STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. WASHINGTON STATE DEPARTMENT OF CORRECTIONS, Respondent.	CASE 133034-U-20 DECISION 13416 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Gregory Rhodes and *Edward Earl Younglove III*, Attorneys at Law, Younglove and Coker, P.L.L.C., for the Washington Federation of State Employees.

El Shon D. Richmond, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Corrections.

The Washington Federation of State Employees (union) is a bargaining representative within the meaning of RCW 41.80.005(9) and represents a bargaining unit of nonsupervisory community corrections staff employed by the Washington State Department of Corrections (employer). On September 23, 2020, the union filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission). The union asserts the employer reassigned a group within the community corrections bargaining unit—the Western Washington Work Crew (WWWC)—from its normal duties in response to the crew raising safety issues related to COVID-19. An Unfair Labor Practice Administrator issued a preliminary ruling on September 30, 2020, stating a cause of action for employer interference. Examiner Elizabeth Snyder held a hearing on April 14 and 15, 2021, and May 3, 2021. The parties submitted post-hearing briefs on July 16, 2021.

The issue presented is whether the employer interfered with employee-protected rights in violation of RCW 41.80.110(1)(a) by reassigning WWWC's normal duty station in response to them raising safety concerns in connection with COVID-19. I find that the employer did not interfere with employee-protected rights for two reasons: the employer's lack of clear communication in response to two emails does not constitute an interference violation, and the union activity in which the employer allegedly interfered was an unprotected work stoppage. The case is dismissed.

BACKGROUND

The WWWC consists of 10 employees, including one sergeant who supervises offenders assigned to perform community service work for either a parole violation or as condition of their original sentence. The WWWC is located in three separate locations: Tacoma, Seattle, and Everett. All work crew members report to the same supervisor, Sergeant Rick Mroos, who is their direct lead report. Mroos reports to Program Manager Rene Vertz, located in King County. Vertz reports to Field Administrator Kim Dewing. Of the 10 employees, two officers are in the Everett location, two are in Tacoma, and the remainder are in Seattle. There are also crews in eastern and southwestern Washington, but those employees were not impacted in the same way as the WWWC.

Due to the COVID-19 outbreak, on Friday, March 13, 2020, Mac Pevey, assistant secretary for the Community Corrections Division, sent a memo within an email to all community corrections staff indicating that there would be a change in the employees' duty station because it was no longer sending offenders into the field. Early in the week of March 16, 2020, as part of the change in duty station, the work crew went to their local criminal justice facilities in Everett, Seattle, or Tacoma to perform intake services, such as taking temperatures of people entering the buildings. These services were performed at the entrance of the three control stations in areas similar to a small lobby or waiting room. Intake services usually occurred between 7:00 a.m. and 9:00 a.m.

The employer provided personal protective equipment (PPE) to the crew members in the Everett location but did not provide any PPE or other protective measures, such as a protective window, to the crew members in the other two offices. On March 18, 2020, Officer Samuel Phillips, located

in the Tacoma field office, sent an email to Dewing and Field Administrator Dave Thomson (who was located in the Tacoma region), requesting PPE and a protective window. The Tacoma office did have a protective window further inside the lobby area but was not given approval to utilize the window.

On March 19 at 5:48 a.m., Vertz emailed a response to Phillips and others stating that it was the responsibility of each location to determine how the screening process would be approached. Pevey also sent out a revised official memo by email on March 19, in which Pevey clarified the March 13 memo by email, adding that "face to face contacts will only occur as long as it is safe to do so."

The union believed it had not received a clear enough directive on the process moving forward. On March 19 at 8:21 a.m., union council representative Jodi Hocking sent an email stating that if the Tacoma crew members were not provided appropriate masks or protective screens by 11:00 a.m. that day, then those crew members would no longer perform intake services. After receiving no response to Hocking's email, the Tacoma crew members stopped performing intake services because they did not feel they were provided adequate PPE.[1] Additionally, Phillips sent an email to Vertz at 1:06 p.m. on the same day stating that he no longer felt safe working in the Tacoma office.

