Community College 7 - Shoreline (Washington Federation of State Employees), Decision 9094 (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 7, (SHORELINE COMMUNITY COLLEGE),

Employer.

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, AND KIMBERLY ANNE CAMERN,

Complainants,

vs.

WASHINGTON FEDERATION OF STATE EMPLOYEES,

Respondent.

CASE	DECISION
18920-U-04-4814	9094 - PSRA
18947-U-04-4819	9095 - PSRA
18951-U-04-4821	9096 - PSRA
18952-U-04-4822	9097 - PSRA
18960-U-04-4824	9098 - PSRA
18961-U-04-4825	9099 - PSRA
18962-U-04-4826	9100 - PSRA
18963-U-04-4827	9101 - PSRA
18965-U-04-4828	9102 - PSRA
18976-U-04-4830	9103 - PSRA
18977-U-04-4831	9104 - PSRA
18978-U-04-4832	9105 - PSRA
18987-U-04-4833	9106 - PSRA
18995-U-04-4836	9107 - PSRA
18997-U-04-4838	9108 - PSRA
18998-U-04-4839	9109 - PSRA
19025-U-04-4844	9110 - PSRA
19026-U-04-4845	9111 - PSRA

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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, III*, for the union.

Between October 21 and December 2, 2004, a total of 18 classified employees of Community College District 7 d/b/a Shoreline Community College (Shoreline) filed similar unfair labor practice complaints with the Public Employment Relations Commission naming the

Washington Federation of State Employees (union) as respondent.[1] The cases were consolidated for processing, based on the facts that: (1) all of the employees involved alleged they were represented by the union at Shoreline; and (2) all of the charges involved alleged failure of the union to provide adequate notice and information in advance of a ratification vote on the first collective bargaining agreement negotiated by the union under the Personnel System Reform Act of 2002 (PSRA). Examiner Walter M. Stuteville held a hearing on the consolidated matters on April 25 and 26, 2005. The parties filed post-hearing briefs.

ISSUES

1. Does the Commission have jurisdiction to adjudicate allegations of union restraint of employee rights concerning the ratification of a collective bargaining agreement?
2. Did the union violate the PSRA by failing to give adequate notice to the complainants concerning their right to vote on ratification of the 2005-2007 collective bargaining agreement?
3. Did the union violate the PSRA by failing to give adequate information to the complainants concerning the union security provision contained in that collective bargaining agreement?

The Examiner rules that: (1) the Commission has jurisdiction in this matter; (2) the union violated the statute by failing to provide the complainants with adequate notice and information concerning their right to vote on the contract ratification; and (3) the union violated the statute by failing to explain that a union security provision was included in the contract that it had agreed to submit for ratification by all bargaining unit employees. To remedy the unlawful actions, the Examiner orders the union to

[1] The names of the individual complainants and their respective case numbers are set forth in the caption in the order in which the complaints were filed.

cease and desist from seeking to enforce the 2005-2007 collective bargaining agreement until such time as it is ratified in conformity with the terms agreed upon by the union in bargaining.

ISSUE 1: DOES THE COMMISSION HAVE JURISDICTION IN THESE CASES?

Restraint Prohibited

The Personnel System Reform Act of 2002, Chapter 41.80 RCW, governs these parties, and protects the rights of state employees:

> RCW 41.80.050 RIGHTS OF EMPLOYEES. Except as may be specifically limited by this chapter, employees shall have the right to self-organize, 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. Employees shall also have the right to refrain from any or all such activities* except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.

(emphasis added). Those rights are protected by the unfair labor practice provisions of the PSRA, and by the Commission's delegated authority to determine and remedy unfair labor practices:

> RCW 41.80.110 UNFAIR LABOR PRACTICES ENUMERATED.
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> . . . .
>
> (2) It is an unfair labor practice for an employee organization:
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> (a) To *restrain or coerce an employee in the exercise of the rights guaranteed by this chapter* . . .

(emphasis added). The Commission has adopted Chapter 391-45 WAC to regulate the processing of unfair labor practice cases.

In *King County*, Decision 7108 (PECB, 2000), the counterpart provisions of the Public Employee's Collective Bargaining Act,

Chapter 41.56 RCW (at RCW 41.56.040 and 41.56.150(1)) was discussed, as follows:

> To establish interference with protected rights, a complainant need only prove that a party engaged in conduct which employees reasonably perceived as a threat of reprisal or force or promise of benefit associated with their union activity. The actual intent is not a factor or defense. *City of Seattle*, Decision 3066 (PECB, 1998), *affirmed* Decision 3066-A (PECB, 1989).

The "restraint" and "coercion" terms appear in both Chapters 41.56 and 41.80 RCW, and the Examiner applies the same standards to the facts and evidence in these cases.

Analysis of Jurisdiction Issue

The Examiner has considered, and rejected, several arguments advanced by the union.

Tradition cited by the union is inapposite, even though the Examiner agrees that nothing in Chapter 41.06 or 41.80 RCW guarantees all bargaining unit members a right to participate in a ratification vote conducted by a union on a tentative agreement reached in collective bargaining. For reasons detailed below, this is *NOT* a traditional situation.

Commission precedents cited by the union are inapposite, even though the Commission generally declines to exercise jurisdiction over internal union affairs. The precedents cited by the union are distinguishable on their facts: *Lewis County*, Decision 464-A (PECB, 1978) held that bargaining unit employees who were not union members did not have a right to participate in union meetings called to formulate proposals for future bargaining, but did not address the rights of non-members once a union has given them voting rights. *Lake Washington School District*, Decision 6891 (PECB, 1999), concerned the right of union members to vote by

absentee ballot in union elections, and attempts by union members to have specific issues presented in negotiations,[2] but did not address the rights of non-members.

