STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PROTEC17, Complainant, vs. KING COUNTY, Respondent.	CASE 132052-U-19 DECISION 13514 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Paul Marvy, Projects Administrator, for PROTEC17.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney Daniel T. Satterberg, for King County.

On August 21, 2019, PROTEC17 (union) filed an unfair labor practice complaint against King County (employer) with the Public Employment Relations Commission (Commission). On August 22, 2019, the union filed an amended complaint. A preliminary ruling was issued on August 30, 2019, and an answer was filed on September 17, 2019. A hearing was conducted by videoconference on February 9, 2022. The parties elected to present oral closing arguments at the hearing.

ISSUES

The issue, as framed by the preliminary ruling, is whether the employer refused to bargain in violation of RCW 41.56.140(4) [and if so commit derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed by refusing to provide information to the union concerning union grievances.

Based on the record presented, the union failed to meet its burden of proving that the employer refused to bargain through its handling of the union's information request.

BACKGROUND

The union represents numerous employer bargaining units, including a bargaining unit of Public Health Administrative Support Supervisors (PHASSes) employed by the employer's Department of Public Health and Department of Community and Health Services (CHS). Their most recent collective bargaining agreement at the time the unfair labor practice was filed was in effect from January 1, 2018, through December 31, 2020. Denise Cobden served as the union representative for the bargaining unit during the relevant time period.

Union Grievances and Information Request

On August 14, 2018, the employer allegedly made several changes related to staffing at its Kent health clinics that affected the number of staff supervised by PHASS Raye DeWolfe-Molesky. The union filed a grievance at some point in 2018 regarding the changes (the union's "body-of-work grievance").

On October 5, 2018, Area Manager Anne Shinoda-Mettler issued a written reprimand to DeWolfe-Molesky for "inappropriate email communications." The union grieved the reprimand ("disciplinary grievance").

On November 9, 2018, Cobden sent an information request letter to the employer's Senior Labor Negotiator Andre Chevalier. The seven-part information request sought documents related to both the body-of-work grievance and the disciplinary grievance:

1. All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) supporting the decision to eliminate an [Administrative Specialist II] FTE from Kent.

2. All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) regarding the decisions behind removing the PHASS supervision of the [Health Program Assistant I] with dual reporting duties at Kent School Based Health Clinic (KPA) and Kent East Hill Public Health, and transferring that supervision to a [Personal Health Services Supervisor].

3. All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) regarding the decisions behind reducing the [Health Program Assistant I] with dual reporting duties at Kent School Based Health Clinic (KPA) and Kent East Hill Public Health from 40 hours/week to 24 hours/week, completely eliminating the [Administrative Specialist III] support provided to the Kent East Hill Site.

4. All emails between any of the following parties between January, 2017 to present regarding the Kent Administrative Support staffing, Kent School Based Health Clinic (KPA) staffing and operations, all concerns surrounding staff that report to Raye DeWolfe-Molesky during that timeframe or regarding Raye DeWolfe-Molesky. The parties are as follows:

Tina Abbott	Anne Shinoda-Mettler
Alex Golan	Juan Padilla
Jerry DeGrieck	

5. All investigation notes, emails, documents and case files regarding the written reprimand of Raye DeWolfe-Molesky from any party(ies) involved in any way with this action.

6. All other employees who have received any discipline of any kind for the same alleged violation surrounding the above written warning.

7. Any other information related to the discipline.

At the time of the information request, the body-of-work grievance was pending at step 3 of the parties' grievance procedure, and the disciplinary grievance was pending at step 1.[1] Cobden requested that the information be provided within two weeks.

Employer Responses and Subsequent Communications

No evidence was presented at hearing to show what the employer's initial response was upon receiving the union's information request.

Generally, the union contends that after November 9, 2018, a painful pattern of back-and-forth communications ensued regarding the union's information requests. Cobden testified broadly that

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[1] There are four steps to the grievance process outlined in the parties' collective bargaining agreement, the fourth step being arbitration.

she had a months-long interactive debate with Chevalier regarding what information the union needed, what information was relevant to the union's needs, which documents the employer had and had not provided, and why further information should be provided. DeWolfe-Molesky also testified generally that there were "lots of phone conversations" between Cobden and employer representatives regarding the information requests. However, the union failed to substantiate this alleged pattern with specific evidence beyond a small handful of events. Meanwhile, the union's grievance timelines remained paused, and the employer produced numerous installments of documents in response to the union's request.

The specific events that I can find occurred by a preponderance of the evidence are as follows:

Late 2018: Employer Furnished Some Documents

At some point in late 2018, Chevalier provided approximately 50 hard-copy pages of documents to Cobden in response to the union's information request. Chevalier obtained these documents from Alex Golan in CHS Human Resources. It is not clear from the record what was specifically contained in the documents.[2]

Chevalier also enlisted an administrative staffer from the Office of Labor Relations, Dylan Seitz, to assist him in continuing to compile records responsive to the union's request. There was some evidence that Seitz was in contact with human resources and management officials inside CHS to obtain additional documents.

