STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| CITY OF BELLINGHAM,<br><br>Employer. | |
| GUILD OF PACIFIC NORTHWEST EMPLOYEES,<br><br>Complainant,<br><br>vs.<br><br>WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES,<br><br>Respondent. | CASE 132831-U-20<br><br>DECISION 13299 - PECB<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER |

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*Ed Stemler*, General Counsel, for the Washington State Council of County and City Employees.

The complainant, the Guild of Pacific Northwest Employees (Guild), filed a complaint against the Washington State Council of County and City Employees (WSCCCE), the former exclusive bargaining representative of a bargaining unit of employees at the City of Bellingham (employer).[1] The original complaint, filed on June 10, 2020, was amended on June 30, 2020, and a preliminary ruling was issued on July 1, 2020. The WSCCCE filed its answer on July 21, 2020. A hearing was conducted by videoconference on October 20, 2020, in front of Examiner Christopher Casillas. The parties filed post-hearing briefs on December 7, 2020, to complete the record.

[1] The employer is not a party to this proceeding and is identified for jurisdictional purposes only.

ISSUE

The issue as framed by the preliminary ruling involves:

> Union restraint or coercion in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by threats of reprisal or force, or a promise of benefit by representative of the Washington State Council of County and City Employees, a bargaining representative, to employees represented by the Guild of Pacific Northwest Employees.

The Guild has carried its burden of proof in demonstrating that the WSCCCE unlawfully interfered with employee rights in violation of RCW 41.56.150(1). The unlawful interference occurred when a WSCCCE representative sent a letter that included several factual and legal misrepresentations to bargaining unit members after the Guild had been certified as the exclusive bargaining representative. The cumulative effect of these misrepresentations interfered with the rights of employees who had just elected the Guild to represent them. A separate event, initiated by WSCCCE staff representative Joe Downes, seeking a waiver and release from two bargaining unit members involved in an internal investigation, was not unlawful and is not part of the finding that the WSCCCE violated RCW 41.56.150(1).

BACKGROUND

The bargaining unit at issue in this proceeding was first certified by the Commission in 1976 with the Washington State Council of County and City Employees, AFSCME AFL-CIO, Local 114 designated as the exclusive bargaining representative. *City of Bellingham*, Decision 144 (PECB, 1976). The current bargaining unit is described as follows:

> All regular and nonuniformed public employees except the Professional Engineers in the Engineering department, Professional Librarians, Planners, Assistant

> Planner, City Attorney's and Mayor's confidential secretaries as per RCW 41.56.030, of the City of Bellingham, Washington.[2]

On October 14, 2019, the Guild filed a representation petition with the Commission. A new petition was filed on January 6, 2020. The WSCCCE was granted status as intervenor in the representation proceeding. The Commission subsequently conducted an election proceeding. On May 13, 2020, the Commission tallied the vote, and the Guild was determined to have prevailed in the election. After no meritorious election objections were filed, the Commission certified the Guild as the exclusive bargaining representative in a decision issued May 21, 2020. *City of Bellingham*, Decision 13202 (PECB, 2020).

On approximately May 18, 2020, two employees, John Marshall Harris and Sean Hall, both of whom are in the bargaining unit now represented by the Guild, were notified by the employer that they were under formal investigation. Both employees were notified that they had a right to union representation, and both individuals reached out to Jael Komac, who was a past president for the WSCCCE local and had, at the time of the investigation, become an organizer on behalf of the Guild. Komac informed both employees that the Guild had not yet been certified and that they should contact Downes, a local staff representative for the WSCCCE. Harris and Hall, subsequently, both contacted Downes seeking representation. Downes made contact with both individuals, and he indicated that he would be available to represent them in any proceeding.

An investigatory interview of Harris and Hall was set for Friday, May 22, 2020. The Guild was certified on May 21, 2020, and prior to their investigatory interview, both employees elected to forego any further representation by the WSCCCE in the matter. Komac subsequently agreed to serve as the representative for both Harris and Hall, and she attended the investigatory interview for both individuals. In conjunction with Komac taking over as the representative, Harris and Hall each notified Downes that they no longer needed him as their representative. Downes did not attend

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[2] *City of Bellingham*, Decision 13202 (PECB, 2020).

the investigatory interview on May 22, as both employees were represented in the interview by Komac.