Federal precedents provide a basis for scrutiny of the union conduct at issue here. The preliminary rulings in each of these cases cited *Branch 6000, Letter Carriers*, 232 NLRB 263 (1977) and *Boilermakers Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28 (1990), where the National Labor Relations Board (NLRB) asserted jurisdiction. In both of those casess, unions abdicated their roles as exclusive bargaining representatives by submitting questions to referendum votes among all bargaining unit employees, and the NLRB then required those unions to provide fairness to all bargaining unit employees. Thus, shortcomings on the part of the unions in such situations are subject to scrutiny before labor relations agencies as violations of the statutory prohibition of restraint and coercion. This Examiner adopted a similar standard in *Western Washington University*, Decision 8849 (PSRA, 2005), and likewise adopts that standard in these cases.[3]

Commission precedent provides a basis for scrutiny of contract ratification processes. The Commission asserted jurisdiction in

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[2] The *Lake Washington* decision concerned an appeal from a preliminary ruling issued without benefit of a full evidentiary record. It involved alleged irregularities in the tally of contract ratification ballots (which is factually similar to these cases), but the complainants were union members (which kept that situation closer to "internal union affairs" than these cases).

[3] In both NLRB decisions, the fact of the union giving all bargaining unit employees a right to vote on a decision that could otherwise have been a union decision resulted in NLRB scrutiny. Factual differences between the NLRB cases and the cases at hand were discussed by this Examiner in the *Western Washington* decision, and that analysis is incorporated here by reference.

Naches Valley School District, Decision 2516-A (EDUC, 1987), where a union was obligated to accept a contract notwithstanding a negative vote of its members, because it had induced that employer to implement the new contract and accepted the benefits of the new contract. The Commission regulates the collective bargaining process generally, and thus scrutinized a contract ratification process that affected the collective bargaining process.[4] An apt response to the union's assertion that there is no statutory support for such an examination is that no language in the PSRA contradicts the *Naches Valley* precedent.

The instant cases present unique facts closely related to the "duty of fair representation" owed by exclusive bargaining representatives to all bargaining unit employees. That duty has been enforced by labor relations agencies since at least *Miranda Fuel Co.*, 140 NLRB 181 (1962), and by the federal courts since at least *NLRB v. Teamsters Local 282 (Transit-Mix Concrete)*, 740 F.2d 141 (2d cir., 1984). The instant cases arise out of the first collective bargaining under a new statute and are within a series of cases of first impression for the Commission as they involve the rare circumstance of a union having agreed with an employer in collective bargaining to allow non-member employees to vote on ratification of the contract.

Conclusion as to Jurisdiction

In light of the statutory authority of the Commission to prevent restraint and coercion of employees, and in light of the NLRB and Commission precedents supporting scrutiny of union actions at the

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[4] The *Naches* decisions point out that collective bargaining statutes do not guarantee any employees a right to ratify collective bargaining agreements negotiated by their exclusive bargaining representative.

fringe of "internal" union affairs, it is appropriate for the Commission to assert jurisdiction in these cases.

ISSUE 2: DID THE UNION FAIL TO PROVIDE THE COMPLAINANTS WITH ADEQUATE NOTICE AND INFORMATION ABOUT THEIR RIGHT TO VOTE ON RATIFICATION OF THE 2005-2007 CONTRACT?

The New Collective Bargaining Statute

Along with numerous changes to the State Civil Service Law, Chapter 41.06 RCW, the PSRA created an entirely new collective bargaining process for civil service employees of the state of Washington:

First, the scope of collective bargaining under the PSRA includes, for the first time:[5] (1) the wages of state employees;[6] (2) the amount of money paid by the state toward the cost of fringe benefits for state employees;[7] and (3) union security provisions obligating some or all bargaining unit employees to join the union or pay a representation fee.[8]

Second, collective bargaining agreements under the PSRA were to go into effect no earlier than July 1, 2005,[9] and RCW

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5 Prior to the PSRA, collective bargaining under RCW 41.06.150 was limited to matters controlled by the agency head or institution of higher education.

6 Prior to the PSRA, the wages of state employees were set by the Washington Personnel Resources Board or its predecessors, implementing legislative appropriations.

7 Prior to the PSRA, insurance benefits made available to state employees were set by legislative appropriations based on recommendations of another state board.

8 Prior to the PSRA, union security obligations were imposed and/or terminated in state employee bargaining units only by elections conducted by the Department of Personnel under RCW 41.06.150 as then in effect.

9 See RCW 41.80.001.

41.80.010(3)(a) effectively required the union to complete its negotiations for its first PSRA contracts by October 1, 2004.[10]

The Bargaining Process at Shoreline

The union represented two bargaining units at Shoreline before the PSRA was enacted, and those units carried over under RCW 41.80.070: (1) A unit of nonsupervisory custodians; and (2) a unit of nonsupervisory classified employees other than custodians. On May 26, 2004, the union was certified as exclusive bargaining representative of a unit of supervisory classified employees in *Community College 7 (Shoreline)*, Decision 8574 (PSRA, 2004).[11]

Negotiations began in mid-April of 2004 for the first contracts to be negotiated under the PSRA. Exercising an option made available in RCW 41.80.010(4),[12] the Governor's designee bargained with the union for a coalition of higher education institutions that included 12 of the state's community college districts (including Shoreline) and The Evergreen State College.

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[10] The October 1 deadline is related to approval of contracts by the director of the Office of Financial Management (in RCW 41.80.010(3)(b)), submission of a request for funds by the Governor to the Legislature (in RCW 41.80.010(3)), and legislative approval or rejection of the request for funds as a whole (in the final paragraph of RCW 41.80.010(3).