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[2] The union did not enter any of the documents that it received from the employer in response to the information request into evidence. The employer offered four sets of documents totaling 964 pages. It is not clear from the record whether this comprises the full volume of documents the employer provided the union, which documents were furnished when, or whether all of the documents were provided before the union filed the unfair labor practice claim. It is not clear if the hard-copy documents provided in late 2018 are contained within the 964 pages. It appears from review that many of the documents contained in the employer's exhibits relate to DeWolfe-Molesky's employment, her communications, and staff that reported to her or interacted with her. For example, it is clear that some portion of the documents relate to a county whistleblower investigation initiated by DeWolfe-Molesky. However, neither side offered evidence at hearing to establish by a preponderance how the sum total of documents furnished before the unfair labor practice filing compared to the various subparts of the union's request.

January 28, 2019: Chevalier's Email to Cobden

On January 28, 2019, Chevalier sent Cobden an email regarding the union's request and pending grievances. Chevalier stated that he had discussed parts one through four of the information request with CHS representatives and that "many of the topics inquired about were primarily or exclusively discussed by management representatives over the phone or through meetings rather than through email or other electronic documentation." Chevalier stated that the employer had, therefore, created a document with narrative responses explaining "the rationale behind the management actions at issue" in the body-of-work grievance. He attached that document, which consisted of one to five paragraphs of narrative explanation related to each decision at issue in parts one through four of the information request.[3]

In the email, Chevalier also contended that the employer saw the union's body-of-work grievance as deficient because it failed to allege anything that constituted a violation of either the collective bargaining agreement or a 2017 memorandum of understanding referenced in the grievance. Chevalier asked Cobden to respond and let the employer know if the union intended to move forward with the grievance in light of the new information provided in the employer's narrative document and the alleged deficiency of the grievance. Chevalier indicated that if the union did not respond, the employer would presume the grievance resolved.

Finally, Chevalier stated that the employer would continue searching for documents responsive to the union's information request and confirmed that the disciplinary grievance timeline remained paused while the employer gathered responsive documents.

January–Early May 2019: No Response from Union; Employer Furnished More Documents

It is undisputed that the union did not respond to Chevalier's January 28 email or follow up on its information request at all for over three months. The union explained the gap at hearing through

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[3] At hearing, Chevalier testified that he thought this type of response would be more substantive than "essentially a pile of Outlook meeting invites." Neither side followed up on this remark to develop evidence whether Outlook meeting invites were actually searched for, existed, or were offered to the union. The union did not argue that the employer's failure to offer it Outlook meeting invites for the alleged meetings at which the decisions were discussed was deficient.

testimony that Cobden and DeWolfe-Molesky had difficulty synching schedules to meet up and review the documents furnished by the employer. The employer provided at least one additional installment of documents in response to the union's information request before the parties next communicated on May 7, 2019.

May 7–8, 2019: Phone Call and Emails

Between May 7–8, 2019, the union and employer had additional communications regarding the information request. Cobden testified that once she and DeWolfe-Molesky had reviewed the employer's responses, she reached out to Chevalier and to tell him that she "felt like there was more information out there . . . that was not produced" by the employer. Cobden believed she had reached out via email. It appears from Chevalier's testimony and the content of the emails that the parties had a phone call first, followed by an exchange of emails summarizing each side's perspective. The emails were the only specific evidence of the substance of the exchange.

Chevalier's May 7 email stated that, given the union's lack of response to Chevalier's email, he had been under the assumption the union considered the body-of-work grievance resolved and that the union had accepted the information the employer previously provided as sufficient to satisfy its concerns. He stated that Seitz had been following up with CHS for any other "helpful responsive [documents]" related to parts one through four of the union's request and that the employer believed documents responsive to parts five through seven had also been provided.

Chevalier asked that if Cobden believed the employer's responses to the union's information requests were "insufficient to fulfill your duties under the collective bargaining agreement please let me know what additional information you believe is needed and how it is intended to support your collective bargaining duties." Chevalier reiterated concerns about the lack of clarity in the union's body-of-work grievance regarding which parts of the collective bargaining agreement or memorandum of understanding were allegedly violated and asserted that he was "unsure what practical benefit" would come from the union contesting the alleged changes at that time, when a total program restructure was allegedly going to occur effective January 1, 2020.

On May 8, 2019, Cobden responded to Chevalier's email and stated that the union saw deficiencies in the employer's response to the information request:

> As I had verbally informed you, Ms. DeWolfe-Molesky and myself have been reviewing the information you provided, but identified that it was only partially responsive to item 5. We have not yet had the opportunity to review the most recent information sent by [the employer] yesterday, but that response is only partially responsive to the request.

Cobden stated that the union "disagree[d] with the attached management response" and that the union would be filing an unfair labor practice regarding the information requests.[4] In response to Chevalier's request that Cobden identify any additional information outstanding from the employer's information request responses and why the information was needed, Cobden asserted only that "the entire request is relevant to adequately representing our union contract for both grievances." She offered to "discuss deficiencies in the information request response with [the employer] including answering [its] questions and highlighting information not present in [its] response," however.

Finally, Cobden disputed that the body-of-work grievance should be closed because of her lack of response to Chevalier's January 28 email and stated, "We can discuss and will explain more about our grievance at the Step 3 meeting once we receive the relevant information."

