University of Washington, Decision 11181-A (PSRA, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 23818-U-11-6079 DECISION 11181-A - PSRA DECISION OF COMMISSION

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Attorney General Robert M. McKenna, by *Mark K. Yamashita,* Assistant Attorney General, for the employer.

This case comes before the Commission on an appeal by the University of Washington (employer). On February 23, 2011, the Washington Federation of State Employees (union) filed an unfair labor practice complaint alleging employer interference with employee rights in violation of RCW 41.80.110(1)(a) and employer refusal to bargain in violation of RCW 41.80.110(1)(e). In accordance with WAC 391-45-110, the Unfair Labor Practice Manager reviewed the complaint and issued a deficiency notice stating that a cause of action could not be found on the facts alleged. The union filed an amended complaint. The Unfair Labor Practice Manager found a cause of action existed, and issued a preliminary ruling, for employer interference in violation of 41.80.110(1)(e) by refusing to process a grievance filed by the union. The preliminary ruling framed the issue before the Examiner. WAC 391-45-110; *King County,* Decision 9075-A (PECB, 2007). The employer filed an answer. Examiner Steve Irvin

conducted a hearing and issued a decision[1] finding the employer interferred with employee rights by refusing to process a grievance. The employer filed a timely appeal.

BACKGROUND

Bargaining Unit

The union represents a bargaining unit of employees at Harborview Medical Center (HMC). The bargaining unit was created by the Higher Education Personnel Board (HEPB) in 1972.[2] The union was certified as the exclusive bargaining representative in 1973. *Harborview Medical Center, University of Washington,* Case No. HEPB-RCE #1 (1973).

When the Legislature enacted the Personnel System Reform Act (PSRA) in 2002, the Commission gained jurisdiction over the bargaining unit. Twice, the union has petitioned this agency to modify the bargaining unit.

On June 30, 2004, the union filed a unit clarification petition under Chapter 391-35 WAC. The union sought to accrete part-time employees into the HMC bargaining unit. In *University of Washington,* Decision 9391 (PSRA, 2006), the Executive Director issued an order clarifying the bargaining unit. The bargaining unit description was modified to read:

> All full-time and regular part-time nonsupervisory classified employees of the University of Washington working at Harborview Hospital, excluding members of the governing board, employees excluded from the coverage of Chapter 41.06 RCW, students, employees covered by other collective bargaining agreements, confidential employees and supervisors.

On January 1, 2010, the union filed a representation petition under WAC 391-25-440. The union sought to add the position of truck driver lead to the HMC bargaining unit. In *University of Washington,* Decision 10717 (PSRA, 2010), the Executive Director issued a bargaining unit certification:

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1 *University of Washington,* Decision 11181 (PSRA, 2011).

2 As stated in the Examiner's decision, "under the rules of procedure of the HEPB, a bargaining unit was first created, and then a labor organization petitioned to represent the employees in the newly-created unit. The HEPB was replaced by the Washington Personnel Resources Board (WPRB) in 1993."

> All full-time and regular part-time nonsupervisory classified employees of the University of Washington working at Harborview Medical Center, excluding members of the governing board, employees excluded from the coverage of Chapter 41.06 RCW, students, employees covered by other collective bargaining agreements, confidential employees and supervisors.

University of Washington, Decision 10717, was issued on April 1, 2010, and is the last order issued by this agency modifying the bargaining unit.

The collective bargaining agreement between the employer and the union was in effect from July 1, 2009 until June 30, 2011.

Employer's Operations and Consolidation

The employer operates the University of Washington Medical Center (UWMC) and HMC. In support of the employer's operations, employees worked in various call centers.

At HMC, the employer operated a call center referred to as the Patient Access Center (PAC). In the PAC, employees classified as Patient Service Specialists (PSS) scheduled patient appointments, coordinated referrals, assigned payer plans, and verified insurance coverage and eligibility, among other duties, for HMC, its facilities, and its satellite clinics. The PSS duties were performed exclusively for HMC patients. Employees working in the PAC were represented by the union in the HMC bargaining unit.

At UWMC, the employer's call center operations were decentralized. Service Employees International Union, Local 925 (SEIU), represents employees working in the PSS classification at UWMC.

The Virtual Front Desk (VFD) was the call center for the University of Washington Physicians Network (UWPN). VFD employees performed work similar to the PAC employees' work, but did not pre-register patients or verify insurance coverage. VFD employees performed duties for approximately seven UWPN clinics. VFD employees were not represented by a union, and according to the employer, were not public employees within the meaning of RCW 41.80.005(6).

Based on the recommendations of a consultant, the employer decided to consolidate its call center operations. The employer consolidated the call center functions of the HMC, UWMC, and UWPN in the newly formed Patient Contact Center (Contact Center).

