

State – Adult Family Home Providers (Washington State Residential Care Council), Decision 12345-A (PECB, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE RESIDENTIAL
CARE COUNCIL,

Complainant,

vs.

STATE – ADULT FAMILY HOME
PROVIDERS,

Respondent.

CASE 26687-U-14

DECISION 12345-A - PECB

DECISION OF COMMISSION

STATE – ADULT FAMILY HOME
PROVIDERS,

Complainant,

vs.

WASHINGTON STATE RESIDENTIAL
CARE COUNCIL,

Respondent.

CASE 26692-U-14

DECISION 12346-A - PECB

DECISION OF COMMISSION

Christopher J. Casillas and Erica Shelley Nelson, Attorneys at Law, Cline & Casillas, for the Washington State Residential Care Council.

Margaret M. Kennedy, Assistant Attorney General, Attorney General Robert W. Ferguson, for the State – Adult Family Home Providers.

The Washington State Residential Care Council (union) filed an unfair labor practice complaint alleging that the State – Adult Family Home Providers (employer) refused to bargain when it delayed making an economic proposal, refused to bargain by failing to give timely notice under

WAC 391-55-265, and interfered with employee rights by way of statements from the employer's negotiator to the union's negotiator. The employer filed a complaint alleging that the union insisted to impasse on permissive subjects of bargaining. Examiner Emily Whitney conducted a hearing and issued a decision dismissing the union's and the employer's unfair labor practice complaints.¹ This case comes before the Commission on a timely appeal by the employer and cross-appeal by the union. The parties appealed all of the issues in the case.

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review 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. *Id.* 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).

We have reviewed the transcript, exhibits, and briefs filed by the parties. The Examiner correctly stated the legal standards. Substantial evidence supports the Examiner's findings of fact, which in turn support the Examiner's conclusions of law. We affirm the Examiner.

The employer alleged that the proposals the union advanced to interest arbitration were permissive subjects of bargaining. The Examiner appropriately applied the balancing test as required by *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197 (1989) and considered the statutory limitations placed on the parties by RCW 41.56.029.

The union alleged the employer interfered with employee rights when the employer's lead negotiator told the union's lead negotiator and legal counsel that the employer would file an unfair labor practice complaint. We agree with the Examiner's conclusion that the employer did not interfere with employee rights. As the Examiner noted, WAC 391-55-265 requires a party that

¹ *State – Adult Family Home Providers (Washington State Residential Care Council)*, Decision 12345 (PECB, 2015).

believes proposals being advanced are permissive subjects of bargaining to notify the opposing party. The employer's negotiator stating that the employer planned to file an unfair labor practice complaint if the union did not withdraw the proposals was not interference. Further, no bargaining unit members were present when the two seasoned negotiators engaged in the discussion.

The union also alleged the employer refused to bargain when the employer delayed delivery of its economic proposal. The Examiner correctly stated and applied the legal standard. The Examiner considered the facts before her and made an appropriate evaluation of the evidence.

The union alleged that the employer refused to give timely notice under WAC 391-55-265 that the employer thought the union's proposals were permissive subjects of bargaining. Under WAC 391-55-265 a party asserting a proposal being advanced to interest arbitration is not a mandatory subject of bargaining "must communicate its concerns to the other party during bilateral negotiations and/or mediation." WAC 391-55-265(1)(a).

We agree with the Examiner that the parties were still in negotiations on August 15, 2014, when the employer notified the union's legal counsel that the employer thought the proposals were permissive subjects of bargaining. The parties agreed at the end of mediation to continue to negotiate certain issues; thus the negotiations had not ended.

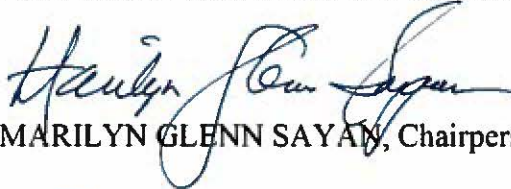
We affirm the Examiner's decision. We note our concern, however, that the employer's communication to the union was only in technical compliance with the rule. The requirement that a party communicate its position during negotiations and/or mediation allows an opportunity for discussion and, if possible, a revision of the proposal. Waiting until the eleventh hour while the parties are still technically negotiating, but on the eve of certification for interest arbitration, is not consistent with the spirit or intent of the rule. In this case, the employer effectively prohibited the union from engaging in a discussion with the employer about why the employer thought the proposals were not mandatory subjects of bargaining and from revising the proposals.

ORDER

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

ISSUED at Olympia, Washington, this 28th day of October, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



THOMAS W. McLANE, Commissioner



MARK E. BRENNAN, Commissioner



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RECORD OF SERVICE - ISSUED 10/28/2015

DECISION 12345-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 26687-U-14

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