May 8—August 6, 2019: No Communications

The record is hazy again for another three months, until August 6, 2019. Chevalier testified that perhaps "[t]here may have been some email or phone discussion" during that time, but neither

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[4] Cobden did not testify to what she meant when she wrote that the union "disagree[d] with the attached management response." Chevalier testified that he was "[n]ot exactly" sure what Cobden meant either.

party offered specific evidence of any communications. It is also unclear if the employer furnished further documents during that time.[5]

August 6, 2019: Cobden's Email to Chevalier and Chevalier's Response

On August 6, 2019, Cobden sent an email to Chevalier. It stated, in relevant part:

> As you know, we filed an information request for Ms. DeWolfe-Molesky in November 2018. I had been working with your office to attempt to gather information which would be responsive to the two pending grievances that we have filed on behalf of Ms. DeWolfe-Molesky. Instead of working with us on this issue, your office and Public Health Management has continued to obstruct our ability to obtain this information. PROTEC17 needs this information in order to properly represent Ms. DeWolfe-Molesky and evaluate violations of the collective bargaining agreement. Indeed we are entitled to this information pursuant to RCW 41.56. Although you have provided a partial response to this information, I would like to outline one more time what information we are missing which is keeping us from proceeding with Ms. DeWolfe-Molesky's grievances. It is outlined below. We expect to receive all responses to this information by Friday, August 9th. I think I have been more than generous in working with you on this issue. If I do not receive a complete copy of all requests by this date, we will proceed with a PERC Unfair Labor Practice.

Cobden then listed out the seven subparts of the union's information request and wrote "[n]ot responded to in any form" by parts one through four, six, and seven and "[o]nly partially responded to" by part five. Cobden's email also listed, in bullet format, five "additional requests" that the union allegedly made "after the first documents were received" that Cobden claimed were not responded to either.[6]

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[5] The parties submitted their documentary evidence in electronic format. The employer gave its exhibit E-3 the descriptive file name "Documents provided 5.31.18" and its exhibit E-4 the descriptive file name "Documents provided 6.25.18." The documents were admitted by stipulation at the start of the hearing, and no testimony was offered to allow me to determine specifically when the documents were furnished and whether the ".18" dates in the file names were in error.

[6] If those additional requests had, in fact, been transmitted by the union to the employer before August 6, 2019, neither side offered evidence of it at hearing beyond this single hearsay statement in Cobden's email. The union did not mention the alleged follow-up requests in its closing argument as a basis for its claim.

Cobden did not testify to why she believed only part five of the information request had been responded to at that point. She testified generally that she believed the employer was "making an effort to try to fulfill [the union's] information requests" and "do their due diligence" but that "there was just something missing" in the employer's responses. Chevalier testified that Cobden's August 6 email "did not make sense to [him]," particularly in its allegation that the employer had not responded in any way to six of the seven parts of the union's information request. Chevalier testified that the employer had provided the union with "hundreds of pages of documents" responsive to its information requests at that point.

After receiving Cobden's email, Chevalier scheduled a meeting with Cobden, DeWolfe-Molesky, and others from the employer side "to gather all the players involved -- or most of them into one room so that [the parties] could get off . . . email correspondence" and substantively discuss each side's understandings of the status of the information requests. The meeting was to occur August 22, 2019. Chevalier wrote that he hoped the meeting would result in an understanding that the employer had made a "good faith effort to provide all responsive materials" and accordingly, that the employer would be "interested in scheduling the [next] grievance meeting[s] without further delay." Before the meeting took place, however, the union filed this unfair labor practice complaint on August 21, 2019.[7]

Union's Disposition of Grievances

There was testimony that, after the filing of the unfair labor practice claim, the union withdrew its grievances and did not pursue them to arbitration. Cobden testified that she felt that information she did not find in the employer's responses may have aided her grievance investigations. For example, Cobden testified that, "having email communication or written communication

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[7] Both parties offered unobjected evidence regarding the substance of the August 22, 2019, meeting and other subsequent events. My jurisdiction is limited to considering whether the employer's actions within the six months preceding the filing of the union's complaint constituted an unfair labor practice. RCW 41.56.160(1). To the extent that I consider evidence that postdates the union's complaint, it is for the limited purpose of analyzing the effect, if any, of the employer's conduct during the timely period on the union's ability to handle its grievances—not whether any post-complaint conduct violated the law. *Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016).

documenting the analysis, thought process, and decision making on both transferring that work away from Raye at the school-based health clinic in Kent as well as information around why they felt that that particular communication from Raye to Anne Shinoda-Mettler merited a written warning," would have been beneficial to the union. It is not clear if any such documents existed.

DeWolfe-Molesky, likewise, testified that she believed responsive documents existed that were not furnished. She testified that she possessed documents that she believed were responsive to the union's request that the employer had never provided. DeWolfe-Molesky also offered opinion testimony based on her years of experience with the employer and "what it takes to make these kind of decisions" that further responsive emails should have existed. However, the union offered no examples at hearing of any such responsive documents in its possession, nor is there evidence that before the date that the unfair labor practice complaint was filed, the union or DeWolfe-Molesky brought any such documents to the employer's attention to clarify the scope or focus of the union's information requests. Though the main employer representative who handled the information request, Chevalier, testified at hearing, the union posed no cross-examination questions of Chevalier to elicit evidence about the employer's understanding of what types of documents the union was seeking, the scope of the employer's search efforts, or the existence of additional documents not produced.

