

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEVE STEFANIDES,

Complainant,

vs.

WENATCHEE VALLEY COMMUNITY
COLLEGE (COMMUNITY COLLEGE
DISTRICT 15),

Respondent.

CASE 22148-U-08-5646

DECISION 10951 - CCOL

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

James A. Gasper, Attorney at Law, Washington Education Association, for the complainant.

Attorney General Robert M. McKenna, by *Dale L. Lehrman*, Assistant Attorney General, for the employer.

On December 11, 2008, Steve Stefanides filed an unfair labor practice complaint with the Public Employment Relations Commission against the Wenatchee Valley Community College (employer). A preliminary ruling was issued finding that the complaint stated a cause of action for employer discrimination and domination of a union. Hearings were held before Examiner Robin A. Romeo on January 12, January 13, January 14, April 7, and April 8, 2010. The parties filed post-hearing briefs.

ISSUES

1. Did the employer discriminate against Stefanides in violation of RCW 28B.52.073(1)(c) by removing him as Science Division Chair?

2. Did the employer dominate or assist the union in violation of RCW 28B.52.073(1)(b) by coercing union leadership to “crush” any potential grievance filed by Stefanides over his removal?

I find that the employer discriminated in violation of RCW 28B.52.073(1)(c) by its removal of Stefanides as Science Division Chair in reprisal for his union activities. However, I do not find that the employer dominated or assisted the union by coercing the union leadership to “crush” Stefanides’ grievance.

LEGAL STANDARDS

Discrimination

Chapter 28B.52 RCW governs the collective bargaining of academic personnel in community colleges. The purpose of that chapter is to strengthen the methods of administering employer-employee relations by establishing orderly methods of communication and promoting cooperative efforts. Certain rights and obligations of administering employer-employee relations are proscribed therein. *See* RCW 28B.52.010

An employer commits an unfair labor practice if it is found to “encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment.” RCW 28B.52.073(1)(c).

In determining allegations of discrimination, the Commission has historically followed the test developed by the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79.

This test is enumerated in *Renton Technical College*, Decision 7441-A (CCOL, 2002) citing *Educational Service District 114*, Decision 4361-A (PECB, 1994). In order for the complainant to establish a *prima facie* case of discrimination they must show:

1. the employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. the employer deprived the employee of some ascertainable right, benefit or status; and
3. a causal connection exists between the employee's exercise of a protected activity and the employer's action.

If the complainant makes out a *prima facie* case, the employer must then articulate legitimate non-discriminatory reasons for its actions.

If the employer articulates non-discriminatory reasons for its actions, the complainant must show that the reasons are a mere pretext for what is in fact a discriminatory purpose or that the protected activity was nevertheless a substantial motivating factor behind the discriminatory action.

In *Renton Technical College*, Decision 7441-A, the Commission affirmed a finding of discrimination in violation of RCW 28B.52.073(1)(c). There, the argument was that the employee had been denied tenure or renewal of his teaching contract due to his union activities. His union activities consisted of filing grievances and contacting a state legislator about the use of equity money. The employer argued that there was no causal connection between the two. The Examiner found that there was a causal connection and that the employee's union activities were a substantial motivating factor behind the discriminatory action.

Domination

Another right and obligation found in Chapter 28B.52 RCW is that it is an unfair labor practice for an employer to dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. RCW 28B.52.073(1)(b). There is unlawful domination or assistance by an employer when it:

- becomes involved in the internal affairs or finances of a union;
- shows a preference between two employee organizations competing for the same bargaining unit; or
- attempts to create, fund, or control a "company union."

Washington State University, Decision 9915 (PSRA, 2007). The complainant bears the burden of proof in a domination claim. WAC 391-45-270(1)(a). In *Community College District 13 - Lower Columbia*, Decision 8117-B, (PSRA, 2005), the Commission dismissed a claim of unlawful domination as there was insufficient evidence of employer intent to assist a union even though the union used employer facilities, including e-mail, to communicate with bargaining unit members about a representation petition. The Commission concluded that: "All of the other examples of the use of employer facilities by [petitioning union] sympathizers occurred after the [petitioning union] filed its representation petition, and there was no evidence that the employer denied the [incumbent union] similar use of the employer's facilities in responding to that petition."

