Western Washington University (Washington Public Employees Association), Decision 8849-B (PSRA, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WESTERN WASHINGTON UNIVERSITY, Employer.	)	
ANNE YAKE, Complainant,	)	CASE 19017-U-04-4843 DECISION 8849-B - PSRA
vs.	)	
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, UFCW LOCAL 365, Respondent.	)	DECISION OF COMMISSION

Anne Yake, a classified employee, appeared pro se.

Schwerin Campbell Barnard, by *Lawrence Schwerin*, Attorney at Law, appeared for the union.

This case comes before the Commission on a timely appeal filed by the Washington Public Employees Association, UFCW Local 365 (WPEA), seeking to overturn the finding of facts, conclusions of law, and order issued by Examiner Walter Stuteville.[1] Anne Yake (Yake), the complainant, did not file a brief on the appeal.

Certain legal issues in this case are similar to issues being decided concurrently in appeals from *Community College District 7 - Shoreline (Washington Federation of State Employees)*, Decision 9094 (PSRA, 2005) and *Community College District 19 - Columbia Basin*

[1] *Western Washington University*, Decision 8849-A (PSRA, 2005).

(Washington Public Employees Association), Decision 9210 (PSRA, 2006). All of these cases stem from negotiations for first collective bargaining agreements under the Personnel System Reform Act of 2002, Chapter 41.80 RCW (PSRA), and specifically from agreements between the unions and the various employers to have all bargaining unit employees vote on ratification of tentative agreements reached in contract negotiations. In all of these cases, bargaining unit employees who were not union members filed complaints with the Commission, alleging that the unions failed to properly notify bargaining unit employees of the ratification vote and failed to properly notify bargaining unit employees of the union security provisions contained in the collective bargaining agreements.[2] The unions filed answers denying the allegations, and questioning the jurisdiction of this Commission to adjudicate claims regarding what they characterize as internal affairs of the unions. In order to provide consistency, we examine the legal arguments in all three cases as a whole, and then apply the same legal standards to the factual differences of each case on appeal.

The Examiner issued his decision in this case on August 12, 2005, finding that the Commission has jurisdiction to adjudicate the complaint and that the union failed to give proper notice of the ratification vote to all bargaining unit employees. The Examiner dismissed Yake's other claims.[3]

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[2] Yake also alleged the union failed to count ballots cast by employees who were not union members, but there was no timely appeal from the Examiner's decision dismissing that allegation. We thus decline to address it here.

[3] The Examiner declined to issue a remedial order in this case, because the union had been decertified as exclusive bargaining representative of the bargaining unit in which Yake is employed, but there was no timely appeal concerning the remedial order. We decline to address it here.

ISSUES PRESENTED

Two issues are presented in all three of the appeals currently before the Commission:

1. Does the Commission have jurisdiction over these complaints concerning notice and opportunity to vote on the ratification of these particular collective bargaining agreements?

2. If the Commission has jurisdiction, did the WPEA commit unfair labor practices by failing to provide adequate notice and opportunity to vote in the ratification election?

We rule that the Commission has jurisdiction to adjudicate claims asserting breach of the duty of fair representation owed by unions to all bargaining unit employees, with respect to situations where a union agrees to allow all bargaining unit employees to vote on ratification of a collective bargaining agreement. Asserting jurisdiction, we find in this case that the WPEA breached its duty of fair representation by: (1) its conduct during the ratification of the 2005-2007 collective bargaining agreement at Western Washington University; (2) failing to allow Yake a meaningful opportunity to review the negotiated contract; and (3) failing to timely respond to employee questions.

ISSUE 1: THE COMMISSION'S JURISDICTION

Applicable Legal Standards

A general policy of non-involvement in internal union affairs can be readily discerned from the precedents of both this Commission and the National Labor Relations Board (NLRB). Unions are private organizations. When asked to regulate the internal workings of

unions, this Commission has taken a "hands-off" approach except where complainants have asserted that union conduct affected the wages, hours, or working conditions of individual employees.

