STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF TEACHERS, LOCAL 4254, Complainant, vs. EDMONDS COLLEGE, Respondent.	CASE 133333-U-21 DECISION 13412-A - CCOL DECISION OF COMMISSION

Jon Rosen, Attorney at Law, the Rosen Law Firm, for the American Federation of Teachers, Local 4254.

Arlene K. Anderson, Assistant Attorney General, Attorney General Robert W. Ferguson, for Edmonds College.

On February 17, 2021, the American Federation of Teachers, Local 4254 (union) filed an unfair labor practice complaint alleging Edmonds College (employer) unilaterally changed wages. The Unfair Labor Practice Administrator reviewed the complaint and issued a preliminary ruling finding a cause of action for:

> Employer refusal to bargain in violation of RCW 28B.52.073(e) [and if so derivative interference in violation of RCW 28B.52.073(a)] [sic] within six months of the date the complaint was filed, by unilaterally changing employee pay when it changed the lab mode to the clinic mode without providing the union an opportunity to bargain.

In the preliminary ruling, the Unfair Labor Practice Administrator asked the employer to respond and whether deferral to arbitration was appropriate. On March 15, 2021, the employer filed an answer. The employer did not request deferral to arbitration.

Examiner Michael Snyder conducted a hearing. The Examiner concluded that the employer changed how the employer paid associate faculty teaching at the Monroe Correctional

Complex (MCC) before negotiating to impasse or agreement. *Edmonds College*, Decision 13412 (CCOL, 2021), at 2 and 12. The method for paying associate faculty teaching at MCC was a long-standing past practice. *Id*. The union did not waive its right to bargain by conduct or contract. *Id*. The union promptly responded to the employer's request for bargaining. *Id*. at 13. The union's failure to make a proposal or respond to the employer's proposal about changing wages was insufficient to find waiver. *Id*. at 13–14. The employer presented its decision as a *fait accompli*. *Id*. at 14–15. The Examiner ordered the employer to restore the *status quo ante* by reinstating the hours, wages, and working conditions that existed before the unlawful change and to pay the employees backpay. *Id*. at 19.

The employer filed a timely appeal. Both parties filed briefs.

The employer argues that the complaint is untimely because the employer notified the union of the employer's plan to change wages and pay employees in conformity with the collective bargaining agreement on May 14, June 1, and August 14, 2020. According to the employer, after notifying the union that it wanted to negotiate pay for associate faculty and providing a proposal, the union responded it was not prepared to discuss the issue and the union did not raise the issue or later ask to bargain. The employer asserts that the collective bargaining agreement specifies how salary is to be computed, and it paid employees consistent with the negotiated agreement. The employer contends that the Examiner erred in imposing a past practice on an issue involving an unambiguous term in the collective bargaining agreement and the matter should be decided by an arbitrator.

The union asserts that the complaint is timely because the change did not occur until the employees were paid on October 10, 2020. In response, the union argues that the employer did not raise the corrections salary issue in mediation. The employer reduced employee salaries and ignored the parties' past practice.

ISSUE

The issue before the Commission is whether substantial evidence supports the Examiner's conclusions that the employer unilaterally changed the wages of associate faculty teaching at the

Monroe Correctional Complex. We affirm the Examiner. Substantial evidence supports the Examiner's findings of fact, which in turn support the conclusions of law that the employer refused to bargain in violation of RCW 28B.52.073(1)(a) when the employer changed how it paid associate faculty teaching at Monroe Correctional Complex.

ANALYSIS

Applicable Legal Standards

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006). The Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

CONCLUSION

Contrary to the employer's assertions, the Commission has jurisdiction over this unfair labor practice case. Wages are a mandatory subject of bargaining. RCW 28B.52.020(7). The parties are obligated to negotiate to impasse or agreement before the employer may make a change to wages. The employer asserts that the language in the collective bargaining agreement precluded the employer from paying the employees using the lab mode. We agree with the Examiner that the language of the collective bargaining agreement is not a clear and unmistakable waiver. As the Examiner explained, "[T]he contractual language does not specify when faculty will not be paid using the lab mode; rather, it identifies one circumstance when they will be." Decision 13412 at 13.

The employer argues that the Examiner addressed an issue that is more appropriately decided by an arbitrator. When the Unfair Labor Practice Administrator issued the preliminary ruling and deferral inquiry on February 24, 2021, the agency explicitly requested the employer to respond whether the employer was requesting deferral to arbitration. The employer had the opportunity to request deferral to arbitration, but the employer did not respond to the deferral inquiry. The appeal of the Examiner's decision is too late in the process to invoke deferral to arbitration.

After reviewing the record, we conclude that substantial evidence supports the Examiner's findings of fact, which in turn support the Examiner's conclusions of law. We affirm the Examiner.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Michael Snyder are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 27th day of January, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

MARK BUSTO, Commissioner

KENNETH J. PEDERSEN, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.

RECORD OF SERVICE

ISSUED ON 01/27/2022

DECISION 13412-A - CCOL has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 133333-U-21

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