ANALYSIS

Issue 1: Discrimination

Protected Activity

The first aspect of proving a *prima facie* case is showing that the employee participated in an activity protected by the collective bargaining statute, or communicated to the employer the intent to do so.

Steve Stefanides was, at all times material to this case, a member of the academic faculty of the employer. The Wenatchee Valley College Association for Higher Education (union), affiliated with the Washington Education Association and the National Education Association, is the exclusive bargaining representative of the academic faculty of the employer. The employer and the union are parties to a collective bargaining agreement effective from July 1, 2008, through June 30, 2011.

Stefanides has a long history of union activity with the college, which at times has brought him into direct conflict with the college administration, other employees, and other union officials. In 2003, he was a member of the union's bargaining team. In 2005, he was chair of the union's grievance committee and was later elected president of the union where he served for two years.

He lost the subsequent presidential election but continued to participate in a variety of grievances on behalf of other employees and voiced his opinion on a proposed contract.

There is little doubt that the administration was aware of Stefanides' union activity. The President of the college, Jim Richardson, the Vice-President for academic affairs, Terry Peek, numerous instructors, and past and present union officials, all testified as to his union activity. Numerous exhibits containing long strings of e-mail messages evidence that awareness as well.

One specific instance of Stefanides union activity led directly to his removal as Science Division Chair, the adverse action complained of herein. His activity was the expression of his opinion to other unit employees that they should vote against a proposed collective bargaining agreement that elected union officials and the administration had agreed upon. His opposition was communicated to other unit employees and forwarded by others to the union and members of the administration.

Specifically, on June 9, 2008, Stefanides sent an e-mail to all full-time and part-time faculty members of the Wenatchee and Omak campuses critiquing the proposed collective bargaining agreement. The subject of the e-mail was: "Proposed contract-no salary improvements for most faculty, overall erosion of faculty rights and protections." The e-mail followed a general membership meeting where union officials presented a proposed contract to its members.

The e-mail, approximately two full written pages, was broken into the sections "Disappointing 'No-Changes' and 'Major Negatives' (Losses)." It included his opinion on voting against the contract and a final point on the process for voting on the contract. The Dean of the Science and Math Division, Alex Roberts, forwarded the e-mail to the Union President, Sharon Wiest.

The union constitution provides the right and privilege to its members in Article IV-Membership, Section 4 (d) to participate in the deliberation of the organization and to vote on contract ratification. The union by-laws provide that in Article IX-Ratification of Agreement and Authorization for Strikes, Section 1, the president and lead negotiator are only authorized to sign a collective bargaining agreement after several steps are completed including providing all

members a digest of the proposed agreement and the ratification of the agreement by a majority vote. Expressing his view on the proposed union contract was thus protected activity by Stefanides.

Deprived of Right, Benefit, or Status

The next aspect of proving a *prima facie* case of discrimination is showing that the employer deprived the employee of some ascertainable right, benefit, or status.

One benefit under the collective bargaining agreement is the yearly appointment of division chairs. This appointment carries a monetary compensation of thirteen hundred dollars (\$1,300.00) a semester or thirty nine hundred dollars (\$3,900.00) an academic year. The process of appointing chairs varies by division, with the overall perception that it is a role that each faculty member should bear at some time in his or her tenure.

According to the contract, division chairs have to be appointed by May of the preceding school year. Otherwise, the administration steps in and appoints someone. In most divisions, it is rotated among faculty and granted to (sometimes reluctant) volunteers. The appointment lasts for two years in duration and consecutive terms may be served.

In December 2007, the subject of Stefanides serving as the Science Division Chair was raised at a division meeting. He volunteered to be the next chair and at the division meeting in May of 2008, he was confirmed. Notice of his election was forwarded to members of the administration including Peek and Roberts. Stefanides' election was done in the same manner as it had been done for years and in other divisions.

Stefanides was subsequently deprived of his position of Science Division Chair. In June 2008, the incumbent chair, Richard Logan held a re-election for the position. The re-election was announced at a division meeting and faculty were asked to vote by ballot. As a result of the vote, a co-worker, David Bennett, was given the position instead of Stefanides. Thereafter, the administration, notably Peek, recognized Bennett as the next chair.

Causal Connection

Finally, a causal connection must be established between the employee's exercise of a protected activity and the employer's action.