- In an early decision, the Commission dismissed an employer-filed unfair labor practice complaint alleging that a union unlawfully prevented non-member employees from voting on the formulation of the union's proposals for collective bargaining. *Lewis County*, Decision 464 (PECB, 1978), *aff'd Lewis County* 464-A (PECB, 1978). Our Executive Director noted there that participation in union affairs is a political right incident to union membership, but one that involves no civil or property right. *Lewis County*, Decision 464 (*citing State ex rel. Givens v. Superior Court of Marion County*, 233 Ind. 235 (1954)). Because the subject matter of that complaint concerned internal union policies, and did not directly affect the employment relationship covered by Chapter 41.56 RCW, that complaint failed to state a cause of action.

- In *Lake Washington School District*, Decision 6891 (PECB, 1999), the Executive Director dismissed a complaint concerning a union's actions during a contract ratification process. The complained-of action was found to be entirely within the internal workings of the union, and that complaint also failed to state a cause of action over which the Commission could exercise jurisdiction. The Executive Director also noted that the courts, rather than the Commission, have jurisdiction over violations of union constitutions and by-laws.[4]

- The Commission reiterated its general reluctance to involve itself in internal union affairs when several individuals

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[4] Because the cited decision did not explain the basis of the individual's complaint, any reliance upon its legal conclusions here must be met with suspicion.

> filed petitions under the Administrative Procedure Act, Chapter 34.05 RCW, asking the Commission to adopt a rule permitting non-member employees required to make payments under a contractual union security clause to have equal participation with union members in voting on terms and conditions of their employment. In denying those rulemaking petitions, the Commission explored the history of its own limited involvement, and the similar limited involvement of the NLRB, in the internal workings of the unions. No authority was found that supported adoption of the proposed rule. *In re: WAC 391-95-010*, Decision 9079 (2004).

Similarly, unions are generally free to limit ratification according to their own internal policies free from NLRB scrutiny. *See NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349-50 (1958).[5] The NLRB recognizes that procedures relating to the ratification of a collective bargaining agreement is generally a matter exclusively within the internal domain of the union. *Houchens Market of Elizabethtown, Inc. v. NLRB*, 375 F.2d 208, 212 (6th Cir. 1967).

No statute compels employee ratification votes on tentative agreements reached by unions and employers in collective bargaining. *Naches School District*, Decision 2516-A (EDUC, 1987); *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342. That is certainly true of the PSRA and the National Labor Relations Act (NLRA). *In re: WAC 391-95-010*, Decision 9079; *Teamsters, Local 310 v. NLRB*, 587 F.2d 1176 (D.C. Cir. 1978). Thus, ratification of a

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[5] The Supreme Court of the United States reiterated this in *NLRB v. Financial Institutions Employees*, 475 U.S. 192 (1996), by dicta noting that unions generally have the right to control who votes on contract ratification.

collective bargaining agreement is, at most, a permissive subject of bargaining.[6] The employers in these cases were not entitled to bargain to impasse on their proposals concerning contract ratification. *Seneca Environmental Products*, 243 NLRB 624 (1979).[7]

These cases not are about the union violating a contractual provision. *See, e.g., City of Walla Walla*, Decision 104 (PECB, 1976). The claimants before us are asserting that the unions violated their statutory duties by preventing non-member employees from having a meaningful opportunity to vote on the contracts. Put another way, our focus is on how the union conducted itself in relation to the bargaining unit employees, rather than on whether the union violated its contractual agreement with the employer.

Unique facts can warrant assertion of jurisdiction in some situations:

- In *North Mason Country Motors*, 146 NLRB 671 (1964), the NLRB noted that it could assert jurisdiction if "probative evidence" suggested the union "agreed that the [employer] could condition execution of the contract upon ratification of any

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[6] Parties can lawfully make proposals on permissive subjects in collective bargaining, subject to the limitation described in the next footnote.

