STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE NURSES ASSOCIATION, Complainant, vs. SKAGIT REGIONAL HEALTH (SKAGIT PUBLIC HOPSITAL DISTRICT 1), Respondent.	CASE 127550-U-15 DECISION 12616-A - PECB DECISION OF COMMISSION

Terrance M. Costello, Attorney at Law, Schwerin Campbell Barnard Iglitzin & Lavitt LLP, for the Washington State Nurses Association.

Michael Brunet, Attorney at Law, Garvey Schubert Barer, for Skagit Regional Health (Skagit Public Hospital District 1).

The Washington State Nurses Association (union) filed an unfair labor practice complaint alleging that Skagit Regional Health (employer) refused to bargain by dealing directly with bargaining unit employees in violation of RCW 41.56.140(4). Examiner Emily K. Whitney conducted a hearing and issued a decision finding the employer committed an unfair labor practice violation by dealing directly with bargaining unit employees. *Skagit Regional Health*, Decision 12616 (PECB, 2016). The employer filed a timely appeal.

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Id.* The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

We have reviewed the transcript, exhibits, and the parties' briefs. The Examiner correctly stated the legal standards. Substantial evidence supports the Examiner's findings of fact, which in turn support the Examiner's conclusions of law. We affirm the Examiner.

On appeal the employer argued that it did not circumvent the union by meeting with employees, proposing changes to the employees' full-time equivalent (FTE) assignments, and changing its proposal based on employee feedback. To support this argument, the employer maintained that it neither made a decision based on the discussions with the employees nor asked the employees to agree to a proposal. The employer also asserted that it was going to share the information it gathered with the union. We do not find the employer's arguments persuasive.

Relying on *Central Washington University*, Decision 12305-A (PSRA, 2016), the employer argued that it did not circumvent the union because the employer did not use the information it gathered from discussions with the employees to make a decision. In *Central Washington University*, the employer asked employees, rather than the union, whether they wanted to perform bargaining unit work. While the employer in *Central Washington University* used the information it gleaned from conversations with employees to make its decision to contract out bargaining unit work, it was the employer's questioning employees about a mandatory subject of bargaining that led to a finding that the employer circumvented the union. In this case, the employer was discussing a change to a mandatory subject of bargaining with employees instead of with the union, and the employer stopped discussing a change to hours once the union filed the unfair labor practice complaint.

Comparing the facts of this case to those in *University of Washington*, Decision 11600-A (PSRA, 2013), the employer argued that it did not circumvent the union because it did not ask the employees to agree to a proposal. In *University of Washington*, the employer decided to change from fixed to rotating shifts, discussed the potential change with employees, and held a mandatory meeting to discuss shift bids and bid guidelines. After finding rotating shifts to be a mandatory subject of bargaining, the Commission found that the union waived by contract its right to bargain the change from fixed to rotating shifts. Because the union waived its right to bargain and there was no evidence that the employer negotiated with represented employees, the employer did not

circumvent the union when it discussed the change with the employees and presented new schedules to them.

Unlike the employer in *University of Washington* who did not negotiate with represented employees, the employer in this case negotiated with represented employees, thereby violating its duty to bargain with the exclusive bargaining representative. The employer proposed changes to hours of work to employees, not the union. Moreover, the employer solicited employee sentiments on its proposal and made changes consistent with the employees' feedback.

The employer further argued that it was gathering employee input and was going to share the information it gathered with the union. Where employees have exercised their right to organize for purposes of collective bargaining, the employer is obligated to deal only with the designated exclusive bargaining representative on matters of wages, hours, and working conditions. RCW 41.56.100; RCW 41.56.030(4); *City of Seattle*, Decision 3566-A (PECB, 1991). An employer retains the right to communicate directly with its represented employees; however, communications may not undermine an exclusive bargaining representative. *City of Seattle*, Decision 3566-A.

When employees have chosen to be represented for collective bargaining, their exclusive bargaining representative has the responsibility for ascertaining the employees' desires on potential changes to mandatory subjects of bargaining. In this case, the employer wanted to change work hours, presented a proposal to the employees, asked the employees for feedback, and changed its proposal based on the employees' feedback. The employer should have instead discussed its intention with the union. Then, the union would have been responsible for gathering the employees' input on the proposed changes.

The employer appealed the Examiner's order and argued that the order should be narrowed to cover medical oncology nurses rather than the entire bargaining unit. After reviewing the order, we conclude that it is consistent with the Commission's practice of applying the order to the entire bargaining unit. We do, however, modify paragraph 2.a. of the order.

ORDER

The findings of fact and conclusions of law issued by Examiner Emily K. Whitney are AFFIRMED and adopted as the findings of fact and conclusions of law of the Commission. The below order is substituted:

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

1. CEASE AND DESIST from:

   a. Dealing directly with bargaining unit members concerning mandatory subjects of bargaining.

   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 41.56 RCW:

   a. Give notice to and, upon request, negotiate in good faith with the Washington State Nurses Association before proposing changes to nurses' work hours and assigned FTEs to bargaining unit employees.

   b. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer 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.

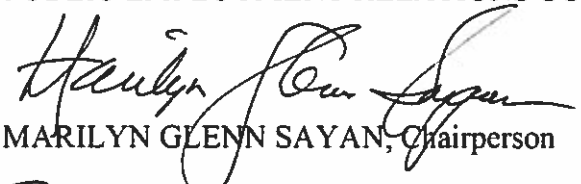
c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Commissioners of Skagit Regional Health, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the complainant, in writing, within 20 days following the date this order becomes final 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.

e. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final 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 1st day of December, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson

MARK E. BRENNAN, Commissioner

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RECORD OF SERVICE - ISSUED 12/1/2016

DECISION 12616-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127550-U-15

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