Columbia Basin College, Decision 11609-A (PSRA, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. COLUMBIA BASIN COLLEGE (COMMUNITY COLLEGE DISTRICT 19), Respondent.	CASE 25018-U-12-6400 DECISION 11609-A - PSRA DECISION OF COMMISSION

Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, by *Kathleen Phair Barnard*, Attorney at Law, and *Danielle Franco-Malone*, Attorney at Law, for the union.

Attorney General Robert W. Ferguson, by *Patricia A. Thompson*, Assistant Attorney General, for the employer.

On July 27, 2012,[1] the Washington Public Employees Association (union) filed an unfair labor practice complaint alleging that Columbia Basin College (employer) interfered with employee rights in violation of RCW 41.80.110(1)(a). The Unfair Labor Practice Manager reviewed the complaint under WAC 391-45-110 and issued a partial deficiency notice. On August 6, the union filed an amended complaint. On August 9, the Unfair Labor Practice Manager issued a preliminary ruling for employer interference with employee rights. On August 30, the employer filed an answer.

Examiner Stephen W. Irvin conducted a hearing and issued a decision finding that the employer interfered with employee rights when College President Richard Cummins (Cummins) sent a

[1] All dates are in 2012 unless otherwise noted.

June 21 e-mail to staff and by statements made by an employer official to employees.[2] The Examiner found that a June 20 e-mail Cummins sent to the bargaining unit did not constitute interference. The union appealed the Examiner's conclusion that Cummins' June 20 e-mail did not interfere with employee rights.

ISSUE

Did the employer interfere with employee rights when the college president sent an e-mail to bargaining unit employees discussing the collective bargaining agreement and the temporary salary reduction?

We affirm the Examiner. The June 20 e-mail sent by the college president did not interfere with employee rights. The e-mail was substantially factual, was not coercive in tone, did not promise a benefit, and did not disparage, discredit, ridicule, or undermine the union.

RELEVANT FACTS[3]

The union represents a bargaining unit of non-supervisory classified employees. The union represents bargaining units at 13 community colleges. The employer and the other 12 community colleges bargain as a coalition and are represented by the Labor Relations Division (LRD) of the Office of Financial Management. On September 29, 2011, the union notified the LRD that the union members ratified a collective bargaining agreement for July 1, 2012 through June 30, 2013. That agreement included a three percent temporary salary reduction for employees making $2,500 or more per month.

On March 30, union President Dave Schiel wrote to LRD Director Diane Leigh and the 13 community college presidents requesting to renegotiate the temporary salary reduction. Leigh responded that the employer was unwilling to reopen the ratified collective bargaining agreement. The Legislature had already approved the agreement.

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2 *Columbia Basin College*, Decision 11609 (PSRA, 2013).

3 The Examiner's decision contains a complete recitation of the facts.

The union then engaged in efforts to convince the community college presidents to negotiate. Bargaining unit members sent postcards to college President Richard Cummins requesting that he negotiate with the union.

On June 19, the union held a bargaining unit meeting. Aware of the meeting, on June 20, Cummins sent the following e-mail to classified staff and supervisors.

> Dear Represented Classified Members of Our Community College,
>
> As you all know, budget realities in Washington State over the last several years have had ongoing impact on Columbia Basin College's state funding. We have reduced our staffing by about 75 FTE positions. A majority of these have been in administration and the part-time faculty ranks, but the reductions have also included several FT faculty and classified staff positions.
>
> To balance the budget for the current biennium, the Legislature approved various measures that affect everyone who attends a Washington college or university as well as anyone who works in higher education. I am writing to you about the one item that most directly affects you as a represented classified employee.
>
> Namely, the Legislature approved the collective bargaining agreement between the college coalition and the [union] that contained a three percent pay cut for all represented classified staff making $2500 or more per month for the 2012-13 academic year. The CBA, which specifies a furlough reduction called Temporary Salary Reduction (TSR) leave to be taken by reducing each employee's work hours by three percent is required in the budget law for Fiscal Year 2012-2013. The coalition agreement resulting from those negotiations, including the three percent reduction, was ratified by bargaining unit members.
>
> [The union] requested to reopen the collective bargaining agreement to renegotiate the pay reduction. The Office of Financial Management's Labor Relations Division, the bargaining agent for the college coalition, has declined to renegotiate the collective bargaining agreement.
>
> CBC does not negotiate the classified contract locally (and has not done so for eight years) but is part of a statewide coalition that negotiates with [the union] through the Governor's Labor Relations Office. Community college presidents do not have the ability to unilaterally open the contract. However, in a letter sent to OFM last month, CBC and other members of the college coalition asked OFM if there were any avenues of flexibility for implementing the budget reduction. The response from OFM stated that we "must accept the provisions of the contract that were bargained in good faith with the unions and ratified by their members."

