STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION,	)	
Complainant,	)	CASE 21123-U-07-5388
vs.	)	DECISION 9946 - PSRA
COMMUNITY COLLEGE DISTRICT 2 (GRAYS HARBOR),	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Schwerin Campbell Barnard, by *Kathleen Phair Barnard* for the union.

Attorney General Rob McKenna, by *Kari Hanson*, Assistant Attorney General, for the employer.

On June 21, 2007, the Washington Public Employees Association, UFCW Local 365, (union) filed an unfair labor practice complaint with the Public Employment Relations Commission under Chapter 391-45 WAC. The complaint alleged that Grays Harbor Community College (employer) committed an unfair labor practice within the meaning of Chapter 41.80 RCW. On June 28, 2007, the Commission issued a preliminary ruling. On July 18, 2007, the employer filed its answer, accompanied by affirmative defenses.

MOTIONS FOR SUMMARY JUDGEMENT

On August 17, 2007, the Union filed a motion for summary judgement and its brief in support of that motion. On August 31, 2007, the employer filed its own motion for summary judgement and its

response to the union's motion. On September 10, 2007, the Union replied to the employer's response to the motion. On September 11, the Commission assigned Examiner Starr Knutson to the case. On September 20, the employer submitted a document in support of its motion for summary judgement. On September 21, I conducted a conference call with the parties' representatives to discuss these matters. I granted the parties' request for summary judgement and asked the parties to submit a list of stipulated facts. On September 27, the employer submitted a supplemental declaration[1] from its human resources officer. On September 28, the parties' submitted their statement of stipulated facts to complete the record.

In both motions for summary judgement, the parties each claim that there are no disputed facts at issue and therefore a summary judgement ruling is appropriate in this case. Motions for summary judgment are processed under WAC 391-08-230, which states in pertinent part:

> A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law.

Where the parties agree to the appropriateness of summary judgement, it is normally granted unless the record reveals factual disputes. *Snohomish County*, Decision 8733 (PECB, 2004). The Commission held in *State - General Administration*, Decision 8087-B (PSRA, 2004) that a "material fact" is one upon which the outcome

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[1] Although the union stated it was not aware the employer intended to submit additional information, it did not object to it being included in the record.

of litigation depends. A motion for summary judgment calls upon the examiner to make final determinations on a number of critical issues, without the benefit of a full evidentiary hearing and record. For this reason, the Commission has consistently noted that granting a motion for summary judgement cannot be taken lightly.

Based upon the stipulations, arguments, and answers submitted by the parties, they do not dispute any of the material facts of this case. Therefore, summary judgement is appropriate.

ISSUE - DEDUCTION OF UNION DUES

1. Did the employer violate the statute when it contacted bargaining unit employees concerning their payroll deduction for union dues and stated the amount deducted was incorrect and promised to reimburse those employees for the excess union dues?

Applicable Law

The Public Service Reform Act, Chapter 41.80 RCW, governs the relationship between the union and the employer. RCW 41.80.100 (Emphasis added) provides in relevant parts:

> (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment . . . of an agency shop fee to the employee organization that is the exclusive representative for the bargaining unit in which the employee is employed. *The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.*
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> . . . .

> (3) Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the employee organization that is *the exclusive representative shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee organization.* The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.

ANALYSIS

This is a case of first impression for the Commission. The union makes a unique charge concerning this employer's actions. The union does not claim the employer failed to deduct dues as provided for in the collective bargaining agreement and authorized by the employee. Here, the union charges the employer with interfering in its internal affairs and relationship with its members or fee payers by not deducting union dues based on the total *gross* salary certain employees earn which includes the work of a separate bargaining represented by a different union.

The facts of this matter are simple, however unique. The parties bargained a new contract which became effective July 1, 2005. Included in that agreement was a new union security provision. In the spring of 2007, the employer discovered it had incorrectly computed the amount of dues that it had been remitting to the union for certain employees in its bargaining unit. The employer's payroll office had computed the dues on those employee's entire gross salary which included both their work as a faculty member and their work as a classified employee.

Employees of the state's community colleges may work in both a classified position and a faculty position during a particular

academic quarter or semester. Here, this union represents a bargaining unit of all classified employees and the Grays Harbor Federation of Teachers, Local 4984, represents a unit of all faculty/instructor employees. The faculty collective bargaining agreement does not include a provision for union security.

More specifically, two employees performed work covered by two different bargaining units during a specific time period and the employer discovered what it believed to be an error when computing the appropriate amount of dues to be deducted. It is the employer's communication with these two employees, concerning the employer's calculation of the dues deduction from their pay, that raised the issue in this case.

The collective bargaining agreement in effect July 1, 2005, states in part:

> Article 35.1 Union Dues
>
> When an employee provides written authorization to the Employer, the Union has the right to have deducted from the employee's salary, an amount equal to the fees or dues required to be a member of the Union. The Employer will provide payments for all said deductions to the Union at the Union's official headquarters each pay period.
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> . . . .
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> 35.4 The Employer agrees to deduct the membership dues, agency shop fee, non-association fee, or representation fee from the salary of employees who request such deduction in writing. Such request will be made on a Union payroll deduction authorization card.

The union by-laws specify in Article 9:

> **Section 2**. Regular members shall pay monthly dies to WPEA at a rate of one and two and one-half tenths percent (1.25%) of gross salary. The maximum dues shall be $48 per month. . . .

