STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 7 (SHORELINE),		
Employer.	CASE	DECISION
ARLENE STRONG, ANDREW CONRAD, CATHY FLETCHER, BRAD COULTER, DEBBY HUNTER, CECILY SHERRITT, PAULINE SIMONS, MARGIELIZE VILLACERAN, AMY STAPLETON, BARBARA KRISTEK, MARY CHEUNG, MICHELLE ORTEGA, DIANE DING, PETER PICKERING, KARI FRITZEN, STEVE GIBLER, ELIZABETH BAIN, KIMBERLY ANNE CAMBERN,	18920-U-04-4814	9094-A - PSRA
	18947-U-04-4819	9095-A - PSRA
	18951-U-04-4821	9096-A - PSRA
	18952-U-04-4822	9097-A - PSRA
	18960-U-04-4824	9098-A - PSRA
	18961-U-04-4825	9099-A - PSRA
	18962-U-04-4826	9100-A - PSRA
	18963-U-04-4827	9101-A - PSRA
	18965-U-04-4828	9102-A - PSRA
	18976-U-04-4830	9103-A - PSRA
	18977-U-04-4831	9104-A - PSRA
	18978-U-04-4832	9105-A - PSRA
	18987-U-04-4833	9106-A - PSRA
Complainants,	18995-U-04-4836	9107-A - PSRA
	18997-U-04-4838	9108-A - PSRA
vs.	18998-U-04-4839	9109-A - PSRA
	19025-U-04-4844	9110-A - PSRA
WASHINGTON FEDERATION OF STATE EMPLOYEES,	19026-U-04-4845	9111-A - PSRA
Respondent.	DECISION OF COMMISSION	

Law Offices of Sidney J. Strong, by *Sidney J. Strong*, Attorney at Law, for the complainant employees.

Parr Younglove Lyman & Coker, by *Edward E. Younglove, II*, for the union.

These consolidated cases come before the Commission on a timely appeal filed by the Washington Federation of State Employees (WFSE), seeking to overturn the Findings of Fact, Conclusions of Law, and Order issued by Examiner Walter M. Stuteville.[1] The 18

[1] *Community College 7 (Shoreline)(Washington Federation of State Employees*, Decision 9094 (PSRA, 2005).

individual complainants support the Examiner's decision and filed a brief opposing the appeal.

Certain legal issues in this case are similar to issues to be decided concurrently in appeals from *Western Washington University (Washington Public Employees Association)*, Decision 8849-A (PSRA, 2005) and *Community College District 19 (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, Chapter 41.80 RCW (PSRA), and specifically form 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 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. 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 for a more uniform case precedent, we will examine the legal arguments of the parties in all three cases as a whole and apply a similar legal standard to the factual differences of each decision on appeal.

The Examiner issued his decision in this case on January 23, 2006, finding that the Commission has jurisdiction to adjudicate the complaint that the union failed to give proper notice to the employees. The Examiner ordered the WFSE to cease and desist from failing to fairly and adequately inform all bargaining unit employees of the opportunity to vote on the acceptance or rejection

of any tentative agreement that permits all bargaining unit employees the opportunity to vote, and directed the WFSE to conduct a second ratification election to be supervised by the Commission.

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 WFSE commit unfair labor practices by failing to provide adequate notice and opportunity to vote in the ratification election?

A third issue presents itself in this case:

3. If the Commission has jurisdiction, and the Commission affirms the Examiner's findings and conclusions that the WFSE violated its duty of fair representation, is the Examiner's remedy of granting bargaining unit employees a second ratification election that is supervised by this Commission appropriate?

We rule in all three appeals 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 WFSE breached its duty of fair representation by: (1) its conduct during the ratification of the 2005-2007 collective bargaining

agreement at Shoreline Community College, and (2) failing to allow the complainants a meaningful opportunity to review the negotiated contract. We modify the remedy.

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.[2]

- The Commission reiterated its general reluctance to involve itself in internal union affairs when several individuals 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).[3] The NLRB recognizes that procedures relating to the ratification of a collective bargaining agreement is generally

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[2] 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.

