

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

vs.

COLUMBIA BASIN COLLEGE
(COMMUNITY COLLEGE DISTRICT 19),

Respondent.

CASE 25018-U-12-6400

DECISION 11609 - PSRA

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Schwerin Campbell Barnard Iglitzin & Lavitt LLP, by *Kathleen Phair Barnard*
and *Danielle Franco-Malone*, Attorneys at Law, for the union.

Attorney General Robert M. McKenna, by *Patricia A. Thompson*, Assistant
Attorney General, for the employer.

On July 30, 2012, the Washington Public Employees Association (union) filed a complaint with the Public Employment Relations Commission charging unfair labor practices against Columbia Basin College (employer). On August 6, 2012, the union filed an amended complaint. A preliminary ruling was issued on August 9, 2012, finding a cause of action for employer interference with employee rights by suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union. The Commission assigned the matter to Examiner Stephen W. Irvin on August 14, 2012, and I presided over a hearing on September 18, 2012. The parties filed post-hearing briefs to complete the record.

ISSUE

Did the employer interfere with employee rights by suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union?

Based on the record as a whole, I find that on two occasions the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) by suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union.

APPLICABLE LEGAL STANDARDS

The burden of proving unlawful interference with the exercise of rights protected by Chapter 41.80 RCW rests with the complaining party. *University of Washington*, Decision 11075-A (PSRA, 2012). An interference violation exists when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Tacoma*.

With respect to employer communications to employees, those statements could be the basis of an interference unfair labor practice under certain criteria, including:

1. Is the tone of the communication coercive as a whole?
2. Are the employer's comments substantially factual or materially misleading?
3. Has the employer offered new benefits to employees outside of the bargaining process?
4. Are there direct dealings or attempts to bargain with the employees?
5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?
6. Did the union previously object to such communications during prior negotiations?
7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

Grays Harbor College, Decision 9946-A (PSRA, 2009).

ANALYSIS

The union represents an approximately 100-member bargaining unit of the employer's non-supervisory classified employees. The bargaining unit is part of a coalition of bargaining units the union represents at 13 community colleges around the state. Under Chapter 41.80 RCW, the union negotiates one master collective bargaining agreement (CBA) with the community colleges, all of which have entered into interagency agreements with the state Office of Financial Management (OFM) to be represented at the bargaining table by the OFM's Labor Relations Division (LRD). On September 29, 2011, the union notified the LRD that the bargaining unit members in the community college coalition had ratified an agreement that ran from July 1, 2012, through June 30, 2013, and included a 3 percent temporary salary reduction for employees making \$2,500 or more per month.

On March 30, 2012, union President Dave Schiel wrote a letter to LRD Director Diane Leigh and the 13 community college presidents demanding to bargain over the temporary salary reduction, in part because the union felt the reduction unfairly targeted union-represented classified employees while administrative, exempt, faculty, and non-represented classified employees experienced no salary reduction. On April 24, 2012, Leigh responded that the state was unwilling to reopen an agreement that had been ratified by the union's bargaining unit members and approved by the state Legislature on April 11, 2012.

In a May 22, 2012 letter to bargaining unit members, the union stated that it was continuing to ask the community college presidents to "negotiate with us – either directly or through the Labor Relations Office – for a supplemental agreement to eliminate, adjust or mitigate the effects of the salary reduction on our members." The union also sent its bargaining unit members a letter on June 12, 2012, asking that they participate in an organized effort to convince the community college presidents to negotiate with the union. The union's efforts proved unsuccessful, and the parties did not negotiate again before the temporary salary reduction went into effect on July 1, 2012.

The events leading to the union's unfair labor practice complaint occurred in the weeks before the temporary salary reduction took effect, and were intertwined with an attempt to decertify the

union as the classified employees' exclusive bargaining representative.¹ The key interactions between employer officials and bargaining unit members during this period included e-mails Columbia Basin College President Rich Cummins sent to bargaining unit members in June 2012 and conversations between Payroll Manager Denise Williamson and bargaining unit members in May 2012.

Cummins' actions

On June 19, 2012, the upcoming temporary salary reduction was the main topic when union Staff Representative Tracy Peterson spoke to approximately 25 bargaining unit members gathered for the union's quarterly meeting with classified staff. Cummins was aware of the meeting and testified that he wrote an e-mail to classified staff and supervisors on June 20, 2012, in order to clear up what he believed were union misconceptions regarding the reduction and the employer's ability to bargain outside of the LRD. Cummins' e-mail read, in part:

To balance the budget for the current biennium, the Legislature approved various measures that affect everyone who attends a Washington college or university as well as anyone who works in higher education. I am writing to you about the one item that most directly affects you as a represented classified employee.