[11] Testimony in this case referred to there being about 150 employees in the classified units, but records transferred to the Commission under RCW 41.80.901 and/or maintained by the Commission suggest a total of as many as 222 employees (about 29 in the custodians unit, about 173 in the classified unit, and about 20 in the supervisors unit).

[12] The operative language is:

> A governing board may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies . . . .

<u>Public information was limited during the negotiations</u>, according to Peggy Lytle, a classified employee at the college. She has been a union shop steward for ten years, and was a member of the union's negotiating team during the negotiations in 2004. She testified that the parties agreed to a ground rule that generally precluded public disclosure or public discussion of the issues being negotiated, and Lytle interpreted that ground rule to mean:

> [U]ntil the articles were . . . tentatively agreed upon by both - by the negotiating teams, then we weren't allowed to speak to them at all, and we couldn't talk about them or discuss them. . . . But what were things that we couldn't speak about was the negotiations themselves and, you know, the proposals and counter-proposals and all of that.

The ground rule did allow the parties to talk with their respective constituencies, but the evidence supports a conclusion that there was a dearth of information to employees about the negotiations.

<u>A tentative agreement was reached</u> by the union and the Governor's designee on September 17, 2004. The union's chief negotiator, Sherri-Ann Burk, testified that agreement on union security was a final piece of the bargain. Exhibit 4 in this proceeding consists of five pages that include "tentative agreement" and "9/17/04 9:00 p.m." in their headers.[13] The paragraph at the bottom of the first and second pages reads as follows:

> The Union agrees to allow all employees in the bargaining units for which they represent to vote, by Employer, on the ratification of this Agreement, with the understand-

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[13] The first page bears signatures of the chief negotiators and handwritten "9/17/04" dates; the second page appears to be an unsigned copy of the first; the third through fifth pages contain contract language for a "Dues Deduction" article that includes union security obligations for all employees covered by the contract.

> ing that this does not set any precedent for future ratification votes.

Taken together, the testimony and documents provide basis for an inference that the union's agreement to open its ratification process to non-members was a quid pro quo for the employer's agreement on the union security provision.

Applying the statutory prohibition of restraint of employees, the NLRB precedents, and the Commission precedents as discussed in the analysis of Issue 1, above, the union both: (1) undertook an obligation of good faith toward the employer;[14] and (2) undertook an obligation to provide notice and fairness to all bargaining unit employees.[15] In evaluating the union's subsequent actions (or inaction), the Examiner starts from two premises:

First, that the union's agreement to allow non-members voting rights was clearly contrary to the union's usual procedure in which only union members would be eligible to vote.[16]

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[14] The employer has not filed a complaint against the union (as in *Naches Valley School District*, Decision 2516-A, and the Examiner does not decide this case from a "breach of good faith toward the employer" perspective.

[15] The union has not filed a complaint against the employer for insisting to impasse upon a permissive subject (as in *PUD 1 of Clark County*, Decision 2045-B (PECB, 1989), where an employer insisted upon withdrawal of unfair labor practices as a condition of agreement), and the Examiner does not decide whether it was wise for the union to agree to a ratification process replicating the union shop elections repealed from RCW 41.06.150.

[16] Burke testified that she normally: Conducts ratification by mail ballot; sends *union members* a letter about the process and a copy of the tentative agreement; and allows 10 to 15 days before the deadline for return of ballots. That ratification process often takes 30 to 45 days.

Second, that bargaining unit employees who were not union members had no basis to expect, let alone demand, that they would be eligible voters in any contract ratification process.[17]

The Contract Ratification Process

The ground rule limiting public discussion of bargaining issues and the last-minute quid pro quo (linking union security and ratification) had a combined effect: No information concerning either the union security issue or the voting process had been imparted to bargaining unit employees prior to September 17, 2004. According to the testimony of Lytle, the resolution of the negotiations just before the opening of the the academic year at Shoreline caused an additional complication, because bargaining unit employees were very busy with their regular duties in September 2004.

The union made some effort to communicate with bargaining unit employees about the ratification process. Lytle's testimony discloses that she used two distinctly different methods, however:

As to the custodians unit, Lytle hand-delivered notices of the ratification vote to the campus mailboxes of the employees.[18]

As to the classified (except custodians) and supervisors units, Lytle testified that the *only* information that she was able to get out to the bargaining unit employees was by means of a

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[17] This union only represents employees of the state of Washington, and the Examiner infers that the ratification process described by Burke would have been the process familiar to the employer and to the employees represented by the union.

[18] Notice is taken of records transferred to the Commission under RCW 41.80.901, which indicate a union shop had been approved for that bargaining unit under RCW 41.06.150. Lytle testified that the employees in that unit were "under a different contract" and were all either union members or were paying an agency fee.

LISTSERV message that she sent out a week after the tentative agreement was reached, on Friday, September 24, 2004. It stated that the ratification vote would be held on Wednesday, September 29, 2005. That LISTSERV message stated that the contract would be available at the voting site, and provided her campus extension number so employees could contact her with questions.

Either of those methodologies was clearly a far cry from the normal ratification practices described by Sherri-Ann Burke, the union's senior field representative and chief union spokesperson in the community college negotiations.

The ratification vote results were tallied and announced on September 29, 2004. Only 33 employees voted.[19] The new collective bargaining agreement was ratified.