[3] 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.

a matter exclusively within the internal domain of a 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 collective bargaining agreement is, at most, a permissive subject of bargaining.[4] 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).[5]

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

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

[5] 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).

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 sort, [such as] by a majority of or even a representative employees group." *North Mason County Motors*, 146 NLRB 671.[6]

- 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.[7]

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*

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[6] 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.

[7] 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.

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 bargain, it is appropriate for the NLRB to give a measure of protection to the expectancy interests of the parties).[8] 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 WFSE and Shoreline Community College (employer) reached agreement for a collective bargaining agreement covering the 2005-2007 biennium on September 17, 2004. That "Tentative Agreement" contained the following language:

> Attached are the final Tentative Agreements for the WFSE Higher Education negotiations. The tentative agreements are on the following articles:
>
> Compensation
> Dues Deduction
> Miscellaneous Paid Leaves
> Vacation Leave

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[8] 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.

> All other outstanding articles and issues by either party are withdrawn.
>
> *The [WFSE] agrees to allow all employees in bargaining units for which they represent to vote, by Employer, on the ratification of this Agreement*, with the understanding that this does not set any precedent for future ratification votes.

(emphasis added). By entering into that agreement, the WFSE 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 WFSE restrained non-member employees 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. 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),[9] but the higher burden

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[9] 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.

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 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 (*citing Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983)). 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 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).[10] 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 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 the WFSE actions and inactions concerning the ratification of the 2005-2007 contract at Shoreline Community College confused employees in such a manner that it precluded the complainants from having a meaningful opportunity to vote on ratification of the contract:

- In June of 2002, an edition of "Washington State Employee," a monthly newspaper published by the WFSE, was distributed to help educate employees about the PSRA.[11] Of particular importance here, on page 5, in the far right-hand column, when referring to the ability of non-member bargaining unit employees to ride the WFSE's "coattails," it states: "Members - and members only - will select the negotiating team and vote

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[10] 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.

[11] Exhibit 25. The information published in the June 2002 edition was largely repeated in a July 2002 special edition of the same publication (Exhibit 26).

on the contract. That goes for non-members who will be agency-fee payers".

- On September 10, 2004, before the WFSE and employer reached a tentative agreement, Sherri-Ann Burke, a WFSE senior field representative, sent a letter to "WFSE/AFSCME High Education Member[s]" informing them about the current state of negotiations. In addition, the letter also informed the addressees to prepare for both a ratification vote or a strike vote, and that the addressees should be aware of the information contained within the letter.[12] Of particular importance here, the letter outlined WFSE "Voting Requirements at Locations, including the following:

  - Members may vote on-site.
  - Members must present picture ID to vote.
  - *Only WFSE/AFSCME members employed in a Higher Education WFSE/AFSCME bargaining unit may vote.*
  - Deadline to become a *member* is the day of voting." (emphasis added).

- On September 17, 2004, the WFSE and the employer reached their tentative agreement, which also permitted all bargaining unit employees the opportunity on ratification of the contract.

- On September 24, 2004, seven days after the tentative agreement was reached, Peggy Lytle, a WFSE member who had served as the bargaining unit shop steward for 10 years, sent an e-mail addressed to an e-mail subscription service, or "list serve", available to classified staff employed at Shoreline Community College. Employees had to affirmatively subscribe to the

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[12] This letter failed to mention that nothing in Chapter 41.80 RCW grants employees the right to strike.

> "list serve" in order to receive updates sent through that method of communication, and employees were under no requirement to subscribe as part of their employment. Lytle's e-mail stated that collective bargaining negotiations between the WFSE and employer were complete, and that contract ratification was the next step. Of particular importance, the e-mail stated that "we, the *bargaining unit members*, must vote to ratify the contract which will then become our contract beginning July 1, 2005." Also of particular importance, the record demonstrates that not all bargaining unit employees received this email.
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> Thus, Lytle largely reinforced previous WFSE statements that "only WFSE" 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.

