

Skagit Valley College, Decision 11536-A (PSRA, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

vs.

SKAGIT VALLEY COLLEGE
(COMMUNITY COLLEGE DISTRICT 4),

Respondent.

CASES 24857-U-12-6345 and
24859-U-12-6347

DECISIONS 11536-A – PSRA and
11538-A – PSRA

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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

Attorney General Robert W. Ferguson, by *Kari Hanson*, Assistant Attorney
General, for the employer.

On June 6, 2012, the Washington Public Employees Association (union) filed four complaints with the Public Employment Relations Commission charging unfair labor practices against Skagit Valley College (employer). On July 31, 2012, and August 27, 2012, the union filed amended complaints. A preliminary ruling was issued on October 30, 2012, finding a cause of action for employer interference with employee rights by threats of reprisal or force or promises of benefit made to all bargaining unit members in conveying to them that they would not have to take the three percent salary reduction if they were not represented by the union. The matter was assigned to Examiner Claire Nickleberry and a hearing was held on February 1, 2013. At the opening of the hearing, the union withdrew the two complaints involving the Head Start supervisory and non-supervisory units. The parties filed post-hearing briefs to complete the record.

ISSUE

Did the employer interfere with employee rights by conveying to employees that they would not have to take the three percent salary reduction if they were not represented by a union?

Based on the record as a whole, I find that the employer did interfere with employee rights by comments made in employee meetings that the classified employees would not have to take the three percent salary reduction if they were not represented by a union.

APPLICABLE LEGAL STANDARDS

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); *Columbia Basin College*, Decision 11609-A (PSRA, 2013). 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 represents four separate bargaining units of classified employees at Skagit Valley College, two non-supervisory and two supervisory. The two bargaining units in this case are a 100 member non-supervisory classified unit [case 24859-U-12-6347] and an 11 member supervisory classified unit [case 24857-U-12-6345]. Under Chapter 41.80 RCW, the union negotiates one master collective bargaining agreement (CBA) with a coalition of community colleges. The employer participates in the coalition of community colleges for the purposes of collective bargaining. The coalition selected the State Office of Financial Management (OFM), Labor Relations Division (LRD) as its bargaining representative. The most recent higher education CBA was effective July 1, 2012, through June 30, 2013.

On May 25, 2011, the Legislature's budget included a provision that provided: "For fiscal year 2013 funding is reduced to reflect a 3.0 percent temporary salary reduction for all employees whose monthly full-time equivalent salary is \$2,500 or more per month through June 30, 2013." The Legislature also enacted a provision that exempted institutions of higher education from reducing salaries by three percent for faculty and exempt employees. It instead allowed the institutions to reduce expenditures for faculty and exempt employees by three percent.

On April 26, 2012, the employer sent a memo to affected employees which read in part:

The Governor's budget for the 2011-13 biennium includes provisions affecting state employees, including a three percent (3%) salary reduction requirement for classified employees. This reduction was also negotiated with the classified bargaining representatives and is included in the WPEA negotiated agreement. The three percent (3%) salary reduction will be for a period of one year beginning July 1, 2012 and ending on June 30, 2013.

On April 30, 2012, Skagit Valley College President, Thomas Keegan, and Executive Director of Human Resources, Sue Williamson, held an all-employee meeting at the employer's main campus in Mount Vernon. On May 4, 2012, a meeting was also held at the Whidbey Island campus. These meetings were described by Williamson as, "an opportunity for the president to discuss what's happening, which could be things that are happening in the legislature, what kinds of building projects are going on, dispelling any rumors that we might have on campus, and an opportunity for people to ask questions."

At the April 30th meeting, Julie Bishop, who is a library and archives paraprofessional 4 and at that time was the union's Chief Job Representative for both campuses, was in attendance. According to Bishop there were faculty, administrators, and classified staff in attendance. Bishop testified that Keegan announced there would be a three percent salary reduction for the represented classified staff. Bishop then asked Keegan if the non-represented classified staff would have to take the pay cut.¹ Keegan did not respond, but looked to Williamson, who responded, according to Bishop's testimony, "That's correct, all represented staff take a three percent salary reduction." Williamson testified that she responded, "Non-represented employees were not taking a 3 percent salary reduction." Williamson also testified that she then stated, "as an example Big Bend Community College was not represented, and they did not take a 3 percent cut." Barbara Murphy, a fiscal specialist in the business office at Mount Vernon, also attended the April 30th meeting and stated that Williamson responded, "if we were unrepresented, then it was her understanding that we would not have to take a 3 percent reduction."

On May 1, 2012, Joe Buenaventura, an information system specialist at the Whidbey Island campus and a union job representative, had a conversation with co-worker, Carolyn Batchelor about the April 30th meeting. She relayed to him what she had been told about the exchange between Bishop and Williamson. Buenaventura testified that Batchelor told him that her understanding of Williamson's statement was "if we weren't part of the union, we wouldn't get the 3 percent budget cut."

¹ There are four non-represented classified employees who work for the employer.