Insufficiency of Notice to Non-Members

Although there could be many reasons why the number of employees voting on ratification was low, the testimony presented at the hearing establishes that employees who were not union members were not given adequate notice of their voting rights:

First, Lytle's choice of technology delayed getting out any information to employees in the classified (except custodians) and supervisors units. The LISTSERV message was sent by means of a campus-wide system maintained by the employer to direct information to various categories of e-mail users on its computer system, and Lytle had to negotiate use of the LISTSERV system with the employer before sending her message. The time taken up for those negotations accounts for over half of the time that elapsed between the "September 17 at 9:00 p.m." time stated on the tentative

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[19] This is understood to be the combined votes of all three bargaining units at Shoreline, since there was no evidence suggesting the units voted separately.

agreement documents in evidence and the "September 29 at 1:30 p.m." close of the polls on ratification.[20]

Second, Lytle testified that she "[D]idn't have any idea who was and who wasn't subscribed to" the classified LISTERV list. In fact, evidence in this record indicates that the group referred to as the "classified LISTSERV" in testimony was not limited to classified employees and did not include all classified employees.

Third, the history of bargaining at Shoreline undoubtedly contributed to employee apathy about the collective bargaining process, thereby compounding the lack of information about the negotiations held under the PSRA in 2004. According to this record, the last actual contract negotiations at Shoreline took place in 1985, and the contract was "rolled over" thereafter by operation of an automatic renewal clause. Thus, neither union members nor bargaining unit employees who were not union members had recent experience with union organizing or informational activities in preparation for contract negotiations, employee input on bargaining issues, or ratification of tentative agreements.

The testimony of several bargaining unit employees supports a conclusion that the union did not provide adequate notice of the ratification process:

- When asked how she learned about the ratification vote, Marilu Neally, a Program Assistant in the college Athletic Department, stated:

> Mostly coworkers who were kind of confused about it, and we would talk, like, at lunch. And they would say, "well, do you know what's going on?" and this person would have an idea, and then this person would throw something up. So there was a

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[20] In fact, 56% of the time.

> lot of confusion, and nobody really - I mean, people that I was around, nobody really know what was going on or not.

Neally also testified that she contacted Lytle about the eligibility of non-union members of the bargaining unit to vote, that Lytle initially told her she could not vote, that Lytle later said she could vote, and that Lytle retracted that opinion still later. Regardless of whether Lytle made the statements attributed to her,[21] Neally's testimony clearly indicates gross confusion about the ratification process.

- Debra Hunter, a program assistant at the college, testified that she was aware of the ratification vote but did not participate in it, because she believed that only union members were eligible to vote. She further stated:

> Well, I'm not altogether against the union. I just don't know what they're about, what they do. I would have liked to have heard what was being voted on, what advantages to me would have been. But I definitely would have voted had I been informed on the issues.

Hunter stated that Lytle did not give her any information about the new contract, even though their work stations are adjacent to one another. Hunter also testified she did not know what "full scope collective bargaining" meant, or that state employees had been given the right to negotiate wages and benefits.[22]

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21 Lytle denied having this series of conversations with Neally.

22 Diane Ding, a cashier in the budget and accounting office, gave similar testimony.

- Barbara Kristek, a supervisor secretary in the humanities department, testified that she did receive notice of the upcoming vote, but that she did not vote because:

> Well, I'm not a member of the union. And according to this e-mail here, which I had received, it said that union members had been notified about the vote. And if the date hadn't been changed, there probably wouldn't have even been any more notification. So I assumed – I hadn't been notified by the union. I didn't belong to the union. I didn't think I was a member of the bargaining unit.

  Kristek was one of many employees that were confused by the reference to previous voting information in the LISTSERV message, because they had not received any previous notice.

- Pauline Simons, another cashier, and Elizabeth Bain, an office assistant III, each stated that they believed that the term "bargaining unit member" was synonymous with "union member."[23]

- Margielize Villaceran, a program manager in the Office of Economic Affairs, testified that she had received the September 24 LISTSERV message, but received no other notice or information concerning what was being voted on or why.[24]

Although the complainants alleged that Lytle knowingly drafted the election notice to mislead non-union members of the bargaining unit, there was no evidence to substantiate such a claim. It is sufficient to say that, for whatever reason (including the length

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[23] Cathy Patrick (a senior secretary), Arlene Strong (another senior secretary) and Peter Pickering (an information systems employee) all testified that they were deterred from voting on the contract ratification because of similar confusion as to terminology.

[24] Villaceran also did not consider herself to be a "bargaining unit member" because she was not a union member.

of time since a contract had actually been negotiated at Shoreline, and the ground rule limiting information about the negotiations in 2004), a large number of bargaining unit employees were left with insufficient information and notice of their right to vote on the ratification of the 2005-2007 contract.

<u>The union's "good faith effort" argument is not persuasive</u> on the record made in this case.

First, the fact that the negotiations on the first PSRA contract were subject to a deadline of October 1, 2004, was known to the union when the PSRA was passed by both houses of the Legislature in May of 2002, and certainly by the first PSRA effective date that occurred on June 13, 2002. If the union failed to inform the employees it represented of their rights, it did so at its peril.

Second, the testimony of the union's director of public affairs, Tim Welch, about the methods generally used by the union to communicate with its usual constituencies does not excuse a failure to give notice when it extends voting rights to an unusual constituency. Welch stated that the union does not have e-mail addresses of all bargaining unit employees, or even of its own members, and that it relies on passive communication mechanisms to communicate with its members.[25] Welch acknowledged that the union's efforts were aimed at its members, and he acknowledged he had no way of knowing whether non-members ever saw those communications.

Third, while the union did have one on-campus meeting concerning the negotiations in 2004, the union's legislative

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[25] Welch mentioned a web site, press releases to local news media, notices posted on campus bulletin boards, the union newspaper, and a telephone hot-line. Copies of special tabloids and the union newspaper were admitted in evidence in this record.

political action field coordinator, Althea Lute, testified that it occurred on February 19, 2004, and that its focus was on getting information to the newly-organized supervisors' bargaining unit. That meeting, held more than a month before the negotiations began and nearly seven months before the union entered into a tentative agreement that gave non-members a right to vote on ratification of the contract, is not evidence of a good faith attempt to get information to the bargaining unit employees who were not union members.