As a WFSE shop steward and an individual communicating with the bargaining unit on behalf of the WFSE, Lytle was an agent of the WFSE. *See Community College District 13*, Decision 8117-B (PSRA, 2005)(employees assisting a union are special agents of that union). Even though the WFSE and employer reached the tentative agreement on September 17, 2004, the WFSE delayed notifying to the bargaining unit about the vote for a full seven days, September 24, when Lytle actually sent her notification. Lytle testified that the delay occurred because she was awaiting permission from the employer to utilize the e-mail system for collective bargaining purposes, in accordance with the employer's policies.[13]

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[13] Employers must be careful to not delay their decision making process when fielding requests from exclusive bargaining representatives to use the employer's facili-

Lytle correctly secured permission from the employer before sending out her e-mail, but she failed to utilize other methods of communication that were available to her while waiting for permission to use the employer's facilities.[14]

Nothing in Chapter 41.80 RCW gives public employees an independent right to use an employer's facility for union business. *See Whatcom County*, Decision 8245-A (PECB, 2004)(*citing City of Seattle*, Decision 1355 (PECB, 1982). Commission precedent considers any rule creating an absolute prohibition of solicitation or communication on an employer's premises to be overly broad on its face if they are not restricted to working hours. *City of Seattle*, Decision 5391-C (PECB, 1997). Here, the WFSE effectively wasted a period of a week waiting for authorization from the employer. This period of time could have been utilized to secure alternative methods of communication that would not have required the employer's permission. This reliance on a single method of communication, the "list serve", especially one that was not guaranteed to reach all bargaining unit employees, precluded those employees from having a meaningful opportunity to vote and constitutes a breach of the union's duty of fair representation.[15]

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ties for communicating with employees.

[14] For example, the union maintained a bulletin board where information was posted, but no evidence exists on the record suggesting that resource was utilized.

[15] In situations such as this, where the employer and union agree through collective bargaining to allow all bargaining unit employees the opportunity to vote, if asked for assistance by a union for assistance in providing a complete list of bargaining unit employees who would be eligible to vote, an employer should provide such list. An employer who declines to do so may be found to have interfered with protected employee rights.

Additionally, and more importantly, the attempted notification failed to unambiguously state that all bargaining unit employees were eligible to vote on ratification of the contract. Throughout the WFSE's "education process" regarding the changes brought by the PSRA, the WFSE continually informed the employees it represented that only "members" would be allowed to select the negotiating team and vote on ratification of the contract.

The complainants testified that they believed that only "members" would be allowed to vote. Lytle's Setember 24 e-mail reinforces these beliefs by a continued use of the term "bargaining unit *members*," a term consistent with the WFSE's educational materials. Although the WFSE's statements regarding "members'" traditional right to ratify collective bargaining agreements were correct at the time they were made.

Once the WFSE 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 rights. The actions and inactions by the WFSE to clarify the rights of all bargaining unit employees demonstrate a pattern of "arbitrary" and "bad faith" behavior constituting a breach of its duty of fair representation.

We disagree with any attempt by the WFSE to mitigate any shortcomings in notification 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 WFSE in 2004.
- By choosing to hold its ratification vote on September 25, the WFSE 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 WFSE 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 WFSE 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.

ISSUE 3 - THE EXAMINER'S REMEDY

The authority of this Commission to prevent and remedy unfair labor practices is set forth in RCW 41.80.120, as follows:

> **Unfair labor practice procedures — Powers and duties of commission.** (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders:
> . . .
> (2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

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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.

Thus, the fashioning of remedies is a discretionary action of the Commission. When interpreting the Commission's remedial authority under Chapter 41.56 RCW, the Supreme Court of the State of Washington approved a liberal construction of the statute to accomplish its purpose. *City of Seattle*, Decision 8313-B (PSRA, 2004)(*citing METRO v. PERC*, 118 Wn.2d 621 (1992). With that purpose in mind, the Supreme Court interpreted the statutory phrase "appropriate remedial orders" to be those necessary to effectuate the purposes of the collective bargaining statute to make the Commission's lawful orders effective. *METRO*, 118 Wn.2d at 633. The Commission's expertise in resolving labor-management disputes was also recognized and accorded deference. *METRO*, 118 Wn.2d at 634 (citing *Public Employment Relations Commission v. City of Kennewick*, 99 Wn.2d 832 (1983)).

