Skagit Public Hospital District 1, Decision 11949 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE NURSES ASSOCIATION, Complainant, vs. SKAGIT PUBLIC HOSPITAL DISTRICT 1, Respondent.	CASE 25407-U-13-6503 DECISION 11949 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Washington State Nurses Association, by *Timothy Sears*, Attorney at Law, for the union.

Davis Wright Tremaine LLP, by *Paula Lehmann*, Attorney at Law, for the employer.

On January 16, 2013, the Washington State Nurses Association (union) filed an unfair labor practice (ULP) complaint against Skagit Public Hospital District 1 d/b/a Skagit Regional Health (employer). The union alleged that the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by its refusal to provide information concerning April Torrey. A preliminary ruling was issued on January 23, 2013, finding causes of action to exist. On April 9, 2013, the union filed an amended complaint. The amended complaint was accepted as it met the conditions of WAC 391-45-070(1) and did not change the preliminary ruling. The employer filed both an answer and amended answer. Examiner Dianne Ramerman held a hearing on July 30, 2013. The parties submitted post-hearing briefs to complete the record.

ISSUES

1. Does the Commission have jurisdiction over information requests used to determine compliance with arbitration awards that arise out of the parties' contractual grievance procedure?

2. Did the employer refuse to bargain and derivatively interfere with employee rights by failing to provide relevant and necessary information requested by the union to determine the employer's compliance with an arbitration award?

The Commission has statutory jurisdiction over the union's information requests asserted under Chapter 41.56 RCW to determine if the employer complied with an arbitration award. Based on the applicable law and evidence presented by the parties, the Examiner rules that the employer refused to bargain and derivatively interfered with employee rights by failing to timely provide relevant and necessary information requested by the union.

BACKGROUND

The employer and union are parties to a collective bargaining agreement (CBA) extending from August 3, 2011, through May 31, 2014. The parties' agreement contains a grievance procedure culminating in final and binding arbitration. Torrey is a registered nurse covered by the parties' CBA who was working towards an oncology recertification. In September 2009, the employer transferred Torrey from the out-patient radiation oncology clinic where she had daily interaction with cancer patients to the in-patient float pool in the hospital where such interaction was not guaranteed. A grievance was filed challenging Torrey's transfer, and ultimately the matter proceeded to arbitration. On June 26, 2012, Arbitrator Burton White ruled Torrey's reassignment was a breach of the parties' CBA and ordered the employer to "cooperate with the [g]rievant to insure that during all periods of her [o]ncology certification, she shall be assigned sufficient oncology nursing work hours to meet the needs of her recertification." The arbitration award stated Arbitrator White retained jurisdiction.

The Oncology Nursing Certification Corporation (ONCC) requires individuals pursuing oncology certification to meet specific criteria. Torrey testified that the renewal application for her certification (expiring in December 2012) was due by July 2012 and that she was required to have completed a certain number of practice hours at the time of her application. She further testified that she tracked her practice hours in 2012. Finally, Torrey testified that in August 2012, the ONCC advised her that she did not have the required number of eligible practice hours

and would have to renew her certification by examination. Subsequently, Torrey took the examination, passed, and was recertified on November 19, 2012.

In October 2012, the union twice e-mailed the employer asserting that it was not complying with the arbitration award because it was not assigning Torrey a sufficient number of oncology patients. On November 16, 2012, the employer sent an e-mail to Arbitrator White and the union confirming that its records were consistent with Torrey's report of hours included in the union's October e-mail. However, the employer asserted that Torrey could claim additional hours because the Orthopedic and Surgical Care Unit (OSC) where Torrey worked had oncology patients admitted to it "24/7." Thus, it believed that Torrey had already worked more hours in the OSC than the minimum number of practice hours required by the ONCC to maintain her oncology certification.

Due to the dispute between the parties about the number of eligible practice hours Torrey had worked, in November 2012 White assigned the parties to question the ONCC about its requirements for certification. Specifically, they were to gain clarification on what hours worked count as credible oncology practice hours for certification. The parties developed a list of questions to pose to the ONCC, but that call did not occur by the end of 2012.