In March 2010, the employer notified the employees and the union that it would consolidate its call center operations.[3] On March 26, 2010, the union demanded to bargain the consolidation of the call center and its effects. The employer and the union met on June 14 and 24, 2010, to discuss the consolidation. On June 14, 2010, the employer informed the union that it would not bargain representation of the employees in the Contact Center because representation was not a mandatory subject of bargaining. The union's concerns included whether the bargaining unit work performed by PAC employees was going to be moved to the Contact Center. The union asserted that the work would remain part of the bargaining unit after the consolidation.

The employer created a new job classification for Contact Center employees. The employer described the new position as a civil service classified position not represented by a union. The employer was unwilling to bargain over the job classification or the representation status of the Contact Center employees.

At all times, the union maintained the position that the employer could not remove the work from the bargaining unit. At all times, the employer maintained the position that it would not bargain the representational status of the Contact Center employees. As a result, no bargaining occurred over removing the PAC work from the HMC bargaining unit to the Contact Center.

On July 16, 2010, the employer posted the Contact Center Representative (CCR) position for the Contact Center. While the union continued to object to the employer's actions, the union encouraged all of the PAC employees to apply for the position to maintain their jobs.

All of the PAC employees applied for the CCR positions in the Contact Center and were offered employment. The employer sent letters to employees confirming the salary, pay range and step placement, work schedule, and that the position was a classified non-union position.

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[3] Facts relating to how the employees and the union were notified are set out in *University of Washington,* Decision 11075-A (PSRA, 2012).

Effective October 1, 2010, the employer considered PAC employees to have become Contact Center employees who were no longer represented by the union. Employees began moving to the Contact Center in the second week of October 2010. The transition was completed by November 15, 2010.

Cases Pending Before the Commission

Case 23515-U-10-5995

On September 21, 2010, the union filed an unfair labor practice complaint, which was docketed as case 23515-U-10-5995. Pursuant to WAC 391-45-110, the Unfair Labor Practice Manager found a cause of action to exist and issued a preliminary ruling.

Examiner Karyl Elinski conducted a hearing on November 3, 4, and December 15, 2010. On May 25, 2011, the Examiner issued *University of Washington*, Decision 11075 (PSRA, 2011) (Decision 11075). The Examiner held that the employer's decision to consolidate its call center operations was not a mandatory subject of bargaining because the employer was statutorily allowed to reorganize its operations without bargaining. The Examiner found that the employer refused to bargain the removal of work from the HMC bargaining unit to the Contact Center, breached its good faith bargaining obligation, and unlawfully interfered with employee rights. The Examiner restored the positions removed from the HMC bargaining unit to the bargaining unit, restored the *status quo ante*, ordered the payment of union dues, and ordered binding interest arbitration. On June 13, 2011, the employer appealed the Examiner's decision to the Commission.

On March 14, 2012, the Commission entered its decision in case 23515-U-10-5995. *University of Washington,* Decision 11075-A (PSRA, 2012) (Decision 11075-A). The Commission affirmed the Examiner's decision that the employer was obligated to bargain the effects of its decision to consolidate the call centers. The Commission affirmed the Examiner's decision that the employer unlawfully removed work from the bargaining unit when it moved work from the HMC bargaining unit to unrepresented positions in the Contact Center, breached its good faith bargaining obligation during effects bargaining, and interfered with employee rights. The

Commission affirmed the Examiner's order for the employer to pay union dues. The Commission reversed the Examiner's order of interest arbitration. The Commission overturned the Examiner's order returning employees to the bargaining unit. The Commission ordered the employer to restore the *status quo ante* on specific subjects of bargaining and ordered the parties to bargain certain effects of the consolidation.

On March 23, 2012, the union filed a motion for reconsideration under RCW 34.04.470. The union sought to clarify the bargaining unit status of the Contact Center employees who previously worked in the PAC. On April 2, 2012, the employer filed a response arguing that the Commission's decision was clear and did not return the work to the bargaining unit.

On April 26, 2012, the Commission issued *University of Washington,* Decision 11075-B (PSRA, 2012) (Decision 11075-B) clarifying its order. The Commission clarified that "[t]o remain consistent with normal case processing, in this case, the union's representational rights continue until processing of the unit clarification and representation petitions are complete." The only Contact Center employees the union continued to represent were those who previously worked in the PAC. The union did not gain representational rights for the Contact Center employees who were unrepresented or had been represented by another union. On May 25, 2012, the employer appealed Decisions 11075-A and 11075-B to superior court.[4]

Unit Clarification and Representation Petitions

On September 3, 2010, the union filed a unit clarification petition seeking a determination that the union continued to represent the former PAC employees who worked in the Contact Center. The case was docketed as case 23495-C-10-1439.

