

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT	)	
23 - EDMONDS,	)	
	)	
Employer.	)	
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DOROTHY JANE BARNETT-PARKER,	)	CASE 16457-U-02-4228
	)	
Complainant,	)	
	)	
vs.	)	DECISION 7815-A - PSRA
	)	
WASHINGTON PUBLIC EMPLOYEES	)	
ASSOCIATION,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	
_____	)	

*Dorothy Jane Barnett-Parker* appeared *pro se*.

*Mark S. Lyon*, General Counsel, for the Washington Public Employees Association.

On June 19, 2002, Dorothy Jane Barnett-Parker filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, naming the Washington Public Employees Association (union) as respondent in connection with her status as a classified employee of Edmonds Community College (employer) in a bargaining unit represented by the union. The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on July 16, 2002,

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<sup>1</sup> At that stage of the proceedings, all of the facts alleged in a complaint are presumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

indicating it was not possible to conclude that a cause of action existed under RCW 41.56.150(3) on an allegation of union discrimination for the filing of an unfair labor practice charge, because no facts were alleged concerning a previous unfair labor practice charge. Barnett-Parker was given 21 days to amend her complaint, but nothing further was heard or received from her at that time. The allegation under RCW 41.56.150(3) was dismissed on August 21, 2003. Examiner Walter M. Stuteville held a hearing on the remaining allegation on December 6, 2002. The parties filed post-hearing briefs.

Based on the testimony and documents admitted in evidence at the hearing, and the parties' arguments, the Examiner rules that Barnett-Parker has failed to prove that the union threatened her with reprisal or force so as to interfere with her statutory collective bargaining rights. The complaint is dismissed.

#### BACKGROUND

Barnett-Parker is a senior accountant at Edmonds Community College, and has actively participated in the union at the Lynnwood campus for some time. In the 1990's, she took an active role in a failed attempt to decertify the union. Thereafter, she was elected to office as the chapter treasurer, and then served as chapter president for three years. Barnett-Parker was no longer holding union office in October 2001, when Luis Moscoso was hired by the union to work with WPEA bargaining units in the area from north of Seattle to the Canadian border.

In December 2001, after her successor as chapter president stepped down mid-term, Barnett-Parker was appointed to the chapter

presidency by the chapter executive board. Moscoso was thus working for the WPEA when Barnett-Parker resumed the chapter presidency.

Testimony from both Moscoso and Barnett-Parker indicated that they had many disagreements as to how they were to work together in their representation of the classified employees. A major issue was the proper role of union staff versus the roll of the chapter president in communicating with the management of the college. The disagreements became personal on both sides, and Barnett-Parker eventually refused to meet alone with Moscoso.

In March and April 2002, Barnett-Parker and the chapter vice-president, Beverly Felton, met with two other unions for discussions about a change of union representation. As a part of that same movement, a website titled "no2wpea" was created by another former chapter president. Barnett-Parker, Felton and two other chapter officers then resigned their union offices on May 1, 2002.

Moscoso testified that, although he had heard "decertification" threats from Barnett-Parker earlier, he did not learn of the "no2wpea" website or Barnett-Parker's active involvement with other unions until late May of 2002. On May 23, 2003, Moscoso sent a message by e-mail, as follows:<sup>2</sup>

Re: Edmonds CC "Decert" Info

Dear Bothers and Sisters,

I have received several calls regarding the situation at EdCC. Here are the bare facts to date: Janie Barnett, former President of the Chapter has set up an email

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<sup>2</sup> From the printout admitted in evidence it was impossible to determine whether or how this statement was formatted or paragraphed.