Fourth, the LISTSERV was an untried method of communication that was used by Lytle only after a substantial delay and without knowing exactly who was on (or omitted from) the recipient group.

Conclusion on Adequacy of Notice

The union restrained employees in the exercise of their rights by failing to inform them of their right to vote on ratification of the 2005-2007 contract. From this Examiner's perspective, the shortcomings of the union's efforts in the days between the quid pro quo agreement opening its ratification process to non-members and the actual voting were exacerbated by the failure of the union to keep its members (let alone all bargaining unit employees) informed during the contract negotiations in 2004. In a situation where employees hired in the most recent 19 years had never experienced a contract ratification process at Shoreline, the union's agreement to give all bargaining unit employees voting rights on the contract ratification required it to do much more than the one inherently defective LISTSERV notice to most of the employees involved, and the differential treatment provided to the custodians unit. As a party to such an unusual agreement, those minimal efforts put forth by Lytle do not even support the union's defense that it did the best it could.

ISSUE 3: DID THE UNION UNLAWFULLY CONCEAL THE EXISTENCE OF THE UNION SECURITY PROVISION IN THE CONTRACT TO BE RATIFIED?

The ability of unions to negotiate union security provisions, rather than having union security obligations imposed and/or removed by vote of the employees, was clearly among the changes that occurred with the enactment of the PSRA. Equally clearly, union security was among the last issues resolved in the contract negotiations that occurred in 2004 and this union agreed to open its ratification process to all bargaining unit employees. It is also clear that Lytle said nothing about the union security provision in the LISTSERV message that she sent to give bargaining unit employees notice of the ratification vote. Lytle detailed "highlights" of the contract:

> *Wage increases of 3.2% effective July 1, 2005; 1.6% effective July 1, 2006.*
>
> *Callback pay will now be 3 hours; Stand By pay will be $1.5o or 7% of salary, whichever is greater.*
>
> *Salary Survey Adjustments:* All represented workers who are more than 25% behind the average salary survey will receive salary increases in addition to the COLA's.
>
> *Health Care Premium Costs* will remain at the 12% of total medical costs during the 2 years of the contract.
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> In addition, the *Employer paid dental care will be maintained* and the *$25,000 life insurance benefit is restored.*
>
> *Promotions:* If an employee is promoted more than six ranges, the employee will receive a ten percent (10%) increse. Right now it is a 5% increase.
>
> Employees will receive an additional Personal Holiday to be used during the two-year period of the contract.
>
> *Parking remains as is.*
>
> A copy of the contract will be available at the voting sites.
>
> For more information on contract language check out the unions website @ www.wfse.org.

It is not necessary for the Examiner to decide whether Lytle was engaging in deliberate concealment, because the test is the reasonable perceptions of the employees. The testimony of several witnesses called by the complainants supports a conclusion that the failure to mention the union security provision was at least a contributing factor to the exceedingly low turnout (constituting about 15 percent, if the total number of employees is at or near the 222 on the Commission's records) at the ratification vote.

Conclusion on Failure to Mention Union Security

Although the witnesses that testified in this proceeding about the lack of information given to them and their confusion about the contract terms was small in comparison to the total number of employees eligible to vote on this campus, it is nevertheless indicative of a serious problem in the manner in which the union represented the interests of these bargaining units in conducting the ratification election. Acknowledging the difficulty of putting together a state-wide election process in many different campuses and work settings in a very short time, it is still astonishing that so few employees understood what was going on and how the results of the ratification vote would affect each of them. Unions owe a duty of fair representation to all employees in the bargaining units they represent, not just those who are union members. That duty exists irrespective of whether the employees have any voice or vote in contract ratification processes, and it goes far beyond just notifying personnel of the impending vote. The testimony in this record clearly shows how poorly the union notified the employees at Shoreline of the tentative agreement to be voted upon, and it compounded the problem of inadequate notice when it made no mention of the union security provision in the only information it attempted to circulate to all bargaining unit employees. Whether this lack of information about the union security provision was intentional or not, it provides an addi-

tional basis to rule that the union acted in a manner that restrained the rights of the employee that it is certified to represent.

REMEDY

The remedial orders in unfair labor practice cases are customarily designed to restore to aggrieved employees to the conditions that existed prior to the violations of the statute. In this instance, that means the conditions that existed when the union agreed to give non-members voting rights on ratification of a new contract that was to include a union security provision. Thus, the union cannot enforce the new contract until and unless it is properly ratified by a vote of all bargaining unit members.

If the union chooses to conduct a second ratification vote on the tentative collective bargaining agreement that it had reached with the Governor's designee on September 17, 2004, it must:

- Give adequate notice of the ratification vote to all bargaining unit employees, in order to conform with the duty of fair representation imposed upon it by statute;
- Provide adequate information to all bargaining unit employees concerning the terms of the tentative agreement being submitted for ratification, including a complete copy of the tentative agreement to all prospective voters, in order to conform with its own practices as described by union official Burke and to conform with the duty of fair representation imposed upon it by the statute;
- It must obtain from Shoreline a current list of all bargaining unit employees and their residence addresses; and

- It must provide the Commission staff with the following materials for mailing to all bargaining unit employees:
  - A notice explaining the unfair labor practice which has been committed and the election process;
  - A ballot for the ratification vote;
  - A postage-paid envelope for each bargaining unit employee to return the ballot to the Commission, containing the names and addresses of bargaining unit employees needed to check eligibility at the time the ballots are counted; and
  - A postage-paid envelope pre-addressed to each bargaining unit employee, for sending out the ballot materials.

