

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Complainant,

vs.

STATE - OFFICE OF FINANCIAL
MANAGEMENT,

Respondent.

CASE 23292-U-10-5936

DECISION 11084 - PSRA

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Younglove and Coker, P.L.L.C., by *Edward Earl Younglove III*, Attorney at Law,
for the union.

Attorney General Robert M. McKenna, by *Alicia Young*, Assistant Attorney
General, for the employer.

On June 15, 2010, the Washington Federation of State Employees (union) filed an unfair labor practice complaint against the Washington State Office of Financial Management (employer) alleging that the employer failed to bargain with the union in violation of RCW 41.80.110(1)(e) and interfered with employee rights in violation of RCW 41.80.110(1)(a). A preliminary ruling was issued and the employer filed an answer. Examiner Robin A. Romeo held a hearing on October 18 and 19, 2010, and the parties filed post-hearing briefs to complete the record.

ISSUES PRESENTED

1. Did the employer refuse to bargain in good faith when it refused to bargain over supplemental agency specific issues away from the master table with all but one agency and insisted on bargaining supplemental issues at one master table?

2. Did the employer refuse to bargain and interfere with employee rights when it conditioned future supplemental bargaining on achieving a good result with one agency's supplemental bargain?

I find that the employer did not refuse to bargain when it agreed to bargain agency specific issues at the master table but not at a separate supplemental table. I also find that the employer committed an independent interference violation by stating to the union that it would engage in supplemental bargaining for one agency and that future bargaining would be conditioned on the employer's experience in bargaining with that one agency.

ISSUE 1: Refusal to Bargain

Applicable Legal Standard

Prior to 2002, collective bargaining for state civil service employees was governed by the Washington Personnel Review Board rules and administered by the Department of Personnel. State employees had the right to bargain grievance procedures and personnel matters over which their particular agency or institution could lawfully exercise discretion. Representatives of bargaining units bargained with the employing agency.

The new law, known as the Personnel System Reform Act (PSRA), gave state civil service employees, for the first time, the right to bargain wages, hours, and terms and conditions of employment. The PSRA established a process where one master agreement would be bargained between the employer and a union that represented multiple bargaining units. Prior to the PSRA, there were 56 separate bargaining agreements with the union, one for each agency.

Chapter 41.80.010(2)(a) provides the procedure for bargaining:

If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining

representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(emphasis added).

The PSRA requires the negotiation of one master agreement where a union represents more than one bargaining unit. Supplemental bargaining of agency specific issues is permitted for inclusion in or as an addendum to the master agreement. The Governor must submit a request for funds to implement the agreement by October 1, prior to the legislative session where the request will be considered. RCW 41.80.010(3).

It is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of its employees. RCW 41.80.110(1)(e). Collective bargaining means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to subjects of bargaining. RCW 41.80.005(2).

Matters affecting employee wages, hours and working conditions are considered to be mandatory subjects of bargaining. *See Federal Way School District, Decision 232-A (EDUC, 1977).* Permissive subjects of bargaining are matters which are not mandatory subjects and are not illegal subjects of bargaining. If an issue is found to be permissive, the parties may engage in bargaining on that subject, but neither side can insist on that issue to the point of impasse. *See Renton School District, Decision 706 (EDUC, 1979).* Bargaining procedures are not mandatory subjects of bargaining. *City of Tukwila, Decision 1975 (PECB, 1984).*

Application of Standard

The current collective bargaining agreement between the parties expires on June 30, 2011. The Governor needed to request the funds by October 1, 2010, to implement economic provisions of

a successor agreement. On January 8, 2010, the union sent a letter to the employer asking to start negotiations on a successor collective bargaining agreement.

On February 17, 2010, Greg Devereux, executive director of the union and Carol Dotlich, president of the union, spoke on the telephone to Christine Gregoire, Governor of the State of Washington. They spoke about the upcoming negotiations on the successor collective bargaining agreement. Specifically, the conversation focused on engaging in supplemental bargaining on agency specific issues. The Governor said that she would contact the Department of Transportation (DOT) and see if they were interested in supplemental bargaining. She then stated that she would “see how it goes” and then engage in future bargaining at separate tables depending on the outcome.