Namely, the Legislature approved the collective bargaining agreement between the college coalition and WPEA that contained a three percent pay cut for all represented classified staff making \$2500 or more per month for the 2012-13 academic year. The CBA, which specifies a furlough reduction called Temporary Salary Reduction (TSR) leave to be taken by reducing each employee's work hours by three percent, is required in the budget law for Fiscal Year 2012-2013. The coalition agreement resulting from those negotiations, including the three percent reduction, was ratified by bargaining unit members.

WPEA requested to reopen the collective bargaining agreement to renegotiate the pay reduction. The Office of Financial Management's Labor Relations Division, the bargaining agent for the college coalition, has declined to renegotiate the collective bargaining agreement.

CBC [Columbia Basin College] does not negotiate the classified contract locally (and has not done so for eight years) but is part of a statewide coalition that negotiates with WPEA through the Governor's Labor Relations Office.

¹

On June 27, 2012, bargaining unit member Julie Henning filed a decertification petition with the Commission (PERC case 24945-E-12-3728). Proceedings in the case are blocked pending resolution of the instant unfair labor practice case.

Community college presidents do not have the ability to unilaterally open the contract. However, in a letter sent to OFM last month, CBC and other members of the college coalition asked OFM if there were any avenues of flexibility for implementing the budget reduction. The response from OFM stated that we "must accept the provisions of the contract that were bargained in good faith with the unions and ratified by their members."

All of this leaves CBC with the obligation to implement the terms of the 2012-13 collective bargaining agreement, including the three percent salary and work hour reduction. We must follow the law.

On a related note, the budget law also affects faculty and exempt employees, but it does so in a fundamentally different way. Though we are required to reduce expenditures on faculty and exempt employees by three percent, the Legislature did not require this reduction take the form of furloughs. We are instead mandated to enact "overall compensation reduction" of three percent in each of these two employee groups.

To meet this requirement, CBC has reduced the number of faculty and exempt employees primarily through leaving vacant positions unfilled. On top of this, many faculty on their own initiative have accepted additional students into their classes, and many exempt employees have assumed additional roles and responsibilities without additional compensation.

On the morning of June 21, 2012, Cummins received an e-mail from bargaining unit member Greg Brown that read, in part:

I have a general question regarding the union & 3% cutback for classified staff. My father was a Sears store manager, so being a union member "gets my goat"!☹

Several of us on campus have tried unsuccessfully to vote the union out of here. Had we not been a "closed shop" campus, could the 3% reduction [have] been avoided??

Personally, I'd love to have more "fuel" to remove the union from this campus!

Cummins responded a half-hour later:

Thanks....I really appreciate [your] note. Since this is about the contract and the union, I can't talk about it really. The one thing I can say is what I said in the email; namely, non-represented employees don't have to take the cut.

Hope that helps...Rich

The union argues that Cummins' e-mails interfered with employee rights by stating that employees not represented by the union would not have to take the temporary salary reduction. The employer contends Cummins' e-mails do not fit the *Grays Harbor College* criteria for interference because they: (a) did not have a coercive tone; (b) were substantially factual and not misleading; (c) did not promise any benefits; (d) did not attempt to deal directly or attempt to bargain with employees; (e) did not disparage, discredit, ridicule, undermine or argue with the union; (f) were not a communication the union objected to during prior negotiations; and (g) did not put the employer in a position from which it could not retreat.

I make a clear distinction between Cummins' June 20 and June 21 e-mails. In his June 20 e-mail to classified employees, Cummins attempted to lay out the facts pertaining to the temporary salary reduction and inform bargaining unit members that the employer was tied to the agreement reached by the union and the LRD. Based on the *Grays Harbor College* criteria, this e-mail did not constitute an act of interference on the employer's part. It was factual, non-coercive, and made no attempt to promise a benefit outside of the union and the collective bargaining process. I believe an employee would have reasonably perceived the e-mail as an attempt to share information and not as a promise of benefit associated with employees' union activity.

Cummins' June 21 e-mail to Brown leads to a different conclusion based on the *Grays Harbor College* criteria. Although Cummins may not have intended to undermine the union, his response to a blatantly anti-union e-mail from a bargaining unit member did so through the promise of a benefit. Cummins' final sentence – "The one thing I can say is what I said in the email; namely, non-represented employees don't have to take the cut." – appears innocuous on its face, but it must be considered in context with the question that led to the answer. In contrast to Cummins' June 20 e-mail, which objectively detailed the dilemma facing the employer, his June 21 e-mail emphasized a fact that would lead an employee to reasonably perceive there was a benefit for not being represented by the union.

