Kiona Benton School District, Decision 11862 (EDUC, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIONA BENTON SCHOOL DISTRICT, Complainant, vs. KIONA BENTON EDUCATION ASSOCIATION, Respondent.	CASE 25699-U-13-06582 DECISION 11862 - EDUC ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Eric T. Nordlof, Attorney at Law, for the employer.

James A. Gasper, Attorney at Law, Washington Education Association, for the union.

On May 9, 2013, the Kiona Benton School District (employer) filed an unfair labor practice complaint against the Kiona Benton Educational Association (union) alleging the union breached its duty to bargain in good faith by refusing to bargain with the employer's designated collective bargaining representatives. A preliminary ruling was issued on May 14, 2013. The union answered the complaint on June 5, 2013. On July 1, 2013, the employer filed a motion for summary judgment. On July 26, 2013, the union responded to the employer's motion for summary judgment and on August 5, 2013, the employer replied to the union's response.

ISSUES

1. Did the union breach its duty to bargain in good faith by refusing to bargain with the employer's designated collective bargaining representatives?

2. Should the employer's motion for summary judgment be granted?

APPLICABLE LEGAL STANDARDS

WAC 10-08-135 provides that a "motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A "material fact" is one upon which the outcome of the litigation depends. *State – General Administration,* Decision 8087-B (PSRA, 2004). A motion for summary judgment calls upon the examiner to make final determinations on a number of critical issues without the benefit of a full evidentiary hearing and record. The granting of such a motion cannot be taken lightly. *Port of Seattle*, Decision 7000 (PECB, 2000). The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (PECB, 2001), *citing City of Vancouver*, Decision 7013 (PECB, 2000). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A, *citing City of Seattle*, Decision 4687-A (PECB, 1996).

RCW 41.59.140(2)(c) states that it "shall be an unfair labor practice for an employee organization" to "refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090." While the choice of a bargaining representative is not absolute, the choice is an important right and is properly one for each party to decide. *See, e.g., City of Tacoma*, Decision 11064 (PECB, 2011), aff'd *City of Tacoma*, Decision 11064-A (PECB, 2012) "An employer, including a public employer, has just as much right to bargain through a designated representative as its employees have." *Sultan School District*, Decision 1930-A (PECB, 1984).

ANALYSIS

On February 1, 2013, the employer notified the union's designated collective bargaining representative, Steve Lindholm, in writing, that it had designated Eric Nordlof and Mona Von Hollebeke as its collective bargaining representatives. The letter notified Lindholm that

collective bargaining issues were to be communicated to these two employer designated collective bargaining representatives. The notification also advised that if these two representatives were not available, Lindholm could contact the Kiona Benton School District Superintendant Rom Castilleja directly. On May 1, 2013, Nordlof again notified Lindholm, via e-mail, of the employer's designation. Lindholm e-mailed the following response to Nordlof:

> Eric,
>
> You are hurting my feelings! Just so you know the union will no longer be contacting you. Rom's refusal to follow protocol has now given him the opportunity to deal with me directly.
>
> You may want to contact your dysfunctional client as a great deal of info has been direct to him by Mr. Boyer regarding investigations on Friday. He will be taking very aggressive action if communications and requests are not fulfilled.
>
> As I am busy filing additional arbitration on your client I will end this-your communications will have to come through rom [sic] as the union will only communicate with him. If you don't like it, you might find someone that will listen to your pleads!

It is hard for this Examiner to imagine a more direct refusal to bargain in good faith than Lindholm's response to the employer's routine, reasonable, lawful, and direct designation of its chosen collective bargaining representatives.

In *City of Tacoma*, Decision 11064 (PECB, 2011), *aff'd City of Tacoma*, Decision 11064-A (PECB, 2012), the Commission upheld a finding that "an employee's right to the union representative of his/her choice is an important right and, absent special or extenuating circumstances, is properly the right of union officials, not employers, to decide." The Commission has also held that "[a]n employer, including a public employer, has just as much right to bargain through a designated representative as its employees have." *Sultan School District*, Decision 1930-A (PECB, 1984). It is clear that both unions and employers have an important, though not absolute, right to designate those representatives that they feel are best qualified and positioned to represent them in collective bargaining.