The effected employees at issue in this case provided cards to the employer authorizing it to deduct 1.25% of their gross salary as union dues. There is no mention of the term *gross salary* in the collective bargaining agreement.

Gross Salary as the Basis for Union Dues Deduction

The union asserts that the term *gross salary* controls the amount of monies to be remitted to the union. It believes the term means the whole amount of the salary earned by an employee no matter what type of work the employee performed in earning those wages. I disagree. The union is entitled to collect dues based only on the wages earned while performing the bargaining unit work that is represented by that particular exclusive representative.

The union receives dues, under a union security provision for the activities it performs on behalf of the employees in a bargaining unit for which it has been certified as the "*exclusive* bargaining representative."[2] The term "exclusive" means that no other employee organization has jurisdiction over that body of work. Logically then, the union should receive dues based on the wages for the work performed in a unit for which it has been certified as the exclusive representative.

Furthermore, the statute specifies the purpose for which dues may be remitted when it identifies the specific "purposes germane to the collective bargaining process" for which the union may collect dues. In a representation fee, the union may only charge:

> that part of the fee no greater than the part of the membership fee that represents a pro rata share of

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[2] The law provides that employees who do not wish to become members of the union may pay a fee based solely on the activities related to collective bargaining and contract administration.

> expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

The union therefore cannot collect dues for any other of its activities and, more germane to this case, it cannot collect dues for the identified purposes in the statute that are in fact done by another bargaining agent for another bargaining unit. It can only charge for contract administration of its own contract and not for the administration of the collective bargaining agreement of another union representative.

Employer Interference in Internal Union Affairs

The union further argues that the employer has interfered in its internal affairs by attempting to rewrite its by-laws to conform to what the employer believes the amount ought to be to acquire or retain membership in the organization. I disagree. The language in the collective bargaining agreement only pertains to the wages, hours and working conditions of employees performing the work that is certified to the exclusive representative; it does not pertain to work outside of the jurisdiction of the union. The provisions of the contract between this employer and this union cannot be construed to apply the wages, hours and working conditions of work which has been certified to another exclusive representative. Therefore, common sense leads me to the conclusion that dues should only be based on wages for bargaining unit work.

In one of its briefs, the union alleges that the employer intentionally intruded into internal union affairs by contacting union members about the amount of dues that had been deducted and stating they would receive reimbursement for the amount over paid.

However, the record includes a letter the employer wrote dated May 30, 2007, which states in part that:

> [I]t had applied the 1.25% to the entire gross salary earned . . . including both your classified and part-time faculty salaries. However, we have recently determined that dues should be deducted based only on your classified salary, since your part time faculty salary is unrelated to the WPEA/GHC collective bargaining agreement or to the law governing that agreement.

I do not believe that the meaning of that letter is inapposite to the union's arguments. The language of that letter could not be, nor would be, interpreted by a reasonable employee to be an intrusion into or comment on union affairs. The record does not contain any evidence of such an interpretation or perception. The letter lays the whole burden on the employer and its calculations; it does not make any assertions about the union, its by-laws or negative inference concerning the amount of dues set by the union.

CONCLUSION

The union bargained a contract with the employer that governs the terms and conditions of employment of the employees included in the classified bargaining unit. Those classified bargaining unit employees have obligated themselves to pay monies to the union bargaining on their behalf as classified employees and not as faculty employees. The amount of that payment should thus be based on their wages earned while performing the work of the classified bargaining unit. The union does not bargain concerning faculty work and it does not represent these employees when they are preforming faculty bargaining unit work; therefore it is not entitled to any dues monies based on faculty work. The union certified to represent a particular bargaining unit bargains concerning the working conditions of those employees.

While it may have been more prudent for the employer to approach the union prior to contacting the employees, the union clearly states in its statement of the facts included with the complaint, that it would refuse to discuss the matter with the employer. The employer appropriately corrected its error as soon as it discovered that incorrect deductions had been made.

FINDINGS OF FACT

1. Community College District 2 (Grays Harbor) is an institution of higher education under the provisions of RCW 41.80.005(10).

2. The Washington Public Employees Association, UFCW Local 369, is an employee organization under the provisions of RCW 41.80.005(7). It represents a bargaining unit of classified employees of the college.

3. Th faculty at the college are represented by another bargaining agent and that collective bargaining agreement does not contain a union security provision.

4. The college and the Union bargained a contract effective July 1, 2005, through June 30, 2007, that contained a new union security provision. The previous contracts between the parties had not contained such a provision.

5. The union's by-laws state that union dues required for membership are 1.25% of gross salary.

6. Some employees perform work that is covered in the two different bargaining units, each with separate and distinct collective bargaining agreements.

7. In June 2007 the employer discovered it had applied the 1.25% union dues deduction formula to the gross salary, which included pay for non-bargaining unit work, of certain employees. Those employees had performed both classified work represented by the Union and faculty work represented by the faculty union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

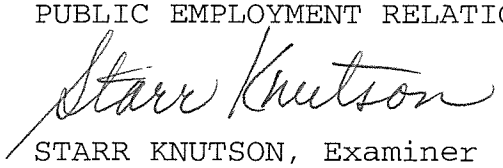
2. Community College District 2 (Grays Harbor) did not commit an unfair labor practice and did not violate RCW 41.80.110(1)(a) and (e) when it corrected the calculation of union dues to apply only to wages earned while performing bargaining unit work.

ORDER

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

ISSUED at Olympia, Washington, this 28th day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STARR KNUTSON, 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.