

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE
EMPLOYEES,

Complainant,

vs.

COMMUNITY COLLEGES OF SPOKANE,

Respondent.

CASE 128005-U-16

DECISION 12626 - PSRA

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for
the Washington Federation of State Employees.

Cheryl L. Wolfe, Senior Counsel, Attorney General Robert W. Ferguson, for
Community Colleges of Spokane.

On March 9, 2016, the Washington Federation of State Employees (union or WFSE) filed an unfair labor practice complaint alleging that Community Colleges of Spokane (employer or CCS) refused to bargain and derivatively interfered in violation of RCW 41.80.110(1)(e) and (a) by contracting out bargaining unit work without providing an opportunity for bargaining. Unfair Labor Practice Manager Jessica J. Bradley reviewed the complaint under WAC 391-45-110 and on March 24, 2016, found a cause of action to exist. On April 28, 2016, the matter was assigned to Stephen W. Irvin. In lieu of an evidentiary hearing in this matter, the parties stipulated to facts regarding the charge and a remedy for the bargaining unit employees affected by the employer's actions.

ISSUE

Did the employer refuse to bargain and derivatively interfere in violation of RCW 41.80.110(1)(e) and (a) by contracting out "warning track" work around the baseball diamond without providing the union an opportunity for bargaining?

Based on the stipulated facts, the employer refused to bargain and derivatively interfered in violation of RCW 41.80.110(1)(e) and (a) by contracting out “warning track” work around the baseball diamond without notifying the union or providing the union an opportunity for bargaining.

BACKGROUND

The union is the exclusive bargaining representative for a bargaining unit that includes employees in the employer’s facilities and trades job classes. At the time of the events in question, the union and employer were parties to a collective bargaining agreement effective from July 1, 2015, through June 30, 2017.

ANALYSIS

Applicable Legal Standards

On March 15, 2016, the Commission adopted a new standard for determining whether an employer had a duty to bargain a decision to contract out bargaining unit work. *Central Washington University*, Decision 12305-A (PSRA, 2016). The threshold question under the new standard is whether the work that was contracted out is bargaining unit work. If the work is not bargaining unit work, then the analysis would stop and the employer would not have had an obligation to bargain its decision to contract out work. If the work is bargaining unit work, then the *City of Richland* balancing test should be applied to determine whether the decision to contract out bargaining unit work is a mandatory subject of bargaining.

The Supreme Court issued its decision in *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989), announcing the balancing test after *Clover Park School District*, Decision 2560-B (PECB, 1988). The Commission applies the *City of Richland* balancing test in other cases to determine whether a topic is a mandatory subject of bargaining. The balancing test would appropriately fit into the analysis of whether an employer was obligated to bargain because the balancing test weighs the competing interests of the employees in wages, hours, and working conditions against “the extent

to which the subject lies ‘at the core of [the employer’s] entrepreneurial control’ or is a management prerogative.” *City of Richland*, 113 Wn.2d at 203. Recognizing that public sector employers are not “entrepreneurs” in the same sense as private sector employers, entrepreneurial control should consider the right of a public sector employer, as an elected representative of the people, to control management and direction of government. *See Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977). Applying the balancing test to the question of whether a duty to bargain a decision to contract out work existed broadens parties’ ability to make arguments that the decision is or is not a mandatory subject of bargaining.

If the decision is a mandatory subject of bargaining, then the next question is whether the employer provided notice and an opportunity to bargain the decision. If the employer did not, then the union will have met its burden of proving that the employer refused to bargain by contracting out bargaining unit work. *Central Washington University*, Decision 12305-A.

Parties’ Stipulations

On October 11, 2016, the parties stipulated to the following in lieu of a hearing:

1. Facts

On January 8, 2016, CCS gave notice to WFSE of its intent to contract out a fence repair caused by a wind storm. Subsequent to the notice, the bid was amended to include installation of a warning track. A separate notice of warning track work was not provided to WFSE. The warning track work is bargaining unit work.

2. Remedy

- a. CCS agrees to pay each employee 16 hours of pay at his current overtime hourly rate to the following employees: Grounds & Nursery Specialist 1 – Jason Young, Grounds & Nursery Specialist 2 – Darren Haworth, Grounds & Nursery Specialist 3 – Mark Fey, and Grounds & Nursery Specialist 4 – Charles Howland. CCS will use its best efforts to make these payments on or before the second pay period following final execution of the PERC order.
- b. An order should be entered in PERC [Case] No. 128005-U-16 finding CCS did not provide notice of the warning track work and requiring CCS to post a notice of the order with the stipulated finding; read the order at the next regular meeting of the Board of Trustees; refrain from contracting out bargaining-unit work without notice; and for the compensation in a. above.

