 20, 2004, the Washington Public Employees Association placed a copy of the tentative agreement described in paragraph 6 of these findings of fact on its internet website along with a bulletin that a computer user had to view before accessing the website. The bulletin contained an overview of the higher education master agreement, including union security, and information concerning the dates, times and places of a vote to accept or reject the tentative agreement described in paragraph 5 of these findings of fact. It also noted that the locations and times were tentative so interested parties should check for changes on Friday, September 24, 2004. The bulletin also stated that "all WPEA bargaining unit members have an opportunity to vote on ratifying the contract."

11. On September 21, 2004, the Washington Public Employees Association held a meeting which between 15 and 20 employees attended, where its officials discussed the tentative agreement described in paragraph 6 of these findings of fact. They pointed out the union security clause and that all bargaining unit members were eligible to vote on the contract.
12. The Washington Public Employees Association conducted an election for all bargaining unit employees to vote on whether they accepted or rejected the tentative agreement described in paragraph 6 of these findings of fact on Saturday September 25, 2004, from 3:00 P.M. until 6:00 P.M. at the Bremer Student Center in Olympic Community College. However, every bargaining unit member could vote in any polling site at any community college whose employees were represented by the Washington Public Employees Association. Only 24 bargaining unit employees voted. None of the complainants voted.
13. Considering the totality of the circumstances, the Washington Public Employees Association should have foreseen that its efforts to notify bargaining unit members were not likely to reach an audience of employees that included the complainants. The four days' advance notice did not mobilize a substantial number of bargaining unit members to vote in the ratification election described in paragraph 12 of these findings of fact. These efforts were so deficient as to signal that the Washington Public Employees Association was indifferent to the right of the complainants to vote in the ratification election.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction and statutory authority to hear this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.

2. James Stuart, David Bartelheim, Jeanne Gardner, Cathryn Gray, William Holdman, Shirlee Wilford, and Jacqueline Baker have legal standing to file a complaint charging unfair labor practices, and the Commission has jurisdiction under RCW 41.80.110 to determine and remedy complaints that the employee organization described in paragraph 2 of the above findings of fact has interfered with or restrained such employees in the exercise of their statutory rights under RCW 41.80.050 by its breach of its duty of fair representation that entailed an agreement reached with the State of Washington in collective bargaining as described in paragraph 5 of the foregoing findings of fact.
3. By not fairly and adequately notifying all bargaining unit employees who pay representation fees to the Washington Public Employees Association in the bargaining units it represents at Olympic Community College, as described in paragraph 2 of the above findings of fact, of the opportunity to vote on whether the bargaining unit would accept or reject the tentative collective bargaining agreement, as described in paragraph 12 of the above findings of fact, and thereby breaching its duty of fair representation, the Washington Public Employees Association interfered with and restrained those employees in the exercise of their rights under RCW 41.80.050, and has committed an unfair labor practice in violation of RCW 41.80.110(2)(a).
4. The Washington Public Employees Association did not fail to include the union security clause in a summary of the new contract, and thus did not interfere with or restrain those employees in the exercise of their rights under RCW 41.80.050, nor did it commit such an unfair labor practice in violation of RCW 41.80.110(2)(a).

ORDER

The Washington Public Employees Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Failing to adequately inform James Stuart, David Bartelheim, Jeanne Gardner, Cathryn Gray, William Holdman, Shirlee Wilford, Jacqueline Baker and all members of the supervisory and non-supervisory classified employee bargaining units of their voting rights conferred by agreement of the Washington Public Employees Association with the State of Washington in collective bargaining.
 - b. In any other manner, restraining or coercing employees in the exercise of their rights under Chapter 41.80 RCW.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS to effectuate the purposes and policies of Chapter 41.80 RCW.
 - a. Post, in conspicuous places on Olympic Community College premises where Washington Public Employees Association notices to all employees are usually posted, copies of the notice attached to this order. Such notices shall be duly signed by an authorized representative of the Washington Public Employees Association. Such notices shall remain posted for 60 days. Reasonable steps shall be taken by the respondent, Washington Public Employees Association, to ensure that such notices are not removed, altered, defaced, or covered by other material.

- b. Read the notice attached to this order at a meeting of all employees in the bargaining units represented by the Washington Public Employees Association at Olympic Community College and at the next state-wide convention held by the Washington Public Employees Association.
- c. Publish in the next monthly issue of the "WPEA Sentinel" a true-sized copy of the notice attached to this order.
- d. Notify each of the above-named complainants, 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 each named complainant with a signed copy of the notice attached to this order.
- e. 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 attached to this order.

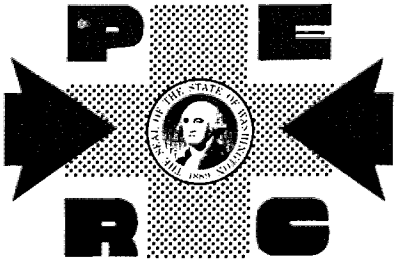
Issued at Olympia, Washington, the 22nd day of November, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CARLOS R. CARRIÓN-CRESPO, 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 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 WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to fairly and adequately notify all bargaining unit employees in the supervisory and non-supervisory classified units we represent of the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement reached between the State of Washington and ourselves, the Washington Public Employees Association.

WE UNLAWFULLY interfered with and restrained all bargaining unit employees in the exercise of their statutory rights by breaching our duty of fair representation.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease and desist from failing to fairly and adequately inform all bargaining unit employees of the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement reached between the Washington Public Employees Association and the State of Washington on September 17, 2004, in negotiations for a successor contract.

WE WILL cease and desist from failing to fairly and adequately inform all bargaining unit employees of the opportunity to vote on the acceptance or rejection of any other tentative collective bargaining agreement reached between the Washington Public Employees Association and the State of Washington in negotiations, when the negotiated agreement calls for such opportunity (and notice).

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

DATED: _____

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's website, www.perc.wa.gov.