STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WARDEN EDUCATION ASSOCIATION, Complainant, vs. WARDEN SCHOOL DISTRICT, Respondent.	CASE 128604-U-16 DECISION 12778 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On December 7, 2016, the Warden Education Association (union) filed an unfair labor practice complaint with the Public Employment Relations Commission. The union's complaint alleged that the Warden School District (employer or district) interfered with employee rights by making threats of reprisal or force associated with protected union activity and that the employer dominated the union by making verbal and written statements intended to interfere with the administration of the union. The Commission's Unfair Labor Practice Manager issued a preliminary ruling on January 5, 2017, stating that a cause of action existed. Examiner Daniel Comeau held a hearing on April 26, 2017, and the parties filed post-hearing briefs to complete the record on June 23, 2017.

ISSUES

The issues, as framed by the preliminary ruling, are as follows:

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) by taking the following actions:

1. On June 11, 2016, sending an e-mail to union president Tim Carlberg, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with protected union activity.

2. On November 15, 2016, making inappropriate and vulgar statements to union staff representative Steve Lindholm while he was representing the union in a grievance hearing, which could be reasonably perceived as threats of reprisal or force, or promise of benefit, associated with protected union activity.

3. On November 15, 2016, questioning Carlberg and Lindholm about whether they had talked with other employer officials before filing a grievance, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with protected union activity.

4. On November 23, 2016, sending an e-mail to Lindholm, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with protected union activity.

Employer domination of the union in violation of RCW 41.59.140(1)(b) and, if so, derivative interference in violation of RCW 41.59.140(1)(a) since November 15, 2016, by making verbal and written statements to Lindholm or Carlberg that intended to interfere with the administration of the union.

Based on the record, the Examiner finds that the employer did not interfere with, restrain, or coerce either Lindholm or Carlberg in the exercise of protected employee rights. Lindholm is not an employee as defined by the statute and, therefore, has no rights protected by Chapter 41.59 RCW. The Examiner also finds that the employer did not unlawfully dominate the union or interfere with the administration of the union.

BACKGROUND

The employer and the union were parties to a collective bargaining agreement (CBA) effective from September 1, 2014, through August 31, 2017. The union represents a bargaining unit of certificated employees working for the district in Warden, Washington. Tim Carlberg is the local union president and is also a certificated employee in the bargaining unit. He has served as president since June 2015. Steve Lindholm is a UniServ Representative for the Washington Education Association, which is an organization representing local unions across the state of Washington. Lindholm is responsible for assisting local unions with collective bargaining, grievance filing, and representing bargaining unit employees who are under investigation and require due process. He is not employed by the district.

The school board (board), at all times relevant to the complaint, consisted of Doug Skone, Board President; Rick Martin; Aaron Golladay; Bryce Cox; and Sharon Buck. Superintendent David LaBounty and Director of Business and Operations Veronica Perez report to the board and represent the employer in labor relations. Given their capacity in labor relations and collective bargaining matters, LaBounty and Perez have significant dealings with Lindholm and Carlberg.

A majority of the union's allegations arise from a November 15, 2016, grievance meeting at which the tenor and substance of the conversations rapidly deteriorated. The substance of the meeting included several points of contention, each of which had been ongoing between the union and the employer leading up to that meeting. Thus, to understand the context and dynamic of that meeting, it is important to first understand the circumstances under which the disputes arose.

Carlberg and the National Board Certification Process

The National Board Certification is the highest level of certification to which a teacher can aspire. The parties' CBA provided, in relevant part, the following:

> ARTICLE IV - INSTRUCTION SECTION A: PROFESSIONAL DEVELOPMENT
>
> . . .

> Beginning 2016–2017, [t]he District will provide annual tuition costs for six (6) National Board candidates by cohort groups as an employee recruitment and retention offering.

The parties disagreed over whether the cohort process could begin prior to September 1, 2016. The union identified an opportunity to connect with an established cohort from the Moses Lake School District. The employer, however, disagreed and relied on the CBA, which required the cohort to begin during the 2016–17 school year.

Gail Hardman, a middle school teacher and bargaining unit employee, attempted to begin the process as early as March 2016. She believed it would benefit the Warden school teachers to connect with a more established cohort group, because she believed it would give those teachers a good start on the certification process. Hardman wanted to begin the process before September 1, so the teachers in the cohort would not be starting from scratch when the school year started.

Deadlines for joining the Moses Lake School District cohort were approaching. Hardman had been communicating with the employer in an attempt to ensure the employer would fund the process. On June 10, 2016, very close to a potential deadline, Perez e-mailed Hardman indicating that there was no requirement that the cohort be facilitated or jump-started over the summer. Rather, the agreement was simply to form a six-person cohort during the 2016–17 school year, with the teachers directing their own studies. Perez added that a facilitated cohort would be possible if the budget would allow it on a case-by-case basis.