All of this leaves CBC with the obligation to implement the terms of the 2012-13 collective bargaining agreement, including the three percent salary and work hour reduction. We must follow the law.

On a related note, the budget law also affects faculty and exempt employees, but it does so in a fundamentally different way. Though we are required to reduce expenditures on faculty and exempt employees by three percent, the Legislature did not require this reduction to take the form of furloughs. We are instead mandated to enact "overall compensation reduction" of three percent in each of these two employee groups.

To meet this requirement, CBC has reduced the number of faculty and exempt employees primarily through leaving vacant positions unfilled. On top of this, many faculty on their own initiative have accepted additional students into their classes, and many exempt employees have assumed additional roles and responsibilities without additional compensation.

Additionally, while many classified employee salaries have increased through step increments, exempt employee and faculty salaries have declined, on average relative to inflation, by 10 percent over the past decade because exempt and faculty do not receive guaranteed step increases.

As all of us know, the Great Recession has had a huge impact on the state budget, our students and members of our community. I personally do not like this pay cut, but I recognize the limits of my authority and will follow the law.

I am sorry that the Great Recession has taken its toll on so many of us, and I sincerely thank you for your great service work for our community. We really are a principle way that economic hard times get reversed.

Sincerely,

Rich

On June 21, Cummins responded to an e-mail from a bargaining unit employee. The Examiner found that e-mail interfered with employee rights. That e-mail is not at issue in the appeal.

APPLICABLE LEGAL PRINCIPLES

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutorily protected rights. RCW 41.80.110(1)(a). Employer

communications to employees could interfere with protected employee rights under one, any combination, or all of the following criteria:

1. Is the communication, in tone, coercive as a whole?
2. Are the employer's comments substantially factual or materially misleading?
3. Has the employer offered new "benefits" to employees outside of the bargaining process?
4. Are there direct dealings or attempts to bargain with the employees?
5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?
6. Did the union object to such communications during prior negotiations?
7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

Grant County Public Hospital District 1, Decision 8378-A (PECB, 2004). The complainant bears the burden of demonstrating that the employer's conduct resulted in harm to protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009). The complainant is not required to demonstrate that the employer's intent was to interfere, nor is it necessary for the complainant to demonstrate that the employee involved was actually coerced or that the employer had union animus. *Grant County Public Hospital District 1*, Decision 8378-A. The determination of whether an interference allegation has been committed is based on whether a typical employee could reasonably perceive the employer's action as discouraging the employee's union activity. *Grant County Public Hospital District 1*, Decision 8378-A. A claim of interference must be supported by a preponderance of the evidence; the standard is not particularly high. *Pasco Housing Authority*, Decision 5927-A (PECB, 1997).

ANALYSIS

The union argues that the June 20 e-mail interfered with employee rights because the e-mail materially misrepresented the facts, promised a benefit, and that reasonable employees would believe if they decertified the union the employer would not reduce compensation. The

employer argues that, under the criteria for evaluating employer communications, the June 20 e-mail did not constitute interference.

The June 20 e-mail sent by Cummins to the classified staff and supervisors does not meet any of the criteria for interference. Based on a review of the record, the first, second, third, fifth, and seventh criteria are applicable for analyzing the June 20 e-mail. We do not analyze the June 21 e-mail Cummins sent to a bargaining unit employee. The Examiner found that e-mail to interfere with employee rights and neither party appealed the Examiner's conclusion.

First, Cummins' e-mail is not coercive. The e-mail did not seek to compel employees to take any action, such as decertifying the union.