On March 4, 2010, the union sent a letter to the employer asking to bargain over supplemental issues for nine separate agencies away from the master table. The employer replied that they would not agree to bargain issues away from the master table but they would entertain agency specific proposals at the master table. The employer also stated that they might engage in supplemental bargaining at a separate table for one agency, the Parks Department, a change from the earlier offer to bargain over DOT.

On April 9, 2010, the employer sent a letter to the union changing the offer to bargain one agency’s supplemental issues at a separate table to a different agency, the Department of Social and Health Services (DSHS). The employer confirmed that it was not willing to engage in supplemental bargaining at a separate table with any other agency but would entertain agency-specific issues at the master table.

On June 9, 2010, the employer provided a comprehensive written proposal for supplemental bargaining to the union when the parties met. The employer’s proposal included provisions on a process for mutual agreement of issues for supplemental bargaining, a timeframe for conclusion of supplemental bargaining, the definition of supplemental bargaining team members, and a process if the parties fail to reach agreement at a supplemental table. The union submitted a counter proposal on each provision of the employer’s proposal except for the provision defining bargaining team members.

In bargaining previous master agreements, the process used by the parties to bargain the master agreement caused the union to drop numerous supplemental agency specific proposals due to the October 1 deadline. The union believed there simply wasn't enough time for the parties to bargain over the supplemental proposals.

This time, the union wanted to rectify this process and was attempting to do so by asking to bargain supplemental issues away from the master table. The employer agreed to bargain one agency at a separate supplemental table. The employer was unwilling to bargain more agency specific issues at a supplemental table and asked the union to present its agency specific issues at the master table so that they could address them there.

At the time the union filed this complaint, the employer had not refused to bargain agency specific issues, as it was willing to discuss the union's issues, but rather was refusing to engage in bargaining at a separate table. The employer was not refusing to bargain the issues but rather was unwilling to bargain in the process that the union wanted.

CONCLUSION

The claim that the employer refused to bargain when it would not agree to bargain at separate tables has to do with bargaining procedures. Such procedures are not a mandatory subject of bargaining. Further, the Governor's statement "that she would see how it goes" was not a refusal to bargain but was an independent interference violation as discussed below. The union has failed to show a violation of the obligation to bargain.

ISSUE 2: Interference

Applicable Legal Standard

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Chapter 41.80 RCW. RCW 41.80.110(1)(a). RCW 41.80.050 provides employees with the right to:

[S]elf-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees

shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.

(emphasis added).

The Commission finds unlawful interference where one or more employees could reasonably perceive an employer's action as a threat of reprisal or force or promise of benefit associated with the exercise of protected rights. *Omak School District*, Decision 10761-A (PECB, 2010). The complainant need not show that the employer intended to interfere or that the employees involved actually felt threatened. *Central Washington University*, Decision 10118-A (PSRA, 2010).

In *Western Washington University*, Decision 9309-A (PSRA, 2008) the Commission found that employer statements interfered with employee rights. There, the employer's statements to the union that no agreement would be reached because the University President did not wish to "reward bad behavior" interfered with employee rights because bargaining unit members could reasonably feel threatened by those types of statements. The Commission found that the employer's statements not only disparaged the union, but they also showed the intent on the part of the employer to punish the union for its conduct at the bargaining table.

Application of Standard

In the phone conversation with the union on February 17, 2010, the Governor told the union that prior supplemental bargaining with the union was contentious and acrimonious. In that conversation, she also commented that the employer did not get one thing out of the bargaining. She said that the employer was reluctant to engage in supplemental bargaining because of that experience. As mentioned above, she agreed to engage in bargaining for one agency but conditioned future supplemental bargaining on the results of that bargain by stating "she would see how it goes."

An employee could reasonably perceive these statements, taken together, to be interpreted to punish the union for its prior conduct in bargaining. As in *Western Washington University*, these comments show the intent on the part of the employer to punish the union for its conduct at the bargaining table.

The employer's comments on February 17, 2010, conditioned future supplemental bargaining on its experience in bargaining supplemental issues at a separate table with one state agency. Through her comments, the Governor implied that the employer must get something out of the bargain. Conditioning future bargaining on the experience in bargaining with one agency was a threat or promise to the union.