Hardman was frustrated with Perez's e-mail and responded to Perez, expressing her disappointment in the employer's "irresponsibility" and claiming that the employer had a "low level of understanding" of the certification process. She further asserted that such employer decisions were the reason why the district continued to lose high-level teachers and caused stress for teachers trying to utilize the process. After responding to Perez, Hardman forwarded her e-mail to Carlberg who in turn forwarded it to the board on June 10, 2016. Carlberg preceded the forwarded e-mail chain with the following message:

> Doug,
>
> When you said you were going to get the ball rolling on this, I took it to mean in a positive way. I echo Gail's sentiments below…she asked me to forward this email chain to you and the rest of the board on her behalf.
>
> It's actions like these by this district that have caused teachers to leave their positions in Warden in unprecedented numbers these past three years. National Board was something that this school board emphasized as being important to attracting and retaining teachers last fall. Can you explain why the sudden change, or does this board just not comprehend what it is that the district is doing?

On June 11, 2016, Martin replied to Carlberg:

> I really expect someone in a leadership position to project leadership. You fail in that regard. You can't promote success, but would rather revel in discontent. You either manifest problems or seek issues out, and discover ways to accelerate and promote a division between staff and those you think you represent. Look past your own petty games, get a pair and lead with candor and clarity. As far as I'm concerned, my primary duty is to facilitate, promote, encourage and do everything in my ability to support you, certificated, and classified staff to create the best learning environment for our students. I'm here to serve you. You are in an excellent position to promote success, but sadly you desire to divide and create discontent. Quit using your position as a speed bump, and work toward something positive.

Lindholm and the Health Insurance Grievance

Later in 2016, Lindholm investigated whether the employer had made a health insurance premium payment to the Washington Public Employee Benefits Board (PEBB) so that new teachers would be eligible for benefits beginning September 1, 2016. On September 11, 2016, Lindholm e-mailed LaBounty requesting all new employee enrollment forms for the 2016–17 school year as well as verification that the first month's (September's) premium had been paid. LaBounty forwarded this e-mail to Perez on September 12, 2016.

Lindholm e-mailed LaBounty again on September 12, 2016, claiming that at least one member had turned in enrollment forms but had not received notice of coverage. Specifically, Lindholm's e-mail included the following:

> In doing some research, it would appear that at least one member has turned in insurance enrollment paperwork, yet the district has not processed the paperwork/the member hasn't received notification of coverage from the insurance carrier.
>
> I don't need to remind you of the contract provision which requires the district to offer coverage beginning the first day of the month after being employed-September 1.
>
> Further, I hope I don't need to remind you that WEA brought forward a grievance over this very issue one year ago, and the district narrowly missed having to defend itself in numerous statutory hearings.
>
> Should the district not come into full compliance prior to Friday, September 16, 2016, WEA will be filing another grievance related to this. This email will serve as the pre-grievance hearing/presentation as we brought this to your attention today during a grievance hearing which was unrelated to this issue.
>
> Your actions have made it very clear: you won't follow the contract no matter how clearly we show your actions are contrary to the CBA's wages, hours, terms, and conditions of employment.
>
> We hope you correct this willful and purposeful violation of the contract.
>
> Remember, the parties have proposals on the table related to health care, you can't unilaterally impose-I'll explore an [sic] ULP with legal.

On September 13, 2016, LaBounty responded to Lindholm:

> All of our teachers as of September 1st have medical coverage. All of our teachers that have submitted complete paperwork have been confirmed through PEBB. Two teachers have not turned in any paper work, and another two have paper work submitted but are waiting on clarifying questions to progress. These four teachers have received notifications from our HR clerk of what is needed. PEBB has communicated to us that cards are mailed out to individuals within 7-14 working days. Any individual can call the plan directly to check their status and get an ID number if they need it prior to receiving their ID card. All of the plan numbers are located on page 2 of the Employee Enrollment Guide under Contact the Plans. This guide was provided and individually reviewed with each new teacher by our HR clerk.
>
> You claim that an individual employee's insurance has not been properly handled, yet fail to provide us with information regarding which employee is at issue. Please share with us all information that you have regarding any errors so that we can review the matter appropriately.

The same day, Lindholm replied:

> You can't be trusted not to retaliate! I'll release information as it is necessary for the union to make its case.
>
> We are still awaiting the information we requested. Your proclamation of coverage needs to be verified through our research!

On September 16, 2016, Perez responded to Lindholm's information request and attached verifications and enrollment forms. She also explained that the September premium payment was not due until October 20, which meant that she would be unable to provide verification of the payment in September. In addition, Perez provided an incomplete S-275 form that would be completed by September 30, 2016.

Lindholm responded to Perez:

> You need to provide an S275 form without redacted information. These are public documents and you are required by law to provide them. You don't want to be sued for something so stupid...or maybe you do???? I will look forward to the above clarified request prior to the close of business. For what it [sic] worth, WEA needs this form, in its entirety, for contract enforcement and bargaining.

The next line of communication between Lindholm and the employer began on September 23, 2016. In his September 23 e-mail, Lindholm explained to LaBounty that Lindholm's reading of the PEBB contract between the parties required premium payments by the twentieth of the month of coverage (for example, by September 20 for September coverage). He pointed out that he was requesting "proof" that the September premium payment was made by way of a PEBB invoice and proof of payment from the district. He also questioned what the employer had done with the money allocated for health insurance premiums if it had not been used to pay for the September premium.

Lindholm's e-mail continued as follows:

> The Union is disappointed that you ignored our previous email related to health care concerns, so now we will force you to respond via the grievance process. Keep in mind the previous email served as the pre-grievance step.

> WEA hopes the district provides the above requested information in a timely fashion. Grievances will be filed within the contractual time limits.
>
> Should you wish to discuss this issue or the previous insurance related email, you have my contact information. If you ignore this email as is your practice, WEA will respond accordingly!

On September 26, 2016, Lindholm sent another e-mail to LaBounty regarding the insurance premiums. In that e-mail, he expanded his request for documents relating to the September 2016 premium payment, after selectively quoting from a PEBB representative statement indicating that delayed payment was not a part of the employer's contract with the PEBB. Because of this, Lindholm continued to assume that bargaining unit members did not have coverage and that the employer was intentionally withholding the premium payments (thereby denying immediate employee eligibility). Furthermore, he claimed the employer was unilaterally implementing a change in eligibility for health insurance benefits.[1]

Perez responded the same day and suggested to Lindholm that she, Lindholm, Carlberg, LaBounty, and Rockie Hansen, the employer's attorney, meet one hour before the October 4 board meeting to discuss the insurance issue. She offered this suggestion to "allow [them] to get any questions answered and provide additional clarity to the district processes regarding PEBB." Lindholm rejected the idea, stating that he would not meet with the employer until all requested information was presented in writing with sufficient time to prepare for any meeting.

On September 27, Perez replied by indicating that she was still working on gathering the requested information and hoped to have it by the end of that week. On September 28, 2016, the union filed a grievance claiming the employer failed to provide health care benefits in the first month of employment for newly hired teachers as required by the CBA.

On September 30, 2016, Perez provided information to Lindholm. Lindholm's response indicated that the information provided was not to his satisfaction:

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[1] There were ongoing negotiations between the parties at the time, and health insurance benefits were on the agenda.

> We still need proof of September payment made by the district. Using October payment for September is authorized-so what have you done with September allocation if it wasn't applied to the September premium? It would be a lot easer [sic] just to be upfront with your business practices-you are only delaying the inevitable!

In spite of Lindholm's response, Perez was still willing to provide information and meet with Lindholm to discuss PEBB accounting. Perez responded to Lindholm on October 3, 2016:

> Please clarify your request. The check dated 9/30/16 is the payment for the September payroll deduction, as well as the allocation by the District. I specifically offered to sit down with you and our legal counsel to discuss how we account for PEBB payments and you were not interested. That opportunity remains open if you would like to do so on October 10th, before the grievance hearing with the school board. As always, please let me know what specific records you are requesting and I will get them to you.

The parties met on the matter and, in a letter dated October 17, 2016, LaBounty provided the employer's response to the union's grievance. In that response, he indicated that Lindholm and the union had provided no evidence that any bargaining unit employee was without any health insurance coverage in September. LaBounty further noted that all new 2016–17 certificated employees were submitted to PEBB for coverage effective September 1, 2016. He attached a printout of an e-mail exchange showing an effective eligibility date of September 1, 2016, for each of the new teachers, and he denied the union's grievance at Step 2.

As the parties were working through the insurance issue, a dispute arose as to who was responsible for cancelling an on-site flu-shot clinic. This clinic was offered annually by Safeway for staff before the school year began. Carlberg and Lindholm believed the employer had cancelled the clinic because a Safeway representative had mentioned it to Carlberg. Conversely, Perez was in possession of a voicemail from Safeway cancelling the clinic. This issue was not resolved by the time the parties met on November 15, 2016, for the Step 3 grievance meeting.

The Step 3 Grievance Meeting

On November 15, 2016, the parties held a Step 3 grievance meeting on the insurance issue. Lindholm and Carlberg were present for the union and LaBounty, Perez, Skone, Martin, Golladay,

and Hansen were present for the employer. Both parties' witnesses testified that the tension level was high during the meeting. The employer believed Lindholm set the negative tone by entering the room and slamming down papers prior to beginning his presentation. Lindholm testified the tension existed because Martin and the rest of the board members were agitated for having to sit through a Step 3 grievance meeting and having to hear about Lindholm's claims of Perez's lack of candor and misrepresentations.

Within this context, Lindholm presented the union's case to the employer, with a focus on "inconsistencies and some potential lies that maybe had been told" during the grievance and information gathering process. He specifically utilized the above e-mail chains and documents received to illustrate how management had been misrepresenting facts or lying about making health insurance premium payments and cancelling the flu-shot clinic. Lindholm testified that he referred to Perez only after Skone asked Lindholm to identify who he believed was lying.

After Lindholm concluded his insurance grievance presentation, he proceeded to raise two unrelated issues: Perez's failure to redact social security numbers from documents and Perez's cancellation of the flu-shot clinic. Since these issues were not a part of the insurance grievance, LaBounty and Perez were not prepared to discuss them.

At this point, the accounts of the meeting split. Lindholm and Carlberg testified that Martin asked Lindholm why he was such a "dick," "fucking dickhead," or some version thereof. The employer's witnesses testified that Martin had asked Lindholm why he was such a "fucking victim." Following this foray into name-calling, Lindholm asked Hansen if she was going to "muzzle" her client. At or around the time of the meeting, Skone asked Lindholm and Carlberg if they ever thought of simply going to Perez and LaBounty and having a conversation about issues prior to filing grievances.

In regard to grievances, the parties' CBA provided the following:

ARTICLE III - PERSONNEL

. . .

SECTION C: GRIEVANCE PROCEDURE

. . .

2. PROCEDURE AND STEPS

> Any instances when there is concern over contract interpretations, the WEA President should be notified who in turn will bring together the parties in order to discuss and review the issue. Every effort will be made to resolve the concern at the first level. Within a reasonable time following knowledge of the act or condition which is the basis of the complaint, a pre-grievance meeting will be held with the grievant, WEA representative, and the supervisor.

On November 21, 2016, the employer issued its Step 3 grievance decision in a letter to Lindholm and Carlberg. In that letter, the employer recounted the union's argument and presentation, pointed out that Lindholm had accused staff of lying, demanded an apology from Lindholm, and ultimately denied the union's grievance. The employer did not refer to the profanity or name-calling in its letter.

On November 23, 2016, Lindholm responded to the letter by sending an e-mail to LaBounty, the board, Hansen, and Carlberg:

> David,
> The Union finds it grossly disturbing that district legal counsel utilizes the grievance response as a forum for bashing the union and misrepresenting ALL of the facts. For example, there was [sic] very detailed conversations about the district's release of protected information; ie; Members' Social Security numbers, yet there is no mention of that transgression. Further, there was no mention of Rick Martin's cussing out of the union.
>
> . . .
>
> The Union cannot comment on the request for an apology[2] as telling lies is not good for the business relationship…that is why arbitrators will never order apologies as remedies.

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[2] In its November 21, 2016, Step 3 grievance decision letter, the employer requested that Lindholm make a formal apology to Perez for accusing her of lying.

Martin responded only to Lindholm the same day:

> My cussing was and is meant specifically for you. You would like to make it about the union, and that is simply not the case. The Warden School Teachers need a professional organization to represent them, they deserve that, and I support that. I've told Tim how I feel about things, but at the same time I support him. Steve, what I do not support is whiners and crybabies. I do not support people that feel sorry for themselves, at the same time expecting others to feel the same way as they do. Your style promotes a toxic environment, and I oppose that. Tim is in a leadership position, and you are not. You are an advisor. Steve, you are completely off base and nonsensical. The board is the board, Dave LaBounty, Veronica, and Rocky [sic] represent the district. Neither Tim, or Dr. LaBounty can operate independently without our approval. Your mind is the only one I can think of that can develop the 6:1 concept. You are an educated adult, but you present yourself as a spoiled child, unable to see past their own self interests.
>
> I look forward to sitting with you again; after you change your diaper.

Lindholm forwarded this e-mail to Carlberg. During his testimony, Lindholm indicated that he routinely forwards e-mails from the employer to Carlberg in order to keep him aware of ongoing developments on matters at issue.

Prior Interactions Between Lindholm and the Employer

To provide context concerning the parties' relationship, the employer presented evidence of Lindholm's prior verbal and written statements made to management at various meetings and negotiations. Specifically, the employer presented evidence demonstrating how Lindholm communicated with and treated both LaBounty and Perez. Perez specifically recalled that her working relationship with Lindholm began poorly. Perez testified that during her first labor-management meeting with Lindholm, he told her that he was tired of her "bullshit" because he perceived her to be rolling her eyes as he presented the union's issues. Perez denied ever having behaved that way and was shocked by his language and accusation, since Lindholm had never worked with her before and did not know her. She also testified that Lindholm was aggressive and hostile in his tone, particularly in e-mails, and gave ultimatums coupled with threats of filing grievances and lawsuits.

LaBounty testified that he recalled the meeting at which Lindholm described Perez's perceived behavior as "bullshit." He also recalled instances where Lindholm had used profanity during negotiations and suggested that LaBounty was a liar. According to LaBounty, Lindholm was often aggressive, hostile, and negative when negotiating or communicating with management.

Lindholm recalled these instances during rebuttal, but only with slight variations. Lindholm admitted to using the term "bullshit" at a meeting with Perez and LaBounty. However, he testified that he had directed his statement specifically at LaBounty and said, "[I]f you don't correct your business manager's behavior I'm going to correct this bullshit because I'm not going to sit and have people sit and roll their eyes and act childish in formal types of meetings."

Lindholm further testified that he once referred to an employer proposal as a "fuck you" proposal, because he perceived it as a poor proposal intended to "drive [a] wedge deeper and deeper" between the parties rather than one intended to get closer to agreement. Finally, in regard to the claim that Lindholm had called LaBounty a liar, Lindholm explained that at the meeting in question he had perceived LaBounty to be making a statement "one hundred percent contrary" to what LaBounty had said at a prior meeting. While it is unclear from the record exactly what the issue was, Lindholm admitted to replying, "You're really going to say that? You really mean that?" and "[T]hat's fine, these are going to be dealt with in different venues."

ANALYSIS

Applicable Legal Standards

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.59.140(1)(a). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014), *citing Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). An employer interferes with employee rights 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).

An employer may interfere with employee rights by making statements, through written communications, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008). 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 for the complainant 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. *Id.*

It is unlawful under RCW 41.59.140(1)(b) to dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. The union bears the burden of proof and must establish that the employer intended to control or interfere with the administration of the union or that the employer intended to dominate the internal affairs of the union. *King County*, Decision 2553-A (PECB, 1987).

A domination violation has a high standard of proof in that it requires proof of intent to dominate. *See Community College District 13 – Lower Columbia*, Decision 8117-B (PSRA, 2005).

Application of Standards

Martin's June 11, 2016, E-mail to Carlberg

Martin's June 11, 2016, e-mail to Carlberg did not interfere with Carlberg's protected employee rights. The Commission has held that frank and candid statements made between employer and union officials in which both parties are expressing frustrations with the bargaining process or their relationship may not constitute interference. *City of Mountlake Terrace*, Decision 11831-A. "[U]nion officials should be accustomed to controversial situations, and can be expected to receive and interpret harsh words, criticism, and displeasure." *City of Renton*, Decision 7476-A (PECB, 2002).

Carlberg and Hardman had been communicating with management and the board about jump-starting the cohort process for National Board Certification. This issue was also a contentious one because the parties disagreed over when the program should start. Thus, there was tension between the parties on this issue even before the e-mail exchange between Carlberg and Martin.

On June 10, 2016, Carlberg forwarded to the board Hardman's e-mail expressing her disappointment in the employer's "irresponsibility" and its "low level of understanding" of the National Board Certification process. In his own e-mail, Carlberg echoed Hardman's sentiments and frustrations, claimed that the employer's actions were resulting in teachers leaving, and suggested that the employer did not understand what it was doing. Carlberg clearly expressed frustration to the board in his e-mail.

In response to Carlberg, Martin expressed his own frustration. He accused Carlberg of being a failed leader and someone who reveled in discontent. Martin also suggested that Carlberg look past his "own petty games, get a pair and lead with candor." Certainly, these words were critical of Carlberg, but within the context of the parties' contentious relationship this e-mail could not reasonably be found to be threatening or coercive. As the Commission explained in *State – Office of Financial Management*, Decision 11084-A (PSRA, 2012), when officials share frustrations with an authority beyond the bargaining table, they should not be surprised if the other party shares its frustrations as well.

The union argues that characterization of a union activist as iconoclastic or argumentative can constitute interference because it could be reasonably perceived as a threat of reprisal associated with union activity. In support of this argument, the union relies on *City of Port Angeles*, Decision 10445-A (PECB, 2010), in which the examiner found no interference violation because management's statements regarding grievances were not threatening or coercive. Therefore, that case has limited persuasive value in the present case.

As a union officer, Carlberg is subject to the "thicker skin" principle—that is, "[T]he longer a union official is involved in representing the interests of bargaining unit employees, the less

reasonable are their claimed perceptions of threats and coercion." *State – Office of Financial Management*, Decision 11084-A; *City of Renton*, Decision 7476-A. The union's claim that Carlberg could reasonably perceive Martin's insults as threats or coercion is unpersuasive. Therefore, Martin's June 11, 2016, e-mail to Carlberg did not interfere with Carlberg's protected employee rights.

Martin's November 15, 2016, Insult of Lindholm

Martin's insult calling Lindholm a "fucking victim"[3] at the November 15, 2016, meeting did not interfere with either Lindholm's or Carlberg's employee rights. RCW 41.59.140(1)(a) protects employees from interference, restraint, or coercion in the exercise of their rights guaranteed in RCW 41.59.060. The terms "employee" and "educational employee" as used in Chapter 41.59 RCW mean any certificated employee of a school district. RCW 41.59.020(4).

Lindholm is not a certificated employee of the district but is instead employed by the Washington Education Association as a UniServ Representative. Therefore, he has no employee rights protected by Chapter 41.59 RCW that could be violated by the employer. Martin's rhetorical and vulgar question directed at Lindholm as to why he was a "fucking victim" was not in violation of the statute.

The union also argues that Martin's insult at the November 15 meeting, at which Carlberg was present, was made in an attempt to undermine Lindholm in his representative capacity. Thus, the union believes that Martin's insult directed at Lindholm interfered with Carlberg's employee rights. To support its argument, the union relies on *Colfax School District*, Decision 9940 (PECB, 2007).

In *Colfax School District*, the superintendent stated in a memorandum that he personally did not feel that the salaried union representative was helpful in mediation and that bargaining was met

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[3] While choosing between the two insults seems to be seeking a distinction without a difference, the Examiner finds that, based on all of the evidence, that Martin called Lindholm a "fucking victim." Specifically, the word "victim" fits within the theme of Martin's frustration with Lindholm. Indeed, in his November 23, 2016, e-mail to Lindholm, Martin expressed his frustration with Lindholm's consistent portrayal of himself as someone who "feel[s] sorry for themselves" and "expect[s] others to feel the same way as they do."

only with threats of more grievances and mediation. The superintendent sent the memorandum to the entire bargaining unit, which was why the examiner in that case found the employer to have violated the statute. The examiner concluded that bargaining unit employees could have reasonably interpreted the superintendent's statements as made in an attempt to undermine or ridicule the bargaining representative. For this reason, *Colfax School District* is distinguishable from the instant case.

Unlike the superintendent in *Colfax School District*, Martin did not call Lindholm a "fucking victim" in front of rank-and-file bargaining unit members. Instead, Martin did so in front of Carlberg. As union president, Carlberg should be accustomed to controversial situations and should be less concerned about coercion and threats than rank-and-file members could be. Again, as stated in *City of Renton*, Decision 7476-A, "[t]he longer a union official is involved in representing the interests of bargaining unit employees, the less reasonable are their claimed perceptions of threats and coercion." Therefore, the union's claim that Carlberg could reasonably perceive Martin's insult of Lindholm as a threat or coercion is unpersuasive.

At the time Martin insulted Lindholm, the parties were engaged in difficult and contentious discussions concerning the insurance grievance, the cancellation of a flu-shot clinic, and the release of social security numbers. The specific purpose of the Step 3 meeting was to allow the union to present its case to the board and establish how management had violated the CBA. The employer disagreed with the union's position and the board members, particularly Martin, disagreed with Lindholm's characterization of Perez. As the examiner explained in *Colfax School District*, "in the context of difficult face-to-face negotiation, there must be some allowance for argumentative statements." In light of the difficult and contentious conversations between the parties at that meeting, a reasonable person in Carlberg's position could not reasonably perceive Martin's insult as interfering with employee rights.

Skone's November 15, 2016, Question

Skone's question to Carlberg and Lindholm about whether they had discussed issues with management prior to filing grievances did not interfere with employee rights. Skone was not making a threat or casting disparaging or discouraging remarks at Lindholm or Carlberg for having

filed a grievance. Instead, he was asking why they did not utilize an earlier opportunity to speak with management on the issue, which is an opportunity provided for in the parties' CBA. The first level of the grievance procedure in the parties' CBA states that the union president should be notified of any concern and then "bring together the parties in order to discuss and review the issue." The CBA adds that "[e]very effort will be made to resolve the concern at the first level." To Skone and the rest of the board, it did not appear as if Lindholm and Carlberg had attempted to resolve the issue at the first level.

City of Port Angeles, Decision 10445-A, upon which the union relies for a different proposition, is instructive in this matter. In *City of Port Angeles*, an operations manager told crew members that a new boot policy would be forthcoming. The union shop steward immediately filed a grievance and the operations manager, who continued to be responsive to and processed the grievance, discussed the premature nature of the grievance with the shop steward, as the policy had not been finalized yet. The examiner found that these statements neither disparaged the grievance nor interfered with the union's right to file grievances. Instead, the examiner agreed with the employer's position that "parties should be encouraged to discuss their positions in grievances so that disputes can be resolved at the lowest possible level in the dispute resolution process." Moreover, the examiner explained that these conversations were not barred simply because a grievance had been filed under the contract.

In this case, Skone was not discouraging future grievance filings but was instead referring Lindholm and Carlberg to take opportunities to discuss issues with management, as provided for in the CBA, so that disputes could potentially be resolved earlier in the process. Therefore, Skone's question did not interfere with employee rights.

Martin's November 23, 2016, E-mail to Lindholm

Martin's November 23, 2016, e-mail to Lindholm did not interfere with employee rights. As explained above, Lindholm is not an employee within the meaning of RCW 41.59.140(1) and, therefore, has no employee rights protected by the statute.

The parties had been engaged in a contentious series of e-mail and verbal conversations concerning the insurance premium grievance, the cancelled flu-shot clinic, and the release of social security numbers. Martin's November 23 e-mail to Lindholm was an extension of the already hostile exchanges between the parties. Martin was responding to Lindholm's November 23 e-mail in which Lindholm criticized the employer's Step 3 grievance decision letter and expressed displeasure that the employer's legal counsel,[4] in that letter, was purportedly bashing the union, misrepresenting facts, and omitting Martin's "cussing out of the union."

It is worth repeating that, given Lindholm's and Carlberg's positions, they should have been able to interpret Martin's critical language as a product of the parties' contentious and—as Martin put it —"toxic" relationship. Certainly, Martin used rude and offensive language, such as when he called Lindholm a "crybab[y]" and a "whiner[]" and stated that Lindholm needed to "change [his] diaper." However, given the level that the contentious conversations had reached by that time, it is reasonable to conclude that neither Lindholm nor Carlberg should have felt threatened or undermined by Martin's e-mail.

By the date of Martin's e-mail, Lindholm had already accused LaBounty of intentionally violating the insurance provisions of the CBA and of having a practice of ignoring e-mails. Further, Lindholm had claimed that LaBounty could not be trusted with information and would be expected to retaliate against employees. Lindholm had characterized Perez's failure to provide public documents as "stupid." He had also implied that Perez and the employer were mishandling the money allocated for health insurance premiums and accused Perez of not being up-front in her business practices, lying about insurance premium payments, and cancelling the flu-shot clinic.[5]

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[4] Lindholm accused the employer's "legal counsel" of "bashing the union," although the grievance decision letter was authored by Skone, the board president.

[5] The union objected to evidence of Lindholm's conduct prior to November 15, 2016, or in unrelated union meetings. The union argues that Lindholm's prior behavior does not render Martin's statements to Lindholm and Carlberg more or less likely inappropriate. Thus, the union asserts that such evidence should be excluded as irrelevant. The Commission, in clarifying the test for interference claims in *City of Mountlake Terrace*, Decision 11831-A, relied on the parties' contentious relationship as the context within which statements were made. In analyzing that case, the Commission acknowledged the parties' previous litigious relationship as important context that led to a tense conversation between the employer's assistant city manager and the union president concerning the termination of an employee. Therefore, Martin's verbal and written statements must be analyzed in the context of the parties' relationship, which makes Lindholm's prior behavior relevant.

Carlberg was copied on each of the e-mails in which Lindholm leveled these accusations against LaBounty and Perez, and Carlberg was at the meeting where Lindholm's presentation cast a negative light on Perez as the director of business and operations.

Employer Domination

A domination violation has a high standard of proof in that it requires proof of intent to dominate. *See Community College District 13 – Lower Columbia*, Decision 8117-B. Considering all of the facts of this case, the union failed to prove by a preponderance of the evidence that the employer intended to interfere with and involve itself in the internal affairs of the union.

The union argues that the intensity with which Martin criticized Lindholm is indicative of his intent to influence Carlberg to choose a different representative to replace Lindholm. However, as previously explained, Martin was expressing his frustrations with Lindholm's approach to the insurance grievance and with Lindholm's contribution to a "toxic environment."

The union places significant emphasis on Martin's statement "Neither [Carlberg], or Dr. LaBounty can operate without our approval" and interprets it to mean that Martin, on behalf of the board, was attempting to exert control over Carlberg and the union. However, that is only one interpretation of Martin's e-mail, because he made that statement after pointing out that Lindholm was an advisor to Carlberg. Thus, it is reasonable to conclude that Martin was explaining to Lindholm that Carlberg looked to Lindholm for authority just as LaBounty looked to the board for authority. In any event, the union's interpretation is insufficient to prove Martin intended to interfere with Carlberg's choice of a bargaining representative.

The union also relies on *City of Tacoma*, Decision 11064 (PECB, 2011), for the proposition that an employer could be found to have dominated the union if it attempted to influence the choice of a union representative. However, *City of Tacoma* involved an employee's choice of a union representative during a *Weingarten* investigation. In that case, the choice of a union representative was influenced more by the need for a timely employer investigation, and the chosen union representative was also a material witness in the investigation. The employer's decision to exclude the employee's chosen representative was not influenced by the employer's desire to coerce an

employee in the selection of representative. Indeed, the examiner in *City of Tacoma* found that the employer lawfully excluded the employee's first choice of a representative because the employer had a legitimate need to protect the integrity of its investigation. Thus, *City of Tacoma* has little precedential value in this case.

CONCLUSION

Based on the foregoing, the Examiner finds that the employer did not interfere with, restrain, or coerce either Lindholm or Carlberg in the exercise of protected employee rights. Lindholm is not an employee as defined by the statute and, therefore, has no rights protected by Chapter 41.59 RCW. The Examiner also finds that the employer did not unlawfully dominate the union or interfere with the administration of the union. The union's unfair labor practice complaint is dismissed.

FINDINGS OF FACT

1. The Warden School District is a public employer within the meaning of RCW 41.59.020(5).

2. The Warden Education Association (union) is an employee organization within the meaning of RCW 41.59.020(1) and is the exclusive bargaining representative of all certificated employees of the employer.

3. Tim Carlberg is the local union president and is also a certificated employee in the bargaining unit. He has served as president since June 2015.

4. Steve Lindholm is a UniServ Representative for the Washington Education Association, which is an organization representing local unions across the state of Washington. He is not employed by the district.

5. The school board (board), at all times relevant to the complaint, consisted of Doug Skone, Board President; Rick Martin; Aaron Golladay; Bryce Cox; and Sharon Buck.

6. Superintendent David LaBounty and Director of Business and Operations Veronica Perez report to the board and represent the employer in labor relations.

7. The employer and the union were parties to a collective bargaining agreement (CBA) effective from September 1, 2014, through August 31, 2017.

8. The parties' CBA provided that, beginning in 2016–17, the employer would provide annual tuition costs for six National Board candidates by cohort groups as an employee recruitment and retention offering.

9. On June 10, 2016, Carlberg forwarded an e-mail to the board expressing a bargaining unit member's disappointment in the employer's "irresponsibility" and claiming that the employer had a "low level of understanding" of the National Board Certification process.

10. On June 11, 2016, Martin e-mailed Carlberg accusing Carlberg of being a failed leader and someone who reveled in discontent. Martin also suggested that Carlberg look past his "own petty games, get a pair and lead with candor."

11. On September 11, 2016, Lindholm e-mailed LaBounty requesting verification that the district had paid the first month's health insurance premium on behalf of bargaining unit employees.

12. On September 12, 2016, Lindholm accused LaBounty in an e-mail of "willful and purposeful violation of the contract" related to the payment of health insurance premiums.

13. On September 13, 2016, Lindholm sent an e-mail to LaBounty—who had asked for evidence that new employees were without health coverage—stating, "You can't be trusted not to retaliate!"

14. On September 16, 2016, Lindholm in an e-mail response to Perez stated, "These are public documents and you are required by law to provide them. You don't want to be sued for something so stupid…or maybe you do????"

15. On September 23, 2016, Lindholm e-mailed LaBounty, accusing him of ignoring previous e-mails regarding the union's health insurance concerns and of having a practice of ignoring e-mails.

16. On September 30, 2016, Lindholm implied in an e-mail to Perez that she had mishandled money allocated for health insurance premiums and accused her of not being up-front with her business practices.

17. On November 15, 2016, the parties held a Step 3 grievance meeting, at which Lindholm, Carlberg, LaBounty, Perez, Skone, Martin, Golladay, and the employer's attorney, Rockie Hansen, were present.

18. At the November 15 meeting, Lindholm identified Perez as having been misrepresenting facts or lying about making health insurance premiums and cancelling a flu-shot clinic for staff.

19. At the November 15 meeting, Martin asked Lindholm why he was such a "fucking victim."

20. At the November 15 meeting, Skone asked Lindholm and Carlberg if they ever thought of simply going to Perez and LaBounty and having a conversation about issues prior to filing grievances.

21. The parties' CBA provides for pre-grievance discussions between the union president and management regarding contract disputes.

22. On November 21, 2016, the employer sent its Step 3 grievance decision in a letter to Lindholm and Carlberg. In that letter, the employer recounted the union's argument and presentation, pointed out that Lindholm had accused staff of lying, demanded an apology from Lindholm, and ultimately denied the union's grievance. The employer did not refer to the profanity or name-calling in its letter.

23. In his November 23, 2016, e-mail, Lindholm criticized the employer's Step 3 grievance decision letter and expressed displeasure that the employer's legal counsel, in that letter,

was purportedly bashing the union, misrepresenting facts, and omitting Martin's "cussing out of the union."

24. On November 23, 2016, Martin responded to Lindholm via e-mail, referring to Lindholm as a "crybab[y]," a "whiner[]," and as one whose style promoted a "toxic environment." Additionally, he claimed Lindholm was "off base and nonsensical" and that Lindholm "present[ed him]self as a spoiled child." Martin also suggested that Lindholm "change [his] diaper" prior to another meeting.

25. Also in his November 23 e-mail, Martin stated, "Neither [Carlberg], or Dr. LaBounty can operate independently without our approval."

26. In an earlier bargaining session with the employer, Lindholm had referred to an employer proposal as a "fuck you" proposal.

27. In an earlier labor management meeting, Lindholm had referred to Perez's behavior as "bullshit" and "childish."

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-45 WAC.

2. By sending the June 11, 2016, e-mail to Carlberg, as described in Finding of Fact 10, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

3. Based upon Findings of Fact 11 through 19, by asking Lindholm why he was a "fucking victim" at the November 15, 2016, grievance meeting, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

4. By asking Lindholm and Carlberg if they ever thought of having discussions with management staff prior to filing grievances, as described in Findings of Fact 20 and 21, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

5. By sending the November 23, 2016, e-mail to Lindholm, as described in Findings of Fact 24 and 25, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

6. By asking Lindholm why he was a "fucking victim" at the November 15 meeting, asking Lindholm and Carlberg if they ever thought of having discussions with management staff prior to filing grievances, and by sending the November 23 e-mail, as described in Findings of Fact 19 through 21, 24, and 25, the employer did not unlawfully dominate the union in violation of RCW 41.59.140(1)(b).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 26th day of September, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DANIEL J. COMEAU, 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 09/26/2017

DECISION 12778 - EDUC has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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