STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 19 (COLUMBIA BASIN), Employer.	)	
KATHLEEN PAXTON, Complainant, vs. WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	)	CASE 18916-U-04-4812 DECISION 9210 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
COMMUNITY COLLEGE DISTRICT 19 (COLUMBIA BASIN), Employer.	)	
GENE WAGNER, Complainant, vs. WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	)	CASE 18917-U-04-4813 DECISION 9211 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Kathleen Paxton and *Gene Wagner* appeared pro se.

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

On October 20, 2004, Kathleen Paxton (Paxton) and Gene Wagner (Wagner) filed complaints charging unfair labor practices under Chapter 391-45 WAC, naming the Washington Public Employees Association (WPEA/union), as the respondent. Paxton and Wagner are

nonsupervisory, classified employees of Community College District 19 (Columbia Basin) (Columbia Basin College/employer). Although both are bargaining unit employees, neither is a union member. The union represents nonsupervisory, classified employees of the employer.[1] The employer and union have had a bargaining relationship since 1997 and were parties to a collective bargaining agreement effective from March 1, 2003, through June 30, 2005.

The allegations in these consolidated cases involve the opportunity to vote the acceptance or rejection of the tentative agreement.[2] The complainants allege that the union and employer agreed to allow all bargaining unit employees, including themselves, the opportunity to vote the acceptance or rejection of the tentative agreement. They argue that the union did not give notice of the opportunity to vote to all bargaining unit employees, and it did not make "any serious attempt" to notify all bargaining unit employees of the opportunity to vote.[3] The complainants assert that although the union stated that information about the vote was made available at meetings and was posted on the union website and

---

[1] There are approximately 119 nonsupervisory, classified employees in the bargaining unit; no evidence was presented as to how many bargaining unit employees are also union members.

[2] The "tentative agreement" is the tentative collective bargaining agreement the union and employer arrived at in negotiations in 2004; it may also be called the tentative "master contract," tentative "higher education agreement" or tentative "higher education master agreement." Although there may be differences between these documents, any differences were not presented as evidence and thus are not relevant for purposes of this decision.

[3] Paxton also alleges that "[n]o one has answered any questions regarding the number of . . . employees voting or the percentage of votes approving/disapproving the ratification." However, at hearing another bargaining unit employee testified that she asked the union for such information. Our rules and precedent preclude individual complainants from asserting the rights of other individual employees. *See* WAC 391-45-010 and the discussion under the "Remedies" section below.

union bulletin boards, they did not attend such meetings or look to such postings as non-union members. Finally, the complainants argue that the union did not represent the interests of all employees within the bargaining unit and only represented the interest of members.[4]

The union does not contest that it agreed with the employer to allow all bargaining unit employees the opportunity to vote the acceptance or rejection of the tentative agreement. However, it asserts that it did provide all bargaining unit employees with adequate notice of the opportunity to vote through in-person notification, meetings, e-mails and postings, and thereby represented the interests of all bargaining unit employees.

Preliminary rulings issued on December 22, 2004, stated that:

> Unfair labor practice complaints concerning the actions of a union during a contract ratification vote are normally dismissed as the Commission lacks jurisdiction over internal union affairs. *Lewis County*, Decision 464-A (PECB, 1978); *Lake Washington School District*, Decision 6891 (PECB, 1999). However, a different result is possible where a union delegates its representative role to a referendum of all bargaining unit employees. *Branch 6000, Letter Carriers*, 232 NLRB 263 (1977), *aff'd*, 595 F.2d 808 (D.C. Cir. 1979); *Boilermakers, Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28 (1990).

The preliminary rulings in these consolidated cases found allegations involving union interference in violation of RCW 41.80.110(2)(a) by failing to provide adequate notice and by not

---

[4] Wagner asserts that the vote was to establish a "closed shop." Under a closed shop, the employer is required to hire only union members and bargaining unit employees are required, as a condition to employment, to remain members of the union. Closed shop provisions are illegal under Washington state collective bargaining laws and the federal National Labor Relations Act. Under RCW 41.80.100(1), a collective bargaining agreement may contain a union security provision requiring, as a condition of employment, that employees pay an agency shop fee.

allowing all bargaining unit employees to vote. The preliminary rulings pointed out that the statements of facts filed by the complainants made reference to alleged violations of articles 1 and 11 of the parties' collective bargaining agreement, and that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. However, the preliminary rulings did not dismiss allegations that the union violated its agreement with the employer to allow all bargaining unit employees the opportunity to vote on the acceptance or rejection of the tentative agreement.

Examiner Dianne E. Ramerman held a hearing on this matter. In June of 2005, the parties filed post-hearing briefs to complete the record.

ISSUES

1. Does the Commission assert jurisdiction over the opportunity to vote on the acceptance or rejection of the tentative agreement?

2. If the Commission asserts jurisdiction, did the union interfere with and restrain the complainants in the exercise of their statutory rights by breaching its duty of fair representation (DFR)?

3. If the union interfered with and restrained the rights of the complainants, what is the appropriate remedy?

The Examiner finds that the Commission has statutory authority to assert jurisdiction over the opportunity to vote on the acceptance or rejection of the tentative agreement and concludes that the union committed unfair labor practices. To remedy the unlawful actions, the union is ordered to cease and desist from providing unfair and inadequate notice of the opportunity to vote to bargaining unit employees who are not union members, and enforcing or seeking to enforce the union security provision in the union's

collective bargaining agreement with the employer upon the complainants. The request for an order requiring a new vote is denied.