On December 3, 2012, the union e-mailed an information request ("the December 3 request") to the employer's attorney and copied Arbitrator White. The union's request was as follows:

> In order for the [WSNA] to evaluate the [e]mployer's purported compliance with the [a]rbitrator's [a]ward . . . , please provide the following information:
>
> For each workday on which [Torrey] worked since June 26, 2012, specify:
>
> 1. The department or unit to which [Torrey] was assigned to work (if more than one department or unit, specify the number of hours she was assigned to work in each department or unit);
> 2. The total number of hours [Torrey] worked;
> 3. The number of oncology patients in the [OSC], including the number of oncology patients who were admitted or discharged;
> 4. The number of oncology patients assigned to [Torrey's] care, and the number of non-oncology patients assigned to her care;
> 5. The number of hours [Torrey] was assigned to work in the oncology clinic; [and]

> 6. Any steps the [e]mployer has taken since June 26, 2012 to comply with the portion of the [a]rbitrator's [a]ward requiring the [e]mployer to cooperate with [Torrey] to ensure that she is assigned sufficient oncology nursing work hours to meet the needs of her recertification.
>
> Please provide this information before the close of business Friday, December 7, 2012. Thank you for your cooperation in this matter.

On December 28, 2012, the employer e-mailed Arbitrator White and the union stating that it had fully complied with the award by assigning Torrey more than enough shifts to allow her to maintain her oncology certification and asking for an order affirming that it had complied with the award. It asserted that it had provided Torrey with sufficient practice hours because there are "typically oncology patients in the unit 24/7." The employer did not provide any information to the union or communicate with it at this time. Consequently, two days later, on December 30, 2012, in response to the employer's December 28, 2012 e-mail, the union sent an e-mail to Arbitrator White and the employer that repeated the union's December 3 request.

On January 8, 2012, the parties' representatives participated in the conference call with the ONCC to understand its requirements for accepting credible oncology practice hours worked for purposes of certification. During the call, the Director of ONCC advised the parties that only the hours that a nurse is caring for patients with an oncology diagnosis could be counted toward recertification.

By January 16, 2013, the employer had still not responded to the union's December 3 and December 30, 2012 requests. Based on the employer's lack of response, the union filed this ULP.

On January 18, 2013, the employer e-mailed the union noting the filing of the ULP and, for the first time, acknowledged the union's one-and-a-half-month-old, and twice made, December 3 request. Concerning the union's information requests, the employer asserted that: "we have provided the number of shifts she has been assigned to the OSC. I also thought that many of these questions had been addressed in meetings between the parties. I will check on this and provide a response shortly."

The next correspondence from the employer was on January 28, 2013. At this time, the employer advised the union that the employer's attorney was on family emergency leave and would respond to the requests for information as quickly as possible.

On January 29, 2013, almost two months after the initial request, the employer responded to the union's information requests. The employer provided information regarding the shifts Torrey worked, the average number of cancer patients in the OSC, and the number of patients Torrey is typically assigned. In its e-mail, the employer asserted that it was very labor intensive and burdensome to determine what patients were actually assigned to Torrey's care by checking patient medical records against the assignment sheets. The employer also noted that it would be willing to verify Torrey's log that tracked her hours. It claimed that because Torrey had already been recertified via examination, the data on specific hours she worked with oncology diagnosed patients was not relevant. It concluded by noting that it had met with Torrey to discuss her recertification and had assigned Torrey to the OSC as often as possible.

In a February 3, 2013 e-mail, the union explained that it believed the employer's January 29, 2013 response to the union's information requests was incomplete and inaccurate. The union asserted that:

1. The number of shifts the employer claimed Torrey worked in the OSC was impossible;
2. The total number of hours for each workday that Torrey worked from June 26, 2012 through December 31, 2012 was readily available in the employer's time and payroll records;
3. The number of oncology patients in the OSC for each of Torrey's workdays, including the number of oncology patients who were admitted or discharged, was relevant information because the number of oncology patients varies from day to day thereby making the average number of oncology patients insufficient and immaterial;
4. The employer's claim that Torrey was typically assigned four patients contradicts information the union received from Torrey who asserted that she was usually assigned five patients per shift, making the daily assignment sheets necessary to resolve the dispute;
5. The employer was non-responsive to the requests for the number of hours Torrey worked during each workday in the oncology clinic from June 26, 2012 through December 31, 2012 because it gave the sum total of hours for the 27 week period in the OSC; and
6. Torrey did not recall any meeting with the employer.

The union asserted that all of the requested information was in the employer's possession and control and was readily accessible without undue burden. It repeated in this February 3, 2013 email, for a third time, its December 3 and 30, 2012 information requests.