On Friday, March 20, the employer emailed the WWWC members, directing them to assemble in Seattle on the following Monday, March 23. On that following Monday, the WWWC members were then informed that they would begin work on Wednesday, March 25, at the Monroe Correctional Complex in a newly created space near the prison that would hold probation violators. Nearly all WWWC members had previous experience working with inmates.

The space for probation violators moved from the main complex to make room for the creation of a quarantine and isolation space within the prison. The building at the Monroe Correctional

---

[1] Crew members in Seattle and Everett did not stop working.

Complex had not been used for 10 years or more, and required cleaning and setup by the work crew. The crew members were able to pick their new shifts based on seniority and were reimbursed for mileage. They did not receive any per diem or options for hotel reimbursement because the modification in their work was classified as a change in duty station rather than a temporary assignment. The employer did offer access to agency vans that the employees could use to drive to and from work. Later in the year, the employer offered benefits such as hotel reimbursement and per diem to other employees statewide who, unlike these employees, volunteered to work in other duty stations.

ANALYSIS

Applicable Legal Standards

Under Washington's collective bargaining laws, it is an unfair labor practice for an employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by the collective bargaining laws. RCW 41.80.110(1)(a); RCW 41.56.140(1).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd, Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). To prove an interference violation, the complainant must prove, by a preponderance of the evidence, that the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A. To meet its burden of proving interference, a complainant need not establish that an employee was engaged in protected activity. *Washington State Patrol*, Decision 11775-A (PSRA, 2014); *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). The complainant is not required to demonstrate that the employer intended to or was motivated to interfere with an employee's protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee was actually coerced by the employer or that the employer had union animus. *Id.*

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 other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

Application of Standard

The union argues that the employer interfered with its members' protected rights when the employer reassigned their duty stations in close proximity to Phillip's and Hocking's emails and a day after the employees held a work stoppage. The union believes that the employer's subsequent lack of a clear response to these emails was retaliatory in nature and that these events, combined with the work stoppage, created a reasonable perception that a nexus existed between the members' protected activities and the decision to reassign the bargaining unit's duty station.

First, the employer's lack of clear communication in response to the two emails does not constitute an interference violation. The employer's somewhat vague email on March 19 and its lack of further response on that day do not appear retaliatory in nature. The lack of communication shows that the employer was uncertain or unclear on how to address the situation.

The union cites Pevey's March 13 email memo (later clarified on March 19), which stated that staff should use their discretion if they felt unsafe due to COVID-19 concerns, as a reason to stop performing intake services. The bargaining unit in Tacoma did not think that the face-to-face nature of the intake duties was safe to perform without PPE and a protective window or screen. Considering the nature of the environment that the employer was working in—given the beginning of a global pandemic where everything was new and there was no precedent for such a situation, I think it is reasonable to believe that Vertz's March 19 email in response to Phillip's March 18 email was neither intimidating nor threatening. Vertz stated that it was the responsibility of each location to determine how to screen and that she would be speaking with "Kim [Dewing] in a few minutes" regarding the screening protocol. The employer's email shows that they were trying to work out the procedures, and it does not rise to the level of interference.

The union's argument that the employer's failure to respond to Hocking's March 19 email should be considered a retaliatory action is also without merit, because the union did not give the employer a reasonable amount of time to adequately respond before the employees stopped working. Hocking's email, which amounted to a request to bargain, was sent at 8:21 a.m. In the email, Hocking stated that if a response was not received by 11:00 a.m. that same morning, then bargaining unit members would stop performing intake duties. In *State – Washington State Patrol*, Decision 10314-A (PECB, 2010), the union asked the employer to schedule bargaining dates in a formal demand to bargain on January 1, 2008. The employer would not agree to begin negotiating before April 21, 2008. The employer's delay in responding to the union's request to establish dates for negotiations was a failure to timely respond to the union's January 1, 2008, demand to bargain. In the present case, the union waited less than three hours for a response before the members stopped working. This is not a reasonable amount of time to expect the employer to respond even, or especially, under emergency circumstances.