Upon learning that Harris and Hall no longer wanted to be represented in the interview by the WSCCCE, Downes sent both individuals a waiver and release document. The waiver and release document noted that each employee had previously been a member of the WSCCCE, but as of May 21, 2020, the Public Employment Relations Commission (PERC) certified the Guild as the new exclusive bargaining representative. Per the document, the employees were requested to sign and certify that they did not want the WSCCCE to act on their behalf related to any discipline situation and that they were waiving their right to take any legal action against the WSCCCE. Harris and Hall testified that they refused to sign the waiver and release document and they were confused as to why they were asked to do so. At the close of the investigation neither Harris nor Hall received any discipline, and they returned to work.

Downes testified to the reason he sent the waiver and release document to Harris and Hall. It was, in part, because he participated in an initial meeting involving the discipline investigation, which included serving as a representative for some other employees who were interviewed as witnesses. Because Harris and Hall had contacted Downes for representation initially and the fact that the Guild's certification was issued the day before the interview, Downes stated that he wanted to assure "continuity" in their representation. Downes also specified that he had not been contacted by anyone from the Guild about the investigation and, in turn, was unaware as to any actions taken by the Guild to represent the two employees.

Separately, on May 22, 2020, a letter was sent to Bellingham city employees from Chris Dugovich, the president/executive director of the WSCCCE, regarding the recent change in representation. Dugovich made a number of representations and statements about the election, the Guild, and the WSCCCE in this letter. Those statements included a reference to the Guild as a "minority representative" for allegedly failing to receive a majority of the votes from eligible voters. In fact, Komac testified that the Guild received approximately 187 votes in its favor out of 252 cast. The remaining 65 ballots received were cast for the WSCCCE. The election documents indicated that the bargaining unit had 374 eligible voters.

The letter continued on to represent that employees could still maintain their membership in the WSCCCE and that it would be "available to assist you with any work place issues that we can help with." Dugovich also stated that in "exactly one year from the date of the certification" employees could return to the WSCCCE. Members of the Guild were also advised by Dugovich to remember that "dues are voluntary!" Anyone with questions was invited to reach out to the WSCCCE via its toll-free number or email address.

Following the distribution of the May 22 letter from Dugovich, Komac testified that she received about 100 emails and a large number of phone calls from Guild members questioning the meaning and purpose of the letter, which, in her words, caused a "big disruption." Komac's unrefuted testimony was that Dugovich's letter created "a lot of confusion and spread misinformation."

## ANALYSIS

### Applicable Legal Standard

The Public Employees' Collective Bargaining Act (PECBA) prohibits employee organizations from interfering with, restraining, or coercing employees in the exercise of their collective bargaining rights:

> RCW 41.56.040. RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall *directly or indirectly*, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees *in the free exercise of their right to organize and designate representatives of their own choosing* for the purpose of collective bargaining, *or in the free exercise of any other right under this chapter*.

(emphasis added). Enforcement of these statutory rights is through the unfair labor practice provisions of the statute.

RCW 41.56.150(1) makes it an unfair labor practice for a bargaining representative to interfere with, restrain, or coerce public employees in the exercise of the rights guaranteed within chapter 41.56 RCW. Included among those are the rights of employees to: (1) organize and

designate representatives of their choosing; (2) deal with their employer through the labor organization they have selected to represent them; and (3) change or decertify their exclusive bargaining representative. *Community College District (Lower Columbia College)*, Decision 8117-B (PSRA, 2005). Importantly, any organizational activity in pursuit of that third set of rights must not impede the ability of the incumbent union to conduct business as the exclusive bargaining representative implementing the second set of rights. *Id.*

Both unions and employers can commit interference violations, although complaints involving employer conduct occur with more frequency. *City of Port Townsend (Teamsters Union, Local 589)*, Decision 6433-B (PECB, 2000). The legal determination is similar and is relatively simple: Interference is not based upon the reaction of the particular employee involved. Rather, it is on whether a typical employee in similar circumstances reasonably could perceive the conduct as a threat of reprisal or force, or a promise of benefit related to the pursuit of rights protected by the chapter. *Community College District 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210 (PSRA, 2006); *King County*, Decision 6994-B (PECB, 2002); *Brinnon School District*, Decision 7210-A (PECB, 2001); *City of Port Townsend*, *(Teamsters Union, Local 589)*, Decision 6433-B. Intent or motivation is not a factor or defense. *King County*, Decision 6994-B. Nor is it necessary to show that the employees involved were actually interfered with or restrained for an interference charge to prevail. *Id*.

