Grandview School District, Decision 10639-A (EDUC, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GRANDVIEW EDUCATION ASSOCIATION, Complainant, vs. GRANDVIEW SCHOOL DISTRICT, Respondent.	CASE 22141-U-08-5643 DECISION 10639-A - EDUC DECISION OF COMMISSION

James A. Gasper, Attorney at Law, for the union.

Stevens, Clay & Manix, P.S., by *Gregory L. Stevens,* Attorney at Law, for the employer.

On December 8, 2008, the Grandview Education Association (union) filed a complaint alleging that the Grandview School District (employer) committed multiple unfair labor practices in violation of Chapter 41.59 RCW, including directly dealing with a bargaining unit employee who had filed a grievance, requesting information from the union's former president, and by prohibiting the current union president from using the employer's e-mail system to communicate with bargaining unit employees. Unfair Labor Practice Manager David I. Gedrose issued a preliminary ruling sending the following allegations to hearing:

> Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promise of benefit made by employer official Kevin Chase to Karen Miller concerning information related to a grievance arbitration hearing, Jaime Downing concerning the union's use of the employer's e-mail system, and Ryan Downing concerning Chase's denial of a grievance and scheduling of a grievance hearing.

Examiner Lisa A. Hartrich held a hearing and issued a decision dismissing the union's complaint. *Grandview School District*, Decision 10639 (EDUC, 2009). The union now appeals.

ISSUES PRESENTED

1. Did the employer interfere with protected employee rights when Superintendant Kevin Chase had a conversation with bargaining unit employee Ryan Downing concerning the reasons why Downing's request for a tuition reimbursement was denied and when Chase sent an e-mail to Downing about the scheduling of his grievance?
2. Did the employer interfere with protected employee rights when Chase asked former local president Karen Miller for bargaining notes from the 2005 contract negotiations?
3. Did the employer interfere with protected employee rights when Chase had a conversation with local union president Jamie Downing about her use of the employer's e-mail system for non-union related matters?

For the reasons set forth below, we affirm the Examiner's decision that the employer's actions were not unfair labor practices.[1] Chase's conversations with Ryan Downing and Karen Miller, as well as his e-mail to Downing, did not interfere with employee rights as neither could be construed as discouraging Ryan Downing from exercising protected activities. Chase's statement to Jamie Downing about her use of the e-mail system also did not interfere with protected employee rights. If there was a dispute about whether use of the e-mail system conformed to the parties' collective bargaining agreement, the grievance procedure contained in their agreement is the proper mechanism to resolve that dispute, and not the statutory unfair labor practice provisions.

A brief recitation of the facts is necessary to place this controversy in the proper context. The employer and union are parties to a collective bargaining agreement that expired on August 31,

---

[1] This Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002).

2009. On January 1, 2008, the union filed a separate unfair labor practice complaint alleging that the employer violated Chapter 41.59 RCW by directly dealing with bargaining unit employees. On May 15, 2008, the parties jointly requested that an agency settlement mediator be assigned to assist them in resolving the dispute without a hearing. The parties reached a mutually agreeable settlement that was reduced to writing that, for reasons which will be addressed later, is unnecessary to detail here other than to explain that the employer agreed that it would not directly deal with employees with regards to mandatory subjects of bargaining or contract administration, and instead the employer would direct all issues to the local union president.

Specific Facts Related to Ryan Downing

Ryan Downing[2] is a bargaining unit employee who began his employment with the employer on August 21, 2008. On September 1, 2008, he made a claim under the parties' collective bargaining agreement for a tuition reimbursement for a National Teachers Certification Program. The employer's Business Manager, Brad Shreeve, denied the request. Shortly after Shreeve denied the request, Chase visited Downing to explain the employer's rationale: that Downing was not an employee of the district at the time he enrolled in the program. Chase did not ask Downing whether he intended to file a grievance over the matter, and Chase did not ask Downing about any other union matters.

On October 25, 2008, union president Jamie Downing sent Chase an e-mail inquiring about the employer's decision to deny Ryan Downing's reimbursement request and also asking why he would discuss association business with a bargaining unit member in violation of the settlement agreement. She asked Chase to respond to her questions by October 31, 2008.