Second, the e-mail was substantially factual and was not materially misleading. Cummins explained the budget predicament and the legislative directive, as the employer understood it. Cummins pointed out that the employer and the union had negotiated a collective bargaining agreement that included the salary reduction, that the union requested to renegotiate the pay reduction, and that the employer negotiates as part of a coalition. The employer identified the differences in the Legislature's direction for achieving budget reductions for faculty and exempt employees and classified employees. The employer explained what actions it took, in conjunction with the faculty and exempt employees, for achieving the budget reduction.

The union takes exception to the way Cummins characterized the e ployer's ability to negotiate the contract. The union asserts that the employer was, in fact, free to leave the coalition and negotiate independently. The union argues that the employer had the option to terminate its contract with LRD and negotiate directly with the union, but chose not to exercise that option. The union's preference for and interpretation of how the employer could negotiate its contract does not render Cummins' communication materially misleading.

The reality the employer pointed out was that the employer, as part of the coalition, and the union negotiated a collective bargaining agreement that included the salary reduction. While the union may have wanted to re-open negotiations, the employer's bargaining agent did not agree to

re-open negotiations. The employer was bound by the collective bargaining agreement that had been ratified by the bargaining unit employees and the Legislature.

Third, Cummins did not offer a new benefit outside of the bargaining process. The union argues that the e-mail made a promise of benefit that encouraged bargaining unit employees to sign cards in support of decertification. Specifically, the union argues that "statements leading employees to believe that decertification could prevent the 3% salary reduction were unlawful promises of a benefit rather than factual predictions." Contrary to the union's argument, nothing in the e-mail suggested that the employer could prevent the salary reduction.

The union contends that the e-mail was an unlawful prediction on how the salary reduction could be restored. Cummins wrote, "However, in a letter sent to OFM last month, CBC and other members of the college coalition asked OFM if there were any avenues of flexibility for implementing the budget reduction. The response from OFM stated that we 'must accept the provisions of the contract that were bargained in good faith with the unions and ratified by their members.'" The e-mail communicated to bargaining unit members that the employer inquired about taking the actions the union requested and the result of the employer's efforts. Cummins made no predictions about how the salary reduction could be restored.

Whether the employer had the resources to restore the three percent salary reduction is not relevant to the analysis of whether the June 20 e-mail interfered with employee rights. In an effort to show that the June 20 e-mail was not factual and promised a benefit, the union argues that the employer could restore the pay cuts. The June 20 e-mail neither discussed the employer's ability to restore the salary reductions, nor informed employees that if they were not represented they would not receive salary reductions.

Fourth, the employer did not disparage, discredit, ridicule, or undermine the union. The e-mail was not argumentative. While Cummins explained some of the steps the union took in an attempt to renegotiate the salary reduction, he did not comment on the union's actions.

Finally, the e-mail did not place the employer in a position from which it could not retreat. Prior to sending the e-mail, the employer was obligated to implement the collective bargaining agreement, and that obligation continued.

Remedy

On June 27, a bargaining unit employee filed a decertification petition (case 24945-E-12-3728). On July 30, the union filed this unfair labor practice complaint. This unfair labor practice complaint blocks the decertification petition.

In its brief to the Examiner, the union requested that the Examiner "order that a decertification election not be held." The Examiner did not grant the relief the union requested. On appeal, the union has not made the same request of the Commission. We note, the unfair labor practice proceeding is not the proper avenue for achieving the dismissal of a petition concerning a question for representation. We take administrative notice that the union has filed a motion requesting that the Executive Director dismiss the decertification petition in case 24945-E-12-3728. That is the proper avenue for addressing the disposition of the decertification petition.

CONCLUSION

The June 20 e-mail Cummins sent to bargaining unit employees did not interfere with employee rights. The e-mail was not coercive, the e-mail was not materially misleading, the employer did not offer a new benefit, the employer did not disparage, discredit, ridicule, or undermine the union, and the e-mail did not place the employer in a position from which it could not retreat. The June 20 e-mail discussed the temporary salary reduction contained in the collective bargaining agreement, the union's request to reopen the collective bargaining agreement, the negotiation of the collective bargaining agreement, and the actions the employer took with respect to other employee groups. The June 20 e-mail was factual.

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 6th day of May, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MAJEL C. BOUDIA

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DETAILS:	Independent Interference see 24869-U-12-6352				
COMMENTS:					

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