In *Community College District 13 (Lower Columbia College)*, the Commission determined that, based on a review of applicable National Labor Relations Board (NLRB) case law, the interference standard for unions (RCW 41.56.150(1)) is narrower than the interference standard for employers (RCW 41.56.140(1)). The threshold for union interference, therefore, is more restrictive to include tactics such as “violence, intimidation and reprisals.” The evidence in this case showed that some employees felt “pressured” upon being approached by a competing union to sign an authorization card. But, the Commission noted, feeling some pressure during an organizing campaign is not tantamount to intimidation that would rise to the level of unlawful coercion.

Where an unfair labor practice is alleged, the complainant bears the burden of proof and must prove by a preponderance of the evidence that the complained-of allegation occurred.

WAC 391-45-270(1)(a); *Cowlitz County*, Decision 7007-A (PECB, 2000). Although claims of unlawful interference with the exercise of rights protected by chapter 41.56 RCW must be established by a preponderance of the evidence, the burden of proof that WAC 391-45-270 imposes upon the complainant is not substantial. *City of Pasco*, Decision 9181 (PECB, 2005).

Application of Standard

The legal issue in this case centers around two distinct acts taken by the WSCCCE shortly after the Guild was certified as the new exclusive bargaining representative: (1) a waiver and release document sent by Downes to two bargaining unit members regarding their representation at an investigatory interview; and (2) a letter sent on May 22, 2020, to all bargaining unit employees by Dugovich—one day after the Guild's formal certification. With respect to the waiver and release document, the Guild has not carried its burden of proof that this act unlawfully interfered with the rights of bargaining unit employees in violation of RCW 41.56.150(1). Downes's request had a benign rationale and impact that did not rise to the level interfering, restraining, or coercing the rights of the two bargaining unit members under investigation. Conversely, the May 22 letter to members of the bargaining unit, in which Dugovich made several false or misleading claims, was unlawfully coercive in violation of RCW 41.56.150(1). A typical employee could perceive the letter as a threat or reprisal or promise of benefit associated with their statutory right to deal with their employer through their designated exclusive bargaining representative.

*Downes's Waiver and Release Document*

The waiver and release document sent by Downes to the two bargaining unit members under internal investigation likely caused some confusion on the part of Harris and Hall, but there is some rationale and legal explanation for it that does not amount to unlawful interference. As a practical matter, Downes had a legal basis for seeking the waiver and release. The employer's investigation against Hall and Harris had commenced while the WSCCCE was the exclusive bargaining representative. Downes testified that he had actually participated in some employee interviews who were witnesses in the investigation. The WSCCCE was still the bargaining representative when Harris and Hall contacted Downes seeking representation, and Downes agreed to be present for their investigatory interviews. The timing of the interviews also raised some

confusion, as the employees were contacted about the interviews prior to the Guild's certification, but the actual interviews occurred the day after the Guild was certified.

Legally, there is not a strong rationale supporting any need for the WSCCCE to seek this waiver and release from these two employees. However, the law with respect to the duty of fair representation is unsettled enough in this situation to warrant at least some concern. A leading treatise on labor law, *The Developing Labor Law*, notes that "[o]nce a union that is signatory to a contract is decertified or otherwise loses its status as collective bargaining representative, it retains no representational rights under the contract, save the right and duty to process grievances that arose prior to decertification where there is no successor collective bargaining representative."[3] In Section 8(b)(1)(A) of the National Labor Relations Act, the NLRB has found a violation against a union for violating its duty of fair representation regarding the processing of pending grievances following certification of another labor organization as the exclusive bargaining representative. *Government Employees Local 888 (Bayley-Seton Hospital)*, 308 NLRB 646 (1992).[4] This is not to affirmatively suggest that the WSCCCE retained a duty of fair representation to Harris and Hall following its decertification; rather, it highlights the fact that the WSCCCE's efforts to limit any liability were not wholly without merit.