Second, even if the employer's decision to reassign the bargaining unit members' duty station did appear retaliatory in nature, the actions that prompted the employer's response would be the unprotected work stoppage, not the union's preceding emails. In *City of Clarkston*, Decision 3094 (PECB, 1989), the Commission states:

> Chapter 41.56 RCW . . . does not confer or protect a right to strike. RCW 41.56.120. . . . Public employers are not precluded from threatening public employees with sanctions in the event of their participation in a strike or other work stoppage which is unprotected. *Concrete School District*, Decision 1059 (PECB, 1980).

In *City of Tacoma*, Decision 4444 (PECB, 1993), the Commission "consistently declined to regulate strikes through the unfair labor practice provisions of the statutes. . . . Neither Chapter 41.56 RCW nor Chapter 41.59 RCW protect the right of public employees to strike. Neither statute contains a clause protecting 'concerted activities.'"

Moving the WWWC was a reasonable solution to the bargaining unit's concern for safety and lack of PPE. Some union members decided to stop their intake work, which limited their ability to perform available work. Their previous job duties were suspended, and the employer was in need

of people to help with the new probation violator's unit—a place where the bargaining unit members would neither interact with the public nor need the same level of PPE. All WWWC employees were located in western Washington and had some degree of correctional institution experience. I find that a reasonable, work-related connection can be made between the employees' work stoppage and the employer's decision to move their duty station the very next day. Since the work stoppage is not protected activity, there is no interference violation.

The union argues that the members perceived an interference of their protected rights when the employer failed to offer overtime, per diem, or hotel lodgings. The employer counters that these benefits were later offered to other employees statewide who voluntarily moved to different duty stations when the agency had a better grasp of the COVID-19 situation. The union cites *Kennewick School District,* Decision 5632-A, to support its argument that interference can occur months after the protected activity. In *Kennewick,* the union argued that interference occurred when a reprimand was issued three months after the filing of a grievance and a month and a half after the filing of an unfair labor practice complaint. The present case differs from *Kennewick School District* in that this case involved an unprecedented, emergency situation where the employer lacked experience, unlike the standard filing of a grievance. In this case, the employer did offer to supply transportation for the bargaining unit members. During the hearing, there was no testimony that the members requested additional pay, hotel lodging, or other benefits in March 2020 when they were told to report to the Monroe Correctional Complex. In this situation, it was unrealistic of the union to assume retaliation when the WWWC members did not ask for additional benefits from the employer. There are reasonable distinctions between the members' situation here and other employees' situations at different points in time.

CONCLUSION

The union failed to prove that the employer interfered with WWWC member rights when it reassigned the members' duty station. The employer's broad response in two emails during an emergency situation does not constitute interference. The union did not give the employer a reasonable amount of time to respond to its email threatening a work stoppage on March 19, 2020. Work stoppages are not protected activity under the statute. Failing to offer lodging, per diem, or

other benefits that were ultimately received by other employees' months afterward does not rise to the level of interference. Rather, it shows a lack of experience during an unprecedented emergency situation. The case is dismissed.

FINDINGS OF FACT

1. The Washington Federation of State Employees (union) is a bargaining representative within the meaning of RCW 41.80.005(9) and represents a bargaining unit of nonsupervisory community corrections staff employed by the Washington State Department of Corrections (employer).

2. The Washington Department of Corrections (employer) is a public employer within the meaning of RCW 41.80.005 (8).

3. The employer and union are parties to a collective bargaining agreement effective from July 1, 2019, through June 30, 2021.

4. The Western Washington Work Crew (WWWC) consists of 10 employees, including one sergeant who supervises offenders assigned to perform community service work for either a parole violation or as condition of their original sentence. The WWWC is located in three separate locations: Tacoma, Seattle, and Everett.

5. All work crew members report to the same supervisor, Sergeant Rick Mroos, who is their direct lead report. Mroos reports to Program Manager Rene Vertz, located in King County. Vertz reports to Field Administrator Kim Dewing.

6. Of the 10 employees, two officers are in the Everett location, two are in Tacoma, and the remainder are in Seattle. There are also crews in eastern and southwestern Washington.

