

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF  
WASHINGTON,

Complainant,

vs.

WENATCHEE SCHOOL DISTRICT,

Respondent.

CASE 23450-U-10-5978

DECISION 11138-A - PECB

DECISION OF COMMISSION

*Jason MacKay*, Staff Attorney, for the union.

*Dionne & Rorick*, by *Michael H. Rorick*, Attorney at Law, for the employer.

On August 17, 2010, the Public School Employees of Washington (union) filed an unfair labor practice complaint against the Wenatchee School District (employer). The union alleged that the employer refused to bargain by making a unilateral change to the methodology used to pay bargaining unit employees to perform auxiliary duties. Examiner Lisa A. Hartrich conducted a hearing and found that the employer refused to bargain. The employer now appeals that decision.<sup>1</sup>

<sup>1</sup> The Commission's rules require that a notice of appeal identify the specific rulings, findings, and conclusions a party wishes to challenge. WAC 391-45-350(3). A party must put the Commission and opposing party(ies) on notice of the argument(s) it desires to advance. *Clover Park School District*, 7073-A (EDUC, 2001). Where the notice of appeal does not supply sufficient information on which to determine a specific basis for an appeal, the Commission need not reach the substantive issues of the case. *Clover Park School District*, Decision 7073-A. The Commission has authority to waive its rules, when a party is not prejudiced. WAC 391-08-003. In the present case, we waive strict application of our rules because it is clear from the parties' appellate briefs that the union was not prejudiced by the employer's failure to assign error to any portion of the Order.

On appeal the employer makes several arguments, none of which we find persuasive. To address those arguments we incorporate the Examiner's applicable legal standards, analysis and conclusions here as we see no reason to restate them. We will address certain arguments raised by the employer.

First, the employer argues that the union did not have standing to bring this unfair labor practice complaint. To address that argument, we find it significant that: 1) classified LIT stipends have been included in the secretary/para/tech collective bargaining agreement for many years; 2) the employer has negotiated with the union over the Learning Improvement Team (LIT) stipends since at least 1997; 3) the employer has paid union members such stipends since at least 1997. Also, we find it worth noting that the employer sent copies of the July 2010 stipend removal notification letters to the union.

Additionally, the idea that the employer believed it could stop paying stipends to members of the union's bargaining unit based on how it interpreted *another unit's* collective bargaining agreement is sorely misplaced. Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. The employer cannot unilaterally undo a decade of past practice, because its view of the law or the respective collective bargaining agreement is different from that of the union. Collective bargaining is about communication. Even when an employer disagrees with the union, that belief does not relieve it of its duty to bargain.

We have reviewed the entire record and fully considered the arguments of the parties. The Examiner correctly stated the legal standards. We find substantial evidence supports the Examiner's findings of fact, and the findings of fact support the conclusions of law. We affirm the Examiner's decision in its entirety. We find that the employer committed a refusal to bargain unfair labor practice when it unilaterally stopped paying stipends to bargaining unit employees for participating on LIT teams. The employer will reinstate the past practice of paying stipends to LIT employees.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order of Examiner Lisa A. Hartrich are AFFIRMED and ADOPTED as the Findings of Fact, Conclusions of Law, and Order of the Commission, except that the Order is AMENDED as follows:

- 2.a. Restore the *status quo ante* by paying a stipend to each classified employee in the bargaining unit who performed Learning Improvement Team (LIT) work during the 2010-2011, 2011-2012 and 2012-2013 school years. The employer will pay the appropriate stipend amount, depending on the LIT position held by each employee, equivalent to the LIT stipend received by the certificated staff counterparts in 2010-2011, 2011-2012 and 2012-2013 but subtracting any amount already paid to each bargaining unit employee for LIT work for these school years.

ISSUED at Olympia, Washington, this 14<sup>th</sup> day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GUENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

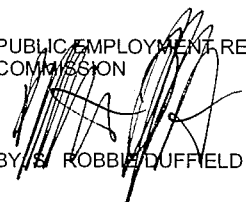
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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23450-U-10-05978 FILED: 08/17/2010 FILED BY: PARTY 2  
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BAR UNIT: MIXED CLASSES  
DETAILS: See 23450-U-10-5978  
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