message board to promote "decertification" of the WPEA Chapter at Edmonds. She also has stated that 1/3 of the membership at Head Start should not be part of her new union! Although there are claims that AFT and/or SEIU have been in support of her effort, State Officials from those Unions were unaware of this. We have been given assurances that neither of these unions is "raiding" us for members. (Why would they waste resources for just a few hundred members when they know the WPEA is actively studying affiliation for its 5,000 employees under 30 WPEA contracts?) Ms. Barnett's negative comments about WPEA only serve to show how duplicitous and devious she has been during her tenure as President. She is trashing the EdCC contract although she's the one who negotiated and signed it! She has criticized the WPEA state-wide but when has she done anything positive to address her concerns? Her behavior at the convention was an embarrassment to her fellow delegates. Why did she even go, knowing she was resigning three days later to lead a decertification movement? It is clear that Ms. Barnett is frustrated with the resurgence of "union democracy" at EdCC led by other officers and members dissatisfied with her poor record of leadership over the past year. She resigned on her own account because her own E-Brd [sic] was asking for more information and leadership than she could provide. Now she wants to dictate her desire for a new regime (different union) led by herself. Janie was part of the last decertification effort at EdCC in the 90's. Other individuals who also wanted to reform the WPEA were part of that decert also. But unlike Ms. Barnett when the membership elected to stay with WPEA those individuals got to work making their Chapter more responsive to membership needs. Ms. Barnett accepted the mandate to remain in WPEA, but what did she do as President to address the concerns of those who wanted reform? It would appear that she systematically allowed the organization and structure of the Chapter to erode just so she could attempt another decertification this year. She thwarted the efforts of her own E-Brd and Job Reps who sincerely tried to make their Chapter more responsive. Ms. Barnett did not want to improve her Chapter. She wanted a new Union. She was willing to risk the job security of her membership just to pursue her "personal" agenda! Shame on her! She compromised the legitimate interests of her fellow employees, compromised several jobs by not supporting employees unfairly disciplined by management, and allowed numerous WPEA committees to languish from inattention. There are

many more details and sufficient evidence to prove these points. But we do not want to sink to her level of mud-slinging. We will be monitoring her efforts and will respond positively about what the WPEA is doing. We would appreciate any support you may provide for this effort. Please do not forward this email to anyone. There's no sense giving this any more publicity than it deserves. Feel free to answer any questions you may hear about what's going on at EdCC. You may also tell interested parties that they may contact me if they have any information we should know about concerning the decertification effort. Remember, we can not use state resources to discuss this situation. So always read on your own time.

Moscoso testified that his e-mail message was sent to 21 persons that included persons he e-mails regularly concerning his daily schedule. The list included two other WPEA staff members, the officers of the chapter at Edmonds Community College, and the officers of WPEA chapters at Highline Community College, Skagit Valley Community College, Western Washington University, and the State Liquor Control Board. In addition, Moscoso sent copies of his e-mail message to the officers and to the executive director of the WPEA, who are not on his regular list.

Felton testified that she received a copy of Moscoso's e-mail message from Mickey Hooten who had recently resigned from membership in the union. Felton then forwarded the e-mail message to Barnett-Parker and to Judith Spencer, another employee of this employer.

#### POSITIONS OF THE PARTIES

Barnett-Parker asserts that the e-mail message sent on May 23, 2002, was an example of the heavy-handed and coercive tactics used by the union to prevent her from organizing a change of unions.

She contends the e-mail describes her as "duplicitous" and "devious" and difficult to work with, and that it had the effect of stopping the effort to obtain a change of union representation at the college. She further asserts that the "no2wpea" website originated by another employee was pulled offline as a result of Moscoso's e-mail message. Barnett-Parker asks that the union be required to retract each and every accusation and innuendo that she perceives in the e-mail message, and she asks for reimbursement for her attorney fees and expenses.

The union acknowledges that Moscoso sent the e-mail message at issue in this case, but it asserts that the message was sent as an internal memo directed to union leaders. The union denies that the e-mail message was intentionally sent to anyone outside of its leadership, or that it was ever sent to the administration of the college. The union contends that Barnett-Parker has provided no evidence of "public humiliation" and no evidence that the e-mail had any impact on her employment. It also asserts that the disputed message does not contain any threat of reprisal or force, and therefore does not constitute a basis for finding unlawful "interference" with Barnett-Parker's rights as an employee.

## DISCUSSION

### The Legal Standard

RCW 41.56.150(1) prohibits unions from interfering with or discriminating against public employees who exercise collective bargaining rights:

RCW 41.56.150 UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVE ENUMERATED. It shall be an unfair labor practice for a bargaining representative:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To induce the public employer to commit an unfair labor practice;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) to refuse to engage in collective bargaining.

That section is a provision of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, which includes:

RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

As amended by the Personnel System Reform Act of 2002, the State Civil Service Law, Chapter 41.06 RCW, includes:

RCW 41.06.340 UNIT DETERMINATION, REPRESENTATION AND UNFAIR LABOR PRACTICE PROVISIONS APPLICABLE TO CHAPTER.

