STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE NURSES ASSOCIATION, Complainant, vs. GRAYS HARBOR COMMUNITY HOSPITAL (GRAYS HARBOR PUBLIC HOSPITAL DISTRICT 2), Respondent.	CASE 134340-U-21 DECISION 13405 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

Danielle Franco-Malone, Attorney at Law, Barnard Iglitzin & Lavitt LLP, for the Washington State Nurses Association.

Matthew W Lynch, Attorney at Law, Sebris Busto James for the Grays Harbor Community Hospital (Grays Harbor Public Hospital District 2).

On July 20, 2021, the Washington State Nurses Association (union) filed an unfair labor practice complaint against Grays Harbor Community Hospital (Grays Harbor Public Hospital District 2) (employer). The complaint was reviewed under WAC 391-45-110.[1] A partial deficiency notice issued on July 29, 2021, notified the union that a cause of action could not be found at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

[1] At this stage of the proceedings, all of the facts alleged in the complaint or amended complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the complaint.

ISSUES

The complaint alleges the following:

> Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit by denying or limiting Washington State Nurses Association access to bargaining unit employees.
>
> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed by:
>
> (a) Refusing to provide relevant information requested by the union for collective bargaining preparation.
>
> (b) Unilaterally changing the Quality Assurance and Care Transition nurses ability to provide break relief for nurses and provide direct patient care, without providing the union an opportunity for bargaining.
>
> (c) Unilaterally changing the union's access to bargaining unit employees, without providing the union an opportunity for bargaining.

The interference, unilateral change regarding the Quality Assurance and Care Transition nurses, and the information request allegations of the complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The unilateral change regarding the union having access to the premises allegation of the complaint does not state a cause of action and is dismissed.

BACKGROUND

The Washington State Nurses Association (union) represents nurses who provide direct patient care, Quality Assurance nurses, and Care Transition nurses at Grays Harbor Community Hospital (Grays Harbor Public Hospital District 2) (employer).

The parties' collective bargaining agreement expired on October 31, 2020, and the parties have been in negotiations for a successor agreement. The most recent collective bargaining agreement has remained in effect since its expiration.

The collective bargaining agreement contains article 4.7, which provides authorized union representatives reasonable access to areas open to the general public for the purpose of investigating grievances and contract compliance. The parties agree that the visitation will be conducted in a manner which will not be disruptive to the operation of the employer or patient care. The union business will only occur during nonworking time.

Following the COVID-19 pandemic and up until early 2021, the employer barred the union's authorized representative, Travis Elmore, from vising the hospital in person. On February 24, 2021, the union attempted to discuss the issue with the employer during a bargaining session. The employer's policy at the time barred nearly all nonpatient members of the public from entering the hospital. The union suggested precautions for Elmore to have access. The employer allegedly suggested that because the union had filed a number of grievances, Elmore's ability to communicate with nurses was sufficient and Elmore did not need access to the premises.

On March 3, 2021, the employer allegedly proposed a provisional and temporary arrangement to allow Elmore limited access to the employer's premises. Elmore would be allowed to access the hospital but would only be allowed to go to and from a conference room selected by the employer. On March 5, 2021, the parties reached agreement on interim restrictions. There was no express

duration for the interim restrictions, but was based on conditions as they existed at that point in time.

On March 18, 2021, Elmore notified the employer of a visit to the hospital on March 23, 2021. Elmore followed the agreed upon protocol. On May 5, 2021, after receiving a COVID-19 vaccine, Elmore emailed the Executive Director for Human Resources, Julie Feller, to inform Feller that Elmore intended to return to normal access rights as guaranteed by the collective bargaining agreement. Feller responded that the employer would not allow Elmore to return to that type of access. On each occasion Elmore visited the hospital in accordance with the March 5 agreed upon protocol. Elmore was only able to make very limited contact with bargaining unit employees.