On February 27, 2013, the employer provided copies of Torrey's daily assignment sheets and time records. It also clarified that it misunderstood the request regarding Torrey's assignment to the oncology clinic and thought the union was asking about the OSC. It stated that Torrey had not been assigned to the oncology clinic after the award. The employer also clarified that one manager had a conversation with Torrey about maintaining her certification and that two managers had a conversation between themselves about Torrey's assignments, but did not note a meeting occurring. The employer stated that it had not calculated averages or done anything more "exotic," but that the word "average" was used to reflect the qualitative assessment of the chief nursing officer (CNO) of the unit. The CNO's "qualitative assessment was that there was at least one oncology patient on the unit 24/7. . . ." It asserted "that cross checking assignment sheets to patient records is unduly burdensome, particularly in light of the fact that we don't intend to challenge [Torrey's] personal records on the number of oncology patients she treated during the post-arbitration period."

On March 20, 2013, the union again made a request for the number of oncology patients treated in the OSC for each of Torrey's workdays between June and December 2012 so that it could determine if the employer complied with the arbitration award.

On April 4, 2013, the employer responded to the March 20, 2013 e-mail, stating that it would be time consuming and difficult to identify the diagnosis of each patient assigned to Torrey. The employer reiterated it did not intend to challenge Torrey's records, responsive documents had been provided that would allow Torrey to calculate the amount of time spent treating cancer patients, and that in light of the fact that Torrey had been certified through 2016, the information was unnecessary.

The union filed an amended complaint on April 9, 2013. It alleged that the employer's response on January 29, 2013, to the union's December 3 request represented a continuing failure to provide information.

On April 15, 2013, the union responded to the employer's April 4, 2013 correspondence stating that it had repeatedly asked the employer to specify the number of oncology patients treated in the OSC on each of Torrey's workdays from June through December 2012. It expressed frustration with the employer' imprecise assertions made in support of its claim that it had fully complied with Arbitrator White's award. Specifically, the union noted the following statements: 1) that Torrey worked with oncology patients in the OSC "24/7;" 2) that there were "typically oncology patients in the unit 24/7;" and 3) that "the OSC averages at least one cancer patient 24/7." The union argued that these generalizations were not specific enough to verify whether Torrey was provided sufficient oncology nursing work hours to meet the needs of her recertification. The union stated that it had been informed by Torrey and other OSC nurses that there are many days when there are no oncology patients in that unit. The union asserts that the employer's claim undermines its argument that it has fully complied with the award because, if true, it assigned Torrey without regard to whether there were actually any oncology patients in the unit on any particular day and without regard to whether she was assigned oncology patients. It asserts that the employer is in sole possession of the relevant information to determine compliance.

On May 6, 2013, the employer provided the union with the oncology daily census of patients in the OSC, but did not show the number of oncology patients in the OSC on the particular dates that Torrey worked. Consequently, on May 8, 2013, the union complained that the census data was "a compilation of irrelevant averages" and not responsive to its requests. It noted that the employer had provided no information to substantiate the claim that the requests were burdensome. It reiterated its request for the employer to specify, for each workday that Torrey worked from June through December 2012, the number of oncology patients is the OSC, including the number of oncology patients who were admitted or discharged.

On June 10, 2013, the union again requested patient admitting and discharge information for oncology patients between June and December 2012. On July 9, 2013, the employer responded that it was working on gathering the responsive data. Over seven months and two weeks after the initial request, on July 18, 2013, the employer provided the admitting location and a list of

patients (with patient identifiers removed) who had an oncology diagnoses and who were discharged from the OSC from June through December 2012.

ISSUE 1: DOES THE COMMISSION HAVE JURISDICTION OVER POST-ARBITRATION AWARD INFORMATION REQUESTS?

Applicable Legal Standards

Chapter 41.56 RCW governs the relationship between unions and employers and gives the Commission broad authority over information requests and encompasses requests to determine compliance with arbitration awards that arise out of the parties' contractual grievance procedure. The duty to provide relevant information is "derived from the duty to bargain in good faith and extends beyond the period of contract negotiations." *University of Washington*, Decision 11499 (PSRA, 2012), *aff'd*, Decision 11499-A (PSRA, 2013). The obligation applies, for example, to requests for information necessary for the representation of bargaining unit members in processing grievances to enforce the terms of negotiated contracts. *University of Washington*, Decision 11499, *aff'd*, Decision 11499-A; *King County*, Decision 6772-A (PECB, 1999). Furthermore, the Commission has retained authority to decide ULPs after it has certified unresolved collective bargaining issues to statutory interest arbitration. *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992) (holding that the state Legislature did not intend the Commission's explicit statutory directive "to prevent any ULP and to issue appropriate remedial orders" to be affected or impaired by statutory interest arbitration procedures). The Commission has also held that refusal to bargain charges are not susceptible to resolution through contractual grievance proceedings. *City of Bremerton*, Decision 6006-A (PECB, 1998).