On October 28, 2008, Ryan Downing filed a contractual grievance regarding the employer's decision to deny the tuition reimbursement request. Step II of the grievance procedure required the grievant to meet with the superintendant to discuss the grievance. On November 13, 2008, Chase e-mailed Ryan Downing asking him when he would be available for a Step II meeting. Chase did not send a copy of his e-mail to the union. Jamie Downing then followed up on

---

2 Ryan Downing is married to union president Jamie Downing.

Chase's request informing him that the union would meet with him on November 18, and again reminded Chase about the terms of the settlement agreement.

Specific Facts Related to Karen Miller

Karen Miller is a bargaining unit employee who has been employed by the employer for thirty years. Miller previously served as the local union president on two different occasions, has served on the union's bargaining team, and participated in negotiations that occurred in 2005. In the fall of 2008, Chase asked Miller for any notes that she might have from the 2005 negotiations. Chase did not divulge to Miller that he needed the notes for an upcoming grievance arbitration. Miller never provided Chase with the notes, and Chase did not follow up with Miller regarding his request.

Specific Facts Related to Jamie Downing

The parties' collective bargaining agreement permits the union to use the employer's e-mail system for communication with employees. On November 4, 2008, Jamie Downing sent an e-mail to the certified staff asking bargaining unit employees to support employees represented by the East Valley Education Association in their dispute with the East Valley School District.

Shortly thereafter, Chase sent an e-mail to Jamie Downing asking her to refrain from using the employer's e-mail system for East Valley Education Association business. Chase also noted that the union had the right to use the e-mail system for union business, but stated the union was not free to use the employer's e-mail for business conducted by other locals. Chase offered to discuss the matter with Downing. There is no allegation or evidence that Downing was disciplined as a result of sending this e-mail.

PROCEDURAL ISSUES

The Parties' Settlement Agreement

In its arguments before this Commission, the union highlights the parties' settlement agreement and argues that the Examiner failed to properly consider the settlement agreement when analyzing the employer's actions. Settlement agreements, including those mediated by agency

staff, are agreements between the parties and any disputes concerning the application or enforcement of these agreements must be resolved through the grievance procedure of a collective bargaining agreement or the courts. *Clark County*, Decision 5851 (PECB, 1997); *City of Walla Walla*, Decision 104 (PECB, 1976). Neither this Commission nor its staff will give a formal blessing to such agreements, nor will the Commission enforce such settlement agreements through unfair labor practice proceedings.

The union points out that the National Labor Relations Board (NLRB) enforces settlement agreements that it enters into with litigants, and highlights the fact the NLRB will seek judicial enforcement of those agreements if they are violated. The union concedes that the NLRB has been given specific authority to do so, but nevertheless urges this Commission to follow a similar approach. In the union's opinion, this Commission should recognize the parties' settlement agreement as setting certain standards of conduct that govern their relationship because the settlement agreement was an agency mediated agreement. To do otherwise, according to the union, would render future settlement exercises futile since parties would be free to violate an agency-mediated agreement without repercussion from the Commission.

RCW 41.59.110(2) allows this Commission to consider the rules, precedents, and practices of the NLRB as persuasive authority for cases decided under Chapter 41.59 RCW, provided those rules, precedents, and practices are consistent with the statutory scheme of Chapter 41.59 RCW.

Unlike section 10 of the National Labor Relations Act (NLRA), RCW 41.59.150 empowers this Commission to prevent unfair labor practices that are defined by RCW 41.59.140 but only permits this Commission to seek judicial enforcement of formal orders that are issued under the Washington State Administrative Procedure Act, Chapter 34.05 RCW. Because agreements to settle unfair labor practice cases are private agreements, and not formal agency orders, this Commission lacks the statutory authority to seek enforcement of those agreements. Thus, the statutory difference between the NLRA and Chapter 41.59 RCW makes the NLRB precedent and practice inapplicable to this case.