On May 2, 2012, Bishop e-mailed a letter to the other union job representatives which stated in part, "At the recent budget forum I discovered that if we are not 'represented' meaning not WPEA we will not have to take the July 1st 2012, 3% salary reduction. I would like us all to consider this option." At hearing she responded affirmatively when asked: "Are you saying that's what you learned from the question and answer that you had at the main campus meeting on the 30th?" By this statement it is clear that she perceived from the employer's comment that a benefit of being unrepresented was that they would not have to take the three percent salary reduction. In the e-mail, she continues by explaining the decertification process and timeline for filing with the Commission.

On May 4, 2012, Keegan held an all-employee meeting at the Whidbey Island campus. Williamson did not attend this meeting but it was attended by Mary Alice Grobins, Chief Financial Officer. Buenaventura and Batchelor attended this meeting. When Buenaventura arrived at the meeting the attendees were being told that there would be a three percent salary reduction. Batchelor then asked if they were not a part of the union, would the reduction apply to the classified staff. According to Buenaventura, Keegan nodded and said that was correct, that it only applied for represented classified staff and Grobins verified that the three percent salary reduction was just imposed for the represented classified staff.

After the May 4th meeting, Genie Abbot, a program assistant in the nursing department at the Whidbey Island campus, was approached by a co-worker with a couple of slips of paper to sign. She was told that, "if you sign this document to decertify, you will not lose your 3 percent salary." This was the first time she had heard about the decertification process preventing the three percent salary reduction. She was aware that the salary reduction was coming.

I believe that the evidence clearly shows that the employees understood the comments made by Williamson, Keegan, and Grobins to indicate that if they were not represented by a union, they would not have to take the impending three percent salary reduction. Keegan and Grobins did not testify. Only Williamson testified and she stated that she made reference to Big Bend Community College as an example of a non-represented college that did not have to take the reduction. Bishop, who asked the question at the April 30th meeting, sent an e-mail the very next

day to all the union job representatives suggesting that they consider decertification to maintain their salary.

The employer characterizes the comments made by Williamson, Keegan, and Grobins as factual and relies on the statements of employees that they believed they were not stating their opinions. However, the applicable test is not how the employer characterizes the statement, but how the employee perceives the statement. *Grant County Public Hospital District 1*, Decision 8378-A.

It is not necessary to show that the employer acted with intent or motivation to interfere, nor is it necessary to show that the employee involved actually felt threatened or coerced. The determination is based on whether a typical employee in the same circumstances could reasonably perceive the employer's actions as discouraging his or her union activities. Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union. *City of Seattle*, Decision 3566-A (PECB, 1991).

Based on a review of the record in relationship to the Commission's seven criteria for analyzing whether employer communications interfere with protected employee rights, I find that criteria 2, 3, and 5 apply to this case.

The employer argues that its comments to employees were substantially factual. However, the comment made by Williamson went beyond a simple statement of fact. She went on to use the example of an unrepresented college, Big Bend, to illustrate the fact that if the classified employees were not union, they would not be receiving the salary reduction. This statement would certainly emphasize a fact that would lead an employee to reasonably perceive that there may be a financial benefit to not being represented by the union. The perception of that comment is demonstrated in Bishop's e-mail sent the next day after she asked the question, to the other union job representatives suggesting that they consider decertifying the union so that they would not have to take the salary reduction.

Regardless of intent, the comments made in the two meetings by the Williamson, Keegan, and Grobins definitely had the impact of undermining the union by making it clear to employees that

if they were not represented by a union, they would not have to take the salary reduction. The impact was that the employees believed that by decertifying the union, and becoming non-represented, they could avoid the salary reduction.

It is clear that many employees left both meetings with the understanding that if they wanted to avoid the three percent salary reduction, they would have to decertify from the union and become non-represented.

CONCLUSION

By comments made by Williamson in the April 30, 2012 Mount Vernon campus all-employee meeting and comments by Keegan and Grobins in the Whidbey Island campus all-employee meeting on May 4, 2012, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) by stating that the classified employees would not have to take the three percent salary reduction if they were not represented by a union.

FINDINGS OF FACT

1. Skagit Valley College (Community College District 4) is an institution of higher education within the meaning of RCW 41.80.005(10).
2. The Washington Public Employees Association is an exclusive bargaining representative within the meaning of RCW 41.80.005(9), and represents two non-supervisory bargaining units and two supervisory bargaining units of classified employees at the employer's campuses. The two bargaining units in this case are a 100 member non-supervisory classified unit [24859-U-12-6347] and an 11 member supervisory classified unit [24857-U-12-6345] at Skagit Valley College.
3. Under Chapter 41.80 RCW, the union negotiates one master collective bargaining agreement (CBA) with a coalition of community colleges. The employer participates in the coalition of community colleges for the purposes of collective bargaining. The

coalition selected the State Office of Financial Management (OFM), Labor Relations Division (LRD) as its bargaining representative. The most recent higher education CBA was effective July 1, 2012, through June 30, 2013.