Williamson's actions

On May 31, 2012, a number of bargaining unit members attended an on-campus retirement party on the last day of work for Williamson, who as payroll manager was part of the employer's

Human Resources and Legal Affairs department and not in the bargaining unit. Bargaining unit member JoAnn Johnson testified that she and Jennifer Rada engaged in a conversation with Williamson, in which Williamson stated that represented classified employees wouldn't experience the temporary salary reduction if they decertified the union. Later that day, Johnson relayed Williamson's comment to union Shop Steward Carol Groce, who e-mailed Staff Representative Tracy Peterson to inquire about the situation.

The union contends Williamson's statement was a clear promise of benefit to bargaining unit members for decertifying the union. The employer argues that only statements made by an employee with supervisory authority can be attributed to the employer. As a result, the employer asserts a reasonable person would not perceive Williamson had supervisory authority when she engaged in the conversation with Johnson and Rada because Williamson hadn't supervised employees since 2010 and was at retirement's door when she made the statement.

I find the employer's argument unconvincing. Because of Williamson's position in the Human Resources and Legal Affairs department, an employee could reasonably perceive Williamson had a connection to college administrators and would be a credible source when she stated that decertification would derail the temporary salary reduction. Williamson's statement carried enough credibility, in fact, that it quickly made its way from bargaining unit employees to a shop steward, who then contacted a union staff representative.

CONCLUSION

Through Cummins' e-mail response to Brown on June 21, 2012, and Williamson's statement during a conversation with Johnson and Rada on May 31, 2012, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) by suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union.

FINDINGS OF FACT

1. Columbia Basin College (Community College District 19) is an institution of higher education within the meaning of RCW 41.80.005(10).

2. The Washington Public Employees Association is an exclusive bargaining representative within the meaning of RCW 41.80.005(9), and represents an approximately 100-member bargaining unit of the employer's non-supervisory classified employees. The bargaining unit is part of a coalition of bargaining units the union represents at 13 community colleges around the state.
3. Under Chapter 41.80 RCW, the union negotiates one master collective bargaining agreement (CBA) with the community colleges, all of which have entered into interagency agreements with the state Office of Financial Management (OFM) to be represented at the bargaining table by the OFM's Labor Relations Division (LRD).
4. On September 29, 2011, the union notified the LRD that the bargaining unit members in the community college coalition had ratified an agreement that ran from July 1, 2012, through June 30, 2013, and included a 3 percent temporary salary reduction for employees making \$2,500 or more per month.
5. On March 30, 2012, union President Dave Schiel wrote a letter to LRD Director Diane Leigh and the 13 community college presidents demanding to bargain over the temporary salary reduction, in part because the union felt the reduction unfairly targeted union-represented classified employees while administrative, exempt, faculty, and non-represented classified employees experienced no salary reduction.
6. On April 24, 2012, Leigh responded that the state was unwilling to reopen an agreement that had been ratified by the union's bargaining unit members and approved by the state Legislature on April 11, 2012.
7. In a May 22, 2012 letter to bargaining unit members, the union stated that it was continuing to ask the community college presidents to "negotiate with us – either directly or through the Labor Relations Office – for a supplemental agreement to eliminate, adjust or mitigate the effects of the salary reduction on our members."

8. The union also sent its bargaining unit members a letter on June 12, 2012, asking that they participate in an organized effort to convince the community college presidents to negotiate with the union.
9. The union's efforts proved unsuccessful, and the parties did not negotiate again before the temporary salary reduction went into effect on July 1, 2012.
10. On June 19, 2012, the upcoming temporary salary reduction was the main topic when union Staff Representative Tracy Peterson spoke to approximately 25 bargaining unit members gathered for the union's quarterly meeting with classified staff.
11. Cummins was aware of the meeting and testified that he wrote an e-mail to classified staff and supervisors on June 20, 2012, in order to clear up what he believed were union misconceptions regarding the reduction and the employer's ability to bargain outside of the LRD. Cummins' e-mail read, in part:

To balance the budget for the current biennium, the Legislature approved various measures that affect everyone who attends a Washington college or university as well as anyone who works in higher education. I am writing to you about the one item that most directly affects you as a represented classified employee.

Namely, the Legislature approved the collective bargaining agreement between the college coalition and WPEA that contained a three percent pay cut for all represented classified staff making \$2500 or more per month for the 2012-13 academic year. The CBA, which specifies a furlough reduction called Temporary Salary Reduction (TSR) leave to be taken by reducing each employee's work hours by three percent, is required in the budget law for Fiscal Year 2012-2013. The coalition agreement resulting from those negotiations, including the three percent reduction, was ratified by bargaining unit members.

WPEA requested to reopen the collective bargaining agreement to renegotiate the pay reduction. The Office of Financial Management's Labor Relations Division, the bargaining agent for the college coalition, has declined to renegotiate the collective bargaining agreement.