In this instance, a direct connection exists between the removal of Stefanides as division chair and his union activity. Following his opposition to the proposed collective bargaining agreement, his co-workers and union officials campaigned to have a new election conducted for the position. The reason for the new election was that other science division faculty did not want Stefanides representing them as division chair because of his opposition to the contract.

After Stefanides sent out his e-mail on June 9th, a member of the Science Division faculty, Rob Fitch expressed the opinion that he was worried that Stefanides' opposition to the contract would hurt the division's standing with the administration. He expressed this opinion to Bennett who went to union president Wiest for help in having a new election conducted.

Wiest complied with the request and on June 16, sent Logan a memo on behalf of the union's executive board asking him to conduct another election for division chair. Logan complied with Wiest's request. He sent an e-mail to the faculty informing them that as a result of concerns by some employees, he was calling a division meeting to nominate and vote on division chair for the following year. He stated that although Stefanides had volunteered for the position there was a need to vote formally. As a result of the vote, Bennett was elected, and Stefanides was removed from the position.

Employer's Stated Legitimate, Non-Discriminatory Reasons for its Actions.

The employer argues that there is no evidence that the administration removed Stefanides from his Science Division Chair position. The employer points to the collective bargaining agreement to show that the administration had no role in appointing the division chair. The employer states that the administration only becomes involved with the process when the division fails to choose a chair or the chair becomes unavailable to serve as the chair during the term and the division does not elect a replacement.

The employer also argues that there was no ill-will against Stefanides by the two decision-making administrators in the decision to recognize Bennett as division chair. They argue that there is no evidence that the administration went to any Science division faculty and suggested or encouraged them to ask for a formal election, and that Peek did not go to Walter Tribley (Tribley), Dean of the Science and Math Division, and tell him what position to take in the election.

Protected Activity was a Substantial Motivating Factor Behind the Discriminatory Action.

The employer's argument that it played no part in the removal of Stefanides as division chair is without merit. The selection of a faculty member to the position of division chair is a benefit that inures to the contract which the employer interprets and administers. The employer plays an intrinsic role in conferring this benefit upon its employees. The employer is directly involved in the administration of this benefit under the contract by virtue of the fact that the chair is paid a stipend by the employer.

The employer attempted to distinguish the administration from other employees in the decision to hold a new election. The implication is that a division chair is not part of the administration, and therefore his or her actions are not the responsibility of the employer. However, the employer has not defined which employees are included in the administration and which are not. Nor was there an argument that the employer bears no responsibility for the actions of its employees. Accepting the argument that some group of undefined individuals could divest themselves of responsibility under the contract would equate to accepting the argument that no one at the college could be responsible for any contract violation.

In addition, the administration acted to recognize Bennett as the new chair, even though they had been on notice earlier that Stefanides was elected chair. Tribley, Roberts, and Peek were all previously notified that Stefanides was chosen, yet they recognized Bennett as the chair after the new election. Their silence on the change of chair and the failure to take any action was an act of complicity. Most certainly, they were aware of the reason for the change, the desire to oust Stefanides upon direction by the union, and yet they did nothing to oppose or object to the change. This occurred despite the fact that the union's direction to hold a new election directly contradicts the language of the contract that requires the election to be done by May.

The excuse given for a new election, that there was a need to vote formally, as a reason for a new election fails. Notice went out that Stefanides would be the next division chair as early as December 2007 and certainly in May 2008, yet there was no objection to his appointment by anyone until several days after he opposed the proposed contract on June 9, 2008. It is unlikely that the administration believed that the re-election was prompted by the belief that proper procedures had not been followed. The employer's displeasure with Stefanides was transparent. Yet the administration allowed the re-election to occur and enforced its results.

As for the claimed lack of ill will by the administration towards Stefanides, that is questionable especially given Peek's numerous e-mails disparaging Stefanides. While the union did not introduce evidence of Peek, Roberts, or Tribley ordering the new election, their failure to uphold Stefanides' appointment speaks volumes. The employer's subsequent denial of Stefanides' grievance concerning his removal reinforces the employer's complicity.

CONCLUSION

Stefanides engaged in protected union activity when he opposed the proposed contract. His opposition led to a re-election for the position of Science Division Chair, a position he had previously been elected to. The re-election resulted in his removal from the position. The employer articulated legitimate non-discriminatory reasons for the loss of this benefit. Stefanides showed that his protected union activities were nevertheless a substantial motivating factor behind his removal as Science Division Chair.