The Commission's jurisdiction is consistent with federal NLRB jurisdiction. As the Supreme Court observed in *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), the policy of non-deferral in information request cases actually aids the functioning of the arbitration process by allowing evaluation of the merits of the claim before placing the effort and expense of arbitration on the parties. *See DaimlerChrysler Corp. v. NLRB*, 288 F.3d 434 (DC Cir. 2002); *NLRB v. American National Can Co.*, 924 F.2d 518 (4th Cir. 1991). The National Labor Relations Board (Board) has held that essentially the same rationale applies where a union requests information to

determine whether it should seek judicial enforcement of an arbitration award. *NLRB v. Shaw's Supermarkets, Inc.*, 339 NLRB 871 (CA Cir. 2003). The Board has ruled that it would not be more efficient to defer to the arbitrator in post-arbitration disputes over information because deferral in such situations runs the risk that the issue will not be resolved by the arbitrator and that recourse to the Board may ultimately be necessary. *NLRB v. Shaw's Supermarkets, Inc.*, 339 NLRB 871. Therefore, the Board has declined to impose a two-tiered procedure in post-arbitration cases. *NLRB v. Shaw's Supermarkets, Inc.*, 339 NLRB 871.

Analysis and Conclusion

The employer argues that Arbitrator White retained jurisdiction to determine the necessity and relevance of the union's information requests. It asserts that the basis for the information requests is effectively a challenge to the award and therefore unrelated to collective bargaining. It claims that it had no obligation to provide the requested information because it did not violate the award. The employer argues that the union acted in bad faith by attempting to circumvent the arbitrator by "forum shopping." It claims that the union should have raised the issue with Arbitrator White who was already working with the parties to obtain clarification on issues related to the requests. Alternatively, it asserts that it was waiting for the ONCC clarification call to occur before responding.

The employer's assertion concerning the legal jurisdiction over information requests is incorrect. The union was not challenging Arbitrator White's award. In fact, the union agreed with the arbitration award, and its information requests were made in order to support its claim that the employer had not complied with the terms of the valid arbitration award. The existence of an arbitration award did not relieve the employer of its statutory duty under Chapter 41.56 RCW to furnish relevant information requested by the union necessary for its representation of a bargaining unit member in the processing of a grievance. *See University of Washington*, Decision 11499, *aff'd*, Decision 11499-A; *King County*, Decision 6772-A. The union's December 3 request for information was a relevant request under Chapter 41.56 RCW made in furtherance of its representation of a bargaining unit member in the processing of a grievance. Therefore, the Commission, not Arbitrator White, has statutory jurisdiction over the union's information requests.

ISSUE 2: DID THE EMPLOYER REFUSE TO BARGAIN AND DERIVATIVELY INTERFERE WITH EMPLOYEE RIGHTS BY FAILING TO PROVIDE INFORMATION?

APPLICABLE LEGAL STANDARDS

The duty to provide relevant information is rooted in the parties' duty to bargain. The Public Employees' Collective Bargaining Act defines collective bargaining as the:

> performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit . . . .

RCW 41.56.030(4). The duty to bargain includes a duty to provide relevant information requested by the opposite party for the proper performance of its duties in the collective bargaining process. *University of Washington*, Decision 11499, *aff'd* Decision 11499-A, *citing City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, *City of Bellevue v. International Association of Fire Fighters, Local 1604,* 119 Wn.2d 373; *NLRB v. Acme Industrial Co.*, 385 U.S. 432. Failure to provide relevant information upon request constitutes a refusal to bargain ULP which includes a derivative interference violation. *University of Washington*, Decision 11414-A (PSRA, 2013); *University of Washington*, Decision 11499, *aff'd* Decision 11499-A; RCW 41.56.140(4) and (1). The standard is whether the union made a request relevant to the performance of its duties in administering the CBA. *University of Washington*, Decision 11499-A.