Cobden further testified that she felt pressure to proceed with the grievances without resolving the union's information request; however, she agreed that she made no efforts to protest moving forward when the employer sought to schedule the next grievance step meetings after the parties' August 22 meeting. The only evidence of employer action to compel the union to proceed with its grievances is Chevalier's August email stating that the employer was "interested in" moving forward "without further delay."

ANALYSIS

Applicable Legal Standards

Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Facts or evidence that occurred prior to the six-month statute of limitations period can serve as relevant background information, even though those facts or evidence may not form the basis of a violation. *See City of Bellingham*, Decision 10907-A (PECB, 2012) (citing *City of Seattle*, Decision 5930 (PECB, 1997)). Post-complaint evidence is neither inherently inadmissible nor inherently admissible and may have relevance in some cases. *Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016).

Burden of Proof

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof all lie with the complainant. WAC 391-45-270(1)(a); *City of Seattle*, Decision 8313-B (PECB, 2004). This burden of proof requires the complainant to show, by a preponderance of the evidence, that the respondent has committed the complained-of unfair labor practice. *Whatcom County*, Decision 8512-A (PECB, 2005).

Duty to Provide Information

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); *Island County*, Decision 11946-A (PECB, 2014).

In evaluating information requests, the Commission considers whether the requested information appears reasonably necessary for the performance of the union's function as bargaining representative. *City of Bellevue*, Decision 4324-A (PECB, 1994). Failure to provide relevant information upon request constitutes an unfair labor practice for refusal to bargain. *University of Washington*, Decision 11414-A (PSRA, 2013); *Island County*, Decision 11946-A.

Delay in providing necessary information can constitute an unfair labor practice. *City of Seattle*, Decision 10249 (PECB, 2008), *remedy aff'd*, 10249-A (PECB, 2009); *Fort Vancouver Regional Library (Washington Public Employees Association)*, Decision 2350-C (PECB, 1988). Neither the Commission nor the National Labor Relations Board adopts a bright-line rule defining how quickly a party must respond to a request for information. The examiners in the cases cited above looked to several factors to determine whether a delay in providing information was an unfair labor practice. Such factors include the preparation time required for response, the impact of the delay to the party requesting the information, and whether the party responding to the request intended to delay or obstruct the process.

Communication is also essential to fulfilling the obligation to provide information. Upon receiving a relevant information request, the receiving party must provide the requested information or engage in negotiations about the information request. *City of Yakima*, Decision 10270-B (PECB, 2011); *Seattle School District*, Decision 9628-A (PECB, 2008); *Port of Seattle*, Decision 7000-A (PECB, 2000). If the party receiving the information request believes the information request is not relevant or unclear, the receiving party has a duty to convey its concerns and questions to the requesting party in a timely fashion. *Pasco School District*, Decision 5384-A (PECB, 1996).

The obligation to communicate about the information request continues once the responding party begins gathering responsive information. The responding party must communicate with the requesting party to ensure that the information being gathered is the type of information that has been requested. *Kitsap County*, Decision 9326-B (PECB, 2010) (citing *City of Seattle*, Decision 10249, *remedy aff'd*, Decision 10249-A.

The requesting party also has a responsibility to communicate. After receiving a response, if the requesting party does not believe the information provided sufficiently responds to the original request, the requesting party has a duty to contact the responding party and engage in meaningful discussions about what type of information the requestor is seeking. *Kitsap County*, Decision 9326-B; *Island County*, Decision 11946-A.

The duty to provide information does not compel a party to create records that do not exist; however, a party does have an obligation to make a reasonable good faith effort to locate the information requested. *Kitsap County*, Decision 9326-B (citing *Seattle School District*, Decision 9628-A).

Application of Standards

Statute of Limitations

Because the union filed its unfair labor practice complaint on August 21, 2019, my decision is limited to considering whether the employer's actions between February 21, 2019, and August 21, 2019, constituted an unfair labor practice. RCW 41.56.160(1).

Merits of Union's Theories

Unfair labor practice complaints are not self-proving. The complainant in an unfair labor practice case bears the burden of presenting evidence that shows, by a preponderance, that unlawful conduct occurred. The record in this case leaves many unanswered questions. Accordingly, the union has not met its burden of proving that the employer engaged in unlawful delay in its production of documents or that it failed to produce responsive documents.

The union argued several theories of the case: that the employer's responses were insufficiently timely, dragged out, and only produced through the union's alleged prodding across a span of months, and that the employer failed to produce relevant, responsive information. A critical defect in the union's case overall was its failure to pin down and summarize the documents that it had received from the employer by the date its unfair labor practice complaint was filed. The employer offered over nine hundred pages of documents allegedly produced to the union at some point in time; the union failed to take the time in its case presentation to clearly explain which documents

it received (and when) and to present evidence of how the documents received by the date of its complaint compared to the subparts of the union's request. *See Island County*, Decision 11946-A (finding union that presented extensive record of information request documents but did not provide "cogent breakdown" of how information was non-responsive or articulate responsive documents withheld by employer failed to prove violation).