Issue 2: Domination

Stefanides alleges that the employer interfered and dominated in the union's decision not to pursue arbitration of Stefanides' grievance concerning his removal as division chair. However, while the administration denied the grievance at each stage, Stefanides did not satisfy his burden of showing that the administration dictated to the union what to do in response to the denial of the grievance.

Stefanides attempted to show a connection between Peek and Lavinder, the acting union president at the time in regards to the decision to hold a second election for Science Division Chair and the likelihood of success on an ensuing grievance. The implication is that Peek was communicating to the union certain favoritism for taking adverse action against Stefanides.

However, there is ample evidence that the union acted independently in the decision not to represent Stefanides and not process his grievance to the fourth step [arbitration] of the grievance procedure. The union's animus towards Stefanides was clear and definite. Their complicity in the action taken against Stefanides seems to have occurred despite Peek's animus towards him. The union's executive board freely participated and supported the decision not to pursue Stefanides' grievance to arbitration.

CONCLUSION

Stefanides did not satisfy his burden of proof that the employer dominated or interfered with the administration of the union. The allegation is that the employer conspired with the union to "crush" Stefanides' grievance over his removal as Science Division Chair. The evidence showed that the union acted independently in the decision not to pursue Stefanides grievance.

FINDINGS OF FACT

1. Wenatchee Valley Community College is a public employer for purposes of Chapter 28B.52 RCW.
2. The Wenatchee Valley College Association for Higher Education (union), affiliated with the Washington Education Association and the National Education Association, is an employee organization under RCW 28B.52.020(1) and is the exclusive bargaining representative under RCW 28B.52.020(7) of the academic employees of Wenatchee Valley Community College.

3. Steve Stefanides was, at all times material to this case, a member of the academic faculty of Wentachee Valley Community College, and an academic employee for purposes of RCW 28B.52.020(2). Stefanides is a member of the union.
4. The employer and the union are parties to a collective bargaining agreement effective from July 1, 2008, through June 30, 2011.
5. In December 2007, Stefanides volunteered for the position of Science Division Chair, a two year appointment which carried a stipend of thirteen hundred dollars (\$1,300.00) a semester or thirty nine hundred dollars (\$3,900) an academic year pursuant to the contract.
6. On June 9, 2008, Stefanides sent an e-mail to all full-time and part-time faculty members of the Wenatchee and Omak campuses critiquing the proposed collective bargaining agreement.
7. As a result of the e-mail, Stefanides was removed from his position as Science Division Chair for the academic years 2008-2009, and 2009-2010, losing a total stipend of seventy eight hundred dollars (\$7,800.00).
8. Stefanides filed a grievance over his removal as Science Division Chair, which the employer denied at each step of the grievance procedure. The union's executive board voted not to pursue the grievance to the arbitration stage of the grievance procedure.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 28B.52 RCW and Chapter 391-45 WAC.
2. By depriving Steve Stefanides of his position as Science Division Chair, as described in Findings of Facts 5 through 7, the employer unlawfully discriminated against him in violation of RCW 28B.52.073(1)(c).

3. Stefanides failed to sustain his burden of proof that the employer dominated and interfered in the processing of his grievance over removal as Science Division Chair as described in Finding of Fact 8. The employer did not violate RCW 28.52.073(1)(b).

ORDER

Wenatchee Valley Community College, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Discriminating against Steve Stefanides in retaliation for his union activities.
 - b. In any other way manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 28B.52 RCW:
 - a. Reimburse Steve Stefanides the amount of seventy eight hundred dollars (\$7,800.00) which he would have received as Science Division Chair for the academic years 2008-2009 and 2009-2010.
 - b. 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.

- c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Trustees of Wenatchee Valley Community College, 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.

- d. 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.

- 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 he provides.

ISSUED at Olympia, Washington, this 30th day of December, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ROBIN A. ROMEO, 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 THE WENATCHEE VALLEY COMMUNITY COLLEGE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY discriminated in violation of RCW 28B.52.073(1)(c) by removing Steve Stefanides as Science Division Chair in reprisal for his protected activities.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL reimburse Steve Stefanides the amount which he would have received as Science Division Chair for the academic years 2008-2009 and 2009-2010.

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.**

The full decision is published on PERC's website, www.perc.wa.gov.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 22148-U-08-05646 FILED: 12/11/2008 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ACADEMIC
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