

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA POLICE UNION LOCAL 6,

Complainant,

vs.

CITY OF TACOMA,

Respondent.

CASE 23181-U-10-5904

DECISION 11097-A - PECB

DECISION OF COMMISSION

Aitchison and Vick, by *Derrick Isackson*, Attorney at Law, for the union.

Tacoma City Attorney Elizabeth Pauli, by *Michael J. Smith*, Deputy City Attorney, for the employer.

On April 23, 2010, the Tacoma Police Union Local 6 (union) filed an unfair labor practice complaint against the City of Tacoma (employer). The union alleged that the employer refused to bargain when it unilaterally declared that employees who participated in an annual charity basketball game would no longer be able to do so while on duty and be compensated for it. The union also alleged that the employer circumvented the union by directly dealing with members when it attempted to negotiate a repayment plan. Examiner Robin A. Romeo held a hearing and determined that the refusal to bargain charge was untimely, but that the employer did circumvent the union. The employer appeals that decision, and the union cross-appeals to amend the remedy.

On appeal, the employer makes several arguments, none of which we find persuasive. We have reviewed the entire record and fully considered the arguments of the parties. To address those arguments, we incorporate the Examiner's applicable legal standards, analysis and conclusions here as we see no reason to restate them. With regard to the employer's appeal, we find that substantial evidence supports the Examiner's challenged Finding of Fact 5, and the findings of

fact support the challenged Conclusion of Law 3. The employer circumvented the union and made a unilateral change by seeking reimbursement for wages directly from members.

On cross-appeal, the union argues that the Examiner erred by failing to include in the decision “bargaining unit members whose wages were taken from them by the [employer] for authorized on-duty participation in the basketball game in 2005 and 2006....” Here, the burden is on the union to prove that the employer sought to recoup the wages of these additional two bargaining unit members for participation in the basketball game. One of the March 24, 2010, intra-departmental memorandums seeks reimbursement for wages paid for participation in the basketball game in 2005; however, the other seeks reimbursement for wages paid for participation in “Guns & Hoses” in 2006. An employer internal investigation spreadsheet listing basketball game participants from 2005 through 2009 states that the two bargaining unit members were basketball game participants.¹ Nevertheless, the bargaining unit member who participated in the game in 2005 testified that he did so, while the other employee did not testify. In fact, no one explicitly testified whether the other bargaining unit member participated or not. Furthermore, there was no testimony at hearing regarding “Guns & Hoses.” Therefore, we find that the union did meet its burden with regard to the employee who participated in the 2005 basketball game, but did not with regard to the employee who participated in “Guns & Hoses.” We order that Finding of Fact 5 be amended to include 2005, but not 2006.

The union also argues that the Examiner erred by failing to first order the employer to return the at-issue bargaining unit members to the status quo. It asserts that “[g]iven that the [employer] has already taken the wages from bargaining unit members without bargaining, the wages must be returned.” We agree. The typical remedy orders the offending party to cease and desist from its illegal activity and, if necessary, return the aggrieved party to the conditions that existed before the unfair labor practice. *Central Washington University*, Decision 10967-A (PECB, 2012), *citing Skagit County*, Decision 8746-A (PECB, 2006). Thus, we find that the employer should return the wages recouped from the at-issue bargaining unit members in 2005, 2008 and 2009 before any negotiations occur according to the Examiner’s Order.

¹ Exhibit 9.

In conclusion, we have reviewed the entire record and fully considered the arguments of the parties. We affirm the Examiner in that the employer circumvented the union and made unilateral changes by seeking reimbursement for wages for participation in charity basketball games directly from bargaining unit members. Based on the evidence submitted in this case we include 2005, but not 2006 in the decision. We amend the order to require the employer to first return recouped bargaining unit members' wages before negotiations, if any, take place.

AMENDED FINDINGS OF FACT

The Findings of Fact issued by Examiner Robin A. Romeo are ADOPTED as the Findings of Fact of the Commission, except that Finding of Fact 5 is AMENDED as follows:

5. On March 24, 2010, the Chief of Police sent intra-departmental memoranda to fifteen (15) bargaining unit members individually seeking reimbursement for wages paid in 2005, 2008 and/or 2009 for time spent playing in the annual basketball game without giving notice to the union or an opportunity to bargain.

CONCLUSIONS OF LAW

The Conclusions of Law issued by Examiner Robin A. Romeo are AFFIRMED and ADOPTED as the Conclusions of Law of the Commission.

AMENDED ORDER

The Order issued by Examiner Robin A. Romeo is ADOPTED as the Order of the Commission, except that the following is AMENDED, and the rest of the order is renumbered to account for these changes:

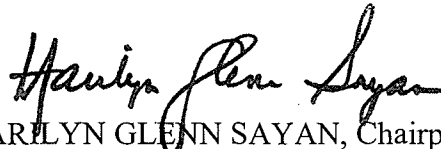
The City of Tacoma, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

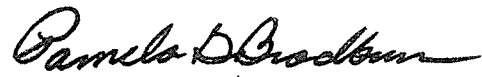
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

- a) Restore the status quo by returning the wages previously recouped to the at-issue bargaining unit members who participated in the annual basketball game in 2005, 2008 and/or 2009.
- b) Give notice to and, upon request, negotiate in good faith with the Tacoma Police Union Local 6 before seeking to recoup 2005, 2008 and 2009 wages paid to employees who participated in the annual basketball game.

ISSUED at Olympia, Washington, this 24th day of August, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


THOMAS W. McLANE, Commissioner



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 CITY OF TACOMA COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights by dealing with employees in attempting to recover wages paid for participating in the annual charity basketball game.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL restore the status quo by returning the wages previously recouped to the at-issue bargaining unit members who participated in the annual basketball game in 2005, 2008 and/or 2009.

WE WILL give notice to and, upon request, negotiate in good faith with the Tacoma Police Union Local 6 before seeking to recoup 2005, 2008 and 2009 wages paid to employees who participated in the annual basketball game.

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

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The attached document identified as: **DECISION 11097-A - 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


ROBBIE DUFFIELD

CASE NUMBER: 23181-U-10-05904 FILED: 04/22/2010 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: LAW ENFORCE
DETAILS: attending and participating in practices for charity athletic events
COMMENTS:

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