Delay in Providing Information and Communication between the Parties

The union's articulation of this theory touches upon two related duties: the duty of the employer to provide requested information in a timely manner and the mutual duty to communicate about information requests. The union argued that there was a pattern following the union's submission of its request in which, "[t]he county would provide some materials, the union would review them, communicate [they were] not sufficient, explain the reasons why. Some time would elapse and the same process would repeat itself." The union further argued that this pattern occurred across a span of months, dragging out the employer's information request responses and resulting in the union considering further discussion with the employer "futile."

The gaps in the record regarding the employer's document productions present a significant challenge to finding for the union on its delay theory. The union did not argue that the fact that the employer's production of documents spanned some months (instead of just the two weeks originally requested by Cobden) constituted an unlawful delay. Instead, the union acknowledged the Commission's precedent indicating that the circumstances surrounding the request and responses should be considered to determine reasonableness, such as the preparation required for a response, the impact of any delay on the responding party, and evidence of intent to obstruct or delay. *City of Seattle*, Decision 10249, *remedy aff'd*, 10249-A; *Fort Vancouver Regional Library*, Decision 2350-C.

It is clear from the record that, at some point, the union came to *believe* the employer was engaging in delay. However, as the union failed to present a cogent accounting of the volume, timing, and contents of the employer's information request responses, I can only piece together by a preponderance some of the facts related to the timeline. The record established that the employer produced approximately 50 hard-copy pages before the start of the timely period—though not the

contents of those 50 pages. There is no dispute that the employer created and furnished a summary document in late January 2019, explaining the bases for its decisions underlying parts one through four of the union's request, as those decisions had apparently been discussed in live meetings rather than through correspondence.[8] The union did not dispute the employer's evidence that it produced an additional installment of documents some months later in the spring of 2019. The specific contents of that installment were, again, not clearly established by the record. Chevalier testified that by August 2019 the employer had produced "hundreds" of pages of documents to the union, and indeed, the employer entered 964 pages into the record—though, unfortunately, neither side offered evidence to clearly establish which documents were provided when and whether all had been provided by the time the union filed its complaint.

In some contexts, the mere fact that the employer's production of documents spanned months may suffice to prove a violation. But here, it is undisputed that both union grievances remained paused by agreement until after the union's complaint was filed (despite Chevalier's January 28, 2019, statement that the employer would consider the union's body-of-work grievance resolved if it did not hear from the union further). The union offered no evidence that it made any attempt to follow up on the information request before May 2019. It failed to present evidence substantiating a months-long, interactive debate between Cobden and Chevalier with "lots of phone conversations" in which the union affirmatively discussed what information it needed and why it was needed. Nor did the union walk the employer through its assessment of the employer's responses and identify types of documents that were still outstanding, etc. in an attempt to prod the employer to search for more documents.

The evidence the union offered at hearing instead reflected a single phone call between the parties in May 2019, and even then, evidence of the call's contents was limited. Cobden testified merely that she told Chevalier she "felt like there was more information out there . . . that was not produced." Her May 8, 2019, follow-up email offered a limited hearsay account of other statements

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[8] The employer was not obligated to fashion a new document where no responsive documents existed, but nor is there evidence that doing so was somehow unlawful. *Island County*, Decision 11946-A; *Kitsap County*, Decision 9326-B.

including that she and DeWolfe-Molesky were still reviewing the employer's responses and that the responses appeared "only partially responsive to item 5." Chevalier invited Cobden in his May 7, 2019, email to articulate any types of information the union was still seeking that it considered outstanding and to say why the information was relevant to the union; the evidence does not show that Cobden took the opportunity to respond with meaningful explanation, retorting only that "the entire request is relevant to adequately representing our union contract for both grievances." *Kitsap County*, Decision 9326-B; *Island County*, Decision 11946-A (establishing requesting party has duty to engage in meaningful discussion about its requests).

The one time when the employer may have wavered in its communication duty was following Cobden's May 8 email, in which Cobden—despite the less-than-helpful statements above—nonetheless invited Chevalier to contact her again to talk through the union's information needs. There is no evidence that Chevalier took up Cobden's offer, and a lull in the parties' communications followed. Considering the totality of the circumstances, including the unhurried pace at which the union was communicating with the employer,[9] the lack of articulation of harm to the union, and Chevalier's subsequent efforts to bring the parties together offline in August to break the communications impasse and meaningfully talk through their understandings of the information request, I find Chevalier's conduct between May and August insufficient to amount to a violation.

On the whole, Cobden agreed that Chevalier and the employer's Human Resources department were "trying to do their due diligence" and "making an effort to try to fulfill [the union's] information requests" but that "there was just something missing." In view of the totality of the record, I do not find that the union has met its burden to establish a violation.

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[9] It was conspicuous that the employer's three-month communication gap between May and August came directly on the heels of a matching three-month communication gap by the union between late January and May, following Chevalier's January 28, 2019, email requesting clarifications about the union's grievance.

