

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WAPATO PUPIL PERSONNEL ASSOCIATION, Complainant, vs. WAPATO SCHOOL DISTRICT, Respondent.	CASE 128988-U-17 DECISION 12894 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
WAPATO ASSOCIATION OF EDUCATIONAL OFFICE PERSONNEL, Complainant, vs. WAPATO SCHOOL DISTRICT, Respondent.	CASE 128989-U-17 DECISION 12895 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On May 17, 2017, the Wapato Pupil Personnel Association (WPPA) and the Wapato Association of Educational Office Personnel (WAEOP) both filed unfair labor practice complaints against the Wapato School District (employer or district). The WPPA asserted that the employer committed an unfair labor practice by skimming bargaining unit work without providing an opportunity for bargaining. The WAEOP asserted that the employer committed an unfair labor practice by changing the working conditions of bargaining unit employees without providing an opportunity for bargaining.

On June 13, 2017, the unfair labor practice manager issued a preliminary ruling finding that both complaints stated a cause of action and consolidated the two complaints for hearing. I held a hearing on February 7, 8, and March 15, 2018. The parties submitted post-hearing briefs on May 4, 2018, closing the record.

ISSUES

1. Did the employer refuse to bargain in violation of RCW 41.56.140(4) by skimming attendance work previously performed by Attendance Clerks in the Wapato Pupil Personnel Association bargaining unit, and assigning the work to building secretaries in the Wapato Association of Educational Office Personnel bargaining unit, and to building administrators,¹ without providing the union with an opportunity for bargaining?
2. Did the employer refuse to bargain in violation of RCW 41.56.140(4) by unilaterally altering job duties by assigning student attendance verification work to building secretaries in the Wapato Association of Educational Officer Personnel bargaining unit, without providing the union with an opportunity for bargaining?

I find that neither union met its burden to prove an unfair labor practice violation and dismiss both complaints.

The work at issue consists of communicating with families of students with two to four unexcused absences by making phone calls and sending form letters from building principals.

The WPPA did not prove that the work at issue was WPPA bargaining unit work. The attendance letters sent by principals regarding two to four unexcused absences was new work and not previously performed by WPPA bargaining unit employees. No work was removed from the

¹ At the end of the second day of hearing, I granted the WPPA's motion to amend its complaint to add the underlined allegation to the original preliminary ruling.

WPPA bargaining unit. For those reasons, the employer did not unlawfully skim the work by assigning it to building administrators and secretaries in the WAEOP bargaining unit.

The WAEOP did not prove that the added duties of producing and distributing the attendance letters and making phone calls constituted a material impact on building secretaries' wages, hours, or working conditions. Accordingly, the employer did not make an unlawful unilateral change when it assigned those duties to building secretaries.

BACKGROUND

The employer is a school district that operates elementary, middle, and high schools providing public education to approximately 3,500 students. Unfortunately, unexcused student absences are a big problem in Wapato. The district expends considerable resources keeping track of and attempting to prevent unexcused absences, and many district employees work to keep track of and reduce unexcused absences. State law requires the employer to take action when students cross certain thresholds in the number of unexcused absences. For example, when a student has five or more unexcused absences in a school year, the formal truancy process begins.

This case centers on a dispute regarding work that was generated by the district's new policy of more aggressively addressing students who have fewer than five unexcused absences in a school year. The work consists of generating quarterly form letters to inform students' parents or guardians of unexcused absences and making calls to students' homes regarding those absences. The WPPA's position is that the work belongs to its bargaining unit and should be performed by the attendance clerks it represents. The WAEOP argues that if the work is assigned to the building secretaries it represents, it should have the opportunity to bargain the addition of the work.

History Regarding Assignment of Attendance Work at the District

The district, the WAEOP, and the WPPA have had a near decade-long difference of views on which bargaining unit should perform attendance-related duties. Prior to 2009, each school had its own attendance clerk assigned to it and the attendance clerk performed all clerical and administrative attendance-related duties for that school. In 2009, due to budgetary concerns, the

employer laid off three of the five attendance clerks, keeping two who are still employed by the district. After the layoff, the remaining attendance clerks moved to administrative offices that were not located in the school buildings, and some attendance duties that were previously performed by attendance clerks were assigned to building secretaries.