WAC 391-35-110(2) allows the Executive Director or his or her designee to withhold processing of a unit clarification petition or an unfair labor practice complaint when a unit clarification petition may be controlled by an unfair labor practice complaint. On September 28, 2010, the Unfair Labor Practice Manager notified the parties that case 23495-C-10-1439 would be placed on hold pending the resolution of case 23515-U-10-5995.

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[4] The appeal is currently scheduled to be heard on February 22, 2013.

On October 4, 2010, the union filed a representation petition to represent employees working in the Contact Center that were previously not represented by a union. Pursuant to WAC 391-25-440, the union sought to include the previously unrepresented Contact Center employees in the existing HMC bargaining unit. The case was docketed as case 23546-E-10-3593.

WAC 391-25-370(1) allows the Executive Director to block the processing of a representation petition when an unfair labor practice complaint is filed and the unfair labor practice complaint could improperly affect the outcome of an election. WAC 391-25-370(2) allows the complainant to request to proceed with the representation petition. On October 5, 2010, the union requested to proceed with case 23546-E-10-3593. On October 18, 2010, the Executive Director denied the request. In doing so, the Executive Director explained that all three cases involved the Contact Center employees and the unfair labor practice complaint must be resolved prior to processing the unit clarification and representation cases.

On September 23, 2011, the employer filed a unit clarification petition. The employer sought clarification of which union, the Washington Federation of State Employees or SEIU Local 925, represented employees in the Contact Center. The case was docketed as case 24270-C-11-1466.

On November 16, 2011, SEIU Local 925 filed a unit clarification petition. SEIU Local 925 sought to include Contact Center employees in the UWMC bargaining unit. The case was docketed as case 24402-C-11-1472.

The three unit clarification petitions and the representation petition were consolidated for hearing. Representation Case Administrator Dario de la Rosa conducted a hearing on November 13, 14, and 15, December 6, and 19, 2012, and January 15, 30, and 31, 2013.

Unfair Labor Practice Complaints

On February 23, 2011, the union filed this unfair labor practice complaint, which was docketed as case 23818-U-11-6079. The union alleged that the employer interfered with employee rights by refusing to process a grievance filed by a Contact Center employee who was represented by the union in the HMC bargaining unit. The Examiner found that the employer interfered with

employee rights by refusing to process the grievance. *University of Washington,* Decision 11181 (PSRA, 2011). The employer appealed the decision to the Commission on October 20, 2011.

On August 16, 2011, the union filed an unfair labor practice complaint alleging employer interference and refusal to bargain. The case was docketed as case 24189-U-11-6195. Examiner Lisa Hartrich held a hearing in case 24189-U-11-6195 on January 9, 2012, and issued *University of Washington,* Decision 11414 (PSRA, 2012) on July 11, 2012. The employer appealed the Examiner's decision to the Commission on August 1, 2012. The Commission affirmed the Examiner's decision. *University of Washington*, Decision 11414-A (PSRA, 2013).

FACTS RELEVANT TO THIS APPEAL

Robin Jackson (Jackson) worked as a PSS in the PAC. Jackson applied for one of the CCR positions in the Contact Center. On August 20, 2010, the employer sent Jackson a letter confirming that Jackson accepted a position at the Contact Center. The letter stated, "This is a Classified Non-Union position."

On December 21, 2010, Contact Center Director Melissa Vasiliades gave Jackson a letter informing her that Vasiliades was considering a recommendation to terminate Jackson's employment as a Patient Services Representative (PSR).[5] Vasiliades requested a meeting with Jackson on the morning of December 27, 2010.

Jackson contacted the union for representation. Union representative Addley Tole contacted the employer to reschedule the December 27, 2010 pre-termination meeting. The employer was unwilling to reschedule. The employer communicated to Tole that he could represent Jackson as her advocate, but the employer did not consider Tole to be Jackson's union representative. The employer considered Jackson a non-represented employee. Union representative Joe Kendo attended the December 27, 2010 meeting with Jackson. The employer considered Kendo to be Jackson's advocate, not her union representative.

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[5] The job title changed from Contact Center Representative to Patient Services Representative.

On January 5, 2011, the employer notified Jackson by letter that it was terminating her employment. In the letter, the employer identified that the action was taken pursuant to WAC 357-40-010. The letter explained, "Under WAC 357-52 any permanent employee who is dismissed may appeal such action to the Washington Personnel Resources Board within thirty (30) calendar days after the effective date of the action appealed."

Jackson did not appeal her dismissal under Chapter 357-52 WAC. Instead, Jackson sought the assistance of the union. At all times, the union has maintained the position that it represented employees in the Contact Center whose work was previously performed in the Harborview bargaining unit.