CONCLUSION

The Governor's statement that the employer was reluctant to bargain based on past bargaining experience was punitive. The Governor's statement that future bargaining was conditioned on the employer's experience in bargaining over one agency's supplemental issues at a separate table was a threat or promise of benefit associated with the exercise of protected rights. These statements interfered with employee rights.

FINDINGS OF FACT

1. The State of Washington is a "public employer" within the meaning of RCW 41.80.005(8). The Governor's Office and the Office of Financial Management (OFM) are agencies of the State of Washington as defined by RCW 41.80.005(1).
2. The Washington Federation of State Employees (union) is an employee organization within the meaning of RCW 41.80.005(7).
3. The employer and the union are parties to a master collective bargaining agreement that expires on June 30, 2011.
4. On January 8, 2010, the union sent a letter to the employer requesting to bargain on a successor collective bargaining agreement.
5. On February 17, 2010, the Executive Director and the President of the union, spoke to the Governor of the State of Washington. They spoke about the upcoming negotiations and the issue of supplemental bargaining on agency specific issues.

6. In the phone conversation with the union on February 17, 2010, the Governor told the union that prior supplemental bargaining with the union was contentious and acrimonious, and that the employer did not get one thing out of the bargain and was reluctant to engage in supplemental bargaining because of that experience. She agreed to engage in bargaining for one state agency at a separate table and that she would see "how it goes" before agreeing to engage in supplemental bargaining for other state agencies.
7. On March 4, 2010, the union sent a letter to the employer asking for supplemental bargaining on nine state agencies. The employer's response to the letter was they would bargain all of the agency specific issues at the master table. However, they might engage in supplemental bargaining at a separate table for one agency, the Parks Department.
8. On April 9, 2010, the employer sent the union a letter stating that the employer was willing to engage in supplemental bargaining over one agency, the Department of Social and Health Services. The employer confirmed that it was not willing to engage in supplemental bargaining at separate tables for any other agency but would entertain agency-specific issues at the master table.
9. On June 9, 2010, the employer provided its written proposal for supplemental bargaining including provisions on a process for mutual agreement of issues for supplemental bargaining, a time frame for conclusion of supplemental bargaining, the definition of supplemental bargaining team members, and a process if the parties fail to reach agreement at a supplemental table. The union responded by offering a counter proposal.
10. The union did not submit any supplemental agency specific bargaining proposals to the employer at the main table.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW.

2. The evidence, as described in paragraphs 4 through 10 of the foregoing findings of fact, establishes that the employer did not refuse to bargain in violation of RCW 41.80.110 (e).
3. The evidence, as described in paragraph 6 of the foregoing findings of facts, establishes that the employer interfered with employee rights in violation of RCW 41.80.110(a).

ORDER

The State - Office of Financial Management, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.80 RCW:
 - a. 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.
 - b. 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.

- c. 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 3rd day of June, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "R. Romeo", is written over the printed name of the official.

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 STATE-OFFICE OF FINANCIAL MANAGEMENT COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights by conditioning future supplemental bargaining on our experience in bargaining with one agency.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL NOT condition future bargaining on our experience in bargaining with one agency.

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

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/03/2011

The attached document identified as: **DECISION 11084 - PSRA** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23292-U-10-05936 FILED: 06/15/2010 FILED BY: PARTY 2
DISPUTE: ER GOOD FAITH
BAR UNIT: ALL EMPLOYEES
DETAILS: Good Faith Negotiations
COMMENTS:

EMPLOYER: STATE - FINANCIAL MANAGEMENT
ATTN: DIANE LEIGH
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-586-0793

REP BY: ALICIA YOUNG
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167 Ph2: 360-664-4183

PARTY 2: WA FED OF STATE EMPLOYEES
ATTN: GLADYS BURBANK
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
Ph1: 800-562-6002 Ph2: 360-352-7603

REP BY: EDWARD YOUNGLOVE
YOUNGLOVE COKER
1800 COOPER PT RD SW, BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
Ph1: 360-357-7791