

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA EDUCATION ASSOCIATION,

Complainant,

vs.

TACOMA SCHOOL DISTRICT,

Respondent.

CASE 133351-U-21

DECISION 13440 - EDUC

ORDER OF DISMISSAL

*Harriet K. Strasberg*, Attorney at Law, for the Tacoma Education Association.

*Dave J Luxenberg*, Attorney at Law, McGavick Graves, P.S. for the Tacoma School District.

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the Tacoma Education Association (union) on February 25, 2021. The complaint alleged that the Tacoma School District (employer) refused to bargain in violation of RCW 41.59.140(1)(e), unilaterally changing the secondary schedule, without providing the union an opportunity for bargaining.

The complaint was reviewed under WAC 391-45-110. A preliminary ruling and deferral inquiry was issued on March 11, 2021, finding a cause of action to exist and providing the employer with an opportunity to file an answer to the complaint. The employer was asked to specify in its answer whether deferral to arbitration was requested. In an answer filed on March 25, 2021, the employer requested that the complaint be deferred to arbitration.

The complaint and answer were reviewed under WAC 391-45-110(3). On March 29, 2021, the complaint was deferred to arbitration in a ruling that stated, in pertinent part:

4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration

award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:

- a. If the arbitrator finds the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union's right to bargain the matter will have been waived by the language of the collective bargaining agreement, and the union should anticipate dismissal of the unfair labor practice allegation based on the "waiver" conclusion.

On November 15, 2021, the Commission received a copy of an arbitration award of Arbitrator Donna E. Lurie regarding the dispute. The award denied the union's grievance, finding that the employer's actions were protected by the collective bargaining agreement.

The award has been reviewed under WAC 391-45-110(3). Based upon Arbitrator Lurie's ruling, the union's right to bargain on the contested issues was waived by the collective bargaining agreement. *City of Spokane*, Decision 2398 (PECB, 1986). The complaint must be dismissed.

#### ORDER

The complaint charging unfair labor practices in case 133351-U-21 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 30th day of November, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
EMILY K. WHITNEY, Unfair Labor Practice Administrator

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 11/30/2021

DECISION 13440 - EDUC 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 133351-U-21

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