On May 19, 2021, the employer announced a new and relaxed visitation policy based on patient and visitor requests. The new policy allowed each patient to designate one visitor who would be allowed to visit the hospital once per day. The new policy also allowed vendors, pizza delivery persons, vending machine contractors, and representatives for medical companies to have access to the premises. At bargaining later the same day, the union raised the issue of access and requested a return to the full access guaranteed in the collective bargaining agreement. The employer refused to discuss any changes to the March 5 agreed upon protocol, and alleged no further access was necessary.

On June 29, 2021, Elmore was scheduled to have a meeting on-site with Feller. Feller allegedly cancelled the meeting. Elmore responded that instead Elmore planned to visit with bargaining unit employees. Feller responded that Elmore continued to be restricted to the conference room based on the March 5 agreement.

ANALYSIS

Unilateral Change

Applicable Legal Standard

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). The obligation to bargain in good faith encompasses a duty to engage in full

and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *University of Washington*, Decision 11414-A (PSRA, 2013).

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Application of Standard

The complaint lacks facts that a unilateral change related to the union's access to bargaining unit employees has occurred. The complaint alleges that the Washington State Nurses Association represents the nurses bargaining unit. The complaint also alleges that the employer proposed a change to the union's access to bargaining unit employees. On March 5, 2021, the union and employer reached agreement on the interim restrictions. The complaint then explains that the union requested to bargain about removing the interim restrictions, and the employer refused to bargain over the change. The complaint alleges that the action was a unilateral change. The complaint alleges that the employer made changes to its visitor's policy. The complaint lacks facts alleging an additional change to a mandatory subject of bargaining for the representative or employees in

the bargaining unit. It appears the only change that affected the bargaining unit was resolved with an agreement on interim restrictions between the parties on March 5, 2021. The union was provided an opportunity to correct the deficiency, but did not file an amended complaint. Thus the unilateral change allegation related to the union's access to bargaining unit employees must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference, unilateral change regarding the Quality Assurance and Care Transition nurses, and the information request allegations of the complaint state a cause of action, summarized as follows:

   Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit by denying or limiting Washington State Nurses Association access to bargaining unit employees.

   Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed by:

   a. Refusing to provide relevant information requested by the union for collective bargaining preparation.

   b. Unilaterally changing the Quality Assurance and Care Transition nurses ability to provide break relief for nurses and provide direct patient care, without providing the union an opportunity for bargaining.

   These allegations will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall

   (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and

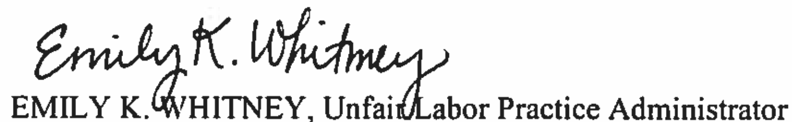
   (b) assert any affirmative defenses that are claimed to exist in the matter.

   The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the complaint concerning unilateral change regarding the union having access to the premises is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of September, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.

RECORD OF SERVICE

ISSUED ON 09/09/2021

DECISION 13405 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 134340-U-21

EMPLOYER: GRAYS HARBOR PUBLIC HOSPITAL DISTRICT 2

REP BY: TOM JENSEN
GRAYS HARBOR PUBLIC HOSPITAL DISTRICT 2
GRAYS HARBOR COMMUNITY HOSPITAL
915 ANDERSON DR
ABERDEEN, WA 98520-1097
tjensen@ghphd2.org

MATTHEW W LYNCH
SEBRIS BUSTO JAMES
14205 SE 36TH STREET STE 325
BELLEVUE, WA 98006
mlynch@sebrisbusto.com

PARTY 2: WASHINGTON STATE NURSES ASSOCIATION

REP BY: SALLY WATKINS
WASHINGTON STATE NURSES ASSOCIATION
575 ANDOVER PARK W STE 101
SEATTLE, WA 98188
swatkins@wsna.org

DANIELLE FRANCO-MALONE
BARNARD IGLITZIN & LAVITT LLP
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
franco@workerlaw.com