Having the ballots returned to and counted by the Commission staff under procedures parallel to the "laboratory conditions" procedures used for representation elections will assure all bargaining unit employees a fair and orderly tally.

FINDINGS OF FACT

1. Community College District 7, d/b/a Shoreline Community College (Shoreline), is an institution of higher education of the state of Washington within the meaning of RCW 41.80.005(10).

2. The Washington Federation of State Employees (union), an employee organization within the meaning of RCW 41.80.005(7), is the exclusive bargaining representative of three bargaining units of classified employees of Shoreline: A unit of non-supervisory custodians (for which the union was certified under Chapter 41.06 RCW and for which a union shop implemented

by vote of the bargaining unit employees under RCW 41.06.150 was in effect as of June 13, 2002); a unit of non-supervisory, classified employees other than custodians (for which the union was certified under Chapter 41.06 RCW and for which no union shop obligation was implemented under RCW 41.06.150 as of June 13, 2002); and a unit of classified supervisors (for which the union was certified in February 2004).

3. The union and Shoreline were parties to a collective bargaining agreement covering the "non-supervisory, classified employees, except custodians" bargaining unit that went into effect on December 1, 1986. That agreement was extended from year to year thereafter through 2003 by operation of an automatic renewal clause, and was never re-negotiated by the union and Shoreline.

4. Chapter 41.80 RCW, State Collective Bargaining, was enacted as part of the Personnel System Reform Act of 2002 (PSRA), and created an entirely new collective bargaining process for civil service employees of the state of Washington, including classified employees of community colleges. PSRA provisions that took effect on June 13, 2002, carried over the bargaining relationships that had been established previously under Chapter 41.06 RCW. PSRA provisions that took effect on July 1, 2004, established a duty to bargain, for the first time, concerning: (a) the wages of state employees; (b) the amount of money paid by the state toward insurance benefits for state employees; and (c) union security obligations requiring some or all bargaining unit employees to become union members or pay a representation fee.

5. The operative effect of a PSRA provision which took effect on July 1, 2004 (RCW 41.80.010), was that negotiations for first

contracts under the new collective bargaining process had to commence by July 1, 2004, that those negotiations had to be completed by October 1, 2004, and that the first contracts were to take effect no earlier than July 1, 2005.

6. In anticipation of the first of the deadlines described in paragraph 5 of these findings of fact, the union held one information session on the Shoreline campus during or about February 2004. The focus of that meeting was on the separate unit of supervisors for which the union was certified about that time, and the testimony of union officials who participated in that meeting supports an inference that little or no information was provided to the employees in the pre-existing "non-supervisory classified except custodians" bargaining unit.

7. In anticipation of the first of the deadlines described in paragraph 5 of these findings of fact, the union commenced negotiations with the Governor's designee (representing a coalition of state higher education institutions, including Shoreline), during or about April 2004. Sherri-Ann Burke was the union's chief spokesperson in those negotiations. Peggy Lytle, a Shoreline classified employee, was an on-campus shop steward for the union and was a member of the union's negotiating team in 2004.

8. During the negotiations commenced as described in paragraph 7 of these findings of fact, the parties agreed upon a ground rule which limited the amount and content of information that could be made public. Lytle interpreted that ground rule to mean that she could not discuss the parties' proposals or counter-proposals with employees in the bargaining units at Shoreline, and she conformed with that interpretation.

9. During the period from April 2004 through September 16, 2004, the union did little to directly inform bargaining unit employees at Shoreline (and particularly employees who were not union members) about the progress of the negotiations or the issues being discussed at the bargaining table. Any limited union efforts in this regard were by passive means, such as the local new media, newsletters, notices posted on bulletin boards, and the union's website.

10. By documents dated as 9:00 p.m. on September 17, 2004, the union and the governor's designee reached a tentative agreement on a collective bargaining agreement under the PSRA. The inclusion of a union security provision in the contract was among the last issues agreed upon in those negotiations. In connection with the parties' agreement on union security, the union specifically and explicitly agreed to allow all bargaining unit employees to vote on ratification of the tentative agreement. That extension of voting rights to bargaining unit employees who were not union members was contrary to the union's usual voting procedures, which was to allow only union members to vote on contact ratification.

11. The union established polling times of 6:00 a.m. to 8:00 a.m. (Plant Operations Lunchroom) and 11:30 a.m. to 1:30 p.m. (room 1011M) on September 29, 2004, for the employees in the bargaining units at Shoreline to vote on ratification of the tentative agreement described in paragraph 10 of these findings of fact.

12. The union directly provided employees in the "custodians" bargaining unit with individual notices of the tentative agreement and of the contract ratification process, by means

of Lytle leaving materials for each of those employees in their campus mailboxes.

13. The union did not directly provide individual notices of the tentative agreement or of the contract ratification process to employees in the "classified except custodians" or the "classified supervisors" bargaining units.

14. Between September 17 and September 23, 2004, the union did not provide any notice of the tentative agreement or of the contract ratification process to employees in the "classified except custodians" and "classified supervisors" bargaining units at Shoreline.

15. The only effort made by the union to provide notice of the tentative agreement or of the contract ratification process to employees in the "classified except custodians" and "classified supervisors" bargaining units at Shoreline was by means of a LISTSERV message sent by Lytle on September 24, 2004. When she sought and obtained permission to use the employer's LISTERV system, Lytle was unaware of what employees were included in or excluded from the coverage of that system. In fact, the so-called "Classified LISTSERV" Lytle used neither includes all classified employees nor is limited to classified employees.

