Everett Community College, Decision 11135 (CCOL, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF TEACHERS WASHINGTON, Complainant, vs. EVERETT COMMUNITY COLLEGE (COMMUNITY COLLEGE DISTRICT 5), Respondent.	CASE 23327-U-10-5942 DECISION 11135 - CCOL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Rosen Law Firm, by *Jon Howard Rosen,* Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Scott Majors,* Assistant Attorney General, for the employer.

On June 30, 2010, the American Federation of Teachers Washington (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Everett Community College (employer) as the respondent. The union is the exclusive bargaining representative within the meaning of RCW 28B.52.020 for the employer's academic employees in the following categories: (1) Instruction, (2) Counseling, (3) Library/Media Specialists. Unfair Labor Practice Manager David Gedrose reviewed the complaint under WAC 391-45-110, and issued a deficiency notice on July 6, 2010, that indicated it was not possible to conclude a cause of action existed at that time.

The union filed an amended complaint on July 27, 2010, alleging employer discrimination in violation of RCW 28B.52.073(1)(c) and employer refusal to bargain in violation of RCW 28B.52.073(1)(e). Specifically, the union alleged that the employer discriminated against bargaining unit members by its termination of Evelyn Henriques, John Meyer, Belle Nishioka,

and Sandy Nisperos in reprisal for union activities protected by Chapter 28B.52 RCW. In addition, the union alleged that the employer refused to bargain by: (a) its unilateral change to the wages, hours and working conditions of full-time tenured counselors through assignment to them of full-time temporary counselors' work, without providing an opportunity for bargaining; and (b) skimming of bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining.

On August 4, 2010, Gedrose reviewed the complaint and issued a preliminary ruling finding a cause of action. The Commission assigned Examiner Karyl Elinski to conduct further proceedings. A hearing took place on November 30 and December 1, 2010, and the parties filed written briefs to complete the record.

ISSUES

1. Did the employer terminate Evelyn Henriques, John Meyer, Belle Nishioka, and Sandy Nisperos in reprisal for union activities?

2. Did the employer unilaterally change the wages, hours and working conditions of full-time tenured counselors by assigning them the full-time temporary counselors' work, without providing an opportunity for bargaining?

3. Did the employer skim bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining?

On the basis of the evidence, testimony and the record as a whole, the Examiner finds that the employer did not terminate Henriques, Meyer, Nishioka, and Nisperos in reprisal for union activities. The Examiner also finds that the employer did not unilaterally change the wages, hours and working conditions of full-time tenured counselors by assigning them the full-time temporary counselors' work. Finally, the Examiner finds that the employer skimmed bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining.

ISSUE 1: Did the employer terminate Evelyn Henriques, John Meyer, Belle Nishioka, and Sandy Nisperos in reprisal for union activities?

Applicable Legal Standards: Discrimination

Chapter 28.52 RCW governs the collective bargaining relationship between community college employers and their academic personnel. RCW 28B.52.073(1)(c) states that it is an unfair labor practice for an employer 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.

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The employee maintains the burden of proof in employer discrimination cases. As explained most recently in *Department of Corrections*, Decision 10998-A (PSRA, 2011), to prove discrimination, the employee must first set forth a prima facie case by establishing the following:

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.

An employee may use circumstantial evidence to establish the prima facie case because parties do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). In response to an employee's prima facie case of discrimination, the employer need only articulate its non-discriminatory reasons for acting in such a manner. The employer does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the employee to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. *Clark County*, Decision 9127-A. The employee meets this burden

by proving either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Analysis

During the 2009-2010 academic year, Henriques, Meyer, Nishioka, and Nisperos were full-time temporary employees providing counseling services for the employer. As detailed in the parties' 2008-2011 collective bargaining agreement, temporary employees are employed on annual contracts and have no right of subsequent employment.

The employer's counseling services included four full-time tenured counselors and one full-time probationary counselor who worked in the Counseling, Advising and Career Center (CACC). Four temporary counselors and one tenured counselor worked in programs elsewhere on the campus. The 10 counselors were academic employees represented by the union and worked in a division overseen by Vice President of Instruction and Student Services Sandra Fowler-Hill.

When the 2009-2010 academic year began, the counselors in the CACC were each required to be available for 12 hours of walk-in counseling services during opening week rather than five hours as in previous years. In response, the union filed a grievance on behalf of those counselors on November 16, 2009, and the employer denied the grievance on December 18, 2009. On May 26, 2010, the employer and union signed a letter of agreement resolving the dispute.

In a February 2010 meeting, the employer notified the union that it was considering not renewing the temporary counselors' annual contracts as part of budgetary reductions throughout the college. The union representatives were disappointed that the employer was considering such measures, but acknowledged that the employer was within its contractual rights to do so.

On March 17, 2010, the employer informed each of the four temporary counselors that their employment would end when their contracts expired on June 11, 2010. Vice President of Administrative Services Jennifer Howard sent an e-mail to the affected employees that said "severe, on-going budget reductions" led to the decision and added that "given the current financial situation across the state, the College must redefine and restructure how it serves students to ensure the service aligns with our mission and maintains economic viability."

On the same day, Dean Dottie Krzyzanoski sent an e-mail inviting counseling services employees to "a discussion of the proposed restructuring" of the employer's counseling services on April 2, 2010. At that meeting, college President David Beyer provided the attendees the restructuring plan that the employer decided it was going to implement. This plan for the 2010-2011 academic year included employing educational planners to provide educational planning, course management, and academic advising services in support of mandatory advising.

On April 27, 2010, the union filed a grievance regarding the termination of the four temporary counselors and the implementation of the plan to hire educational planners from outside the bargaining unit to provide counseling services to students. The employer denied the union's grievance on May 26, 2010, and the union filed its unfair labor practice complaint one month later.

Conclusion

Although the union asserts that the November 16, 2009 grievance provided the impetus for the employer's termination of the four temporary counselors, it did not show how the temporary counselors were involved in the grievance filed on behalf of the CACC counselors. The Examiner finds that the union has failed to make its prima facie case on this issue. Other than being members of the union, the temporary counselors did not participate in an activity protected by the collective bargaining statute when the union filed the grievance on behalf of the counselors in the CACC. As a result, no further analysis is necessary.

ISSUE 2: Did the employer unilaterally change the wages, hours and working conditions of full-time tenured counselors by assigning them the full-time temporary counselors' work, without providing an opportunity for bargaining?

Applicable Legal Standards: Unilateral Change

RCW 28B.52.073(1)(e) states that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of its employees. RCW 28B.52.020(8) defines collective bargaining as "the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an

effort to reach agreement with respect to wages, hours, and other terms and conditions of employment . . . In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining."

As expressed recently in *King County*, Decision 10576-8-A (PECB, 2010), "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as mandatory subjects of bargaining. *Federal Way School District*, Decision 232-A (EDUC, 1977), *citing NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except where such changes are made in conformity with the statutory collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991). An employer that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4) and (1); *Federal Way School District*, Decision 232-A.

As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or to a good-faith impasse concerning any mandatory subjects of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006). An employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations.

The Commission reiterated in *Kitsap County*, Decision 8893-A (PECB, 2007) that where a unilateral change is alleged, the complainant must prove that the dispute involves a mandatory subject of bargaining and that the employer made a decision giving rise to the duty to bargain. *Municipality of Metropolitan Seattle (METRO)*, Decision 2746-B (PECB, 1990). No violation exists where there is no change to an established past practice. *King County*, Decision 4893-A (PECB, 1995); *City of Pasco*, Decision 4197-A (PECB, 1994). In order for a unilateral change

to be unlawful, that change must have a "material and substantial" impact on the terms and conditions of employment. *King County*, Decision 4893-A (PECB, 1995).

It is an unfair labor practice to present a change to a mandatory subject of bargaining as a *fait accompli.* In determining whether an employer has presented a decision to change a mandatory subject as a *fait accompli*, the focus is on whether an opportunity for meaningful bargaining existed under the circumstances as a whole. *City of Edmonds*, Decision 8798-A (PECB, 2005) quoting *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the union is adequately notified of a contemplated change at a time when there is still an opportunity for bargaining which could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain if requested, then a *fait accompli* should not be found.

Although Commission precedents do not require that an employer provide *written* notice to a union regarding a proposed change in the status quo, an employer's communication to the union must be sufficiently clear to afford the union actual notice of the intended change. *See Washington Public Power Supply System*, Decision 6058-A. The imposition of a change in the status quo as a *fait accompli* without any prior contact with the employees' authorized bargaining agent is not effective notice, and where an employer presents a decision as a *fait accompli*, failure on the part of the bargaining agent to request bargaining will not create a waiver by inaction. *Washington Public Power Supply System*, Decision 6058-A.

In determining whether an unfair labor practice has occurred, the totality of the circumstances must be analyzed. *City of Mercer Island*, Decision 1457 (PECB, 1982); *Walla Walla County*, Decision 2932-A (PECB, 1988). The evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid reaching an agreement. *City of Clarkston*, Decision 3246 (PECB, 1989).

Analysis

The 10 tenured, temporary, and probationary counselors for the 2009-2010 academic year performed work according to Article 6.11.B of the 2008-2011 collective bargaining agreement.

B. Academic employees: Counseling

1. Providing educational, career and short-term personal counseling, and crisis intervention for individuals and groups.
2. Referring students to college services, community agencies and other professionals as appropriate.
3. Advising students regarding student services processes, course selection, career opportunities, etc.
4. Advising faculty, staff, and administrators on issues related to student development and retention.
5. Administering and interpreting individual and group tests.
6. Providing workshops, seminars, and/or orientations for student development and retention.

As part of its efforts to reduce its budget for the 2010-2011 academic year, the employer decided to eliminate the temporary counselor positions and restructure how it delivered its counseling services, which included the addition of five educational planners in the CACC. As part of the restructuring, the six remaining counselors were offered a choice of assignment based on seniority. Two counselors chose to remain in the CACC, three tenured counselors chose assignments that were formerly performed by temporary counselors, and one tenured counselor chose to become an instructor.

The union argues that the employer's restructuring changed the working conditions for the three tenured counselors who chose assignments at locations which were previously occupied by temporary counselors. Furthermore, the union contends that it had no knowledge of the restructuring until the employer presented the plan to the counselors at the April 2, 2010 meeting as a *fait accompli* as opposed to a proposal to be bargained. The employer contends that no duty to bargain existed because there was no actual change in the counselor's working conditions as a result of the restructuring, which the employer further contends was done in compliance with the parties' collective bargaining agreement.

Testimony shows the tenured counselors' duties and responsibilities were unchanged when they chose to move into the positions that were occupied by temporary counselors. Even though they did less entry-level academic advising, the tenured counselors performed the same job duties as they had previously, they were paid at the same rate, and continued to work 30 contract hours per

week – including 19.5 hours of direct student contact – just as they had done during the 2009-2010 academic year.

Conclusion

The union failed to establish that there was a change to a mandatory subject of bargaining when tenured counselors chose their new assignments, some of which were positions formerly occupied by temporary counselors. Despite working in different locations with different student populations, the counselors' wages, hours and working conditions were the same as they were before restructuring. As such, the employer had no duty to bargain.

ISSUE 3: Did the employer skim bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining?

Applicable Legal Standards: Skimming

As detailed in Issue 2, RCW 28B.52.073(1)(e) states that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of its employees, and RCW 28B.52.020(8) defines collective bargaining as the mutual obligation of the parties to bargain in good faith with respect to wages, hours, and other terms and conditions of employment.

In *Fibreboard Paper Products v. NLRB*, 379 U.S. 203 (1964), the United States Supreme Court held that the decision to contract out work previously performed by members of an established bargaining unit that results in the termination of bargaining unit employees is a mandatory subject of bargaining. In *South Kitsap School District*, Decision 482 (PECB, 1978), the Commission held that any decision to transfer or "skim" bargaining unit work was also a mandatory subject of bargaining. Exclusive bargaining representatives have a legitimate interest in preserving work that their bargaining units historically perform, at least where an employer has not cut back services and personnel. *South Kitsap School District*, Decision 482.

As expressed in *City of Snoqualmie*, Decision 9892-A (PECB, 2009), the first step in analyzing a potential skimming violation is to determine whether or not the work at issue was in fact bargaining unit work. If that question is answered in the affirmative, the Commission then

balances five factors to determine whether a duty to bargain exists concerning the decision to transfer bargaining unit work.

1. The previously established operating practice as to the work in question (*i.e.*, had non-bargaining unit personnel performed such work before?);

2. Whether the transfer of work involved a significant detriment to bargaining unit members (*e.g.*, by changing conditions of employment or significantly impairing reasonably anticipated work opportunities);

3. Whether the employer's motivation was solely economic;

4. Whether there has been an opportunity to bargain generally about the changes in existing practices; and

5. Whether the work was fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions.

Analysis

Prior to the employer restructuring its counseling services for the 2010-2011 academic year, 10 tenured, probationary, and temporary counselors provided a variety of academic, personal and career counseling services to the college's students. As mentioned above, after the employer made the decision to bring five classified employees into the CACC as educational planners and terminate four temporary counselors, the remaining counselors chose their assignments. Three chose positions previously occupied by temporary counselors, two chose to stay in the CACC and one chose to become an instructor.

The union argues that the duties performed by the educational planners were traditionally performed by counselors in the academic employees bargaining unit. The union contends that transferring those duties to educational planners – without the opportunity to bargain – was a significant detriment to the bargaining unit, because four temporary counselors lost their jobs when the employer restructured counseling services in an attempt to deal with a budget shortfall.

The employer argues that the union failed to prove that educational planners do bargaining unit work, asserting instead that they provide entry-level advising and information as the first point of

contact for students and do not provide counseling services. The employer contends that, because the educational planners do not perform the work of counselors, it had no duty to bargain its decision to transfer the work. The employer asserts that even if the work transferred were bargaining unit work, other non-bargaining unit employees had performed entry-level advising work in the past. There was no detriment to the bargaining unit, according to the employer, and no evidence that the employer's motivation for restructuring its services was solely economic.

From all the evidence presented, it is evident that the counselors' fundamental duties and responsibilities have been incorporated in the educational planners' job description. The Examiner finds little difference, for example, between the counselors' responsibility for "[a]dvising students regarding student services processes, course selection, career opportunities, etc" and the educational planners' responsibility to "[g]uide students in admission processes, course selection, registration, transcript evaluation and graduation procedures." In addition, Castorena testified on cross-examination that the educational planners' duties and responsibilities were performed by counselors she supervised before the employer implemented its restructuring plan. The evidence provided leads to the conclusion that the work is bargaining unit work.

Having established that the work in question is bargaining unit work, the analysis turns to past practice and whether non-bargaining unit employees had previously done the work. In January of 2008, the employer and the union agreed to a memorandum of understanding that provided guidelines for different employee groups in student advising.

> While the administration is responsible for articulating, training, scheduling and funding advising services, the collective bargaining agreement between the college and the union indicates that advising students is one of the core responsibilities of faculty members. Therefore, faculty members shall play the primary role in advising students and be included in developing advising services. The union understands, however, that advising includes a broad range of activities and that college staff and administrators appropriately perform some of those activities. This document provides guidelines for allocating advising activities between faculty, staff, and administrators. . . .
>
> New and returning students approach a wide range of faculty, staff, and administrators with initial inquiries for routine information about college services

> and educational programs. This type of advising can be provided by faculty or by staff and administrators whose job it is to provide support to students and who are trained to provide routine information. Routine information is essentially facts and information that can be found in college publications (i.e. college catalog, quarterly schedule, curriculum guides). The faculty's advising role is to provide advising beyond routine information.

The memorandum of understanding between the parties illustrates the employer's past practice in regard to its counseling services before the restructuring. As bargaining unit members, the counselors were responsible for a wide range of student advising activities, including the dissemination of routine information, while non-bargaining unit employees were limited to providing routine information.

Despite the employer's efforts to distinguish the educational planners' work from that of the counselors, a comparison of the duties and responsibilities indicates that there is little fundamental difference between the work educational planners perform and the work that the counselors had historically performed. For example, Educational Planner Jason Pfau is listed as an Opportunity Grant Specialist and testimony indicated he does the same work that was performed during the 2009-2010 academic year by John Meyer, a temporary counselor whose contract wasn't renewed for 2010-2011.

The decision to employ educational planners had an inarguably detrimental effect on the bargaining unit members, by taking away their positions and terminating the temporary counselors. Bringing five educational planners into the counseling services division from outside of the bargaining unit allowed the employer to eliminate the jobs of the four temporary counselors and have the educational planners perform the same work at a lower wage.

There was no evidence of a non-economic reason for the employer's decision to have educational planners perform bargaining unit work, which was presented to the union as a *fait accompli* at the April 2, 2010 meeting. In fact, the employer estimated that it saved between $260,000 and $270,000 in its academic budget by not renewing the temporary counselors' annual contracts and creating the educational planner positions.

Conclusion

The work performed by the tenured, probationary, and temporary counselors was bargaining unit work. When the employer assigned the same work to educational planners outside of the bargaining unit, without bargaining, it committed a skimming violation.

FINDINGS OF FACT

1. Everett Community College (Community College District 5) is a public employer within the meaning of Chapter 28B.52 RCW.

2. American Federation of Teachers Washington is the exclusive bargaining representative within the meaning of RCW 28B.52.020 for the employer's academic employees in the following categories: (1) Instruction, (2) Counseling, (3) Library/Media Specialists.

3. During the 2009-2010 academic year, 10 full-time tenured, full-time temporary, and full-time probationary counselors performed work according to Article 6.11.B of the 2008-2011 collective bargaining agreement.

4. The employer's counseling services included four full-time tenured counselors and one full-time probationary counselor who worked in the Counseling, Advising and Career Center (CACC). Four full-time temporary counselors and one full-time tenured counselor worked in programs elsewhere on the campus.

5. On November 16, 2009, the union filed a grievance on behalf of the five full-time counselors who worked in the CACC. The full-time temporary counselors were not involved in this grievance, nor had they been involved in any union activity.

6. In a February 2010 meeting, the employer notified the union that it was considering not renewing the full-time temporary counselors' annual contracts as part of budgetary reductions throughout the college.

7. On March 17, 2010, the employer informed each of the four full-time temporary counselors that their employment would end when their contracts expired on June 11, 2010.

8. On April 2, 2010, the employer presented the union with a *fait accompli* when it announced it would implement its new restructuring plan, which included educational planners performing bargaining unit work and the reassignment of full-time counselors to positions previously held by full-time temporary counselors.

9. When it implemented its restructuring plan, the employer hired five educational planners in the CACC and offered full-time tenured and full-time probationary counselors the opportunity to fill the remaining vacant positions, including those previously held by the full-time temporary counselors. There were no changes to the wages, hours and job responsibilities for the full-time tenured counselors who chose to relocate and fill positions formerly held by the full-time temporary counselors.

10. Work previously performed by full-time counselors is now performed by educational planners who are not part of the bargaining unit described in Finding of Fact 2.

11. The employer did not notify and provide the union with an opportunity to bargain before deciding to remove counselor work from the bargaining unit as described in Finding of Fact 8.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 28B.52 RCW and Chapter 391-45 WAC.

2. As described in Findings of Fact 5 through 7, the employer did not violate RCW 28B.52.073(1)(c) by discriminating against bargaining unit members for engaging in union activities when it terminated Evelyn Henriques, John Meyer, Belle Nishioka and Sandy Nisperos.

3. As described in Finding of Fact 9, the employer did not violate RCW 28B.52.073(1)(e) by unilaterally changing the wages, hours and working conditions of full-time tenured counselors.

4. As described in Findings of Fact 10 and 11, the employer violated RCW 28B.52.073(1)(e) by skimming bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining.

ORDER

Everett Community College (Community College District 5), its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Deciding upon or implementing transfers of work historically performed by employees in the academic employee bargaining unit represented by the American Federation of Teachers Washington, to employees outside of that bargaining unit without first giving notice to AFT Washington and providing an opportunity for collective bargaining.

   b. Failing to notify the union of an intent to remove bargaining unit work from the bargaining unit through restructuring of positions.

   c. Failing to afford the union the opportunity to bargain prior to implementing any changes in the working conditions of the bargaining unit members.

   d. In any other manner 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 28B.52 RCW:

a. Restore the *status quo ante* by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change of transferring bargaining unit work outside the bargaining unit found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with the American Federation of Teachers Washington before transferring bargaining unit work outside the bargaining unit.

c. 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.

d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Trustees of Everett 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.

e. 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.

f. 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 4th day of August, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, 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.

CASE 23327-U-10-5942
DECISION 11135 - CCOL

COLLECTIVE BARGAINING

PERC

STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT *EVERETT COMMUNITY COLLEGE* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY skimmed bargaining unit work previously performed by full-time tenured counselors and full-time temporary counselors, without providing an opportunity for bargaining.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL reinstate the wages, hours and working conditions which existed for the full-time counseling employees in the American Federation of Teachers Washington bargaining unit prior to the unilateral change of transferring bargaining unit work outside the bargaining unit.

WE WILL give notice to and, upon request, negotiate in good faith with the American Federation of Teachers Washington, before transferring bargaining unit work outside the bargaining unit.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the e 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:	23327-U-10-05942	FILED:	06/30/2010	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ACADEMIC				
DETAILS:	-				
COMMENTS:					

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