[7] Parties can lawfully bargain to impasse only on mandatory subjects of collective bargaining. A party that insists upon a permissive subject of bargaining as a concession or condition of a contract commits an unfair labor practice. *Klauder v. San Juan County*, 107 Wn.2d 338 (1986)(proposal concerning interest arbitration); *Public Utility District No. 1 of Clark County*, Decision 2045-B (PECB, 1989)(proposal concerning withdrawal of pending unfair labor practice charges).

sort, [such as] by a majority of or even a representative employees group." *North Mason County Motors*, 146 NLRB 671.[8]

- In *Port of Seattle*, Decision 2549-C (PECB, 1987), the Executive Director noted that a complaint alleging that a union has aligned itself in interest against one or more bargaining unit employees during a contract ratification process could state a cause of action for violation of the union's duty to fairly represent all bargaining unit employees.[9]

When a union agrees to allow all bargaining unit employees the opportunity to vote on a question, it lowers the shield of protection that the *Financial Institutions* and *Lewis County* precedents provide. An agreement to allow all bargaining unit members the opportunity to vote *creates rights* that the non-member employees would ordinarily not have enjoyed, and gives them an expectation that their votes will count in the collective bargaining process. A union entering into such an agreement thus exposes itself to scrutiny regarding any allegation that it restrained employees from the right to vote granted to them by the agreement. *Cf. Beatrice/Hunt-Wesson, Inc.*, 302 NLRB 224 (1991) (Stephens, concurring)(if the parties have made ratification a part of the

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[8] Absent such facts, the NLRB found the employer refused to bargain in good faith by refusing to execute an agreed upon collective bargaining agreement. In defending its actions, that employer argued that the union, by accepting ratification from the one employee who was a union member, failed to submit the contract to a proper vote. The NLRB agreed with the union that the union's by-laws controlled how ratification was to occur, and therefore ratification by one employee was acceptable.

[9] Absent such allegations, the Executive Director dismissed that complaint alleging a union discriminated against a bargaining unit employee when it permitted only employees who have senior status the opportunity to vote on the proposed collective bargaining agreement.

bargain, it is appropriate for the NLRB to give a measure of protection to the expectancy interests of the parties).[10] If a union accepts an employer proposal on the permissive subject of contract ratification, our precedents on non-interference with contract ratification do not apply.

Application of Standards

The WPEA and Western Washington University (employer) reached agreement for a collective bargaining agreement covering the 2005-2007 biennium. That agreement contained the following language:

> Effective July 1, 2005, the University will recognize the bargaining unit as an agency shop if:
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> 1. The [WPEA] permits all employees within the bargaining unit to vote on the ratification Agreement;
> 2. The [WPEA] makes a good faith effort to notify all bargaining unit members of the opportunity to vote on ratification of the Agreement and of the terms of the Agreement, according to its internal notification procedures;
> 3. The Agreement is ratified by a majority of the employees voting in the ratification election.

By entering into that agreement, the WPEA created voting rights that non-member employees ordinarily would not have had, and it obligated itself to provide fair representation to them in the ratification process. We assert jurisdiction in this case to determine allegations that the WPEA restrained non-member employees

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[10] Had the employer disputed the sufficiency of the union's ratification process, it might have cited the *Beatrice/Hunt-Wesson* case as a basis to withhold submitting the contract to the Legislature under RCW 41.80.010. The employer would have done so at risk that it would be found guilty of a "refusal to bargain" unfair labor practice if it failed to demonstrate that the union's ratification process violated the parties' agreement.

in the exercise of rights protected by RCW 41.80.050 and RCW 41.80.080(3), in violation of RCW 41.80.110(2)(a).

ISSUE 2: UNION'S DUTY OF FAIR REPRESENTATION

Applicable Legal Standards

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Supreme Court of Washington specifically recognized that the doctrine of a union's duty of fair representation to all bargaining unit members exists within Chapter 41.56 RCW. The *Allen* court first described the history of the doctrine under the NLRA, noted that Chapter 41.56 RCW substantially parallels the NLRA, and concluded the doctrine of the duty of fair representation applied to unions certified under Chapter 41.56 RCW.

RCW 41.80.050 secures rights for employees covered by the PSRA, including the right to:

> [S]elf-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion.