16. Employees in the bargaining units represented by the union at Shoreline gave credible testimony that they were confused by the LISTSERV message sent by Lytle on September 24, 2004, and particularly by portions of that message that referred to an earlier notice to "bargaining unit members" which they had not received, so that they reasonably perceived that they were not eligible to vote on ratification of the tentative agreement.

17. In the context of the parties' bargaining relationship and the union's past practices, the actions and inactions described in paragraphs 12 through 15 of these findings of fact failed to provide bargaining unit employees (and particularly employees who were not union members) of their right to vote on the ratification of the tentative agreement.

18. The message Lytle sent via the LISTSERV system on September 24, 2004, listed 11 subjects as "highlights" of the tentative agreement, but omitted any mention of or reference to the union security provision that would impose new obligations on members of the "classified except custodians" and "classified supervisors" bargaining units.

19. In the context of the parties' bargaining relationship, the statutory change concerning union security, and the union's agreement that essentially replicated the previous statute by allowing all bargaining unit employees to vote on ratification of a contract containing new union security obligations, the actions described in paragraph 17 of these findings of fact failed to provide bargaining unit employees (and particularly employees who were not union members) of the contents of the tentative agreement on which the union had agreed to give them voting rights.

20. On September 29, 2004, only 33 employees out of the total of approximately 222 classified employees represented by the union at Shoreline voted on the ratification of the tentative agreement.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.

2. State civil service employees have legal standing to file, and the Commission has jurisdiction under RCW 41.80.110 to determine and remedy, complaints that an employee organization has restrained or coerced such employees in the exercise of their rights under RCW 41.80.050.

3. State civil service employees have legal standing to file, and the Commission has jurisdiction under RCW 41.80.110 to determine and remedy, complaints that an employee organization has restrained or coerced such employees in the exercise of voting rights created by agreement of the employer and union in collective bargaining as described in paragraph 10 of the foregoing findings of fact.

4. By not adequately informing employees in the bargaining units it represents at Shoreline of their right to vote on the ratification of a new collective bargaining agreement, as described in paragraphs 12 through 17 of the foregoing findings of fact, the Washington Federation of State Employees restrained those employees in the exercise of their rights under RCW 41.80.050, and has committed an unfair labor practice in violation of RCW 41.80.110(2)(a).

5. By not adequately informing employees in the bargaining units it represents at Shoreline of the union security provision contained in the tentative agreement, as described in paragraphs 18 and 19 of the foregoing findings of fact, when the union had agreed to permit all bargaining unit employees to vote on ratification of that tentative agreement as described in paragraph 10 of the foregoing findings of fact, the Washington Federation of State Employees restrained those employees in the exercise of their rights under RCW 41.80.050,

and has committed an unfair labor practice in violation of RCW 41.80.110(2)(a).

ORDER

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. Enforcing or seeking to enforce at Shoreline Community College the tentative agreement reached on September 17, 2004, or any collective bargaining agreement resulting from any purported ratification vote on that tentative agreement conducted by the union.

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

   c. 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.

   d. 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. Commence enforcement at Shoreline Community College of the tentative agreement reached on September 17, 2004, and of any collective bargaining agreement resulting from that tentative agreement, only upon ratification of that tentative agreement in conformity with the following procedure:

i. The union must provide a copy of the collective bargaining agreement proposed for ratification directly to each employee in the bargaining units represented by the union at Shoreline Community College, either by delivery (with the consent of the employer) to the individual mailboxes maintained by the employer for each such employee, or through the United States Mail addressed to the residences of each such employee.

ii. The union must provide the Commission staff with notices in the form attached as "Appendix A" to this order, in sufficient number to mail copies to each employee in the bargaining units represented by the union at Shoreline Community College plus a 25 per cent excess to allow for spoilage and requests for additional materials.

iii. The union must provide the Commission staff with ballots allowing all bargaining unit employees to vote "Yes" or "No" on ratification of the tentative agreement reached on September 17, 2004, in sufficient number to mail copies to each employee in the bargaining units represented by the union at Shoreline Community College plus a 25 per cent

excess to allow for spoilage and requests for duplicate ballots.

iv. The union must provide the Commission staff with envelopes addressed for return to the Commission's Olympia office and pre-labeled with the names and addresses of employees in the bargaining units represented by the union at Shoreline Community College, in sufficient number to mail to those employees plus a 25 per cent excess to allow for spoilage and requests for duplicate ballots.

v. The union must provide the Commission staff with plain envelopes for use as secrecy envelopes that are smaller than those described in subparagraph iv. of this paragraph 2.a., in sufficient number to mail the employees plus a 25 per cent excess to allow for spoilage and requests for duplicate ballots.

vi. The union must provide the Commission staff with envelopes of sufficient size to contain the materials described in subparagraphs ii. through v. of this paragraph 2.a., pre-addressed to the employees in the bargaining units represented by the union at Shoreline Community College, plus a 25 per cent excess of similar envelopes to allow for spoilage and requests for duplicate ballots.

vii. The union must provide the Commission staff with postage stamps sufficient to mail the envelopes described in subparagraphs (iv) and (vi) of this paragraph 2.a., plus a 25 per cent excess of

postage stamps to allow for spoilage and requests for duplicate ballots, and any unused postage stamps shall be kept separately by the Commission staff and shall be returned to the union upon the issuance of a tally of the ratification vote.

viii. The union must consent to have the ballots on the ratification vote opened and counted by the Commission staff under the procedures customarily used for representation elections, and to be bound by the results of the ratification vote as indicated on the tally of ballots issued by the Commission staff. If the tentative agreement is not ratified through the procedure set forth in this paragraph 2.a., the union shall not seek a re-vote on ratification of the tentative agreement reached September 17, 2004, and shall reopen negotiations with the employer.

b. Post, in conspicuous places on the employer's premises where union notices to all employees are usually posted, copies of the notice marked "Appendix B" 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.

c. Read the notice marked "Appendix B" attached to this order at a meeting of all employees in the bargaining units represented by the union at Shoreline Community College held prior to the mailing of ballots for the

ratification vote conducted as described in paragraph 2.a. of this order.