In *City of Bremerton*, Decision 6006-A, the Commission adopted the rationale in *NLRB v. Acme Industrial Co.* 385 U.S. 432, where the Supreme Court strongly endorsed requiring the employer to supply information to the union that would aid in "sifting out unmeritorious claims" in the grievance process. Consequently, the Commission now uses a "discovery-type standard" to determine the relevance of the requested information and to allow parties to "judge for themselves" whether to press their claims through the contractual grievance procedure or before

the Commission or courts. *City of Yakima*, Decision 10270-B (PECB, 2011) (citations omitted). Thus, the union only needs to show that the requested information is probably relevant. *Seattle School District*, Decision 5542-C (PECB, 1997). Information pertaining to employees in the pertinent bargaining unit has been held presumptively relevant. *University of Washington*, Decision 11499, *citing City of Bremerton*, Decision 6006-A, *aff'd University of Washington*, Decision 11499-A.

Upon receiving an information request, a party must either supply the information, or, if it perceives that a particular request is unclear, irrelevant, or overly burdensome, communicate its concerns to the other party in a timely manner. *Seattle School District*, Decision 9628-A (PECB, 2008). It is not enough for an employer to rationally believe that the information sought is not the kind of information that must be disclosed. *City of Yakima*, Decision 10270-B. If an employer thinks the records are not subject to disclosure, it must notify and bargain with the union over the issue and cannot unilaterally withhold or redact relevant requested information. *Seattle School District*, Decision 5542-C (where request included records that were potentially confidential).

If the requesting party does not believe the information provided sufficiently responds to the intent and purpose of the request, the requesting party has a duty to contact the responding party and engage in meaningful discussions about what type of information it is seeking. *Kitsap County*, Decision 9326-B (PECB, 2010). Because information requests are an extension of the collective bargaining process, the parties are expected to negotiate any difficulties they encounter. *Port of Seattle*, Decision 7000-A (PECB, 2000); *City of Yakima*, Decision 10270-B; *University of Washington*, Decision 11499-A.

The duty to provide information includes an obligation to make a reasonable, good faith effort to locate the information requested. *Seattle School District*, Decision 9628-A. The responding party also has a duty to ensure that it reasonably preserves the information being sought. *City of Seattle*, Decision 10249 (PECB, 2008), *aff'd,* Decision 10249-A (PECB, 2009). Moreover, the responding party must not carelessly or knowingly provide false information. *Seattle School District*, Decision 9628-A.

Parties must be prompt in providing relevant information. Unreasonable delay in providing necessary information may constitute a ULP. *University of Washington*, Decision 11499-A. Where a ULP is found based on an unreasonable delay in the production of a relevant information request, it is not a defense or "cure" for the offending party to claim that it had eventually provided the information. The unreasonable delay that hampers the good faith bargaining process is the offensive practice, and thus, it cannot be rendered moot by the eventual production of the information which is past the point of the "unreasonable delay" determination. *See Seattle School District*, Decision 5542-C. If the employer representative assigned to respond to the request is not available to gather the information for a period of time such that it would make the request untimely, another person should be assigned even if it will be more difficult for that person to gather and process the information. *University of Washington*, Decision 10226 (PSRA, 2008).

Inadvertence and/or the lack of prejudice to a requesting party are not defenses to a failure to provide relevant requested information. *University of Washington*, Decision 11499, *aff'd* 11499-A, *citing City of Bremerton*, Decision 5079 (PECB, 1995), (where the defense that withholding an employer official's investigatory notes did not harm the union because those notes duplicated information contained in other information provided to the union was found to be without merit).

ANALYSIS

Information Requested Was Presumptively Relevant and Necessary

The information that the union requested concerned Torrey's hours of work and work assignments. The union requested the information to "judge for itself" whether the employer was complying with Arbitrator White's award - an award that arose out of the grievance procedure contained in the parties' CBA. Accordingly, the requests were relevant and necessary to represent Torrey and appropriately process her grievance.

Employer Did Not Timely Respond to the Union's Information Requests

By December 30, 2012, the employer had not responded to the union's December 3 request so the union repeated its request. The employer only acknowledged the requests on January 18, 2013, after the initial ULP was filed on January 16, 2013. The employer, however, cannot

ignore a statutory information request for over seven weeks. It had an independent statutory duty to either supply the information or communicate its concerns to the union. It did neither and did not provide any information related to the union's information requests until January 29, 2013, at which time it only provided generalized information and not the specific information that the union requested. By its own admission, the employer unilaterally determined that the requests were under Arbitrator White's jurisdiction and that compliance issues with the award would be worked out during the ONCC conference call. When it became clear that the call would not occur in 2012, it asked for an order from Arbitrator White stating that it had fully complied with the award – presumably in the hope of relieving it of any obligation to respond to the requests. Moreover, it waited almost three months before it provided the daily assignment sheets and time records requested on December 3, 2012. Then, the employer failed to timely supply admitting location and discharge information, which was part of the December 3 request, for over seven months.

Torrey's Tracking of Her Own Hours Not a Defense

The fact that Torrey kept contemporaneous records by tracking her practice hours did not void the employer's statutory obligations to provide the information it had regarding Torrey. The union specifically advised the employer that it believed the generalized information the employer had provided conflicted with the information it was receiving from Torrey and others. The union needed the employer's version of information in order to determine the truth. Additionally, the employer's assertions that Torrey already had the same information and that the employer was not going to challenge her records are also misplaced. The standard is whether the union made a valid request relevant to the performance of its duties. A responding party cannot defend a refusal to provide relevant information by stating that it has assessed the information and has itself determined that the requesting party did not need the information because, in the respondent's assessment, there is no prejudice. As part of its duties, the union needed the information to evaluate the employer's compliance with the arbitration award.

Torrey's Recertification by Examination Not a Defense

Torrey's recertification did not make the union's information requests irrelevant because the union did not request the information to determine if Torrey could recertify using her hours, but

rather to determine if the employer was complying with the award. Again, the standard is whether the union made a request relevant to the performance of its duties in administering the CBA, which it did. The fact that Torrey took the examination to recertify did not render moot the employer's obligation to provide requested, relevant information.

ONCC Call Not a Defense

The conference call between the parties' representatives and the ONCC in January 2013 did not satisfy the employer's statutory obligation to respond to the union's December 3 request. The purpose of the call was for the ONCC to clarify what "type" of work a nurse can count towards the ONCC's recertification requirements. The ONCC did not, and in fact could not, answer the question of how many working hours Torrey was assigned to an oncology patient. Further, the call did not, as the employer argues, address what was a "relevant" information request under Chapter 41.56 RCW, but did clarify what hours were relevant for certification through the ONCC. Finally, if the employer thought the call satisfied the December 3 request, it had an obligation to communicate that to the union which it did not do.

Unavailability of Employer Attorney Not a Defense

The employer cannot excuse its failure to respond by citing to its attorney's family emergency. The attorney wrote Arbitrator White on December 28, 2012, requesting an order of compliance with the award. The first time the employer raised this issue with the union was on January 28, 2013, over seven weeks after the initial request. After stating its inability to respond, the next day on January 29, 2013, the employer did in fact provide a response. Additionally, the employer uses a sophisticated law firm that should have a process in place to help respond to information requests in a timely manner when a single attorney is out of the office, even if it would have been more difficult for another individual. For these reasons, a family emergency does not justify a delayed response.

"Overly Burdensome" Not a Defense In this Case

While the burdensome nature of a request can be a relevant factor under certain circumstances, here this is not the case for at least three reasons. First, any burden in providing the requested information would not have justified the employer's over seven week delay in acknowledging

the December 3 information request. If a party thinks a request for information is overly burdensome, it must respond within a reasonable amount of time and inform the other party of this assertion. This will then allow the parties to resolve the dispute, which may include the narrowing of the request. In the present case, the employer did not notify the union of its assertion that it believed the information requests were burdensome for over seven weeks and only did so after the union filed this ULP.

Second, the employer's actions demonstrate that it was not unduly burdensome to provide some of the requested information. It admitted in its January 29, 2013 response that it had access to Torrey's daily assignment sheets. Further, stipulated documents admitted at hearing and testimony reflected that the employer maintains records that show the hours employees work on any given day. However, the employer did not provide copies of these records to the union until February 27, 2013, almost three month after the initial request. Thus, after its initial response, the employer continued to fail to provide the union with documents it had in its possession that were responsive to the union's requests.

