

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOWN OF FRIDAY HARBOR,  Employer.	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES,  Complainant,	CASE 134585-U-21
vs.	DECISION 13500-A - PECB
GUILD OF PACIFIC NORTHWEST EMPLOYEES,  Respondent.	DECISION OF COMMISSION

*Ed Stemler*, General Counsel, and *Joseph Downes*, Staff Representative, for the Washington State Council of County and City Employees.

*Dean Tharp*, Staff Representative, for the Guild of Pacific Northwest Employees.

The Washington State Council of County and City Employees and its affiliated Local 1849F (WSCCCE) represent a wall-to-wall bargaining unit of employees at the Town of Friday Harbor (employer). On October 4, 2021, the Guild of Pacific Northwest Employees (Guild) filed a petition to represent the bargaining unit. (Case 134515-E-21).

During an open meeting on October 7, 2021, the employer’s Town Council adopted a COVID-19 vaccine mandate for all employees and volunteers effective December 7, 2021. During the public comment portion of the meeting, the then Local 1849F President Charles Berry suggested the employer delay implementation of the vaccine mandate until the resolution of the representation petition. The mayor, Farhad Ghatan, and the town administrator, Duncan Wilson, agreed. On October 11, 2021, Wilson emailed Guild Staff Representative Dean Tharp, Berry, WSCCCE Executive Director Chris Dugovich and others. Wilson wrote that he had discussed options “with PERC” and sought the unions’ input on the vaccine mandate. On October 18, 2021, Tharp

responded, “I recommend you delay implementation until the representation election has concluded and the elected representative and the Town are permitted to bargain impacts.”

Dugovich testified that after reviewing Wilson’s October 11 email, he telephoned PERC Executive Director Michael Sellars to discuss the matter. According to Dugovich, Sellars told him that the PERC staff advised Wilson that “in the unusual situation of the vaccine mandate,” the city was able to “to work with the current exclusive representative to mitigate any of the issues that may evolve out of a vaccine mandate.” Dugovich testified that he came away from the discussion with Sellars believing that the WSCCCE had the right to bargain over the vaccine mandate notwithstanding the pending representation petition filed by the Guild.

On October 27, 2021, the WSCCCE filed an unfair labor practice complaint alleging the Guild interfered with the WSCCCE’s rights as the exclusive bargaining representative. On November 3, 2021, Sellars issued a letter notifying the parties that if the WSCCCE’s complaint stated a cause of action, the unfair labor practice complaint would block the representation petition.

Ballots for the representation election were mailed on October 28, 2021. Ballots were due by 5:00 p.m. on November 23, 2021. Sellar’s letter stated ballots would be impounded until the unfair labor practice complaint was resolved.

The Unfair Labor Practice (ULP) Administrator reviewed the complaint and issued a deficiency notice. The WSCCCE filed an amended complaint on November 22, 2021. The ULP Administrator issued a preliminary ruling finding a cause of action.

After a hearing, Examiner Michael Snyder concluded that Tharp’s email did not interfere with employee rights in violation of RCW 41.56.150(1). *Town of Friday Harbor (Guild of Pacific Northwest Employees)*, Decision 13500 (PECB, 2022). The email recommended the same course of action Berry earlier advocated. *Id.* at 5. The email did not contain “the violence, intimidation, or reprisals necessary to establish” a violation, the Examiner found. *Id.* at 5. Further, the email was consistent with Commission case law regarding the parties’ obligations during the pendency of a representation petition. *Id.* The Examiner rejected the WSCCCE’s contention that communications

between the WSCCCE staff and PERC staff had bearing on the issue of whether the Guild's email interfered with employee rights. *Id.* at 6.

The WSCCCE filed a timely appeal. The WSCCCE and the Guild filed briefs to complete the record.

## ISSUE

The issue before the Commission is whether the Guild's October 18, 2021, email interfered with employee rights in violation of RCW 41.56.150(1). We affirm the Examiner albeit on different grounds.

### Applicable Legal Standards

#### *Standard of Review*

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).

#### *Union Interference*

It is an unfair labor practice for a bargaining representative to interfere with, restrain, or coerce public employees in the exercise of rights guaranteed by chapter 41.56 RCW. RCW 41.56.150(1). A showing of intent is not required to prove an interference violation under RCW 41.56.150(1). *King County*, Decision 10183-A (PECB, 2008). To establish union interference and coercion in

violation of RCW 41.56.150(1), a complainant must establish the existence of “union tactics involving violence, intimidation and reprisals.” *Community College District 13 (Lower Columbia College)*, Decision 8117-B (PSRA, 2005) (citing *National Labor Relations Board v. Drivers Local 639*, 362 U.S. 274 (1960)). The standard for establishing an interference violation is whether the typical employee in similar circumstances reasonably could perceive the conduct as a threat of reprisal or force, or a promise of benefit, related to the pursuit of rights protected by the statute. *Community College District 13 (Lower Columbia College)*, Decision 8117-B.