CBC [Columbia Basin College] does not negotiate the classified contract locally (and has not done so for eight years) but is part of a statewide

coalition that negotiates with WPEA through the Governor's Labor Relations Office. Community college presidents do not have the ability to unilaterally open the contract. However, in a letter sent to OFM last month, CBC and other members of the college coalition asked OFM if there were any avenues of flexibility for implementing the budget reduction. The response from OFM stated that we "must accept the provisions of the contract that were bargained in good faith with the unions and ratified by their members."

All of this leaves CBC with the obligation to implement the terms of the 2012-13 collective bargaining agreement, including the three percent salary and work hour reduction. We must follow the law.

On a related note, the budget law also affects faculty and exempt employees, but it does so in a fundamentally different way. Though we are required to reduce expenditures on faculty and exempt employees by three percent, the Legislature did not require this reduction take the form of furloughs. We are instead mandated to enact "overall compensation reduction" of three percent in each of these two employee groups.

To meet this requirement, CBC has reduced the number of faculty and exempt employees primarily through leaving vacant positions unfilled. On top of this, many faculty on their own initiative have accepted additional students into their classes, and many exempt employees have assumed additional roles and responsibilities without additional compensation.

12. On the morning of June 21, 2012, Cummins received an e-mail from bargaining unit member Greg Brown that read, in part:

I have a general question regarding the union & 3% cutback for classified staff. My father was a Sears store manager, so being a union member "gets my goat"!☹

Several of us on campus have tried unsuccessfully to vote the union out of here. Had we not been a "closed shop" campus, could the 3% reduction [have] been avoided??

Personally, I'd love to have more "fuel" to remove the union from this campus!

13. Cummins responded a half-hour later:

Thanks....I really appreciate [your] note. Since this is about the contract and the union, I can't talk about it really. The one thing I can say is what I

said in the email; namely, non-represented employees don't have to take the cut.

Hope that helps...Rich

14. On May 31, 2012, a number of bargaining unit members attended an on-campus retirement party on the last day of work for Denise Williamson, who as payroll manager was part of the employer's Human Resources and Legal Affairs department and not in the bargaining unit.
15. Bargaining unit member JoAnn Johnson testified that she and Jennifer Rada engaged in a conversation with Williamson, in which Williamson stated that represented classified employees wouldn't experience the temporary salary reduction if they decertified the union.
16. Later that day, Johnson relayed Williamson's comment to union Shop Steward Carol Groce, who e-mailed Staff Representative Tracy Peterson to inquire about the situation.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-45 WAC.
2. By suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union, as described in Findings of Fact 13 and 15, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a).

ORDER

Columbia Basin College, 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 through statements made by the employer or individuals speaking for management.
 - 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. 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. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Trustees of Columbia Basin 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.
 - c. 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.

- d. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 28th day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'S. Irvin', is written over the printed name of the Examiner.

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.



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 COLUMBIA BASIN COLLEGE COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights in violation of RCW 41.80.110(1)(a), by suggesting to bargaining unit members that they would not receive the 3 percent temporary salary reduction if they decertified the union.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

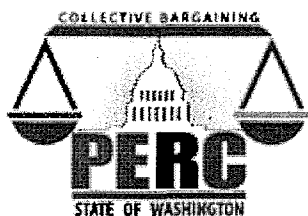
WE WILL cease and desist from unlawfully interfering with employee rights through statements made by the employer or individuals speaking for management.

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
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 12/28/2012

The attached document identified as: **DECISION 11609 - 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: 25018-U-12-06400 FILED: 07/30/2012 FILED BY: PARTY 2
DISPUTE: ER GOOD FAITH
BAR UNIT: ALL EMPLOYEES
DETAILS: Independent Interference
see 24869-U-12-6352
COMMENTS:

EMPLOYER: C COL DIST 19 - COLUMBIA BASIN
ATTN: RICHARD CUMMINS
COLUMBIA BASIN COLLEGE
2600 N 20TH AVE
PASCO, WA 99301-3379
Ph1: 509-547-0511 Ph2: 509-542-4801

REP BY: RICK HALL
STATE - FINANCIAL MGMT
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5540

REP BY: PATRICIA THOMPSON
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE
SPOKANE, WA 99201-1194
Ph1: 509-458-3514 Ph2: 509-456-6190

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: DAVE SCHIEL
140 PERCIVAL ST NW
OLYMPIA, WA 98502-5438
Ph1: 360-943-1121 Ph2: 360-927-4805

REP BY: KATHLEEN PHAIR BARNARD

SCHWERIN CAMPBELL BARNARD
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828 Ph2: 800-238-4231

REP BY: DANIELLE FRANCO-MALONE
SCHWERIN CAMPBELL BARNARD IGLITZIN LAVITT
18 WEST MERCER STREET STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828