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 the "Appendix B" attached to this order.

e. Notify the Compliance Manager 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 the "Appendix B" attached to this order.

Issued at Olympia, Washington, on the 19th day of September, 2005.

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.

{Washington Federation of State Employees logo or letterhead, if it so desires}

NOTICE

RATIFICATION VOTE ON 2005-2007 COLLECTIVE BARGAINING AGREEMENT

On September 17, 2004, the Washington Federation of State Employees (WFSE) reached a tentative agreement with the Governor's designee (representing a coalition of state higher education institutions that included Shoreline Community College) which included the following language:

> The Union agrees to allow all employees in the 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.

The WFSE conducted a ratification vote on September 29, 2004, but several Shoreline Community College employees filed unfair labor practice complaints challenging the sufficiency of the notice and information provided by the WFSE in advance of that ratification vote. The Public Employment Relations Commission (PERC), the state agency responsible for impartial administration of state collective bargaining laws, held a hearing and found that the WFSE restrained Shoreline Community College employees in the exercise of their rights under state law by: (1) Failing to give employees represented by the WFSE (and particularly employees who were not WFSE members) notice of the ratification vote; and (2) Failing to give employees represented by the WFSE (and particularly employees who were not WFSE members) information about a union security provision which, if the tentative agreement is approved, will require all employees to join the WFSE or pay a representation fee.

The remedial order issued by PERC prevents the WFSE from enforcing the 2005-2007 collective bargaining agreement on the basis of the ratification vote conducted in September 2004, but permits the WFSE to have a new ratification vote conducted under the supervision of PERC.

THIS NEW RATIFICATION VOTE is being conducted by secret-ballot among employees of:

SHORELINE COMMUNITY COLLEGE

WHO ARE EMPLOYED IN THE BARGAINING UNITS DESCRIBED AS:

- All non-supervisory custodians;
- All non-supervisory classified employees except custodians; and
- All supervisory classified employees.

All employees (including those who are not union members) will be eligible to vote if they were employed within one of those bargaining units on ***{insert date of mailing}***, and continue to be so employed on the date of the tally of ballots. THE MAJORITY OF THE VALID BALLOTS CAST WILL DETERMINE THE OUTCOME of the election.

THE ELECTION WILL BE HELD BY MAIL BALLOT, with ballots returned to and counted by PERC to alleviate any concerns about fairness or the process. All expenses of this ratification vote are being borne by the WFSE.

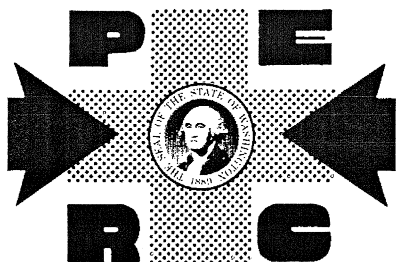
THE DEADLINE FOR RETURN OF BALLOTS TO PERC is:

{Insert date at least two weeks after mailing of ballots, selected by PERC staff in consultation with the WFSE}

The tally of ballots will be held on ***{insert day after deadline for return of ballots}*** at 9:00 a.m., at the Olympia office of the Public Employment Relations Commission, 112 Henry Street NE, Suite 300, Olympia, WA 98506.

SAMPLE BALLOT: ***{Insert sample of ballot prepared by WFSE}***

Inquiries concerning this notice or the election process should be directed to Sally Iverson at the Public Employment Relations Commission . Telephone: (360) 570-7324. Fax: to 360-570-7334. Mail: P.O. Box 40919, Olympia, WA 98504-0919.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO EMPLOYEES WE REPRESENT:

WE UNLAWFULLY failed to adequately inform the members of the classified bargaining unit represented by us, the Washington Federation of State Employees, of their right to vote in the ratification election conducted on the new collective bargaining agreement between Shoreline Community College and the union.

WE UNLAWFULLY failed to adequately inform the members of the classified bargaining units represented by us, the Washington Federation of State Employees, of the terms and conditions of the new collective bargaining agreement that had been negotiated between Shoreline Community College and the union.

WE UNLAWFULLY, restrained the rights of the employees of Shoreline Community College in the exercise of their collective bargaining rights under state law.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease and desist from enforcing the terms and conditions of the tentative collective bargaining agreement reached between representatives of Shoreline Community College and the Washington Federation of State employees until such time as a tentative agreement between the parties is properly ratified by a vote of all bargaining unit employees in conformity of the agreements reached on September 17, 2004.

WE WILL conduct a new ratification election by mail ballot on the tentative collective bargaining agreement reached between the Washington Federation of State Employees and Shoreline Community College on September 17, 2005 under the supervision of the Public Employment Relations Commission.

WE WILL give each member of our classified bargaining units ample notice of this election, a complete copy of the proposed collective bargaining agreement prior to the date of the ratification election.

WE WILL send the Public Employment Relations Commission a full and complete list of all employees that are members of the classified bargaining units at Shoreline Community College and an amount of United States postage stamps sufficient to mail a ballot and a return envelope for the mail ratification election to be conducted by the Public Employment Relations Commission.

WE WILL not, in any manner, restrain, or coerce 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) at 112 Henry Street N.E., PO Box 40919, Olympia, Washington 98504-0919. Telephone (360) 570-7300. The full decision will be published on PERC's website, **www.perc.wa.gov**