As noted above, the investigation against Harris and Hall commenced while the WSCCCE was the bargaining representative. Downes, on behalf of the WSCCCE, initially took on a representative role with various employees, including Harris and Hall. With these facts in mind, it is not legally definitive that the WSCCCE's duty of fair representation to Harris and Hall completely extinguished the moment the Guild became the exclusive bargaining representative. When Harris and Hall notified Downes that they no longer wanted his representation at the interview—particularly in the absence of any communication that the Guild was taking over—

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[3] 1 THE DEVELOPING LABOR LAW 1157 (John E. Higgins, Jr., 6th ed. 1012)

[4] Following a petition for review filed with the United States Court of Appeals for the District of Columbia, the NLRB reconsidered its decision and reversed its initial finding and dismissed the complaint. *Government Employees Local 888 (Bayley-Seton Hospital)*, 323 NLRB 717 (1997).

Downes had some reason to ensure that ending his representation role would not create any liability for the WSCCCE.

The impact of the waiver and release document on Harris and Hall was also negligible and did not rise to the level of interfering with their rights to representation in the investigation. Both bargaining unit members testified that they were confused as to why Downes sent them the waiver and release document, but nothing else came from the exchange to impair their rights. Harris and Hall were both able to discuss the matter with Komac, who instructed them not to sign the waiver and release document while also making herself available to attend the investigatory interviews. The two employees simply did not respond to Downes's request for the waiver and release, and there is no evidence that Downes pressed the matter further or had any additional contact. Komac, in fact, was able to represent both employees in their respective interviews and ultimately, no disciplinary action was issued against either employee.

*The May 22 Letter*

The May 22, 2020, letter from Dugovich to bargaining unit members and employees of the City of Bellingham unlawfully interfered with the rights of those members by impairing their ability to deal with their employer through their designated bargaining representative. Although the letter was short, totaling just one page, Dugovich made at least four separate misrepresentations, misstatements, or obfuscations of the law regarding the change of representation election and the Guild's representation status moving forward. Dugovich's intent in making these statements, while not established in the record, is irrelevant to the question of interference. A typical employee could perceive the combination of these four misrepresentations and the overall tenor of the letter as a threat of reprisal or a promise of benefit associated with their right to elect the Guild as their exclusive bargaining representative.

At the outset of the letter Dugovich refers to the Guild as "a minority representative," which misstates the law on representation elections and unfairly calls into question the validity of the Guild's status as the exclusive bargaining representative. Pursuant to WAC 391-25-530(2), which is the administrative regulation governing representation elections, such elections "shall be decided by a majority of those voting." Based on the record in this case, the Guild received

approximately 187 out of a total 252 votes cast, which equates to about 74 percent of those bargaining unit members who cast a vote. Mathematically, winning 74 percent of the total votes cast does not equate to a "minority representative."

The statement created a reasonable inference, from the perspective of a typical employee, that the Guild had less than majority support in the recent election. Such an inference, however, misstates the law, which awards representation in an election to the entity receiving *support by a majority of those voting*, not of the total eligible voters. A typical employee reading this statement could easily be left with the inaccurate impression that the Guild did not receive majority support in the election. Such a belief creates a realistic prospect that Guild members will question or not seek out the Guild for representation, despite it being the exclusive bargaining representative.

In the next paragraph, the letter goes on to state that the WSCCCE "will be available to assist you with any work place issues that we can help with." This statement is also misleading and works to undermine the Guild's status as the exclusive bargaining representative. The PECBA, chapter 41.56 RCW, defines "collective bargaining" to mean "the mutual obligations of the public employer and the exclusive bargaining representative . . . to execute a written agreement . . . on personnel matters, including wages, hours and working conditions . . . ." RCW 41.56.100 goes on to specify that a public employer has the authority "to engage in collective bargaining with the exclusive bargaining representative . . . ." The PECBA is clear that the designated bargaining representative is the "exclusive" representative in engaging with public employers concerning wages, hours, and working conditions. Dugovich's statement that the WSCCCE can assist employees with any work place issue undermines the exclusivity of the Guild's representation status. A typical employee could reasonably read this statement and believe that one could engage the WSCCCE to represent any of their interests at work. Should this occur and should the employer deal with the WSCCCE in such a manner, the employer would be liable for committing an unfair labor practice in violation of RCW 41.56.140, and the employee's lawful interests could be harmed through such a process.

The qualifying phrase at the end of the statement, potentially limiting the WSCCCE's role to "issues that we can help with," does not save the statement from constituting unlawful interference.