Failure to Provide Responsive Documents

The union also failed to prove the existence of any withheld responsive documents. The union seemed to rely on a few pieces of broad-brush testimony to support this theory: Cobden's testimony that there was "something missing" from the employer's responses and about types of documents she would have ideally liked to find to bolster the union's grievance cases; testimony from DeWolfe-Molesky stating that she had documents in her own possession that she considered responsive to the information request but were not provided by the employer; and opinion testimony from DeWolfe-Molesky that, based on "what it takes to make [the] kind of decisions" at issue in the grievances, more documents ought to have existed. The union also suggested that the disposition of the grievances (i.e., the facts that the union's grievances were denied by the employer and the union elected not to take them to arbitration) was proof that the union was denied documents.

To meet its burden, the union needed to provide more: more specificity about what the "something missing" from the employer's responses was and some evidence that that "something" existed. *Island County*, Decision 11946-A. For example, if DeWolfe-Molesky had access to documents or knowledge of documents that the union believed were responsive to its request that were being withheld, in addition to communicating that information to the employer and trying to direct the employer's search efforts before filing an unfair labor practice claim, those documents—or perhaps even detailed testimony about them—could have been offered as evidence. The union also declined the opportunity to cross-examine Chevalier and probe any deficiencies in the employer's search efforts or its withholding of documents. The union simply did not make its case.

CONCLUSION

The union failed to prove the allegations in its complaint. The complaint is dismissed.

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. PROTEC17 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents numerous employer bargaining units, including a bargaining unit of Public Health Administrative Support Supervisors (PHASSes) employed by the employer's Department of Public Health and Department of Community and Health Services (CHS). Their most recent collective bargaining agreement at the time the unfair labor practice was filed was in effect from January 1, 2018, through December 31, 2020. Denise Cobden served as the union representative for the bargaining unit during the relevant time period.

4. On August 14, 2018, the employer allegedly made several changes related to staffing at its Kent health clinics that affected the number of staff supervised by PHASS Raye DeWolfe-Molesky. The union filed a grievance at some point in 2018 regarding the changes (the union's "body-of-work grievance").

5. On October 5, 2018, Area Manager Anne Shinoda-Mettler issued a written reprimand to DeWolfe-Molesky for "inappropriate email communications." The union grieved the reprimand ("disciplinary grievance").

6. On November 9, 2018, Cobden sent an information request letter to the employer's Senior Labor Negotiator Andre Chevalier. The seven-part information request sought documents related to both the body-of-work grievance and the disciplinary grievance:

> All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) supporting the decision to eliminate an [Administrative Specialist II] FTE from Kent.
>
> All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) supporting the decision to eliminate an [Administrative Specialist II] FTE from Kent.
>
> All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) regarding the decisions behind removing the PHASS supervision of the [Health Program Assistant I] with dual reporting duties at Kent School Based Health Clinic

> (KPA) and Kent East Hill Public Health, and transferring that supervision to a [Personal Health Services Supervisor].
>
> All relevant information and data (emails, meetings, memos, spreadsheets, raw data, or any other documents or information) regarding the decisions behind reducing the [Health Program Assistant I] with dual reporting duties at Kent School Based Health Clinic (KPA) and Kent East Hill Public Health from 40 hours/week to 24 hours/week, completely eliminating the [Administrative Specialist III] support provided to the Kent East Hill Site.
>
> All emails between any of the following parties between January, 2017 to present regarding the Kent Administrative Support staffing, Kent School Based Health Clinic (KPA) staffing and operations, all concerns surrounding staff that report to Raye DeWolfe-Molesky during that timeframe or regarding Raye DeWolfe-Molesky. The parties are as follows:
>
> | | |
> |---|---|
> | Tina Abbott | Anne Shinoda-Mettler |
> | Alex Golan | Juan Padilla |
> | Jerry DeGrieck | |
>
> All investigation notes, emails, documents and case files regarding the written reprimand of Raye DeWolfe-Molesky from any party(ies) involved in any way with this action.
>
> All other employees who have received any discipline of any kind for the same alleged violation surrounding the above written warning.
>
> Any other information related to the discipline.

7. At the time of the information request, the body-of-work grievance was pending at step 3 of the parties' grievance procedure, and the disciplinary grievance was pending at step 1. Cobden requested that the information be provided within two weeks.

8. No evidence was presented at hearing to show what the employer's initial response was upon receiving the union's information request.

9. Generally, the union contends that after November 9, 2018, a painful pattern of back-and-forth communications ensued regarding the union's information requests. Cobden testified broadly that she had a months-long interactive debate with Chevalier regarding what information the union needed, what information was relevant to the union's needs, which documents the employer had and had not provided, and why further

information should be provided. DeWolfe-Molesky also testified generally that there were "lots of phone conversations" between Cobden and employer representatives regarding the information requests. However, the union failed to substantiate this alleged pattern with specific evidence beyond a small handful of events. Meanwhile, the union's grievance timelines remained paused, and the employer produced numerous installments of documents in response to the union's request.

10. At some point in late 2018, Chevalier provided approximately 50 hard-copy pages of documents to Cobden in response to the union's information request. Chevalier obtained these documents from Alex Golan in CHS Human Resources. It is not clear from the record what was specifically contained in the documents.