Additionally, RCW 41.80.080(3) secures representation rights for all employees in a bargaining unit covered by the PSRA:

> The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

That duty of fair representation applies equally to bargaining unit employees who are union members and to bargaining unit employees

who are not union members. The duty of fair representation owed under RCW 41.80.080 closely mirrors the duty of fair representation owed under the similar provision in the Public Employees' Collective Bargaining Act (PECB), RCW 41.56.080, which states in part:

> The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the [bargaining] unit without regard to membership in said bargaining representative.

The employee rights conferred by the PSRA and PECB are enforced through the unfair labor practice provisions in each chapter, RCW 41.80.110 and 41.56.150 respectively. This Commission is authorized to hear and determine claims, and to issue appropriate remedial orders against employers and/or unions that violate the PSRA. RCW 41.80.120; RCW 41.56.160.

In *State - Natural Resources*, Decision 8458-B (PSRA, 2005), this Commission held that in order to achieve its statutory mission of uniform administration of collective bargaining law, unless a specific legislative intent directs otherwise, cases decided under the PECB, Chapter 41.56 RCW, are applicable to cases decided under the PSRA, Chapter 41.80 RCW. Because the union's duty under RCW 41.80.080 is substantially similar to the duty under RCW 41.56.080, cases interpreting a union's duty of fair representation under the latter statute apply to allegations that the duty was breached arising under Chapter 41.80 RCW.

While ample federal case precedent interpreting the duty of fair representation exists, the *Allen* Court outlined and explained the standards to be applied to Washington cases involving alleged breaches of the duty of fair representation:

- A union must treat all factions and segments of its membership without hostility or discrimination. A finding of discrimination requires a showing that an individual was deprived of a right based on their assertion of a protected activity, and that there is a causal connection between the exercised right and the discriminatory action. *Educational Service District 114*, Decision 4361-A (PECB, 1994)(*citing Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991));

- A union's broad discretion in asserting the rights of individual members must be exercised in good faith and honesty;

- The union must avoid arbitrary conduct. A union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational." *Airline Pilots Association, International v. O'Neill*, 499 U.S. 65, 67 (1991)(*quoting Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953)).

Each requirement "represents a distinct and separate obligation, the breach of which may constitute the basis for civil action." *Allen v. Seattle Police Officers' Guild*, 100 Wn. 2d 361, 375 (*quoting Griffin v. United Automobile, Aerospace & Agricultural Implement Workers*, 469 F.2d 181 (*Griffin v. United Automobile*). The duty of fair representation doctrine seeks to assure "the individual employee [or minority] that his union will represent his interest unless it conflicts with the group's interest". *Allen v. Seattle Police Officers' Guild*, 100 Wn. 2d 361, 375 (*quoting* Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 Tex.L.Rev. 1119, 1155 (1973)).

To prove that a union has breached its duty of fair representation, a complainant employee bears the burden of showing that the union behaved irrationally, invidiously, fraudulently, deceitfully, dishonestly, or indifferently as to the rights of bargaining unit employees, or that the union's conduct was so grossly deficient as to be properly equated with arbitrary action. The complainant must also demonstrate a causal nexus between the breach of the union's duty of fair representation and the harm suffered by the employee. By adopting the standard set forth in *Griffin v. United Automobile*, the *Allen* court specifically rejected the notion that bad faith is a required element to prove a breach of the duty. *Allen v. Police Officers' Guild*, 100, Wn.2d 361, 374.

This is still a somewhat higher standard of proof than the "reasonable employee's perception" test applied to most "employer interference" claims under RCW 41.80.110(1)(a) and "union restraint" claims under RCW 41.80.110(2)(a),[11] but the higher burden of proof is accompanied by a broader range of remedies than the "cease and desist" and "post notices" remedies usually available for "interference" and "restraint" violations. *See, e.g., Grant County Public Hospital District 1*, Decision 8378 (PECB, 2004), *aff'd*, Decision 8378-A (PECB, 2004)(also requiring an employer to make good faith submission of a proposed collective bargaining agreement to board of commissioners for ratification).

These standards provide unions with substantial discretion in their decision making, even if the ultimate decision proves to be wrong. *Marquez v. Screen Actors Guild*, 525 U.S. 33; *Allen v. Seattle*

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[11] This acknowledges that labor organizations may have valid reasons for taking or not taking a particular course of action, even if that could otherwise be viewed by a reasonable individual as interfering with employee rights. *See Marquez v. Screen Actors Guild*, 525 U.S. 33.