While it may be the case that the WSCCCE could, in theory, assist employees in certain ways, the qualified nuance of this phrase is lost on a typical employee not trained in the minutiae of labor law. A typical employee reading this sentence would likely conclude that even after the Guild's certification as the exclusive bargaining representative the WSCCCE also remains available to help with any workplace issues. The WSCCCE, however, could not engage the employer on behalf of any employee with respect to topics like employee pay, hours of work, or most other terms and conditions of employment. This is a responsibility and duty reserved to the exclusive bargaining representative, which, at the time of the May 22 letter, was the Guild.

The May 22 letter goes on to misstate the law regarding when, in theory, bargaining unit members could re-elect the WSCCCE as their exclusive bargaining representative. In the fourth paragraph, Dugovich states that in "exactly one year . . . [a bargaining unit member] could return to Council 2 (May 21st, 2021)." Legally, this is not possible due to the "certification bar," and the timeframe here would likely be further extended by the "contract bar." WAC 391-25-030(2) creates a certification bar regarding the timely filing of a change in representation petition. Based on this rule, a "petition involving the same bargaining unit . . . will only be timely if it is filed: (a) More than twelve months following the date of the certification of an exclusive bargaining representative . . . ." WAC 391-25-030(2)(a). There are a number of potential scenarios in which the WSCCCE could, at some point in the future, once again become the exclusive bargaining representative of these employees, but under no scenario would that have such employees returning to the WSCCCE in <u>exactly</u> one year on May 21, 2021.

Under the certification bar, the earliest a change in representation petition could be filed is at least twelve months <u>after</u> the date of certification, which was May 21, 2020. Therefore, the earliest possible date a petition could be <u>filed</u> is May 22, 2021. Notwithstanding the filing date, however, the petition would only trigger a Commission-administered process that could take several weeks or months to complete before the WSCCCE could possibly return as the bargaining representative. Additionally, if the Guild and the employer were to successfully execute a collective bargaining agreement prior to May 22, 2021, the contract bar would also preclude the filing of a petition at that time. Pursuant to WAC 391-25-030(1), a "'contract bar' exists while a valid collective

bargaining agreement is in effect . . . .” Dugovich’s statement creates the false impression that Guild members could return to the WSCCCE at a much earlier point in time than is legally permissible.

Finally, in closing out the letter to bargaining unit members, Dugovich admonishes, “Remember, dues are voluntary!” There is nothing in the record to support the idea that bargaining unit members who elect to join the Guild can thereafter elect not to pay any required dues and still maintain their membership. I take judicial notice of the fact that most membership-based organizations like unions require members to make some form of regular payment as a condition of membership. Dugovich’s statement here is likely a reference to the U.S. Supreme Court’s recent decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018), where the court found that mandatory agency fee provisions unconstitutionally restrict the first amendment rights of citizens. Based on this decision, it is true that neither unions nor employers can condition employment on the payment of an agency fee. But this case makes no comment on the ability of member-based organizations, like the Guild, to set a required dues structure for members who voluntarily join its ranks. Dugovich is improperly mixing concepts by implicitly conflating the Court’s ruling in *Janus* with the notion that the Guild cannot require its members to pay dues. It is true that bargaining unit members must voluntarily join the Guild, but Dugovich paints over this nuance with broad brush strokes to create the misimpression that those members who have elected to join the Guild can voluntarily pay Guild dues. This, again, works to undermine the Guild and interferes with employee rights to rely on the Guild as their exclusive bargaining representative in workplace dealings with the employer.

The WSCCCE cautions the application of RCW 41.56.150(1) in finding Dugovich’s letter unlawful on the grounds that it could restrict speech protected by the First Amendment to the United States Constitution. In advancing this concern, however, there is no citation to any applicable authority imposing any such restrictions or explanation as to how the application of RCW 41.56.150(1) to the facts of this case would impinge any alleged rights. The burden that the WSCCCE carries in asserting any type of affirmative defense, therefore, cannot be met.

The PECBA confers upon employees the right to deal with their employer through their designated representative. The combination of inaccurate and misleading statements in Dugovich's letter interferes with this right and coercively undermines the Guild's status in the tripartite relationship between the employer and its employees. In isolation, any one of the above-referenced statements could have been dismissed as a simple misunderstanding. However, the combination of four different misstatements or muddying of the law in such a short letter and its overall tenor breach the threshold of interference.