Lindholm, however, did not simply question whether the employer's choice of a bargaining representative was absolute or seek clarification on the parameters of the employer's designation.

Instead, he directly and unequivocally stated that he would absolutely and completely disregard the employer's designation. He stated that: 1) "the union will no longer be contacting" Nordlof and that 2) Nordlof's communications would "have to come through rom[1] [sic] as the union will *only* communicate with him." (Emphasis supplied). The first statement that the union would "no longer" contact Nordlof is a clear refusal to contact the employer's designated collective bargaining representative for any reason. The second statement goes further and states that not only was Lindholm refusing to contact the employer's designated representative, but he was also unilaterally deciding that the employer would have one sole bargaining representative and that the union would be dictating who that representative would be.

The May 1, 2013 response was a clear and unequivocal refusal to bargain as discussed above. However, if there was any doubt that Lindholm was refusing to bargain with the employer's designated representative, he reaffirmed his refusal on May 3, 2013. In response to an e-mail from Castilleja which again notified Lindholm of the employer's designated bargaining representatives, Lindholm responded, "I have also pointed out to you that the *district doesn't get to pick who I communicate within the district*. *All* of my communications will be sent to you. What you do with them is up to you." (Emphasis supplied). Again, Lindholm's words are clear and unequivocal in stating that he was refusing to recognize or contact the employer's lawfully designated collective bargaining representatives. He did not say that he would contact Nordloff or Von Hollebeke "as appropriate" or otherwise acknowledge that there was any duty to contact the employer's designated representative under any circumstances. He stated that "*[a]ll* my communications will be sent to" Castilleja. (Emphasis supplied). He also again stated that he was unilaterally deciding that Castilleja would be his sole chosen collective bargaining contact and that the employer had no right to designate who the union was to "communicate within the district."

In its response to this motion for summary judgment and in Lindholm's supporting declaration, the union did not deny that the above cited responses were written and sent by Lindholm. Additionally, in its Answer to the Complaint in this case, the union admits the May 3, 2013 response by Lindholm.

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[1] Kiona Benton School District Superintendant Rom Castilleja.

The union argues that the employer has not exclusively used its designated representatives one hundred percent of the time to address collective bargaining issues and cites to various examples in its brief. The union's argument is that the employer, by not using its designated representatives one hundred percent of the time, has waived its right to designate a collective bargaining representative, apparently for any issue and for all time. While the Commission has held that the choice of a bargaining representative is not absolute, this case is not about, and does not address, whether, when, and how a party may contact someone other than their opposing party's designated bargaining representative. Lindholm did not state that the employer's designation was not absolute or that he was allowed, at times, to contact someone other than the employer's designated representatives. Lindholm refused directly and absolutely to ever contact the employer's designated representatives for any reason whatsoever. Even more, he unilaterally decided that the union could dictate who the employer's representative would be.

The union also cites to various examples of alleged employer incivility and intransigence as issues to be addressed in this case. Such information, whether true or not, are not material facts upon which the outcome of this litigation depends. If the union believes the employer has committed any violation of law under the Commission's jurisdiction it can seek appropriate counsel and file a complaint. Similarly, the tenor and tone of Lindholm's communications are clearly uncivil and this appears to be at least one of the reasons for the employer's designation of Nordlof and Von Hollebeke as its bargaining representative contacts. While incivility has no place in the good faith collective bargaining process, it is not unlawful. That said, it is also not unlawful, nor relevant, for the employer to cite such conduct as its reason for its choice of a collective bargaining representative. The union cites no rule, statute or case precedent for the proposition that the legality of a party's collective bargaining representative is conditioned on its reasoning for such designation. In fact, the union appears to agree with the employer that parties have the right to designate specific collective bargaining representatives, and for that very same reasoning. On May 15, 2013, Lindholm sent an mail to Castilleja stating:

> rom [sic],
>
> The Union, in an effort to curtail additional conflict, is once again formally informing you that Steve Lindholm is the contact person for all Union matters. You will be in receipt of written direction from Connie Meredith, Kiona Benton

> Teachers' Union President confirming the local's request for Union Representation to deal with all Union matters. Should you have questions, feel free to contact me. I believe you are in possession of my contact information.

CONCLUSION

The issue in this case is whether, after proper notification by the employer, Lindholm's direct, absolute and written refusal to abide by the employer's designation of collective bargaining representatives was a violation of the union's duty of good faith bargaining. In this case, Lindholm's direct statements on May 1, 2013, and May 3, 2013, clearly and unequivocally state that he believed the employer had no legal right to designate a collective bargaining representative. He further stated that he was going to completely disregard the employer's clear, direct, written, and lawful designation of Nordlof and Von Hollebeke as its collective bargaining representatives and that he was instead unilaterally designating Castilleja as his sole collective bargaining contact. The Commission's rules do not require parties' representatives to be licensed attorneys or to hold any other license, training, or experience. WAC 391-08-010. It is up to each party to choose their own representatives based on the level of knowledge (legal or otherwise), experience, and training they feel is necessary to represent them. However, the myriad of rules, statutes, and case law precedent controlling collective bargaining rights and duties are substantive and complex and, as the Commission has stated, a party "relies on its erroneous interpretation of law to its detriment." *City of Pasco*, Decision 9181-A (PECB, 2008).

Based on the foregoing, the Examiner finds that there are no genuine issue as to any material fact and that the employer is entitled to judgment as a matter of law. The union's direct, written refusal to abide by the employer's designation of collective bargaining representatives and his unilateral decision to designate Castilleja as his collective bargaining contact is a breach of its good faith bargaining obligation by refusing to bargain in violation of RCW 41.59.140(2)(c) and derivatively interfered in violation of RCW 41.59.140(2)(a)(ii).

FINDINGS OF FACT

1. The Kiona Benton School District is an employer within the meaning of RCW 41.59.020(5).

2. The Kiona Benton Education Association (union) is an exclusive bargaining representative within the meaning of RCW 41.59.020(6).

3. On February 1, 2013, the employer notified the union's designated collective bargaining representative, Steve Lindholm, in writing, that it had designated Eric Nordlof and Mona Von Hollebeke as its collective bargaining representatives. The notification advised that if these two representatives were not available, Lindholm could contact the Kiona Benton School District Superintendant Rom Castilleja directly.

4. On May 1, 2013, Nordlof again notified Lindholm, via e-mail, of the employer's designation of Eric Nordlof and Mona Von Hollebeke as its collective bargaining representatives.

5. On May 1, 2013, Lindholm responded to Nordlof stating, in pertinent part, that "Just so you know the union will no longer be contacting you . . ." and that "your communications will have to come through rom [sic] as the union will only communicate with him."

6. On May 3, 2013, Castilleja again notified Lindholm, via e-mail, of the employer's designation of Eric Nordlof and Mona Von Hollebeke as its collective bargaining representatives.

7. On May 3, 2013, Lindholm responded to Castilleja that "I have also pointed out to you that the district doesn't get to pick who I communicate within the district. All of my communications will be sent to you. What you do with them is up to you."

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-45 WAC.

2. By its actions in Findings of Fact 5 and 7, the union refused to bargain in violation of RCW 41.59.140(2)(c) and derivatively interfered in violation of RCW 41.59.140(2)(a)(ii).

ORDER

KIONA BENTON EDUCATION ASSOCIATION, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to bargain with the employer's designated collective bargaining representatives.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.59 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 meeting of the Kiona Benton Educational Association, 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 4th day of September, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

GUY O. COSS, 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.

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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 THE *KIONA BENTON EDUCATION ASSOCIATION* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain with the employer's designated collective bargaining representatives.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease refusing to bargain with the employer's designated collective bargaining representatives.

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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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	25699-U-13-06582	FILED:	05/09/2013	FILED BY:	EMPLOYER
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	TEACHERS				
DETAILS:	-				
COMMENTS:					

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