Police Officers' Guild, 100 Wn.2d 361, 375 (recognizing that unions require flexibility to settle disputes). These standards also recognize that bargaining unit employees' individual goals may not always be achieved through collective bargaining. *C-Tran*, Decision 7087-B. While unions are not required to bargain collective bargaining agreement provisions of equal benefit to all bargaining unit employees, and while equality of treatment is not the standard on which to judge the union's duty of fair representation, unions are nevertheless prohibited from aligning themselves in interest against one or more employees in the bargaining units they represent. *C-Tran*, Decision 7087-B (*citing Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983)).

Application of Standards

If the terms of a negotiated contract or a union's constitution/ by-laws require ratification of negotiated contracts by affected employees, a failure to submit a contract to a meaningful vote of those employees breaches the union's duty of fair representation. *Deboles v. Trans World Airlines*, 552 F.2d 1005 (3rd Cir. 1977) *cert. denied*, 434 U.S. 837 (1977).[12] The rationale for this proposition is simple:

> By denying a group of workers the chance to ratify, the union risks subjecting them to the disadvantages of a contract whose acceptance they could have prevented, and

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[12] The *Deboles* case was decided under Railway Labor Act, 45 U.S.C. § 151, et seq. (1996)(RLA). While we recognize that differences exist between the RLA and the PSRA, we are also mindful that the duty of fair representation originated in decisions arising out of the RLA, and the *Allen* decision specifically references *Steele v. Louisville & Nashville Railroad*, 323 U.S. 192 (1944) as the origin of the doctrine. The *Deboles* analysis of the duty of fair representation is therefore consistent with our analysis in this case.

> risks depriving them of the benefits of a contract whose acceptance they could have ensured.

International Brotherhood of Teamsters, Local No. 310 v. NLRB, 587 F.2d 1176, 1882 (footnote omitted). This record demonstrates that WPEA actions and inactions concerning the ratification of the 2005-2007 contract at Western Washington University precluded bargaining unit employees from having a meaningful opportunity to vote on ratification of the contract:

- On August 20, 2004, before the WPEA and the employer reached a tentative agreement, WPEA negotiating team member Kathy Sheehan sent an e-mail message to all bargaining unit employees, inviting them to an information session about the status of contract negotiations. Of particular importance here, Sheehan indicated that "only WPEA members" would be eligible to vote on ratification of the contract.[13]

- On September 23, 2004, the WPEA and the employer reached a tentative agreement. Of particular importance here, that agreement provided for all bargaining unit employees, not just union members, to be allowed to vote on ratification.

- On September 23, 2004, at 3:55 a.m., Sheehan sent an e-mail message which was received by Yake. Sheehan wrote: "You will have an opportunity to vote on ratifying the contract on Saturday, Sept. 25, 2004, in Bond Hall 104." Sheehan did not make any reference to the agreement making all bargaining unit employees eligible to vote on ratification, and Sheehan did not expressly retract or countermand her previous statement

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[13] At the time it was made, Sheehan's statement limiting voting rights to union members was consistent with the WPEA's constitution/by-laws.

that "only WPEA members" would be eligible to vote on ratification of the contract.

- On September 23, 2004, at 2:47 p.m., Yake sent an e-mail message to Sheehan, asking whether non-members could vote and related questions concerning the ratification process.

- On September 24, 2004, at 1:17 p.m., Yake sent a second e-mail message to Sheehan, stating that Telecom employees who "are not dues paying members" were still trying to figure out whether they could vote on contract ratification.