Following the 2009 layoffs and reassignment of attendance duties, the WAEOP and the WPPA each filed unfair labor practice complaints with the Commission. The WPPA alleged that the district unlawfully skimmed attendance duties from the WPPA-represented attendance clerks and assigned the work to the WAEOP-represented building secretaries. The WAEOP alleged that the district made an unlawful unilateral change by adding those duties to the building secretaries without providing an opportunity for bargaining.

Examiner Jamie L. Siegel issued a decision finding that the district did not unlawfully skim bargaining unit work from the WPPA because the WPPA waived its right to bargain that decision. However, she also found that the district committed an unfair labor practice when it moved the attendance-related work to building secretaries without fulfilling its bargaining obligation with WAEOP. As part of her remedy, she ordered the parties to bargain the impacts of that decision. *Wapato School District*, Decision 10743 (PECB, 2010), *aff'd*, Decision 10743-A (PECB, 2011).

Distribution of Attendance Work Following Bargaining in 2010

Following the 2010 unfair labor practice decision, the employer and the WAEOP bargained and reached an agreement that provided building secretaries with up to 16 hours of additional pay in order to perform attendance-related work if such work could not be performed during their regular work day. The agreement was later incorporated into the collective bargaining agreement. The agreement did not define attendance work, but the bulk of the secretarial attendance work consists of taking calls, responding to correspondence from parents and guardians regarding students' unexcused absences, and updating the Skyward system—a software program that keeps track of student attendance data—with the new information. They also enter into Skyward information regarding school-related absences, such as field trips or when a student checks out of school early. One secretary testified that about 30 percent of her day is spent performing attendance duties. Another testified that she spends up to two to three hours per day on attendance duties.

The two attendance clerks spend most of their time focused on attendance issues that occur when a student has a significant attendance issue, such as when a student accrues five or more unexcused absences and triggers the formal truancy process. There is no dispute that work regarding five or more unexcused absences has historically been WPPA bargaining unit work. Attendance clerks also occasionally address issues with students who have fewer than five unexcused absences—early in the school year, for example, when workload related to five or more unexcused absences is low and the attendance clerks have more time. They also proactively reach out to families of students who have a history of truancy issues. In those circumstances, attendance clerks will call or send letters under their names to students' homes.

The district did not have a policy regarding how to address unexcused absences before students reached five occurrences in a school year.

Attendance Work Related to the Current Case

In February 2017, as part of an initiative to be more proactive in addressing attendance issues, the employer asked building principals to develop a plan to regularly reach out to the families of students who had accumulated between two and four unexcused absences.² Principals had some latitude in developing the plan for their individual schools, but district administration created a form letter that could be automatically filled with attendance data and contact information from Skyward. Each letter called the student's unexcused absences to the parents' or guardians' attention and listed the dates of the absences.

The letters went out in March 2017 under the principal's name and were either delivered to a parent or guardian during a conference meeting or mailed home. Building secretaries were responsible for mailing the letters if they were not distributed during conference meetings. Although a district administrator testified that the district intends to send the form letter quarterly, it has not sent another letter pending the outcome of this case.

² The district has an automated phone system that makes calls to students' homes after the first unexcused absence.

There was also evidence that one school principal initially asked secretaries to call students' homes to inquire about unexcused absences in an attempt to reduce their number. But after a secretary informed the principal that the calls were not part of their normal workload, the principal instead assigned those duties to other staff. At two other schools, the secretaries received a list of students with unexcused absences and asked to call their homes to see if excuses could be provided. Secretarial work related to making attendance calls was inconsistent. The ongoing responsibility for making those calls went to the counselors at the schools.

The leadership of the WAEOP expressed concern regarding the additional work being performed by building secretaries, and informed the district of its view that the district was required to bargain the impact on secretaries before assigning the work to them. The leadership of the WPPA expressed concern to the employer of its view that the work of sending attendance letters and making calls regarding unexcused absences belonged to the WPPA and should be performed by the attendance clerks.

ANALYSIS

Applicable Legal Standards

Duty to Bargain

Chapter 41.56 RCW requires a public employer to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining including wages, hours, and working conditions. RCW 41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989). Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain in good faith until reaching agreement or impasse.

The Commission classifies managerial decisions that only remotely affect terms and conditions of employment as permissive subjects of bargaining. *North Franklin School District*, Decision

5945-A (PECB, 1998). Parties may bargain regarding such subjects but are not required to do so. If an employer's decision on a permissive subject of bargaining materially impacts wages, hours, or working conditions of bargaining unit employees, the employer must bargain with the union concerning those impacts. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

The Commission's decisions cannot always draw bright lines between mandatory and permissive subjects of bargaining because the cases often present unique facts. In situations where a managerial decision also involves wages, hours, or working conditions, the Commission and its examiners apply a balancing test to determine whether the matter is a mandatory subject of bargaining. The balancing test analyzes which of the following two characteristics predominate: (1) the extent to which the managerial action impacts the employees' wages, hours, or working conditions, or (2) the extent to which the managerial action is an essential management prerogative. *City of Richland*, 113 Wn.2d 197 at 203.

A party asserting an unfair labor practice complaint bears the burden of proving its case. WAC 391-45-270(1)(a).

Transferring Bargaining Unit Work

Commission precedent establishes that an employer's decision to transfer work from the bargaining unit that has traditionally performed the work to a different bargaining unit (skimming) or to nonemployees (contracting out) is typically considered a mandatory subject of bargaining. *City of Snoqualmie*, Decision 9892-A (PECB, 2009).

The test for determining whether an employer unlawfully skimmed bargaining unit work is set forth in *Central Washington University*, Decision 12305-A (PSRA, 2016) and is utilized in both contracting out and skimming cases. *King County*, Decision 12632-A (PECB, 2017). The Commission utilizes a two-step analysis to determine whether an employer has violated its bargaining obligations by skimming or contracting out work. First, the threshold question is whether the work that was assigned to non-bargaining unit employees was bargaining unit work. *Id.*

The Commission defines bargaining unit work as work that bargaining unit employees have historically performed. Once an employer assigns unit employees to perform a certain body of work, the work attaches to the unit and becomes bargaining unit work. *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001). If the work falls outside the scope of work normally performed by bargaining unit employees, the employer has no duty to bargain.

If the work was not bargaining unit work, then the analysis stops and the employer was under no obligation to have bargained its decision to assign the work. *King County*, Decision 12632-A. If the work was bargaining unit work, then the next step is to apply the *City of Richland* balancing test to determine whether the decision to assign bargaining unit work to non-bargaining unit employees was a mandatory subject of bargaining. *Id.*, citing *Central Washington University*, Decision 12305-A.

The *City of Richland* 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 197 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 the public sector employer, as an elected representative of the people, to control management and direction of government. *Central Washington University*, Decision 12305-A, citing *Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977). In cases where the subject relates to conditions of employment as well as a managerial prerogative, the focus of inquiry is to determine which one predominates. *City of Richland*, 113 Wn.2d 197 at 200.

Application of Standards

For the following reasons, I conclude that both complaints must be dismissed. The district did not unlawfully skim the WPPA’s bargaining unit work because the work at issue was new and not historically performed by attendance clerks. There was also no reduction in attendance clerk work. Attendance clerks performed the same work after the alleged skimming as they did prior to the alleged skimming.

In addition, the district did not make an unlawful unilateral change to building secretaries' working conditions by having them send the attendance letters or call students' homes regarding unexcused absences. This form letter was similar to other letters that building secretaries sent on behalf of building principals. Many secretaries do not make calls home regarding attendance. Those who are requested to make calls do so in limited circumstances, such as at the end of the year in an attempt to reduce the number of unexcused absences.

Skimming

The work of sending attendance form letters was new and did not belong to the WPPA.

Sending form letters regarding two to four unexcused absences was not WPPA bargaining unit work. Prior to 2017, the district did not have a policy governing communication regarding students with two to four unexcused absences. Historically, when addressing those absences, attendance clerks would communicate with parents or guardians by letter or phone call but only if they had time or if they determined that a specific student had a history of attendance issues in previous years. Attendance clerks never produced a regular form letter regarding students who had two to four unexcused absences.

In contrast, sending form letters to students' homes when they had between two and four unexcused absences is new work that was not previously performed by any district employee. The work was created as a result of the district's decision to more aggressively address unexcused absences before they reached the formal truancy level.

Attendance clerks did not lose any work as a result of the new attendance form letter.