Third, the employer's claims that information concerning both the number of oncology patients assigned to Torrey and the number of oncology patients treated in the OSC for each of Torrey's workdays would be overly burdensome to provide is troubling. Arbitrator White's award specifically charged the employer with providing Torrey with sufficient practice hours to meet the needs of her oncology recertification. At the time of the award, employer had an erroneous interpretation of what practice hours counted towards recertification. However, in January 2013, it learned from the ONCC that only those practice hours where Torrey was actually caring for oncology patients counted. Thus, at this time if this information was not already being tracked by the employer, it should have retroactively documented those practice hours where Torrey was actually caring for oncology patients from June 26, 2012, forward to determine its own compliance with Arbitrator White's award. If the employer did not in fact track this information, any burden was a problem of its own making.

Furthermore, if the employer determined the requests were too burdensome due to confidentiality concerns, it should have communicated and bargained over its concerns. It

cannot unilaterally withhold or redact relevant requested information. Rather, the employer, has a duty to communicate about the type of information that is being sought. Here, the union never asked for patient identifying information.

Misunderstanding and Inadvertence Not Defenses

The employer carelessly provided false information to the union in its January 29, 2013 response. As the employer explained in its February 27, 2013 e-mail to the union, it misunderstood the question regarding Torrey's assignment to the oncology clinic and thought the union was asking about the OSC. Plus, once the employer communicated it was working on the response it presumably only took a day to respond. Inadvertence is not a defense.

CONCLUSION

Analyzing the totality of the evidence on this issue, I find that the employer refused to bargain with the union when it delayed and failed to provide relevant and necessary information to the union in violation of RCW 41.56.140(4) and (1). The information requested by the union was relevant information needed by the union for the proper performance of its duties in the collective bargaining process. It needed the information to assess whether the employer was complying with the arbitration award. The employer made legally erroneous defenses - none of which warrant merit. It did not initially communicate to the union why it did not believe the information was relevant or necessary. The employer waited over seven weeks before acknowledging the December 3 request. Almost two months after the initial request, the employer responded to the union's information requests with generalized information and not with the specific information the union had requested. It then took nearly three months to provide the daily assignment sheets and time records, and over seven months to provide the number of oncology patients in the OSC including admitting and discharge information from June through December 2012 despite repeated requests. The employer had a statutory obligation to supply information, or communicate its concerns to the other party, which it did not timely do. Rather the employer unduly delayed providing the requested information to the union.

FINDINGS OF FACT

1. Skagit Public Hospital District 1 d/b/a Skagit Regional Health (employer) is an employer within the meaning of RCW 41.56.030(12).

2. The Washington State Nurses Association (union) is an exclusive bargaining representative within the meaning of RCW 41.56.030(2). The union represents registered nurses at Skagit Regional Health including April Torrey.

3. On June 26, 2012, Arbitrator Burton White issued an award that directed the employer to cooperate with the grievant to insure that during all periods of her oncology certification Torrey was assigned sufficient oncology nursing work hours to meet the needs of her recertification.

4. In August 2012, the Oncology Nursing Certification Corporation (ONCC) advised her that she did not have the required number of practice hours and would have to renew her certification by examination.

5. On December 3, 2012, the union sent the employer a request for information to evaluate the employer's compliance with Arbitrator White's award. The union requested for each workday that Torrey worked since June 26, 2012, the employer specify: 1) the department or unit to which Torrey was assigned to work; 2) the total number of hours Ms. Torrey worked; 3) the number of oncology patients in the Orthopedic and Surgical Care Unit (OSC), including the number of oncology patients who were admitted or discharged; 4) the number of oncology patients assigned to Torrey's care, and the number of non-oncology patients assigned to her care; and 5) the number of hours Torrey was assigned to work in the oncology clinic; 6) any steps the employer has taken since June 26, 2012 to comply with the portion of the award requiring the employer to cooperate with Torrey to ensure that she is assigned sufficient oncology nursing work hours to meet the needs of her recertification.

6. The December 3, 2012, information request by the union was relevant to the performance of the union's obligations as the exclusive bargaining representative. The union needed this relevant information to exercise its duty to evaluate the employer's compliance with Arbitrator White's award obtained through the parties' contractual grievance procedure.

7. On December 28, 2012, the employer asked Arbitrator White for an order affirming that it had complied with the award by assigning Torrey more than enough shifts to allow her to maintain her oncology certification.

8. By December 30, 2012, the employer had not responded to the union's December 3, 2012 request for information. On December 30, 2012, the union repeated its December 3, 2012 information request to the employer.