4. On May 25, 2011, the Legislature's budget included a provision that provided: "For fiscal year 2013 funding is reduced to reflect a 3.0 percent temporary salary reduction for all employees whose monthly full-time equivalent salary is \$2,500 or more per month through June 30, 2013." The Legislature also enacted a provision that exempted institutions of higher education from reducing salaries by three percent for faculty and exempt employees. It instead allowed the institutions to reduce expenditures for faculty and exempt employees by three percent.

5. On April 26, 2012, the employer sent a memo to affected employees which read in part:

The Governor's budget for the 2011-13 biennium includes provisions affecting state employees, including a three percent (3%) salary reduction requirement for classified employees. This reduction was also negotiated with the classified bargaining representatives and is included in the WPEA negotiated agreement. The three percent (3%) salary reduction will be for a period of one year beginning July 1, 2012 and ending on June 30, 2013.

6. On April 30, 2012, Skagit Valley College President, Thomas Keegan, and Executive Director of Human Resources, Sue Williamson, held an all-employee meeting at the employer's main campus in Mount Vernon.

7. At the April 30th meeting, Julie Bishop, who is a library and archives paraprofessional 4 and at that time was the union's Chief Job Representative for both campuses, testified that Keegan announced there would be a three percent salary reduction for the represented classified staff. She then asked Keegan if the non-represented classified staff would have to take the pay cut. Keegan did not respond, but looked to Williamson, who responded, according to Bishop's testimony, "That's correct, all represented staff take a three percent salary reduction." Williamson testified that she responded, "Non-represented employees were not taking a 3 percent salary reduction." Williamson also

testified that she then stated, "as an example Big Bend Community College was not represented, and they did not take a 3 percent cut."

8. On May 1, 2012, Joe Buenaventura, an information system specialist at the Whidbey Island campus and a union job representative, had a conversation with co-worker Carolyn Batchelor about the April 30th meeting. She relayed to him what she had been told about the exchange between Bishop and Williamson. Buenaventura testified that Batchelor told him that her understanding of Williamson's statement was "if we weren't part of the union, we wouldn't get the 3 percent budget cut."
9. On May 2, 2012, Bishop e-mailed a letter to the other union job representatives which stated in part, "At the recent budget forum I discovered that if we are not 'represented' meaning not WPEA we will not have to take the July 1st 2012, 3% salary reduction. I would like us all to consider this option." At hearing she responded affirmatively when asked: "Are you saying that's what you learned from the question and answer that you had at the main campus meeting on the 30th?"
10. On May 4, 2012, an all-employee meeting was held at the Whidbey Island campus. Keegan and Mary Alice Grobins, Chief Financial Officer, were the management representatives at this meeting. When Buenaventura arrived at the meeting the attendees were being told that there would be a three percent salary reduction. Batchelor then asked if they were not a part of the union, would the reduction apply to the classified staff. According to Buenaventura, Keegan nodded and said that was correct, that it only applied for represented classified staff and Grobins verified that the three percent salary reduction was just imposed for the represented classified staff.
11. After the May 4th meeting, Genie Abbot, a program assistant in the nursing department at the Whidbey Island campus, was approached by a co-worker with a couple of slips of paper to sign. She was told that, "if you sign this document to decertify, you will not lose your 3 percent salary." This was the first time she had heard about the decertification process preventing the three percent salary reduction.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-45 WAC.
2. By stating to bargaining unit members that they would not receive the three percent salary reduction if they were not represented by a union, as described in Findings of Fact 7 and 10, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a).

ORDER

Skagit Valley College, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

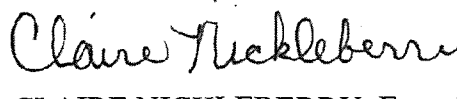
1. CEASE AND DESIST from:
 - a. Unlawfully interfering with employee rights through statements made by the employer or individuals speaking for management.
 - b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41:80 RCW:
 - a. 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.

- b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Trustees of Skagit Valley College, 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.
- c. 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.
- d. 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 7th day of June, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


CLAIRE NICKLEBERRY, 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.



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 VALLEY COLLEGE COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee right in violation of RCW 41.80.110(1)(a), by stating to bargaining unit members that they would not receive the three percent salary reduction if they were not represented by a union.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease and desist from unlawfully interfering with employee rights through statements made by the employer or individuals speaking for management.

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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THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/07/2013

The attached document identified as: **DECISION 11536-A - PSRA** 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: *[Signature]*
ROBBIE DUFFIELD

CASE NUMBER: 24857-U-12-06345 FILED: 06/06/2012 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: SUPERVISORS
DETAILS: Supervisory Classified
COMMENTS:

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

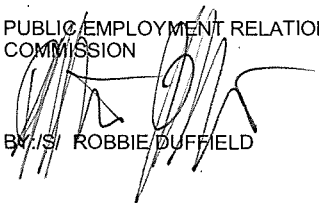
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MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/07/2013

The attached document identified as: **DECISION 11538-A - PSRA** 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:  ROBBIE DUFFIELD

CASE NUMBER: 24859-U-12-06347 FILED: 06/06/2012 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ALL EMPLOYEES
DETAILS: -
COMMENTS:

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