A typical employee, upon reading the letter, would easily come to question the Guild's status as the exclusive bargaining representative. As Komac testified, over 100 members questioned the intent and meaning of Dugovich's letter and what this meant for the Guild's representation, resulting in a significant disruption to the Guild's representation efforts. Unlike the situation in *Community College District 13 (Lower Columbia College)* where some employees merely felt pressure to sign authorization cards, which was determined to not rise to the level of intimidation; the situation herein is more disruptive with numerous employees expressing confusion, after reading the letter, as to the Guild's status and who to look to as their representative. The effect was to intimidate employees and the Guild concerning the Guild's recent certification by calling into question the legitimacy of the recent election and promoting an ongoing role for WSCCCE despite the loss of its status as the exclusive bargaining representative. Such effect is, by definition, unlawful interference.

## CONCLUSION

The WSCCCE's May 22, 2020, letter to bargaining unit employees and members of the Guild unlawfully interfered with their employee rights through its coercive effect of impairing their ability to deal with their employer through their designated representative. This unlawful interference violates RCW 41.56.150(1). In contrast, the waiver and release document submitted by Downes to two bargaining unit members was not unlawful interference and is not part of the findings determining a violation of RCW 41.56.150(1).

## FINDINGS OF FACT

1. The City of Bellingham is a public employer as defined by RCW 41.56.030(13).

2. The Guild of Pacific Northwest Employees (Guild) is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a general citywide bargaining unit of all nonuniformed and nonexempt employees, with noted exceptions, as defined in *City of Bellingham*, Decision 13202 (PECB, 2020).

3. The Washington State Council of County and City Employees (WSCCCE) is a bargaining representative within the meaning of RCW 41.56.030(2). Prior to May 21, 2020, the WSCCCE was the bargaining representative of a general citywide bargaining unit of all nonuniformed and nonexempt employees, with noted exceptions, as defined in *City of Bellingham*, Decision 144 (PECB, 1976).

4. On October 14, 2019, the Guild filed a representation petition with the Commission. A new petition was filed on January 6, 2020. The WSCCCE was granted status as intervenor in the representation proceeding. The Commission subsequently conducted an election proceeding. On May 13, 2020, the Commission tallied the vote, and the Guild was determined to have prevailed in the election. After no meritorious election objections were filed, the Commission certified the Guild as the exclusive bargaining representative in a decision issued on May 21, 2020.

5. On approximately May 18, 2020, two employees, John Marshall Harris and Sean Hall, both of whom are in the bargaining unit now represented by the Guild, were notified by the City of Bellingham that they were under formal investigation. Both employees were notified that they had a right to union representation, and both individuals reached out to Jael Komac, who was a past president for the WSCCCE local and had, at the time of the investigation, become an organizer on behalf of the Guild. Komac informed both employees that the Guild had not yet been certified and that they should contact Joe Downes, a local staff representative for the WSCCCE. Harris and Hall, subsequently, both contacted Downes seeking representation. Downes made contact with both

individuals, and he indicated that he would be available to represent them in any proceeding.

6. An investigatory interview of Harris and Hall was set for Friday, May 22, 2020. The Guild was certified on May 21, 2020, and prior to their investigatory interview, both employees elected to forego any further representation by the WSCCCE in the matter. Komac subsequently agreed to serve as the representative for both Harris and Hall, and she attended the investigatory interview for both individuals. In conjunction with Komac taking over as the representative, Harris and Hall each notified Downes that they no longer needed him as their representative. Downes did not attend the investigatory interview on May 22, as both employees were represented in the interview by Komac.

7. Upon learning that Harris and Hall no longer wanted to be represented in the interview by the WSCCCE, Downes sent both individuals a waiver and release document. The waiver and release document noted that each employee had previously been a member of the WSCCCE, but as of May 21, 2020, the Public Employment Relations Commission certified the Guild as the new exclusive bargaining representative. Per the document, the employees were requested to sign and certify that they did not want the WSCCCE to act on their behalf related to any discipline situation and that they were waiving their right to take any legal action against the WSCCCE. Harris and Hall testified that they refused to sign the waiver and release document and they were confused as to why they were asked to do so. At the close of the investigation neither Harris nor Hall received any discipline, and they returned to work.

8. Downes sent the waiver and release document, in part, because he participated in an initial meeting involving the discipline investigation, which included serving as a representative for some other employees who were interviewed as witnesses. Additionally, because Harris and Hall had contacted Downes for representation initially and the fact that the Guild's certification was issued the day before the interview, Downes stated that he wanted to assure "continuity" in their representation. Downes also specified that he had not been

contacted by anyone from the Guild about the investigation and, in turn, was unaware as to any actions taken by the Guild to represent the two employees.