Furthermore, the NLRB process differs in that the NLRB serves as prosecutor of unfair labor practice complaints, is a party to settlement agreements, and withholds prosecution based upon such agreements. Thus, when a settlement agreement that the NLRB has entered into with the parties is violated, it is incumbent on the NLRB to prosecute in order to remedy an unfair labor practice.

Applying these principles to this case, the Examiner did not commit reversible error when she declined to give weight to the settlement agreement as the parties' settlement agreement is a private agreement that is to be enforced outside this Commission's purview. The union's assertion that the settlement agreement governs the parties' relationship and should be considered in relation to the employer's conduct is rejected. While the parties may have agreed that certain employer behaviors will not be tolerated during the course of their relationship, that agreement has no bearing on whether the employer actually committed an unfair labor practice as defined in RCW 41.59.140 and interpreted by this agency's precedents.

The Preliminary Ruling Process Frames the Issues for Hearing

The union's arguments before this Commission and the Examiner center around two distinct allegations: that the employer's communications with Ryan Downing and Karen Miller constituted direct dealing and interference violations, and that the employer's conversation with Jamie Downing constituted an interference violation.

With respect to the direct dealing allegations, we begin by noting that the preliminary ruling did not frame a direct dealing violation, it only framed an interference violation. In *King County*, Decision 9075-A (PECB, 2007), the Commission held that the preliminary ruling issued under WAC 391-45-110 limits the issues that agency examiners may consider or rule upon. *See also* WAC 391-45-110(2)(a). If a complainant disagrees with the issues framed in a preliminary ruling or believes that the preliminary ruling has failed to address one or more causes of action, the complainant may seek reconsideration of the ruling under WAC 391-45-110(2)(b). If reconsideration is not granted, a complainant still may amend its complaint. WAC 391-45-070.

Based upon King County and WAC 391-45-110, the Examiner did not commit reversible error when she declined to entertain the union direct dealing allegations. However, because we anticipate similar disputes may arise between these parties in the future, in addition to analyzing the employer conduct under the interference standard, we will take the time to examine that conduct under the direct dealing standard even though no violation could be found.

DISCUSSION

Applicable Legal Standard – Interference

Generally, the test for interference is whether a typical employee could, in the same circumstances, reasonably perceive the employer's action as discouraging his or her union activities. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). A complainant is not required to show intent or motive for interference, or that the employee involved was actually coerced, or that the respondent had a union animus. *King County*, Decision 8630-A (PECB, 2005). The complainant bears the burden of demonstrating that the employer's conduct resulted in harm to protected employee rights.

However, in *City of Renton*, Decision 7476-A (PECB, 2002), the Commission held that union officials should "be accustomed to controversial situations, and can be expected to receive and interpret harsh words, criticism, and displeasure." The Commission also stated that "a local union president needs to be less worried about coercion" and threats than the typical employee, and the longer a union official is involved in representing the interests of bargaining unit employees, the less reasonable are their claimed perceptions of threats and coercion. *City of Renton*, Decision 7476-A, *citing Premier Rubber Co.*, 272 NLRB 466 (1984).

Applicable Legal Standard – Direct Dealing

It is an unfair labor practice for an employer to circumvent its employees' exclusive bargaining representative and negotiate directly with bargaining unit employees concerning mandatory subjects of bargaining. *Royal School District*, Decision 1419-A (PECB, 1982). In order for a circumvention violation to be found, the complainant must establish that it is the exclusive bargaining representative of the employees and that the employer engaged in direct negotiations

with one or more employees concerning one or more mandatory subjects of bargaining. *City of Seattle*, Decision 3566-A (PECB, 1991).

However, where an employer's workforce is organized for purposes of collective bargaining, Chapter 41.59 RCW does not preclude direct communications between employers and their union-represented employees. *See University of Washington*, Decision 10490-C (PSRA, 2011), *citing City of Seattle*, Decision 3566-A. Employers maintain the right to communicate directly with employees who are represented, provided the communication does not amount to bargaining or other unlawful activity, including making statements that tend to undermine a union's status as the exclusive bargaining representative of the employees. *University of Washington*, Decision 10490-C.