During the pendency of representation elections, the Commission strives to maintain the “laboratory conditions” necessary to the determination of the “uninhibited desires of the employees.” *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462 (PECB, 1986) (citing *General Shoe Corporation*, 77 NLRB 124 (1948)). Conduct during an election that does not constitute tactics involving violence, intimidation and reprisals may nonetheless “destroy the laboratory conditions necessary to a free election.” *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462. Because the conduct here at issue occurred while a petition for a change of representative was pending, the stricter “laboratory conditions” standard applies. *Cf. City of Bellingham (Washington State Council of County and City Employees)*, Decision 13299-A (PECB, 2021) (applying “violence, intimidation and reprisals” standard where no representation petition pending.)

#### Application of Standards

The WSCCCE asserts that the Guild promised bargaining unit members a benefit associated with union activity. The WSCCCE asks the Commission to order a new election because it relied to its detriment on advice from the PERC Executive Director. In response, the Guild argues the Examiner correctly rejected the WSCCCE’s arguments related to the conversation between the WSCCCE Executive Director and the PERC Executive Director. The Guild further argues the Examiner correctly held that informal communications between WSCCCE and PERC staff were of little importance to determining the issue in this case. The Guild asserts that the Guild’s recommendation was consistent with Commission precedent.

We reject the WSCCCE's contention that Dugovich was misled by his alleged conversation with Sellars. Dugovich's testimony about that conversation was hearsay.<sup>1</sup> Agency staff cannot provide legal advice to parties nor waive the applicability of Commission regulations such as WAC 391-25-140(2) and (4). *See Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947); *Stokley-Bordo, Inc.*, 130 NLRB 869, 871 (1961) (determining informal or personal advice from National Labor Relations Board agents is not binding upon the Board); WAC 391-08-520 (requiring petitions for declaratory orders to obtain a ruling on the applicability of a rule, order, or statute enforced by the Commission). As the Examiner correctly noted, the impact of the staff advice on the election is inapplicable to whether the Guild interfered with employee rights.

Turning to whether the Guild interfered with employee rights, the Examiner did not apply the correct legal standard. The unfair labor practice complaint was filed while a representation petition was pending. Therefore, the Examiner should have also considered whether the email disrupted the laboratory conditions.

Tharp's October 18, 2021, email response to Wilson and others recommending that the employer delay implementing its vaccine mandate until the representation petition was resolved is consistent with the Commission regulation prohibiting changes to the "status quo concerning wages, hours or other terms and conditions of employment" during the pendency of a representation petition. WAC 391-25-140(2). The email was also consistent with the requirement that, other than exceptions not here pertinent, the employer not continue negotiations with the incumbent bargaining representative while a representation petition is pending. WAC 391-25-140(4); *Clark County*, Decision 5373-A (PECB, 1996). Accurately stating the law is not an interference violation. *See City of Issaquah (Issaquah Police Services Association)*, Decision 9255 (PECB, 2006) (finding a communication from a petitioning guild to the employer contained a threat and misstated the law in violation of RCW 41.56.150(1)). A recommendation that an employer not

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<sup>1</sup> While hearsay is admissible evidence under RCW 34.05.452(1) if "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs," the weight accorded to hearsay depends on the degree of independent corroboration that exists. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The Examiner did not rely on the hearsay evidence; accordingly, we attach little weight to the hearsay testimony.

change the status quo while a representation petition is pending is not a violation of laboratory conditions.

Tharp's email was also consistent with the position Berry took when the employer adopted the vaccine mandate. Because his recommendation was consistent with Commission regulations and mirrored the advice earlier given to the Town Council by Berry, no violation of the laboratory conditions by the Guild may be found.

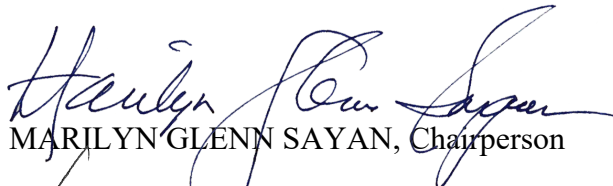
We affirm the Examiner's conclusion that the Guild did not interfere with employee rights in violation of RCW 41.56.150(1).

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 14th day of June, 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

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ISSUED ON 06/14/2022

DECISION 13500-A - PECB 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 134585-U-21

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