A breach of the duty of fair representation is specific to the individual, and does not generally apply to the bargaining unit as a whole. Despite the fact that we have found notice of the ratification lacking, the evidence demonstrates that 30 employees voted for the ratification, while only three voted against. Even if all 18 complainants voted against the contract, those votes would not have affected the outcome of the election.

Any remedy crafted under the statutes this Commission administers should keep in mind the Commission's purpose of promoting labor stability between public employers, employees, and the unions who represent those employees. Even though the complainants have been obligated to pay union security fees under the collective bargaining agreement, they have also received the benefit of the agreement, including a cost-of-living adjustment, a Department of Personnel salary survey increase, and the union has been obligated to represent employees in grievances with the employer. Given the

fact that the 18 complainants could not have affected the outcome of the ratification election, we decline to order a second vote.

We direct the WFSE to cease and desist from failing to properly notify bargaining unit employees of their contract ratification rights. We also direct the WFSE to read into the record at its next state-wide convention the attached notice and to permanently appending that notice to the official minutes of that meeting. Additionally, the WFSE shall publish a copy of the notice in its next issue of the WFSE's "Washington State Employee" newspaper.

NOW, THEREFORE, it is

ORDERED

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

2. The Order issued by Examiner Walter M. Stuteville in the above-captioned case is amended to read:

The Washington Federation of State Employees, it officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to adequately inform all bargaining unit employees of their voting rights conferred by agreement of the union with the employer in collective bargaining.

b. Failing to adequately inform all bargaining unit employees of the contents of the tentative agreement that the union agreed to submit for ratification by vote of all bargaining employees, with specific reference to the union security provision.

c. In any other manner, restraining or coercing employees in the exercise of their rights under Chapter 41.80 RCW.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS to effectuate the purposes and policies of Chapter 41.80 RCW.

a. Post, in conspicuous places on the employer's premises where union notices to all employees are usually posted, copies of the notice marked "Appendix A" attached to this order. Such notices shall be duly signed by an authorized representative of the Washington Federation of State Employees. Such notices shall remain posted for 60 days. Reasonable steps shall be taken by the respondent union to ensure that such notices are not removed, altered, defaced, or covered by other material.

b. Read the notice marked "Appendix A" attached to this order at a meeting of all employees in the bargaining units represented by the union at Shoreline Community College and at the next state-wide convention held by the Washington Federation of State Employees.

c. Publish in the next monthly issue of "The Washington State Employee" a true-sized copy of the notice marked "Appendix A".

d. Notify each of the above-named complainants, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide each named complainant with a signed copy of "Appendix A" attached to this order.

e. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide each named complainant with a signed copy of "Appendix A" attached to this order.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to fairly and adequately notify all bargaining unit employees who are not union members in the nonsupervisory, classified unit we represent of the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement reached between Shoreline Community College and ourselves, the Washington Federation of State Employees.

WE UNLAWFULLY interfered with and restrained all bargaining unit employees who are not union members in the exercise of their statutory rights by breaching our duty of fair representation.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease and desist from failing to fairly and adequately inform all bargaining unit employees who are not union members of the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement reached between the union and employer on September 17, 2004, in negotiations for a successor contract.

WE WILL cease and desist from failing to fairly and adequately inform all bargaining unit employees who are not union members of the opportunity to vote on the acceptance or rejection of any other tentative collective bargaining agreement reached between the union and employer in negotiations that per the negotiated agreement calls for such opportunity (and notice).

WE WILL NOT, in any other manner, interfere with or restrain bargaining unit employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

DATED: _____ WASHINGTON FEDERATION OF STATE EMPLOYEES

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.