. . . .  
(2) Each and every provision of RCW 41.56.140 through 41.56.160 shall be applicable to this chapter as it relates to state civil service employees. . . .

In turn, RCW 41.56.160 authorizes the Public Employment Relations Commission to determine and remedy unfair labor practices.

Barnett-Parker filed the complaint charging unfair labor practices to initiate this proceeding under Chapter 391-45 WAC. Under WAC 391-45-270(1)(a), the complainant party must investigate and prosecute its own complaint, and has the burden of proof.

Protected Activity

Barnett-Parker is a classified employee of the employer, working in a position within an existing bargaining unit. Her activities in support of a change of union representation for the classified employees in that bargaining unit were clearly of the type protected by RCW 41.56.040, and thus by the rules adopted by the Washington Personnel Resources Board under RCW 41.06.150. The ability of a represented employee to mount a decertification action against its certified bargaining representative is certainly a protected activity. *King County*, Decision 2955 (PECB, 1988). Thus, proven interference with her rights as an employee would violate RCW 41.56.150(1).

The burden of proof for an "interference" claim is not particularly high: An interference violation will be found if employees could reasonably perceive the union's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. The elements for finding "interference" by an employer under RCW 41.56.140(1) were set forth in *Lake Washington School District*, Decision 2483 (PECB, 1986) (citing *Endo Industries*, 239 NLRB 1074 (1978)). That list is easily adapted for use in determining whether a union's communication to an employee is an unlawful "interference" under any one, any combination, or all, of the following:

- Is the communication, in tone, coercive as a whole?
- Are the union's comments substantially factual or materially misleading?
- Does the communication disparage, discredit, ridicule, or undermine the employee?



- Does the communication appear to have placed the employee in a position from which he or she cannot retreat?

The complainant must establish her claim by a preponderance of the evidence. *Pasco Housing Authority*, Decision 5927-A (PECB, 1997).

A fact pattern generally similar to this case occurred in *North Beach School District*, Decision 2487 (PECB, 1986), where an employee alleged that a letter sent by a union to employees constituted interference, restraint, coercion and discrimination against the him, principally by discrediting him in the eyes of his co-workers. The decision in that case held that, while allegations of "interference" were sufficient to get to a hearing, the evidence actually produced at the hearing was not sufficient to constitute an "interference" violation under RCW 41.56.150(1):

The collective bargaining statute restricts free speech only to a limited degree. Counteracting an opponent, or even of a perceived opponent, during a representation campaign is not automatically unlawful. There is no allegation that the union made any threats of reprisal or force against the complainant, or that it was in collusion with the employer to discriminate against the complainant, or that the collective bargaining agreement was applied in a discriminatory manner.

In the absence of actual proof of threats of reprisal or force, allegations and insult are insufficient to support a finding of an unfair labor practice.

#### Application of Standards

##### Scope of Inquiry Limited -

The evidence presented at hearing (and, to a certain extent, the arguments made in the briefs) go beyond the e-mail message of May 23, 2002, particularly as to the interactions between Barnett-

Parker and Moscoso in their respective roles as union officials. There was, however, no need for Barnett-Parker to explain why she may have been upset with the union or why she would choose to exercise her right to seek a change of representation. The Examiner thus confines the decision in this case to the e-mail message at issue in the unfair labor practice complaint and in the resulting preliminary ruling. Other evidence provided by the parties has been used only as background information to explain the circumstances surrounding the disputed e-mail message.

Insufficient Evidence of Interference -

The e-mail message at issue in this case fails to meet the "threats of reprisal or force" test because it was sent by a union official to other union officials, rather than being directed to Barnett-Parker or other bargaining unit employees.<sup>3</sup> Barnett-Parker had resigned her union office prior to the time the disputed message was sent, and she did not receive the message directly from Moscoso. Even if the disputed e-mail had contained or intimated a threat of reprisal, it was neither sent to Barnett-Parker nor are there any facts indicating it was ever intended to be read by her.<sup>4</sup>

Barnett-Parker only learned of the disputed message from another former union official. The fact that she eventually received a copy of the message says more about the inability of a sender to

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<sup>3</sup> The making of promises of benefit to dissuade employees from protected activity is also unlawful under RCW 41.56.150(1), but there could be no finding of a promise of benefit where the disputed message was not directed to Barnett-Parker.

<sup>4</sup> The fact that Moscoso stated in the e-mail message that it was NOT to be shared with anyone else (which presumably would have included Barnett-Parker) supports an inference that he never intended it for her eyes.

control distribution of an e-mail once sent, and does not obviate the fact that Moscoco did not send it to her.

Barnett-Parker's focus is on her alleged "public humiliation," but she neither alleged nor proved that the disputed message was directed to anybody outside of the circle of union officials who routinely received e-mail messages from Moscoco. A union may hold a statutory status as exclusive bargaining representative of an appropriate bargaining unit, but it is first and foremost a private organization. Together with a reasonably-implied obligation of loyalty to the organization (perhaps rising to a level of fiduciary responsibility with respect to the handling of the organization's funds), the officials of a private organization have free speech rights to communicate amongst themselves with regard to matters of interest to the organization. Barnett-Parker can be presumed to have shared in that circle of communication while she was an officer of the WPEA chapter at Edmonds; those who remained officers of that private organization after Barnett-Parker resigned were fundamentally entitled to communicate about (and formulate the organizational strategy to respond to) any threat to the organization posed by the budding effort to seek a change of exclusive bargaining representative for the bargaining unit at Edmonds.

Barnett-Parker views the disputed e-mail message as intimidation or coercion to cause her to not engage in what she has characterized as a "decertification" campaign,<sup>5</sup> but she neither alleged nor proved that the union made any threats of reprisal or force against her. Nor has she alleged or proved that the union colluded with

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<sup>5</sup> Technically, a "decertification" petition would seek to end all union representation for the bargaining unit. The contacts with other unions suggest that this effort is better described as seeking a change of representative, and the Examiner has used that term.

the employer to affect her wages, hours or working conditions as an employee.<sup>6</sup> Nor has she alleged or proved that the union negotiated or administered the collective bargaining agreement in a manner that discriminated against her or anyone else involved in the truncated representation campaign. Nor has she provided evidence or explanation (either at the hearing or in her brief) as to how the e-mail message actually led to the collapse of the representation campaign.

Employees and unions have a statutory right to file representation petitions, subject to limited timeliness requirements (WAC 391-25-030) and a showing of interest requirement (WAC 391-25-110). The consent or support of the incumbent exclusive bargaining representative is not required for either a change of exclusive bargaining representative (filed by a different union) or a true "decertification" petition (filed by employees). If Barnett-Parker or others had been able to accumulate sufficient support to file a petition under Chapter 391-25 WAC, the WPEA would have been entitled to mount a campaign in support of retaining its status as exclusive bargaining representative. The Commission's rules impose some restrictions on campaign tactics, in WAC 391-25-470 and -490, but the Commission does not edit or audit everything written or said by the parties during election campaigns. In reading the e-mail at issue here, it is apparent that its clear intent was to inform union officers, both at the Edmonds chapter and other chapters in the area that might be impacted by a loss of members for the

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<sup>6</sup> Discrimination connotes deprivation of some ascertainable employment right, status or benefit. See *Educational Service District 114*, Decision 4361 (PECB, 1993), where the Commission embraced the test for deciding "discrimination" claims set forth by the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).

organization as a whole, of what was occurring. Although it was clear that Moscoso did not approve of or support the efforts of Barnett-Parker, and that he had strong views concerning his working relationship with Barnett-Parker, it is not at all clear how sending the e-mail to union officers would or could result in the abandonment of the representation campaign. The most that can be said is that Barnett-Parker theorizes that word of the e-mail began to circulate after "some local members saw forwarded copies that," but no direct connection was shown between the e-mail message and the campaign.

Barnett-Parker also alleged that the e-mail message resulted in the shutdown of a web site which was a part of the representation campaign. Again, however, no evidence was presented directly connecting the termination of that website and the disputed e-mail. A connection cannot be assumed; it must be proven to be a basis for the finding of an unfair labor practice. *Clover Park School District*, Decision 7073 (EDUC, 2000).

#### Impact on Employment -

Barnett-Parker alleges that the e-mail had a negative impact on her ability to perform her duties as a senior accountant and placed her employment at risk. However, she offered no evidence as to how the e-mail caused this to happen, or that it in fact did happen. She presented no evidence of poor performance reviews or testimony from supervisors that were concerned about the quality of her work. Without supporting evidence, such an allegation cannot be given any credence.

#### Internal Correspondence -

The union defends the e-mail as an internal matter that was only circulated among union leadership with the intent to inform them of

what was going on, from Moscoso's perspective, and the Examiner agrees that such an intent was consistent with the content of the e-mail. Moscoso testified as to the identities of all the individuals copied on the e-mail and they were all in positions of union leadership. Barnett-Parker alleged that the e-mail received wider circulation than was printed on the e-mail, and that was apparent because she and other former officers of the chapter eventually received a copy. However, she did not show that any persons representing her employer or any other employer ever received a copy of the e-mail. In fact she herself testified that no one from the administration of the college ever discussed the e-mail with her.

Commission Jurisdiction -

Finally, throughout her argument at hearing and in her brief, Barnett-Parker alleges that the union was guilty of defamation of her character and the union defended such accusations in its brief in an analysis of an action for defamation of character and the tort of outrage. Such allegations and defenses are, however, beyond the scope of the Commission's jurisdiction. The Commission is not a broad court of general jurisdiction, but an administrative agency charged with the enforcement of specific statutes and sections of the Washington Administrative Code. Actions concerning defamation and outrage are clearly outside the scope of the Commission's authority and those allegations and the union's defenses against them were not considered in the crafting of this decision.

FINDINGS OF FACT

1. Community College District 23 - Edmonds d/b/a Edmonds Community College is a public employer within the meaning of Chapters 41.06 and 41.80 RCW.

2. Washington Public Employees Association, an employee organization within the meaning of RCW 41.80.005(7), is the incumbent exclusive bargaining representative of a bargaining unit of classified employees of Edmonds Community College. At the time relevant to this proceeding, Luis Moscoso was the union staff representative for that bargaining unit.
3. Dorothy Jane Barnett-Parker is a classified employee of Edmonds Community College within the meaning of Chapter 41.06 RCW, employed as a senior accountant. She had completed several terms as treasurer of the local union chapter at the college, and had completed one full term of three years as president of the local union chapter at the college. In the autumn of 2001, she was appointed as president of the local union chapter at the college after her successor as president stepped down from that office.
4. In her role as the appointed president of the local union chapter in late 2001 and continuing into 2002, Barnett-Parker interacted frequently with Moscoso, who had been hired by the union in October of 2001. They had a difficult working relationship.
5. During March and April of 2002, Barnett-Parker and Beverly Felton, who was then vice-president of the local union chapter, began working to effect a change of union representation for the bargaining unit at Edmonds Community College. They met with other unions, to investigate replacing the WPEA as the exclusive bargaining representative. As a part of that effort, another former president of the local union chapter, Dwayne Stuart, opened a "no2wpea" web site.

6. Barnett-Parker and three other members of the board of the local union chapter, including Felton, resigned their union offices in May of 2002.
7. On May 23, 2002, Moscoso sent an e-mail message to 21 persons that he routinely corresponded with by means of e-mail. The persons on that list included two other WPEA staff persons, the officers and executive director of the WPEA, the current officers of the local WPEA chapter at Edmonds Community College, and the officers of WPEA bargaining units at Highline Community College, Skagit Valley Community College, Western Washington University, and at the State Liquor Control Board. The subject of the e-mail message was the representation effort at Edmonds Community College, and he criticized Barnett-Parker and her methods as president of the local WPEA chapter there. Moscoso did not direct this e-mail message to Barnett-Parker, and he asked within the text of the e-mail message that it not be forwarded to anyone.

#### CONCLUSIONS OF LAW

1. The public employment Relations Commission has jurisdiction in this matter under RCW 41.06.340 and Chapter 391-45 WAC.
2. The efforts of Barnett-Parker to obtain a change of union representation for the bargaining unit in which she is employed was lawful union activity protected by RCW 41.56.150 (by reference to RCW 41.56.040) and the Merit System Rules adopted by the Washington Personnel Resources Board under the authority conferred upon it by RCW 41.06.150.
3. Barnett-Parker has failed to sustain her burden of proof to show that the complained-of e-mail message contained or



constituted any threat of reprisal or force or an offer of a benefit to interfere with, restrain, or coerce her in the exercise of her collective bargaining rights as a state civil service employee, so that no unfair labor practice by the Washington Public Employees Association has been established under RCW 41.56.150(1).

ORDER

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 9<sup>th</sup> day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, 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.