9. On January 8, 2013 the parties' representatives engaged in a conference call with the Oncology Nursing Certification Corporation (ONCC). During the call, the Director of ONCC advised the parties that only the hours a nurse is caring for patients with an oncology diagnosis could be counted toward recertification.

10. On January 18, 2013, the employer, for the first time, acknowledged the union's December 3, 2012 request. The employer did not provide the union with the information it requested on December 3, 2012 and again on December 30, 2012.

11. On January 29, 2013, the employer responded to the union's December 3 and December 30, 2012 information requests. However, it provided generalized information and did not provide the specific information the union had requested. The employer asserted that it was very labor intensive and burdensome to determine what patients were actually assigned to Torrey's care.

12. On February 3, 2013, the union explained that it believed the employer's January 29, 2013 response was incomplete and inaccurate. It asserted that all of the requested information was in the employer's possession and control and was readily accessible without undue burden. It repeated its December 3 and 30, 2012 requests.

13. On February 27, 2013, the employer provided part of the union's requested information from its December 3 and December 30, 2012 requests. The employer provided copies of Torrey's daily assignment sheets and time records. This response, occurring nearly three months after the initial request, did not provide the union with all the information it had requested and was not timely. It continued to assert that providing specific information related to the number of oncology patients in Torrey's care was unduly burdensome.

14. On March 20, 2013, the union again made a request for specific information regarding the number of oncology patients treated in the OSC for each of Torrey's workdays during the time period between June 2012 and December 2012.

15. On April 4, 2013, the employer stated that it would be time consuming and difficult to identify the diagnosis of each patient assigned to Torrey's care.

16. On April 15, 2013, the union again asked the employer to specify the number of oncology patients treated in the OSC unit on each workday that Torrey worked from June 2012 through December 2012.

17. On May 6, 2013, the employer provided the union with the oncology daily census of patients in the OSC, but did not provide the number of oncology patients in the OSC on the particular dates that Torrey worked.

18. On May 8, 2013, the union complained that the census data was not responsive to its requests. It noted that the employer had provided no information to substantiate the claim that the requests were burdensome. It reiterated its request for the employer to specify, for each workday that Torrey worked from June through December 2012, the number of oncology patients is the OSC, including the number of oncology patients who were admitted or discharged.

19. On June 10, 2013, the union again requested admitting and discharge information for oncology patients between June 2012 and December 2012.

20. On July 18, 2013, the employer provided the admitting location and a list of oncology patients (with patient identifiers removed) who were discharged from the OSC from June 2012 through December 2012. The employer failed to timely supply requested information for over seven months and two weeks.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By failing or refusing to provide information requested by the union in a timely manner, as described in Findings of Fact 3 through 20, the employer refused to bargain and violated RCW 41.56.140(4) and (1).

ORDER

Skagit Public Hospital District 1, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to recognize the statutory jurisdiction of the Commission over information requests asserted under Chapter 41.56 RCW involving post-arbitration award compliance.

   b. Refusing to bargain in violation of RCW 41.56.140(4) and derivatively interfering in violation of RCW 41.56.140(1) by failing to provide relevant and necessary information upon request to the union so that it can determine the employer's compliance with an arbitration award.

c. 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 41.56 RCW:

a. The employer shall provide all information requested in the union's December 3, 2012 information request, unless the employer has already provided such information.

b. Give notice to and, upon request, negotiate in good faith with the Washington State Nurses Association, before failing to provide relevant documents upon request by the union.

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 Commissioners of Skagit Regional Health, 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, 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 9th day of December, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Diane Ramerman

DIANNE RAMERMAN, 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 25407-U-13-6503
DECISION 11949 - PECB

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 *SKAGIT PUBLIC HOSPITAL DISTRICT 1* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered in violation of RCW 41.56.140(1) by failing to provide relevant and necessary information upon request to the union so that it can determine the employer's compliance with an arbitration award.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL provide all information requested in the union's December 3, 2012 information request, unless the employer has already provided such information.

WE WILL give notice to and, upon request, negotiate in good faith with the Washington State Nurses Association, before failing to provide relevant documents upon request by the union.

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
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OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 12/09/2013

The attached document identified as: DECISION 11949 - 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 /S/ ROBBIE DUFFIELD

CASE NUMBER:	25407-U-13-06503	FILED:	01/16/2013	FILED BY:	PARTY 2
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DETAILS:	April Torrey				
COMMENTS:					

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