11. The union did not enter any of the documents that it received from the employer in response to the information request into evidence. The employer offered four sets of documents totaling 964 pages. It is not clear from the record whether this comprises the full volume of documents the employer provided the union, which documents were furnished when, or whether all of the documents were provided before the union filed the unfair labor practice claim. It is not clear if the hard-copy documents provided in late 2018 are contained within the 964 pages. It appears from review that many of the documents contained in the employer's exhibits relate to DeWolfe-Molesky's employment, her communications, and staff that reported to her or interacted with her. For example, it is clear that some portion of the documents relate to a county whistleblower investigation initiated by DeWolfe-Molesky. However, neither side offered evidence at hearing to establish by a preponderance how the sum total of documents furnished before the unfair labor practice filing compared to the various subparts of the union's request.

12. Chevalier also enlisted an administrative staffer from the Office of Labor Relations, Dylan Seitz, to assist him in continuing to compile records responsive to the union's request. There was some evidence that Seitz was in contact with human resources and management officials inside CHS to obtain additional documents.

13. On January 28, 2019, Chevalier sent Cobden an email regarding the union's request and pending grievances. Chevalier stated that he had discussed parts one through four of the information request with CHS representatives and that "many of the topics inquired about were primarily or exclusively discussed by management representatives over the phone or through meetings rather than through email or other electronic documentation." Chevalier stated that the employer had, therefore, created a document with narrative responses explaining "the rationale behind the management actions at issue" in the body-of-work grievance. He attached that document, which consisted of one to five paragraphs of narrative explanation related to each decision at issue in parts one through four of the information request.

14. In the email, Chevalier also contended that the employer saw the union's body-of-work grievance as deficient because it failed to allege anything that constituted a violation of either the collective bargaining agreement or a 2017 memorandum of understanding referenced in the grievance. Chevalier asked Cobden to respond and let the employer know if the union intended to move forward with the grievance in light of the new information provided in the employer's narrative document and the alleged deficiency of the grievance. Chevalier indicated that if the union did not respond, the employer would presume the grievance resolved.

15. Finally, Chevalier stated that the employer would continue searching for documents responsive to the union's information request and confirmed that the disciplinary grievance timeline remained paused while the employer gathered responsive documents.

16. It is undisputed that the union did not respond to Chevalier's January 28 email or follow up on its information request at all for over three months. The union explained the gap at hearing through testimony that Cobden and DeWolfe-Molesky had difficulty synching schedules to meet up and review the documents furnished by the employer. The employer provided at least one additional installment of documents in response to the union's information request before the parties next communicated on May 7, 2019.

17. Between May 7–8, 2019, the union and employer had additional communications regarding the information request. Cobden testified that once she and DeWolfe-Molesky had reviewed the employer's responses, she reached out to Chevalier and to tell him that she "felt like there was more information out there . . . that was not produced" by the employer. Cobden believed she had reached out via email. It appears from Chevalier's testimony and the content of the emails that the parties had a phone call first, followed by an exchange of emails summarizing each side's perspective. The emails were the only specific evidence of the substance of the exchange.

18. Chevalier's May 7 email stated that, given the union's lack of response to Chevalier's email, he had been under the assumption the union considered the body-of-work grievance resolved and that the union had accepted the information the employer previously provided as sufficient to satisfy its concerns. He stated that Seitz had been following up with CHS for any other "helpful responsive [documents]" related to parts one through four of the union's request and that the employer believed documents responsive to parts five through seven had also been provided.

19. Chevalier asked that if Cobden believed the employer's responses to the union's information requests were "insufficient to fulfill your duties under the collective bargaining agreement please let me know what additional information you believe is needed and how it is intended to support your collective bargaining duties." Chevalier reiterated concerns about the lack of clarity in the union's body-of-work grievance regarding which parts of the collective bargaining agreement or memorandum of understanding were allegedly violated and asserted that he was "unsure what practical benefit" would come from the union contesting the alleged changes at that time, when a total program restructure was allegedly going to occur effective January 1, 2020.

20. On May 8, 2019, Cobden responded to Chevalier's email and stated that the union saw deficiencies in the employer's response to the information request:

> As I had verbally informed you, Ms. DeWolfe-Molesky and myself have been reviewing the information you provided, but identified that it was only

> partially responsive to item 5. We have not yet had the opportunity to review the most recent information sent by [the employer] yesterday, but that response is only partially responsive to the request.

21. Cobden stated that the union "disagree[d] with the attached management response" and that the union would be filing an unfair labor practice regarding the information requests.

22. In response to Chevalier's request that Cobden identify any additional information outstanding from the employer's information request responses and why the information was needed, Cobden asserted only that "the entire request is relevant to adequately representing our union contract for both grievances." She offered to "discuss deficiencies in the information request response with [the employer] including answering [its] questions and highlighting information not present in [its] response," however.

23. Finally, Cobden disputed that the body-of-work grievance should be closed because of her lack of response to Chevalier's January 28 email and stated, "We can discuss and will explain more about our grievance at the Step 3 meeting once we receive the relevant information."