9. On May 22, 2020, a letter was sent to Bellingham city employees from Chris Dugovich, the president/executive director of the WSCCCE, regarding the recent change in representation. Dugovich made a number of representations and statements about the election, the Guild, and the WSCCCE in this letter. Those statements included a reference to the Guild as a "minority representative" for allegedly failing to receive a majority of the votes from eligible voters.

10. The evidence demonstrated that the Guild received approximately 187 votes in its favor out of 252 votes cast. The remaining 65 ballots received were cast for the WSCCCE. The election documents indicated that the bargaining unit had 374 eligible voters.

11. Under the Commission's election-administration rules, representation elections are decided by a majority of eligible voters who cast ballots. Under this formula, the Guild received approximately 74 percent of the vote in its favor.

12. The May 22 letter continued on to represent that employees could still maintain their membership in the WSCCCE and that it would be "available to assist you with any work place issues that we can help with." The Public Employees' Collective Bargaining Act authorizes a public employer to engage in collective bargaining with the exclusive bargaining representative to include the mutual obligation of both parties to execute a written contract on personnel matters, including wages, hours, and working conditions. As of May 21, 2020, the Guild was certified as the exclusive bargaining representative.

13. Dugovich also stated that in the May 22 letter that "exactly one year from the date of the certification" employees could return to the WSCCCE. Under the certification bar rule in WAC 391-25-030(2), the earliest a change of representation petition can be filed is at least twelve months after the issuance of a certification. The contract bar rule in WAC 391-25-030(1), separately, prohibits a change of representation petition being filed

during the term of a valid collective bargaining agreement, except during a designated window period near the expiration of any such agreement.

14. Members of the Guild were also advised by Dugovich to remember that "dues are voluntary!" There is no evidence in the record to support the proposition that the Guild established a voluntary dues structures for those bargaining unit employees who elected to become members.

15. Following the distribution of the May 22 letter from Dugovich, the evidence showed that Komac received about 100 emails and a large number of phone calls from Guild members questioning the meaning and purpose of the letter. Komac's unrefuted testimony was that the May 22 letter caused a "big disruption" and that it created "a lot of confusion and spread misinformation."

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. Through its actions as described in findings of fact 9 through 15, the WSCCCE interfered with the employee rights in violation of RCW 41.56.150(1) by impairing the rights of bargaining unit employees in their ability to deal with their employer through their designated representative.

## ORDER

The Washington State Council of County and City Employees, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. Communicating with bargaining unit members at the City of Bellingham represented by the Guild or any duly elected or appointed bargaining representative in any manner that is false, misleading, or otherwise impairs the legal rights of said employees under chapter 41.56 RCW.

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. Contact all employees, via certified U.S. Mail, who were sent a letter and/or email on May 22, 2020, from Dugovich with a new letter notifying each employee that the May 22, 2020, letter is rescinded in its entirety and that it was found to constitute an unfair labor practice in violation of RCW 41.56.150(1) by the Washington State Public Employment Relations Commission.

b. Contact a compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the WSCCCE’s premises where notices to all union 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. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.

d. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 4th day of February, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER J. CASILLAS, 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.

# RECORD OF SERVICE

ISSUED ON 02/04/2021

DECISION 13299 – PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132831-U-20

| | |
|---|---|
| EMPLOYER: | CITY OF BELLINGHAM |
| REP BY: | SETH FLEETWOOD<br>CITY OF BELLINGHAM<br>210 LOTTIE ST<br>BELLINGHAM, WA 98225<br>mayorsoffice@cob.org |
| PARTY 2: | GUILD OF PACIFIC NORTHWEST EMPLOYEES |
| REP BY: | DEAN THARP<br>GUILD OF PACIFIC NORTHWEST EMPLOYEES<br>PO BOX 157<br>BELLINGHAM, WA 98226<br>deantharp0@gmail.com |
| PARTY 3: | WSCCCE |
| REP BY: | CHRIS DUGOVICH<br>WSCCCE<br>PO BOX 750<br>EVERETT, WA 98206-0750<br>c2everett@council2.com |
| | ED STEMLER<br>WSCCCE<br>PO BOX 750<br>EVERETT, WA 98206<br>ed@council2.com |