No work has been taken from the WPPA bargaining unit. Attendance clerks were able to proceed as they had historically in how they communicated with families regarding two to four unexcused absences. For example, on September 26, 2017, Maria Polina, one of the attendance clerks, sent a letter to the home of a student with fewer than five unexcused absences. This letter was sent after the district began its effort to more aggressively reach out to students with fewer than five absences. Two district administrators who served as Ms. Polina's supervisors testified that sending this letter was within the proper scope of her duties after the new policy went into effect.

The new policy requiring principal involvement in reducing unexcused absences did not reduce the work of attendance clerks. Just as before the new policy, attendance clerks focused on students with more than five absences and targeted students with fewer absences as they were able or if they had a reason. Similarly, there was no evidence that attendance clerks were directed to cease performing any work that they had previously performed as a result of the new policy for principals to more proactively reach out to families of students with two to four unexcused absences.

The district did not unlawfully skim WPPA bargaining unit work.

Because the work at issue here did not historically belong to the WPPA and there was no actual reduction in attendance clerk work, either in quantity or type, the district did not unlawfully skim work and assign it to building secretaries and administrators.

Unilateral Change

The WAEOP alleges the district made an unlawful unilateral change by assigning work to building secretaries regarding the new two to four unexcused absences letter and making calls home regarding those absences without giving notice and providing an opportunity for bargaining.

All building secretaries support building administration by performing a variety of clerical and administrative duties such as answering phones, updating Skyward, and preparing and mailing letters issued by principals and other building administrators. A significant portion of their work week is spent performing attendance-related work. The majority of building secretaries' attendance duties involve receiving phone calls and notes from parents and guardians excusing student absences. When they receive an excuse for an absence, the building secretaries update the Skyward system with the excuse information. Building secretaries also print attendance reports from Skyward for use by school counselors when they address attendance issues that might affect students' progress toward graduation.

Although there is some similarity of duties between all secretaries, there are some variations from building to building related to how much work is performed preparing and distributing letters and making attendance calls. For example, at Adams Elementary, bilingual secretaries routinely make calls to students' homes for a variety of reasons, such as interpreting for disciplinary and

attendance issues, communicating with parents in a nurse's absence, or notifying them that their student was selected as student of the month. At other buildings, such as the high school, secretaries do not call students' homes at all regarding attendance issues.

Given the varied duties regarding building secretaries' workloads regarding sending the attendance letters and making attendance-related calls, it is a challenge to find convincing evidence of a change in the record regarding either new task.

Increased work related to the attendance letters and making calls was minimal.

The attendance letters at issue here were only sent once, in March 2017, but district administrators testified that they intended to distribute the letters on a quarterly basis. The secretaries' work in preparing and sending the letters was limited to, at most, printing the letters, stuffing the letters in envelopes, and mailing them to parents or guardians who did not attend in-person conferences at the school. Some secretaries were not even involved in those tasks. For example, at the high school, building secretaries did not perform any duties to prepare the letters. Instead, they only stuffed envelopes and mailed letters home for those parents who did not attend in-person conferences.

At the middle school, once a secretary informed the principal that attendance-related letters were not work performed by secretaries, the work of distributing the letters was assigned to counselors. And at one elementary school, the secretary did not do any attendance letter-related work.

Building secretaries were not responsible for drafting or preparing the letter. The work was similar in nature to tasks that secretaries performed in sending other letters on behalf of building administrators. The work was minimal in nature and does not support a finding that the change had a material impact on the working conditions of any WAEOP bargaining unit member.

There was little evidence presented regarding the amount of time that secretaries spent on added work in the form of making phone calls to students' homes for attendance-related issues. At one elementary school, only counselors made such calls, based on a list printed by a secretary from the Skyward system. At the middle school, the principal initially asked building secretaries to make

calls regarding unexcused absences but instead assigned that work to counselors when informed by a secretary that secretaries do not make attendance calls. At the elementary schools, secretaries were asked to make calls home regarding unexcused absences to clear out a backlogged list. None of the building secretaries testified to a significant increase in workload due to being required to make calls to students' homes regarding attendance issues.

CONCLUSION

The district did not unlawfully skim the WPPA's bargaining unit work because the work at issue was new and not historically performed by attendance clerks. Further, there was no reduction in any attendance clerk work. Attendance clerks performed the same work after the alleged skimming as they did before.