7. Due to the COVID-19 outbreak, on Friday, March 13, 2020, Mac Pevey, assistant secretary for the Community Corrections Division, sent a memo within an email to all community corrections staff indicating that there would be a change in the employees' duty station because it was no longer sending offenders into the field.

8. Early in the week of March 16, 2020, the work crew went to their local criminal justice facilities in Everett, Seattle, or Tacoma to perform intake services, such as taking temperatures of people entering the buildings. These services were performed at the entrance of the three control stations in areas similar to a small lobby or waiting room.

9. Intake services usually occurred between 7:00 a.m. and 9:00 a.m.

10. The employer provided personal protective equipment (PPE) to the crew members in the Everett location but did not provide any PPE or other protective measures, such as a protective window, to the crew members in the other two offices.

11. On March 18, 2020, Officer Samuel Phillips, located in the Tacoma field office, sent an email to Dewing and Field Administrator Dave Thomson (who was located in the Tacoma region), requesting PPE and a protective window.

12. The Tacoma office did have a protective window further inside the lobby area but was not given approval to utilize the window.

13. On March 19 at 5:48 a.m., Vertz emailed a response to Phillips and others stating that it was the responsibility of each location to determine how the screening process would be approached. Pevey also sent out a revised official memo by email on March 19, in which Pevey clarified the March 13 memo by email, adding that "face to face contacts will only occur as long as it is safe to do so."

14. On March 19 at 8:21 a.m., union council representative Jodi Hocking sent an email stating that if the Tacoma crew members were not provided appropriate masks or protective screens by 11:00 a.m. that day, then those crew members would no longer perform intake services.

15. After receiving no response to Hocking's email, the Tacoma crew members stopped performing intake services because they did not feel they were provided adequate PPE.

16. Crew members in Seattle and Everett did not stop working.

17. Phillips sent an email to Vertz at 1:06 p.m. on the same day stating that he no longer felt safe working in the Tacoma office.

18. On Friday, March 20, the employer emailed the WWWC members, directing them to assemble in Seattle on the following Monday, March 23.

19. On Monday, March 23, the WWWC members were informed that they would begin work on Wednesday, March 25, at the Monroe Correctional Complex in a newly created space near the prison that would hold probation violators.

20. Nearly all WWWC members had previous experience working with inmates.

21. The space for probation violators moved from the main complex to make room for the creation of a quarantine and isolation space within the prison. The building at the Monroe Correctional Complex had not been used for 10 years or more, and required cleaning and setup by the work crew.

22. The crew members were able to pick their new shifts based on seniority and were reimbursed for mileage.

23. The crew members did not receive any per diem or options for hotel reimbursement because the modification in their work was classified as a change in duty station rather than a temporary assignment.

24. The employer offered access to agency vans that the employees could use to drive to and from work.

25. Later in 2020, the employer offered benefits such as hotel reimbursement and per diem to other employees statewide who, unlike these employees, volunteered to work in other duty stations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-45 WAC.

2. By the actions described in findings of fact 4 through 25, the union failed to sustain its burden of proof to establish that the employer interfered with protected employee rights in violation of RCW 41.80.110(1)(a).

ORDER

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

ISSUED at Olympia, Washington, this 12th day of October, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELIZABETH SNYDER, 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 10/12/2021

DECISION 13416 - PSRA 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 133034-U-20

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CORRECTIONS

REP BY:

FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

EL SHON D. RICHMOND
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
elshon.richmond@atg.wa.gov

PARTY 2: WASHINGTON FEDERATION OF STATE EMPLOYEES

REP BY:

HERB HARRIS
WASHINGTON FEDERATION OF STATE EMPLOYEES
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
perc@wfse.org

EDWARD EARL YOUNGLOVE III
YOUNGLOVE & COKER, P.L.L.C.
1800 COOPER PT RD SW BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
edy@ylclaw.com

GREGORY RHODES
YOUNGLOVE & COKER, P.L.L.C.
1800 COOPER PT RD SW BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
grhodes@ylclaw.com