24. The record is hazy again for another three months, until August 6, 2019. Chevalier testified that perhaps "[t]here may have been some email or phone discussion" during that time, but neither party offered specific evidence of any communications. It is also unclear if the employer furnished further documents during that time.

25. On August 6, 2019, Cobden sent an email to Chevalier. It stated, in relevant part:

> As you know, we filed an information request for Ms. DeWolfe-Molesky in November 2018. I had been working with your office to attempt to gather information which would be responsive to the two pending grievances that we have filed on behalf of Ms. DeWolfe-Molesky. Instead of working with us on this issue, your office and Public Health Management has continued to obstruct our ability to obtain this information. PROTEC17 needs this information in order to properly represent Ms. DeWolfe-Molesky and evaluate violations of the collective bargaining agreement. Indeed we are entitled to this information pursuant to RCW 41.56. Although you have provided a partial response to this information, I would like to outline one more

> time what information we are missing which is keeping us from proceeding with Ms. DeWolfe-Molesky's grievances. It is outlined below. We expect to receive all responses to this information by Friday, August 9th. I think I have been more than generous in working with you on this issue. If I do not receive a complete copy of all requests by this date, we will proceed with a PERC Unfair Labor Practice.

26. Cobden then listed out the seven subparts of the union's information request and wrote "[n]ot responded to in any form" by parts one through four, six, and seven and "[o]nly partially responded to" by part five. Cobden's email also listed, in bullet format, five "additional requests" that the union allegedly made "after the first documents were received" that Cobden claimed were not responded to either.

27. Cobden did not testify to why she believed only part five of the information request had been responded to at that point. She testified generally that she believed the employer was "making an effort to try to fulfill [the union's] information requests" and "do their due diligence" but that "there was just something missing" in the employer's responses. Chevalier testified that Cobden's August 6 email "did not make sense to [him]," particularly in its allegation that the employer had not responded in any way to six of the seven parts of the union's information request. Chevalier testified that the employer had provided the union with "hundreds of pages of documents" responsive to its information requests at that point.

28. After receiving Cobden's email, Chevalier scheduled a meeting with Cobden, DeWolfe-Molesky, and others from the employer side "to gather all the players involved -- or most of them into one room so that [the parties] could get off . . . email correspondence" and substantively discuss each side's understandings of the status of the information requests. The meeting was to occur August 22, 2019. Chevalier wrote that he hoped the meeting would result in an understanding that the employer had made a "good faith effort to provide all responsive materials" and accordingly, that the employer would be "interested in scheduling the [next] grievance meeting[s] without further delay." Before

the meeting took place, however, the union filed this unfair labor practice complaint on August 21, 2019.

29. There was testimony that, after the filing of the unfair labor practice claim, the union withdrew its grievances and did not pursue them to arbitration. Cobden testified that she felt that information she did not find in the employer's responses may have aided her grievance investigations. For example, Cobden testified that, "having email communication or written communication documenting the analysis, thought process, and decision making on both transferring that work away from Raye at the school-based health clinic in Kent as well as information around why they felt that that particular communication from Raye to Anne Shinoda-Mettler merited a written warning," would have been beneficial to the union. It is not clear if any such documents existed.

30. DeWolfe-Molesky, likewise, testified that she believed responsive documents existed that were not furnished. She testified that she possessed documents that she believed were responsive to the union's request that the employer had never provided. DeWolfe-Molesky also offered opinion testimony based on her years of experience with the employer and "what it takes to make these kind of decisions" that further responsive emails should have existed. However, the union offered no examples at hearing of any such responsive documents in its possession, nor is there evidence that before the date that the unfair labor practice complaint was filed, the union or DeWolfe-Molesky brought any such documents to the employer's attention to clarify the scope or focus of the union's information requests.

31. Though the main employer representative who handled the information request, Chevalier, testified at hearing, the union posed no cross-examination questions of Chevalier to elicit evidence about the employer's understanding of what types of documents the union was seeking, the scope of the employer's search efforts, or the existence of additional documents not produced.

32. Cobden further testified that she felt pressure to proceed with the grievances without resolving the union's information request; however, she agreed that she made no efforts to protest moving forward when the employer sought to schedule the next grievance step

meetings after the parties' August 22 meeting. The only evidence of employer action to compel the union to proceed with its grievances is Chevalier's August email stating that the employer was "interested in" moving forward "without further delay."

CONCLUSIONS OF LAW

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

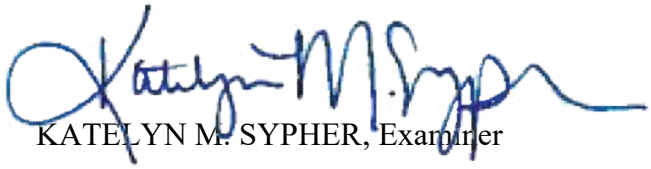
2. By the actions described in findings of fact 4–32, the union failed to prove that the employer refused to bargain with the union's designated representative in violation of RCW 41.56.140(4), and derivatively, RCW 41.56.140(1).

ORDER

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

ISSUED at Olympia, Washington, this 19th day of May, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATELYN M. SYPHER, 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 05/19/2022

DECISION 13514 - PECB 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 132052-U-19

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