The district also did not make an unlawful unilateral change to building secretaries' work by having them send the attendance letters or call students' homes regarding unexcused absences. Any new work assigned did not materially impact wages, hours, or working conditions of building secretaries.

FINDINGS OF FACT

1. The Wapato School District is a public employer within the meaning of RCW 41.56.030(12).
2. The Wapato Pupil Personnel Association (WPPA) is a bargaining representative within the meaning of RCW 41.56.030(2). The WPPA represents a residual unit of classified employees that includes attendance clerks.
3. The Wapato Association of Educational Office Personnel (WAEOP) is a bargaining representative within the meaning of RCW 41.56.030(2). The WAEOP represents building secretaries.

4. The employer and the WPPA are parties to a collective bargaining agreement in effect through August 31, 2018.
5. The employer and the WAEOP are parties to a collective bargaining agreement in effect through August 31, 2018.
6. The employer expends considerable resources keeping track of and attempting to prevent unexcused absences, and many district employees work to keep track of and reduce unexcused absences.
7. Building secretaries' attendance work consists mainly of taking calls, responding to correspondence from parents and guardians regarding students' unexcused absences, and updating the Skyward system—a software program that keeps track of student attendance data—with the new information. A significant portion of their work week is spent performing attendance-related work.
8. Building secretaries support building administration by performing a variety of clerical and administrative duties such as answering phones, updating Skyward, and preparing and mailing letters issued by principals and other building administrators.
9. Attendance clerks spend most of their time focused on attendance issues that occur when a student has a significant attendance issue, such as when a student accrues five or more unexcused absences triggering the formal truancy process. Work regarding five or more unexcused absences has historically been WPPA bargaining unit work.
10. Attendance clerks also occasionally address issues with students who have fewer than five unexcused absences—early in the school year, for example, when workload related to five or more unexcused absences is low and the attendance clerks have more time. They also proactively reach out to families of students who have a history of truancy issues. In those circumstances, attendance clerks will call or send letters under their names to students'

homes. Prior to 2017, the district did not have a policy governing communication regarding students with two to four unexcused absences.

11. In February 2017, as part of an initiative to be more proactive in addressing attendance issues, the employer asked building principals to develop a plan to regularly reach out to the families of all students at their schools who had accumulated between two and four unexcused absences. District administration created a form letter that could be automatically filled with attendance data and contact information from Skyward. Each letter called the student's unexcused absences to the parents' or guardians' attention and listed the dates of the absences.
12. The attendance form letters went out in March 2017 under the principal's name and were either delivered to a parent or guardian during a conference meeting or mailed home. Building secretaries were responsible for mailing the letters if they were not distributed during conference meetings. Building secretaries were not responsible for drafting or preparing the letter. The work was similar in nature to sending other letters on behalf of building administrators.
13. The assigned work related to the attendance letters and calls were minimal in nature and does not support a finding that the change had a material impact on the working conditions of any WAEOP bargaining unit member.
14. The new policy requiring principal involvement in reducing unexcused absences did not reduce the work of attendance clerks. Just as before the new policy, attendance clerks focused on students with more than five absences and targeted students with fewer absences as they were able or if they had a reason. Attendance clerks were not directed to cease performing any work that they had previously performed as a result of the new policy for principals to more proactively reach out to families of students with two to four unexcused absences.

15. Sending letters to students' homes when they had between two and four unexcused absences is new work that was not previously performed by any district employee and was not WPPA bargaining unit work. The work was created as a result of the district's decision to more aggressively address unexcused absences before they reached the formal truancy level. Attendance clerks never produced a regular form letter regarding students who had two to four unexcused absences.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. As described in findings of fact 9 through 12 and 14 through 15, the Wapato School District did not unlawfully transfer attendance clerk work from the WPPA bargaining unit and did not refuse to bargain or violate RCW 41.56.140(4).
3. As described in findings of fact 7 through 8 and 11 through 13, the Wapato School District did not unilaterally alter job duties by adding attendance-related work to building secretaries represented by WAEOP and did not refuse to bargain or violate RCW 41.56.140(4).

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are dismissed.

ISSUED at Olympia, Washington, this 27th day of July, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



E. MATTHEW GREER, 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

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RECORD OF SERVICE - ISSUED 07/27/2018

DECISION 12894 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 128988-U-17

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RECORD OF SERVICE - ISSUED 07/27/2018

DECISION 12895 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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