On January 31, 2011, union representative Anne-Marie Cavanaugh filed a grievance on Jackson's behalf. The employer refused to meet to discuss the grievance and maintained its position that Jackson was not represented by the union and not able to file a grievance.

On February 22, 2011, the union filed for grievance mediation with this agency. On March 4, 2011, the employer informed the union that it would not agree to participate in grievance mediation.

On March 17, 2011, the union notified the employer that it was moving the grievance to the arbitration step of the grievance procedure. The parties did not schedule arbitration.

The Examiner found that the employer interfered with employee rights when the employer refused to process the grievance. The Examiner relied on the order in Decision 11075 that returned the employees to the bargaining unit. The Examiner ordered the employer to engage in grievance mediation with the union and Jackson under the grievance procedure in the parties' collective bargaining agreement. If the parties were unable to reach an agreement within sixty days from the issuance of the decision, the Examiner ordered the parties to submit the dispute to binding arbitration under the grievance procedure. The Examiner ordered that the employer should bear any and all fees and costs charged by the arbitrator, but that each party should pay its own attorneys' fees.

ISSUE: Did the Examiner err when he found that the employer interfered with employee rights when it refused to process a grievance filed by the union on Jackson's behalf?

APPLICABLE LEGAL PRINCIPLES

Interference

It is an unfair labor practice for the employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Chapter 41.80 RCW. RCW 41.80.110(1)(a). The burden of proving unlawful interference with the exercise of rights protected by Chapter 41.80 RCW rests with the complaining party. An interference violation exists when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Tacoma,* Decision 6793-A.

ANALYSIS

Interference

The Examiner found that by failing to process Jackson's grievance, the employer interfered with employee rights. On appeal, the employer argues that Jackson was not in the bargaining unit at the time of her dismissal. The employer asserts that the findings of fact support a conclusion that the employer treated Jackson consistent with the classified non-union status of the position she held. The employer argues that the union failed to seek temporary relief after filing case 23515-U-10-5995.

As stated above, the bargaining unit was last modified in 2010. Neither the Examiner nor the Commission's orders in Decisions 11075, 11075-A, and 11075-B altered the bargaining unit. Jackson continued to be represented by the union until the resolution of cases 23495-C-10-1439

and 24270-C-11-1466. When the union filed case 23495-C-10-1439, the *status quo* was that the work performed in the PAC was represented by the union in the Harborview bargaining unit. That is the *status quo* that must be maintained until the resolution of the unit clarification petitions pending before this agency, not the employer's purported *status quo*.

An employee could reasonably perceive the employer's refusal to process Jackson's grievance as interference with union activity. We affirm the Examiner's conclusion that the employer interfered with employee rights when it failed to process Jackson's grievance.

Authority to Remedy Unfair Labor Practice Violations

Under RCW 41.80.120(1), the Commission is empowered to remedy unfair labor practice violations. 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. *Skagit County,* Decision 8746-A (PECB, 2006). When interpreting the Commission's remedial authority under Chapter 41.56 RCW, the Supreme Court of the State of Washington approved a liberal construction of the statute to accomplish its purpose. *METRO v. PERC,* 118 Wn.2d 621 (1992). With that purpose in mind, the Supreme Court interpreted the statutory phrase "appropriate remedial orders" to be those necessary to effectuate the purposes of the collective bargaining statute to make the Commission's lawful orders effective. *Metro v. PERC,* 118 Wn.2d at 633. The language of Chapter 41.80 RCW and Chapter 41.56 RCW concerning remedial orders is identical. RCW 41.80.120(1) and RCW 41.56.160(1).

In its brief, the employer argued that the Examiner's order mandated interest arbitration if the parties have not reached an agreement after 60 days. The employer is again in error. A simple reading of the Order clearly shows that the Examiner did not mandate interest arbitration but rather simply ordered the employer and the union to utilize the grievance process in place under the parties' collective bargaining agreement. This remedy is crafted to grant Jackson access to the grievance procedure in its entirety which flows from her continued representation by the union.

CONCLUSION

As stated above, the bargaining unit was last modified in 2010. Until the resolution of cases 23495-C-10-1439, 23546-E-10-3593, and 2420-C-11-1466, the employees working in the Contact Center who formerly worked in the PAC and were part of the Harborview bargaining unit continued to be represented by the union. The collective bargaining agreement continues to apply to those employees and the employer. The employer interfered with employee rights in violation of RCW 41.80.110(1)(e) when it refused to process Jackson's grievance. We affirm the Examiner's order requiring the employer to engage in the grievance procedure established by the collective bargaining agreement, and, if necessary, through the arbitration provision in that agreement.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Stephen W. Irvin are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 1st day of February, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBERT DUFFIELD

CASE NUMBER:	23818-U-11-06079	FILED:	02/23/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Robin Jackson see 24024-S-11-0223				
COMMENTS:					

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