Conclusion

Based on the stipulated facts, the employer refused to bargain and derivatively interfered in violation of RCW 41.80.110(1)(e) and (a) by contracting out “warning track” work around the baseball diamond without notifying the union or providing the union an opportunity for bargaining.

The parties’ stipulated remedies are consistent with the remedies imposed by the Commission in similar cases. In *Central Washington University*, for example, the Commission ordered the employer to identify the bargaining unit employees who would have been eligible for overtime work during the period when the contractor’s employees were engaging in bargaining unit work, and to make the bargaining unit employees whole by paying them the appropriate overtime rate for the number of hours worked by the contractor’s employees.

FINDINGS OF FACT

1. Community Colleges of Spokane (employer or CCS) is a public employer within the meaning of RCW 41.80.005(8) and (10).
2. The Washington Federation of State Employees (union or WFSE) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).
3. On October 11, 2016, the parties stipulated as follows:

On January 8, 2016, CCS gave notice to WFSE of its intent to contract out a fence repair caused by a wind storm. Subsequent to the notice, the bid was amended to include installation of a warning track. A separate notice of warning track work was not provided to WFSE. The warning track work is bargaining unit work.

4. Based upon their stipulation described in Finding of Fact 3, the parties stipulated to the following remedy:
 - a. CCS agrees to pay each employee 16 hours of pay at his current overtime hourly rate to the following employees: Grounds & Nursery

Specialist 1 – Jason Young, Grounds & Nursery Specialist 2 – Darren Haworth, Grounds & Nursery Specialist 3 – Mark Fey, and Grounds & Nursery Specialist 4 – Charles Howland. CCS will use its best efforts to make these payments on or before the second pay period following final execution of the PERC order.

- b. An order should be entered in PERC [Case] No. 128005-U-16 finding CCS did not provide notice of the warning track work and requiring CCS to post a notice of the order with the stipulated finding; read the order at the next regular meeting of the Board of Trustees; refrain from contracting out bargaining-unit work without notice; and for the compensation in a. above.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.
2. Based upon Findings of Fact 3 and 4, the employer refused to bargain and derivatively interfered in violation of RCW 41.80.110(1)(e) and (a) by contracting out “warning track” work around the baseball diamond without notifying the union or providing the union an opportunity for bargaining.

ORDER

Community Colleges of Spokane, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Contracting out bargaining unit work without first notifying the union and providing the union an opportunity for bargaining.

- e. 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.

- f. 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 her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 28th day of October, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, 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 STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT COMMUNITY COLLEGES OF SPOKANE COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain and derivatively interfered in violation of RCW 41.80.110(1)(e) and (a) by contracting out “warning track” work around the baseball diamond without notifying the union or providing the union an opportunity for bargaining.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL pay 16 hours of pay at the employee’s current overtime hourly rate to each of the following employees: Jason Young, Grounds & Nursery Specialist 1; Darren Haworth, Grounds & Nursery Specialist 2; Mark Fey, Grounds & Nursery Specialist 3; and Charles Howland, Grounds & Nursery Specialist 4. The employer will use its best efforts to make these payments on or before the second pay period following final execution of this order.

WE WILL give notice to and, upon request, negotiate in good faith with the Washington Federation of State Employees before contracting out bargaining unit work.

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

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

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 10/28/2016

DECISION 12626 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



BY: VANESSA SMITH

CASE NUMBER: 128005-U-16

EMPLOYER: COMMUNITY COLLEGES OF SPOKANE
ATTN: CHRISTINE JOHNSON
PO BOX 6000
SPOKANE, WA 99217-6000
christine.johnson@ccs.spokane.edu
(509) 434-5006

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
2ND FL RAAD BLDG
128 10TH AVE SW
PO BOX 47500
OLYMPIA, WA 98504
labor.relations@ofm.wa.gov
(360) 407-4140

CHERYL L. WOLFE
ATTORNEY GENERALS OFFICE
7141 CLEANWATER DRIVE SW
PO BOX 40145
OLYMPIA, WA 98504-0145
cherylw@atg.wa.gov
(360) 664-4167

PARTY 2: WASHINGTON FEDERATION OF STATE EMPLOYEES
ATTN: HERB HARRIS
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
herbh@wfse.org
(360) 352-7603

REP BY: EDWARD EARL YOUNGLOVE III
YOUNGLOVE & COKER, P.L.L.C.
1800 COOPER PT RD SW, BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
edy@ylclaw.com
(360) 357-7791