

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 286,

Complainant,

vs.

PUYALLUP SCHOOL DISTRICT,

Respondent.

CASES 25375-U-13-6492  
25376-U-13-6493  
25377-U-13-6494  
25451-U-13-6514

DECISIONS 11693 – PECB  
11694 – PECB  
11695 – PECB  
11696 – PECB

PRELIMINARY RULING, DEFERRAL  
INQUIRY, AND ORDER OF PARTIAL  
DISMISSAL

On January 7, 2013, the International Union of Operating Engineers, Local 286 (union) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Puyallup School District (employer) as respondent. The complaints were docketed as Cases 25375-U-13-6492, 25376-U-13-6493, and 25377-U-13-6494. The cases were consolidated for hearing under WAC 10-08-085. A deficiency notice was issued on January 18, 2013, and the union filed amended complaints on February 7, 2013. On the same date, the union filed an additional complaint that was docketed as Case 25451-U-13-6514 and consolidated with the other three cases.

The three amended complaints and one new complaint (hereinafter, Union's Complaints) were reviewed under WAC 391-45-110,<sup>1</sup> and a notice of partial deficiency applicable to all four cases was issued on February 14, 2013. The notice indicated that it was not possible to conclude that a cause of action existed at that time for most of the allegations of the Union's Complaints. The exception was a valid cause of action for allegations concerning unilateral changes regarding

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

health care premiums. The union was given a period of 21 days in which to file and serve amended complaints or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the Union's Complaints for failure to state a cause of action, as set forth in the Order below. A cause of action exists for the unilateral change (and derivative interference) allegations of the Union's Complaints. The preliminary ruling and deferral to arbitration inquiry are set forth in the Order. The employer must file and serve its answer to the unilateral change (and derivative interference) allegations of the Union's Complaints, and respond to the deferral inquiry, within 21 days following the date of this Decision.

#### DISCUSSION

The Notice of Partial Deficiency issued on February 14, 2013, set forth the procedure history of these cases and pointed out the defects to the union's claims.

On January 7, 2013, the union filed complaints for three bargaining units in Cases 25375-U-13-6492 (Maintenance/Warehouse/Printshop Unit), 25376-U-13-6493 (Custodial Unit), and 25377-U-13-6494 (Security Unit). In response to deficiency notices the union filed amended complaints on February 7, 2013, along with a new complaint for the School Bus Drivers Unit, (docketed as Case 25451-U-13-6514). The allegations in the statements of facts (hereinafter, statement of facts) are substantially identical for all cases. Under WAC 10-08-085, the above-noted cases are consolidated for further unfair labor practice proceedings.

The allegations concern employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral change to bargaining unit members' contributions to health care premiums, without providing an opportunity for bargaining; and circumvention of the union through direct dealing with employees represented by the union, without notice to the union.

The allegations concerning a unilateral change states a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

It is not possible to conclude that a cause of action exists at this time for allegations of the complaint concerning circumvention of the union. Those allegations are defective.

The union checked the boxes on the complaint forms for "Employer Interference" and "Employer Refusal to Bargain." The statement of facts alleges a unilateral change, as well as the claim that on August 20, 2012, the employer sent an announcement concerning health care premiums. The statement of facts includes portions of the announcement, and the entire announcement is attached as additional information to the statement of facts. The attached information shows that the August 20 communication was an e-mail that was addressed to "Union/Association Representatives and Presidents."

The statement of facts alleges direct dealing and interference, as well as control, domination, and interference. It is an unfair labor practice in violation of RCW 41.56.140(2) for an employer to dominate or assist a union by interfering with internal union affairs or finances, or by attempting to create, control, or finance a company union. The statement of facts does not provide facts indicating employer domination or assistance of a union, and those boxes are not checked on the complaint forms. The inference drawn is that the terms "control" and "dominate" refer to the allegations of direct dealing.

It is an unfair labor practice in violation of RCW 41.56.140(4) for an employer to refuse to bargain by circumventing the union through direct dealing with employees represented by the union, without notice to the union. However, as previously noted, the information provided by the union shows that the e-mail of August 20, 2012, was sent to union/association representatives and presidents, not to individual bargaining unit members; thus, it appears that the union was given notice of the employer's intended actions. There are no facts indicating that the employer directly bargained with bargaining unit members over health care premiums.

Regarding interference, it is an unfair labor practice for an employer to interfere with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit in connection with union activities. The statement of facts does not indicate independent interference violations; all interference claims appear to be derivative of the refusal to bargain allegation. *See Royal School District*, Decision 1419-A (PECB, 1982).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts of the Union's Complaints to be true and provable, the following allegations state a cause of action, summarized as follows:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral change to bargaining unit members' contributions to health care premiums, without providing an opportunity for bargaining.

Those allegations will be the subject of further proceedings under Chapter 391-45 WAC.

The Puyallup School District shall:

File and serve its answer to the allegations listed in Paragraph 1 of this Order, within 21 days following the date of this Order.

The employer may consolidate its answer to all four cases into one document, but the cases should be identified on the document. The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal

representative of the person or organization that filed the Union's Complaints. Service shall be completed no later than the day of filing. An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the Union's Complaints, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial.
- b. Specify whether "deferral to arbitration" is requested and, if so:
  - i. Indicate whether a collective bargaining agreement was in effect between the parties at the time of the alleged unilateral change;
  - ii. Identify the contract language requiring final and binding arbitration of grievances;
  - iii. Identify the specific contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;
  - iv. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and
  - v. State whether the employer is willing to waive any procedural defenses to arbitration.
- c. Assert any other affirmative defenses that are claimed to exist in the matter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of an answer to specifically deny or explain a fact alleged in the Union's Complaints, will be deemed to be an admission that the fact is true as alleged, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

An examiner will be designated to conduct further proceedings pursuant to Chapter 391-45 WAC. Until an examiner is assigned, all correspondence and motions should be directed to the undersigned.

2. The allegations of the Union's Complaints concerning employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by circumvention of the union through direct dealing with employees represented by the union, in sending an announcement on August 20, 2012, without notice to the union, are DISMISSED for failure to state a cause of action. Any and all allegations stated or implied in the Union's Complaints concerning independent employer interference with employee rights in violation of RCW 41.56.140(1), and/or employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)], are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22<sup>nd</sup> day of March, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order dismissing defective allegations 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

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PO BOX 40919  
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MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 03/22/2013

The attached document identified as: DECISION 11693 - PECB 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: 25375-U-13-06492 FILED: 01/07/2013 FILED BY: PARTY 2  
DISPUTE: ER UNILATERAL  
BAR UNIT: OPER/MAINT  
DETAILS: Maintenance, Warehouse, Printshop  
COMMENTS:

EMPLOYER: PUYALLUP S D  
ATTN: TIM YEOMANS  
302 2ND ST SE  
PO BOX 370  
PUYALLUP, WA 98371  
Ph1: 253-841-1301

REP BY: CLIFFORD FOSTER JR  
PORTER FOSTER RORICK  
800 TWO UNION SQUARE  
601 UNION ST  
SEATTLE, WA 98101-2341  
Ph1: 206-622-0203

PARTY 2: IUOE LOCAL 286  
ATTN: DAVE MAXWELL  
18 E ST SW  
AUBURN, WA 98001  
Ph1: 253-351-9095 Ph2: 800-573-3082

REP BY: DIANA ROLLINS  
IUOE LOCAL 286  
18 E ST SW  
AUBURN, WA 98001-5268  
Ph1: 253-351-9095 Ph2: 253-335-3243

REP BY: JEFF FRAZIER  
IUOE LOCAL 286  
18 E STREET SW  
AUBURN, WA 98001  
Ph1: 253-351-9095



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MIKE SELLARS, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: ROBBIE DUFFIELD

CASE NUMBER: 25376-U-13-06493 FILED: 01/07/2013 FILED BY: PARTY 2  
DISPUTE: ER UNILATERAL  
BAR UNIT: CUSTOD/MAINT  
DETAILS: Custodial  
COMMENTS:

EMPLOYER: PUYALLUP S D  
ATTN: TIM YEOMANS  
302 2ND ST SE  
PO BOX 370  
PUYALLUP, WA 98371  
Ph1: 253-841-1301

REP BY: CLIFFORD FOSTER JR  
PORTER FOSTER RORICK  
800 TWO UNION SQUARE  
601 UNION ST  
SEATTLE, WA 98101-2341  
Ph1: 206-622-0203

PARTY 2: IUOE LOCAL 286  
ATTN: DAVE MAXWELL  
18 E ST SW  
AUBURN, WA 98001  
Ph1: 253-351-9095 Ph2: 800-573-3082

REP BY: DIANA ROLLINS  
IUOE LOCAL 286  
18 E ST SW  
AUBURN, WA 98001-5268  
Ph1: 253-351-9095 Ph2: 253-335-3243

REP BY: JEFF FRAZIER  
IUOE LOCAL 286  
18 E STREET SW  
AUBURN, WA 98001  
Ph1: 253-351-9095





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MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 25377-U-13-06494 FILED: 01/07/2013 FILED BY: PARTY 2  
DISPUTE: ER UNILATERAL  
BAR UNIT: SECURITY  
DETAILS: Security  
COMMENTS:

EMPLOYER: PUYALLUP S D  
ATTN: TIM YEOMANS  
302 2ND ST SE  
PO BOX 370  
PUYALLUP, WA 98371  
Ph1: 253-841-1301

REP BY: CLIFFORD FOSTER JR  
PORTER FOSTER RORICK  
800 TWO UNION SQUARE  
601 UNION ST  
SEATTLE, WA 98101-2341  
Ph1: 206-622-0203

PARTY 2: IUOE LOCAL 286  
ATTN: DAVE MAXWELL  
18 E ST SW  
AUBURN, WA 98001  
Ph1: 253-351-9095 Ph2: 800-573-3082

REP BY: DIANA ROLLINS  
IUOE LOCAL 286  
18 E ST SW  
AUBURN, WA 98001-5268  
Ph1: 253-351-9095 Ph2: 253-335-3243

REP BY: JEFF FRAZIER  
IUOE LOCAL 286  
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## PUBLIC EMPLOYMENT RELATIONS COMMISSION

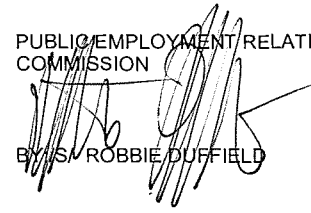
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PAMELA G. BRADBURN, COMMISSIONER  
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MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 03/22/2013

The attached document identified as: **DECISION 11696 - PECB** 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: 25451-U-13-06514 FILED: 02/07/2013 FILED BY: PARTY 2  
DISPUTE: ER UNILATERAL  
BAR UNIT: SCHOOL BUS  
DETAILS: School Bus  
COMMENTS:

EMPLOYER: PUYALLUP S D  
ATTN: TIM YEOMANS  
302 2ND ST SE  
PO BOX 370  
PUYALLUP, WA 98371  
Ph1: 253-841-1301

PARTY 2: IUOE LOCAL 286  
ATTN: DAVE MAXWELL  
18 E ST SW  
AUBURN, WA 98001  
Ph1: 253-351-9095 Ph2: 800-573-3082

REP BY: JEFF FRAZIER  
IUOE LOCAL 286  
18 E STREET SW  
AUBURN, WA 98001  
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