- On September 24, 2004, at 3:11 p.m., Sheehan sent an e-mail message which was received by Yake. Of particular interest here,[14] Sheehan wrote:

> Bargaining unit members, dues payers or otherwise, will have the opportunity to cast a ballot on Saturday. However, the WPEA is recommending that you become a member to avoid having your ballot challenged. *The WPEA bylaws, like other organizations', permit only members in good standing to vote.* To become a member in good standing, you should sign a membership card (available on Saturday) and provide one month's dues, approximately $32, in cash, money order or cashier's check.
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> Bargaining unit members who do not want to become union members will still be able to vote. *It may be challenged, however.*

(emphasis added). Thus, Sheehan largely reinforced her August 20 statement that "only WPEA" members would be eligible to vote on ratification of the contract, and she made no explicit reference to the terms of the tentative agreement that unambiguously provided all bargaining unit employees the unqualified right to vote on ratification of the contract.

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[14] Inexplicably, in light of RCW 41.80.001, Sheehan also wrote that the contract would be effective immediately.

Although more than 24 hours elapsed between Yake's first message and Sheehan's September 24 message, Sheehan never replied directly to either of the messages sent to her by Yake.

Neither of the e-mail messages sent by Sheehan after the tentative agreement was reached made any explicit reference to the new union shop obligation which had been negotiated into the collective bargaining agreement. Sheehan offered no access to the text of the tentative agreement in the first of those messages, other than to say that an information session would be held for one hour before the vote was taken on ratification of the contract. Sheehan's second e-mail message sent within the last two hours of the normal business week only highlighted wage increases, a salary survey, retention of vacation benefits, retention of past overtime computation practices, and only indicated the union would attempt to send a copy of the tentative agreement yet that afternoon.

As a member of the WPEA negotiating team, Sheehan was an agent of the WPEA. *See Community College District 13*, Decision 8117-B (PSRA, 2005)(employees assisting a union are special agents of that union). Beyond being inconsistent with Sheehan's previous e-mail message about voting rights, the messages Sheehan sent on September 23 and September 24 were inconsistent with one another.[15] At no time did Sheehan or any other WPEA official clarify the voting rights of the bargaining unit employees who were not union members, even though Yake explicitly asked for clarification. In this situation, where the union had agreed in collective bargaining to allow all bargaining unit employees the opportunity to vote, it had an obligation to unambiguously notify all employees of their

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[15] While the first of those messages can be read as stating that all bargaining unit employees would have an opportunity to vote on the contract, without qualification, the second of those messages clearly imposed qualifications.

rights. The actions and inactions by the WPEA demonstrate a pattern of "arbitrary" and "bad faith" behavior constituting a breach of its duty of fair representation.

We disagree with the WPEA's assertion that its shortcomings should be mitigated or excused in light of the October 1 deadline imposed by RCW 41.80.010 for submission of collective bargaining agreements to the Office of Financial Management:

- The October 1 deadline existed when the PSRA was enacted in 2002, and was no surprise to the WPEA in 2004.
- By choosing to hold its ratification vote on September 25, the WPEA limited its own opportunity to properly notify bargaining unit employees of their voting rights, and left five full days unused prior to the October 1 deadline it cites here.
- Even if the WPEA and this employer had failed to reach an agreement by October 1, 2004, the PSRA would still have protected the employees under RCW 41.80.001, by keeping any contract negotiated by the WPEA and the employer under the State Civil Service Law, Chapter 41.06 RCW, in effect until a successor agreement was reached.[16]

This Commission will not allow PSRA parties to use the October 1 deadline as a method to circumvent their other responsibilities under Chapter 41.80 RCW.

We also disagree with the WPEA's assertion that the tentative collective bargaining agreement allowed it unfettered freedom to prescribe the method by which ratification was obtained. Although

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[16] For the future, RCW 41.80.090 keeps existing collective bargaining agreements in effect for one year beyond their stated expiration date.

unions are generally free to prescribe their own rules and provisions for contract ratification, under the *Financial Institutions* and *In re: WAC 391-95-010* precedents cited above, the specific facts of this situation prevent application of those precedents here. When a union makes an agreement to give all bargaining unit employees voting rights, it has a statutory duty to clearly and unambiguously communicate those rights to all bargaining unit employees in a timely manner even if the agreement arguably or actually violates the union's own constitution and/or by-laws. When viewed as a whole, the WPEA's mis-statements and actions about informing bargaining unit employees were in violation of RCW 41.80.110(2)(a).

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Walter M. Stuteville in the above-captioned matter are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 20th day of June, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner