

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - REVENUE,)	
)	
Employer.)	
-----)	
DAVID LAZAR,)	CASE 19264-U-05-4893
)	
Complainant,)	DECISION 8972-B - PSRA
)	
vs.)	
)	
WASHINGTON PUBLIC EMPLOYEES)	
ASSOCIATION, UFCW LOCAL 365,)	DECISION OF COMMISSION
)	
Respondent.)	
_____)	

David Lazar, appeared pro se.

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

This case comes before the Commission on a timely appeal filed by the Washington Public Employees Association, UFCW Local 365 (union), seeking review and reversal of certain Findings of Fact, Conclusions of Law, and Order issued by Examiner Katrina Boedecker.¹ Complainant David Lazar (Lazar) filed a timely cross-appeal challenging the Examiner's remedy.

ISSUES PRESENTED

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

¹ *State - Revenue (Washington Public Employees Association), Decision 8972-A (PSRA, 2007).*

2. If this Commission has jurisdiction, did the union interfere with protected employee rights by failing to provide adequate notice and opportunity to vote in the contract ratification election?
3. If the union interfered with the complainant's protected employee rights by failing to inform him of the ratification election, did the Examiner issue an appropriate remedial award?

In accordance with our previous holdings in similar cases, we rule that this Commission has jurisdiction to adjudicate claims asserting a breach of the duty of fair representation owed by unions to all bargaining unit employees where the union agrees to allow all bargaining unit employees the opportunity to vote on ratification of the collective bargaining agreement. Asserting jurisdiction, we find that substantial evidence supports the Examiner's findings and conclusions that the union failed to adequately inform all bargaining unit employees of their ratification vote rights. Finally, based upon the facts of this case, the Examiner issued the appropriate remedial order.

ISSUE 1 - THE COMMISSION'S JURISDICTION

The question of this Commission's jurisdiction over cases similar to this was fully explained in *Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006); *Community College District 7 (Shoreline) (Washington Federation of State Employees)*, Decision 9094-A (PSRA, 2006); and *Community College District 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210-A (PSRA, 2006); and we

incorporate that discussion by reference.² However, we again stress that although the course of conduct surrounding a ratification election for a collective bargaining agreement is usually an internal union matter, and therefore outside this Commission's jurisdiction, when a union agrees with an employer to grant all bargaining unit employees the opportunity to vote, the union exposes itself to scrutiny from this agency regarding any allegation that the union restrained bargaining unit employees from exercising the right to vote granted to them by the agreement.

Here, the record establishes that the union proposed a union security clause to be included in the agreement, while the employer resisted inclusion of such clause. However, parties reached an agreement on the issue memorialized by a September 16, 2004 letter from Carolyn Lacy, the employer's negotiator, stating that the "[u]nion agrees to allow all employees in its general government bargaining units to vote on ratification of the tentative agreement."³ This situation is exactly the same as the factual situation presented in all three cases of the *Ratification Trilogy*. Thus, there is no reason to depart from the established precedent establishing this Commission's jurisdiction.

² Those three cases have come to be known as the "*Ratification Trilogy*". We adopt that moniker when referring to them, and would also note that the issues presented in this case are identical to, and being decided in conjunction with, the issues presented in *Community College District 3 (Olympic) (Washington Public Employees Association)*, Decision 9486-A (PSRA, 2008).

³ The State Labor Relations Office negotiated on behalf of the employer pursuant to RCW 41.80.010. The agreement allowed every higher education civil service employee represented by the union at any higher education institution the opportunity to vote on contract ratification.

Having found that the Examiner correctly concluded that this Commission has jurisdiction over this complaint, we turn to the substance of the complaint.

ISSUE 2 - UNION'S DUTY OF FAIR REPRESENTATION

Once again, the applicable legal standard regarding the union's obligation to notify all bargaining unit employees of the ratification election were outlined in detail in the *Ratification Trilogy*, and we incorporate that discussion by reference. Here, the Examiner's decision outlines in thorough detail the pertinent events leading up to the ratification election, including the steps that the union took to inform bargaining unit employees of their rights with respect to that election. Important to the Examiner's findings was the fact that the union had an obligation to inform bargaining unit employees who were not union members that their rights had changed based upon the agreement, and that the union was grossly deficient in ensuring that bargaining unit employees exercised that right.

We disagree with the union that these cases can be distinguished on their facts from the *Ratification Trilogy*. Although there are certain factual differences between these cases and the *Ratification Trilogy*, the overall pattern of conduct remains similar, and this record supports the Examiner's findings that the union failed to adequately inform the complainants of their rights regarding the ratification election.

Specifically, the parties reached a tentative agreement on September 16, 2004, and as part of that agreement the union agreed to allow all bargaining unit employees the right to vote as part of the ratification process. However, Leslie Liddle, the union's Executive Director, did not post notices to employees of the

ratification elections and the tentative agreement on the union's own website until September 20, 2004. On the same day, Liddle also posted notice on the union's electronic bulletin board that the union would discuss the tentative agreement at the upcoming district meeting.⁴ Although the delay between the tentative agreement and posting of agreement was not as egregious as the delay in *Community College District 9 (Shoreline)*, Decision 9094-A, we nevertheless find this delay contributed to the union's failure to notify bargaining unit employees who were not union members, particularly in light of the short deadline the parties were operating under. This fact is compounded by the fact that there is no evidence suggesting that the union took other steps to inform bargaining unit employees who were not members of the union about their rights.

Additionally, this record also supports the Examiner's findings that when the union did provide information to employees, it did so in a confusing manner. For example, William Johnson, the union chapter president, sent an e-mail on September 21, 2004, to some, but not all, bargaining unit employees asking them to inform employees about the September 25 and 26 ratification election. However, Johnson's e-mail also erroneously instructed the recipients to inform non-union members that if they wished to vote in the ratification election, they would have to pay the average membership fee. This information is similar to the types of conduct we found objectionable in both *Community College District 9 (Shoreline)*, Decision 9094-A, and *Western Washington University*, Decision 8849-B.

⁴ The employer equipment hosts the union's electronic bulletin board, and employees can access this bulletin board from their work station.

Thus, Liddle's minimal efforts to disseminate correct information regarding the ratification election and tentative agreement, including information regarding non-union members' right to vote, were negated by Johnson's later-sent e-mail which disseminated inaccurate information to bargaining unit employees. This record establishes no other significant efforts on the part of the union to inform bargaining unit employees of their rights in the ratification election at issue.

As the Commission previously noted in the *Ratification Trilogy*, when the union agreed to grant all bargaining unit employees the right to ratify the tentative collective bargaining agreement, it had an obligation to adequately inform all bargaining unit employees of that right. The union failed to do so here.

We also disagree with the union's claims that their communication efforts should be viewed in light of RCW 41.80.010. That statute directs the Governor to request from the Legislature funds necessary to implement the compensation and fringe benefit provisions of any negotiated collective bargaining agreement as part of his or her budget request. RCW 41.80.010(3)(a). However, the Governor may only make such a request for funds if the compensation and fringe benefit provisions of the contract are submitted to the Office of Financial Management (OFM) by October 1 prior to the legislative session at which the requests will be considered, and certified by OFM as financially feasible. Because the October 1 deadline loomed over the parties, the union asserts that it could only protect the rights of all bargaining unit employees by promptly ratifying the contract. We disagree that the short deadline excused the union from adequately correcting the misinformation in Burgess's e-mail.

Although we are mindful that the RCW 41.80.010(3)(a) bargaining deadline is a feature unique to state civil service employees and found in no other collective bargaining statute that this Commission administers, we will not allow parties to use the deadline as a means to avoid their obligation to fairly represent all employees. In cases such as this, where a union agrees to grant bargaining unit employees a right that they would not ordinarily possess, the union's first duty is to ensure that those bargaining unit employees who are afforded the new right are clearly informed of those new rights.

Finally, the union asserts that these complaints essentially allege contract violations, and that this Commission does not act as a contract enforcement agency through its unfair labor practice jurisdiction. That legal precedent is not applicable to these cases. Had the complainants alleged that the union denied them the right to vote in the ratification election, the union's argument would be valid. However, these cases are not about the employees' right to vote under the agreement, rather they concern the notice provided by the union to the complainants about their right to vote on ratification of the negotiated agreement.

ISSUE 3 - The Examiner's Remedial Order

Relying upon the Commission's remedial order in the *Ratification Trilogy*, the Examiner ordered the union to cease and desist from interfering with protected employee rights, and also ordered the union to publish notice of its unfair labor practices in its newsletter and to read into the record of its state-wide convention the official notice attached to her decision. The Examiner denied Lazar's request for a new ratification election noting that even if he had received timely notice of the ratification election and voted, his vote would not have altered the outcome of the election.

Lazar argues that this remedial order is insufficient, and notes that this Commission is directed to issue the appropriate remedial orders, and the order issued by the Examiner is not appropriate. In light of our previous holdings, we disagree that the Examiner erred in any manner regarding the order she issued. The Examiner correctly followed established Commission precedent on facts that were almost identical to the facts in this case.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Katrina I. Boedecker are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 16th day of July, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


THOMAS W. McLANE, Commissioner