University of Washington, Decision 11181 (PSRA, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 23818-U-11-6079 DECISION 11181 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Younglove & Coker, by *Edward Earl Younglove,* Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Mark K. Yamashita,* Assistant Attorney General, for the employer.

On February 23, 2011, the Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union alleged that the University of Washington (employer) refused to bargain in violation of RCW 41.80.110(1)(e) and interfered with employee rights in violation of RCW 41.80.110(1)(a), by threats of reprisal or force of promises of benefit made to Robin Jackson in connection with her union activities, when it refused to process a grievance filed by the union on Jackson's behalf. Unfair Labor Practice Manager David I. Gedrose reviewed the complaint under WAC 391-45-110 and issued a deficiency notice on March 1, 2011, indicating that it was not possible to conclude that a cause of action existed for the refusal to bargain allegation.

The union filed an amended complaint on March 4, 2011, in which it omitted the refusal to bargain allegation and restated its employer interference allegation. On March 8, 2011, Unfair Labor Practice Manager Gedrose issued a preliminary ruling finding a cause of action for the interference allegation. On March 11, 2011, the Commission assigned the matter to Examiner

Stephen W. Irvin, who presided over a hearing on June 14, 2011. The parties filed post-hearing briefs for consideration.

ISSUE

Did the employer unlawfully interfere with employee rights when it refused to process a grievance filed by the union on Jackson's behalf?

Based on the record as a whole, I find that the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) when it refused to process a grievance filed by the union on Jackson's behalf.

APPLICABLE LEGAL STANDARDS

RCW 41.80.110(1)(a) establishes that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Chapter 41.80 RCW. Those rights are listed in RCW 41.80.050:

> RCW 41.80.050 RIGHTS OF EMPLOYEES. Except as may be specifically limited by this chapter, employees shall have the right to self-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.

As stated by the Commission in *Grays Harbor College*, Decision 9946-A (PSRA, 2009), the burden of proving unlawful interference with the exercise of rights protected by Chapter 41.80 RCW rests with the complaining party. An interference violation exists when an employee could reasonably perceive the employer's statements or actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The union is not required to show how an employer intended or was motivated to interfere with collective bargaining rights. *City*

of Tacoma, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced or that the employer had a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

ANALYSIS

An adequate assessment of the union's unfair labor practice complaint involving Jackson requires a recitation of key events from a related case involving the union and the employer. In the proceedings that resulted in *University of Washington*, Decision 11075 (PSRA, 2011), the examiner heard the union's complaint of September 21, 2010, that the employer had committed refusal to bargain and interference unfair labor practices in consolidating its call center operations. In a decision issued on May 25, 2011, the examiner concluded that the employer – while within its rights to consolidate its call center services – committed unlawful refusal to bargain and interference violations when it removed bargaining unit work from the union without bargaining. On June 13, 2011, the employer appealed the decision to the Commission.

Prior to consolidation in October 2010, the employer maintained call center functions at three locations: the Patient Access Center, which serviced Harborview Medical Center as well as its other facilities and satellite clinics; the Virtual Front Desk, which serviced the University of Washington Physicians Network; and the University of Washington Medical Center.

Patient services specialists at the Patient Access Center performed duties that included registering patients, scheduling patient appointments, coordinating referrals and verifying patients' insurance eligibility. These employees were part of the union's Harborview Medical Center bargaining unit and were covered by a collective bargaining agreement in effect from July 1, 2009, through June 30, 2011.

In March of 2010, the employer announced in a letter to the union its decision to consolidate the Patient Access Center and the Virtual Front Desk into what became the UW Medicine Contact Center in downtown Seattle. The letter said the employer was also considering the University of Washington Medical Center call center for eventual consolidation.

The union demanded to bargain the consolidation decision on March 26, 2010, but the parties did not meet face-to-face on the matter until June 14, 2010. At that meeting, the employer notified the union that the newly-created patient services representative positions at the consolidated call center would be non-union positions. On July 16, 2010, the employer provided the union patient services representative position descriptions and notified the union that recruitment for the unrepresented positions had begun.

On July 20, 2010, the union notified the employer that, despite advising its members to apply for the positions at the consolidated call center, it was protesting that they were required to apply for work they were already doing. In addition, the union argued the work performed by employees hired for the positions at the consolidated call center was bargaining unit work and that the removal of that work from the bargaining unit was an unfair labor practice.

Jackson, who had been employed as a patient services specialist at the Patient Access Center since February of 2006, was one of the bargaining unit members who applied for patient services representative positions at the consolidated call center. On August 20, 2010, she received a letter that confirmed she had accepted the employer's appointment offer. The letter also stated that the appointment was to a "Classified Non-Union position" with an anticipated start date of October 1, 2010.

Jackson was employed at the consolidated call center until she was terminated on January 5, 2011. On January 31, 2011, the union filed a grievance, claiming the employer violated the collective bargaining agreement by terminating Jackson without just cause. On February 8, 2011, the union received a response from Suzanne Rodriguez, senior human resources consultant in the UW Medicine Health Systems Human Resources division, which read, in part:

> Ms. Jackson was a classified non-union employee at the time of her separation, and was not represented by WFSE or covered under the CBA [collective bargaining agreement]. Therefore, she is not eligible to file a grievance through the union. As presented to Ms. Jackson on January 5, 2011 when she was notified of her dismissal, under WAC 357-52 any permanent employee who is dismissed may appeal such action to the Washington Personnel Resources Board within thirty (30) calendar days after the effective date of the action appealed.

Jackson chose not to pursue this avenue of appeal and continued to pursue the grievance procedure as detailed in the parties' collective bargaining agreement. On February 22, 2011, the union requested mediation with the employer and the Commission, and the union filed its unfair labor practice complaint a day later. The employer did not agree to mediation, nor did it agree to take the grievance to arbitration when the union requested to do so on March 17, 2011.

In arguing that there was no unfair labor practice in this case, the employer contends that Jackson knew she would no longer be part of the bargaining unit when she accepted the assignment to the consolidated call center. As a result of Jackson's decision, the employer asserts she did not have any rights under the collective bargaining statutes when she was terminated. When Jackson wanted to challenge her termination, the employer maintains that she erred in waiving her civil service rights in favor of pursuing the grievance through the union. Finally, the employer argues that the examiner's ruling in *University of Washington*, Decision 11075, has no bearing on this case.

The employer's argument is not compelling, especially as it relates to reliance on Commission precedent, and in light of the fact that the employer sought and was allowed by this Examiner to admit the transcript and exhibits from Decision 11075 into the record. Despite having access to the record in *University of Washington*, Decision 11075, I am neither re-litigating the issues of that case nor am I deviating from its precedent.

In finding that the employer interfered with employee rights in *University of Washington*, Decision 11075, the examiner highlighted the dilemma faced by the bargaining unit members, including Jackson:

> 1. The employer gave bargaining unit members no option but to go along with the consolidation plans, and to accept any change in their status as a result. The only viable options give[n] to members was to move to the new call center, comply with the unilaterally imposed terms and conditions of employment and forfeit bargaining rights, or to leave their jobs. There is nothing more coercive in the employment setting than the threat of job loss.

Although Jackson and others in the bargaining unit accepted assignments for the unrepresented positions in the consolidated call center, it requires an incredible stretch of the imagination to

believe that they had any choice in the matter. The union recognized this when it encouraged its members to protect their interests by applying for the consolidated call center assignments, while at the same time expressing opposition to the employer's actions. The fact that the employer rebuffed the union's attempts to represent Jackson after her termination bolsters the union's argument that the employer displayed a cavalier attitude toward its collective bargaining obligations in this case.

CONCLUSION

When viewed through the lens of *University of Washington*, Decision 11075, it is clear that Jackson was a member of the bargaining unit when she was terminated in January of 2011. As such, she was subject to the terms and conditions of the parties' collective bargaining agreement in effect at the time of her termination and was entitled to its protections, including the grievance procedure detailed in Article 24 of that agreement. When the employer chose not to process the grievance filed by the union on Jackson's behalf, it unlawfully interfered with employee rights.

Chapter 41.80 RCW details the Commission's powers and duties in prescribing remedies for unfair labor practices. RCW 41.80.120(2) reads as follows:

> (2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

The union in this case has requested that the Commission require the employer to restore the *status quo ante* by reinstating Jackson and expunging her personnel file of any documents related to her discipline. While the Commission has broad authority in these matters, the union's proposed remedy is too far-reaching.

However, there is no justice in merely requiring that the employer cease and desist from interfering with its employees in the exercise of their rights. Jackson has been harmed by the

employer's actions; she lost her employment and then was denied access to the grievance procedure that she was entitled to by virtue of being a member of the bargaining unit.

To make Jackson whole requires the employer to allow the union to pursue the grievance procedure to its end. I order the employer to agree to the union's February 22, 2011 request for grievance mediation as provided for in Step 3 of the collective bargaining agreement's grievance procedure. Should the parties not reach agreement in mediation within sixty (60) days of the issuance of this decision, the dispute will be submitted to binding arbitration in accordance with Step 4 of the grievance procedure. The employer shall bear any and all fees and costs charged by the arbitrator. Each party shall bear its own attorney fees.

FINDINGS OF FACT

1. The University of Washington (employer) is an employer within the meaning of RCW 41.80.005(8).

2. The Washington Federation of State Employees (union) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).

3. Robin Jackson was a member of the union's Harborview Medical Center bargaining unit employed as a patient services specialist at the employer's Patient Access Center.

4. Members of the bargaining unit were covered by the parties' collective bargaining agreement in effect from July 1, 2009, through June 30, 2011.

5. In March of 2010, the employer announced in a letter to the union its decision to consolidate the Patient Access Center and the Virtual Front Desk into what became the UW Medicine Contact Center in downtown Seattle.

6. On June 14, 2010, the employer notified the union that the newly-created Patient Services Representative positions at the consolidated call center would be non-union positions.

7. On July 16, 2010, the employer notified the union that recruitment had begun for the unrepresented positions.

8. On July 20, 2010, the union notified the employer that the work performed by employees hired for the positions at the consolidated call center was bargaining unit work and that the removal of that work from the bargaining unit was an unfair labor practice.

9. On August 20, 2010, Jackson received a letter that confirmed she had accepted the employer's appointment offer at the consolidated call center, with an anticipated start date of October 1, 2010.

10. Jackson was employed at the consolidated call center until she was terminated on January 5, 2011.

11. On January 31, 2011, the union filed a grievance on Jackson's behalf, claiming the employer violated the collective bargaining agreement by terminating Jackson without just cause.

12. On February 8, 2011, the employer responded to the union that Jackson was not eligible to file a grievance through the union because she was a classified non-union employee at the time of her termination.

13. On February 22, 2011, the union filed a mediation request with the employer and the Public Employment Relations Commission. The employer did not agree to mediation.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.

2. By engaging in the acts described in Findings of Fact 12 and 13, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a).

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Unlawfully interfering with employee rights by refusing to follow the grievance procedure in the collective bargaining agreement.

   b. In any other 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 41.80 RCW:

   a. Engage in grievance mediation with the union and Robin Jackson under the grievance procedure in the parties' collective bargaining agreement. If the parties are unable to reach agreement within sixty (60) days from the issuance of this decision, they shall submit the dispute to binding arbitration under the grievance procedure. The employer shall bear any and all fees and costs charged by the arbitrator. Each party shall bear its own attorney fees.

   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.

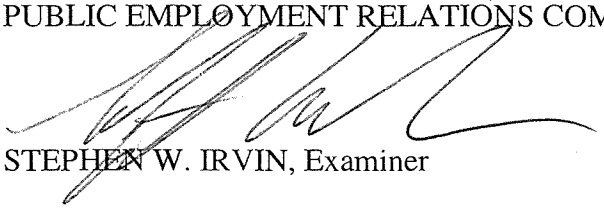
c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Regents of the University of Washington, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

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 28th day of September, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, 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 23818-U-11-6079
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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 *UNIVERSITY OF WASHINGTON* 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 refusing to follow the grievance procedure in the collective bargaining agreement.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL engage in grievance mediation with the union and Robin Jackson. If the parties are unable to reach agreement within sixty (60) days from the issuance of this decision, they shall submit the dispute to binding arbitration. We shall bear any and all fees and costs charged by the arbitrator. Each party shall bear its own attorney fees.

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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RECORD OF SERVICE - ISSUED 09/28/2011

The attached document identified as: DECISION 11181 - 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:/S/ ROBBIE DUFFIELD

CASE NUMBER:	23818-U-11-06079	FILED:	02/23/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Robin Jackson see 24024-S-11-0223				
COMMENTS:					

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