Application of Standards - Ryan Downing

Examining the employer's conduct against the announced standards, Chase's conversation with Ryan Downing regarding denial of Downing's tuition reimbursement request was a simple conversation regarding the employer's reasoning. The conversation was not coercive in nature or tone, and Chase did not make any statements that tended to discourage Ryan Downing in exercising his protected rights under the statute, such as filing a grievance over the matter, or to disparage or discredit the union. Simply stated, Chase's conversation with Ryan Downing was a conversation explaining the employer's position on a matter raised by Downing, and the typical employee in the same situation would not find this kind of conversation to have interfered with his or her protected rights.

Furthermore, while the subject matter of the conversation may have concerned a mandatory subject of bargaining, the tuition reimbursement, Chase did not attempt to bargain directly with Ryan Downing regarding the reimbursement. Thus, the conversation could not have been considered direct dealing.

With respect to the union's allegations that Chase's e-mail asking Ryan Downing when he would be available to discuss the grievance was direct dealing, again no violation can be found. Scheduling a meeting with an employee is not bargaining, and Chase's e-mail only asked about

Ryan Downing's availability. There was no attempt on the part of Chase to bargain or adjust the grievance without the presence of the union. The typical employee would not find the e-mail tended to discourage the exercise of protected rights or a disparagement of the union; rather, the typical employee would read the e-mail as nothing more than a scheduling e-mail.

Application of Standards – Karen Miller

Chase's request to Miller for her bargaining notes also did not interfere with protected rights. Again, there is no evidence that the request was coercive in nature and Chase did not make any statements that tended to discourage Miller in exercising her protected rights under the statute or to disparage or discredit the union. Miller was not subject to any discipline for not complying with Chase's request. Under the facts presented here, a typical employee in this situation would not find this kind of conversation to have interfered with his or her protected rights.

Additionally, Chase's request was not an attempt to directly deal with an employee. A request for a party to provide relevant and necessary collective bargaining information is not an attempt to bargain over a mandatory subject of bargaining; rather the obligation to provide information is part of a party's good faith bargaining obligation. *See King* County, Case 6772-A (PECB, 1999).

Application of Standards – Jamie Downing

Chase's request to Downing to cease using the employer's e-mail system for business that was not local union business did not interfere with protected employee rights. Downing, as the president, should be accustomed to interacting with Chase about matters that the employer and union may disagree. The tone of Chase's e-mail simply stated his interpretation of permissible use of the e-mail system and asked that Downing comply with that interpretation. Chase did not threaten Downing with discipline or disparage the union in any manner. The fact that Chase may or may not have been correct in his interpretation is immaterial to the determination of whether Chase interfered with protected employee rights. If Downing believed Chase to be incorrect, she could have filed a grievance and submitted the matter to arbitration for interpretation.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Lisa A. Hartrich are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 29th day of August, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 08/29/2011

The attached document identified as: DECISION 10639-A - EDUC 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/ MAJEL C. BOUDIA

CASE NUMBER:	22141-U-08-05643	FILED:	12/05/2008	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	TEACHERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: GRANDVIEW S D
ATTN: KEVIN CHASE
913 W 2ND ST
GRANDVIEW, WA 98930
Ph1: 509-882-8500

REP BY: GREGORY STEVENS
STEVENS CLAY MANIX
PAULSEN CENTER
421 W RIVERSIDE STE 1575
SPOKANE, WA 99201-0409
Ph1: 509-838-8330

PARTY 2: GRANDVIEW EDUCATION ASSN/WEA
ATTN: JAMIE DOWNING
2061 WILSON HWY
GRANDVIEW, WA 98930
Ph1: 509-840-0569 Ph2: 509-882-8754

REP BY: JANET BECK
WEA MIDSTATE
711 N KEYS RD
YAKIMA, WA 98901
Ph1: 509-452-6559 Ph2: 509-969-5002

REP BY: JAMES GASPER
WASHINGTON EDUCATION ASSN
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7023 Ph2: 206-854-4609