I. ISSUE 1: DOES THE COMMISSION HAVE JURISDICTION?

The respondents raise several "jurisdictional" questions that must be addressed before the substance of the unfair labor practice complaints can be addressed.[5]

A. Commission Does Not Generally Involve Itself in Opportunity to Vote On Acceptance or Rejection of Tentative Agreement

It is well established that the "internal affairs" of unions are controlled by constitutions and bylaws, which are the contracts between the union and its members for how the organization is to be governed. *Enumclaw School District*, Decison 5979 (PECB, 1997); *Pierce Transit*, Decision 4094 (PECB, 1992); *City of Seattle*, Decision 3470-A (PECB, 1990). Specifically, the opportunity to vote on the acceptance or rejection of the tentative agreement is usually an internal union affair as any voting requirements typically are controlled by the union's internal contracts.[6] *Enumclaw School District*, Decision 5979. Thus, generally speaking, the opportunity to vote on the acceptance or rejection of the

---

[5] The issue is really one of "statutory construction," *i.e.*, whether the Commission has statutory authority to intervene; however, previous cases discussed below address the issue as one of "jurisdiction." *See Dept. of Transportation v. Inlandboatmen's Union*, No. 32272-2-II (Nov. 22, 2005).

[6] Both *Branch 6000, Letter Carriers*, 232 NLRB 263 and *Boilermakers, Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28, are inapposite to the instant case. In these cases, both the Circuit Court and Board distinguished the facts of the case, which involve a referendum, from a contract ratification vote. *See also* Hardin & J. Higgins, *The Developing Labor Law*, 1933 (4th ed. 2001).

tentative agreement is not regulated by, or subject to, the scrutiny of the Commission and must be resolved through internal union procedures or the courts. *See City of Bellingham*, Decision 6951 (PECB, 2000); *Enumclaw School District*, Decision 5979; *Pierce Transit*, Decision 4094; *Lewis County*, Decision 464-A.[7]

B. Limited Exception When Commission Can Involve Itself in Opportunity to Vote on Acceptance or Rejection of Tentative Agreement

Nothing in the Personnel System Reform Act of 2002, Chapter 41.80 RCW (PSRA) requires (or precludes) employee voting on tentative collective bargaining agreements reached between employers and unions. The union may exclude both members and nonmembers (or either or neither group) from the opportunity to vote on the acceptance or rejection of the tentative agreement; the decision is within the union's discretion. *University of Washington*, Decision 4668-A (PECB, 1994); *Naches Valley School District (Naches Valley Education Association)*, Decisions 2516 and 2516-A (EDUC, 1987);[8] *NLRB v. Financial Institutions Employees*, 475 U.S. 192 (1986). This is because bargaining over the opportunity to vote on the acceptance or rejection of the tentative agreement is permissive, in other words, the union can choose to keep the opportunity to vote a purely internal union affair detailed in its bylaws, or make it part of a negotiated agreement in the collective bargaining

---

[7] *Lewis County*, Decision 464-A and *Lake Washington School District*, Decision 6891 are distinguishable on their facts. See also *Western Washington University (Washington Public Employees Association)*, Decision 8849-A (PSRA, 2005) and *Community College 7 - Shoreline (Washington Federation of State Employees)*, Decision 9094 (PSRA, 2005).

[8] These *Naches Valley School District* decisions are inapposite to the instant case. The cases are about the "duty to bargain in good faith" owed between a union and an employer, not about the "duty of fair representation" owed by a union to bargaining unit employees.

context. *See NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). As discussed below, the Commission can assert jurisdiction over some issues agreed to in collective bargaining.

C. Commission Generally Not Involved in Contract Disputes

The opportunity to vote allowed by agreement between the union and employer in collective bargaining and the assertion of a breach of the DFR is not the end of the jurisdictional analysis, however. The Commission has drawn a distinction between two types of DFR issues, asserting jurisdiction over one type (cases involving a statutory right) and declining jurisdiction over the other (cases based entirely on contract). *City of Pasco*, Decision 2327 (PECB, 1985).

In *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982), and in many more recent cases, jurisdiction has been declined with respect to breach of DFR claims arising exclusively from the processing of contractual grievances under collective bargaining agreements. As a general rule, it has been held that the Commission does not have jurisdiction to remedy "violation of contracts" or to otherwise enforce a collective bargaining agreement through the unfair labor practice provisions of the statute. *City of Pasco*, Decision 2327; *City of Walla Walla*, Decision 104 (PECB, 1976). Usually, the appropriate forum for an employee claiming rights as a third-party "beneficiary" to the collective bargaining agreement would be through a civil suit filed in a court having jurisdiction over the employer. *Mukilteo School District*, Decision 1381; *Edmonds Community College*, Decision 2967 (CCOL, 1988).

D. Limited Exceptions When Commission Can Involve Itself in "Contract" Disputes

By contrast, a separate line of precedent holds that the Commission will police its certifications and will assert jurisdiction over

DFR claims that call a union's status as exclusive bargaining representative into question. In *Elma School District (Elma Teachers Organization)*, Decision 1349 (PECB, 1982), the complainant alleged that the union committed an unfair labor practice premised on her previous support of another labor organization and her status as a nondues-paying member of the union. The exceptions under this line of cases focus on union actions that both involve some unlawful basis and have an effect on the wages, hours or working conditions of an employee so as to be a breach of the DFR. *Pierce Transit*, Decision 4094.

Specifically, the Commission has limited its jurisdiction in DFR cases to situations where a union is alleged to have aligned itself against a bargaining unit employee on the basis of union membership (or lack thereof) or discriminated against a bargaining unit employee on some invidious basis.[9] In at least one case, the Commission has explicitly stated that it would have asserted jurisdiction had the complainant alleged that the union aligned itself in interest against one or more employees in the ratification process, or put into question the right of the union to enjoy the statutory benefits of "exclusive bargaining representative" status, which the Commission is empowered to police. *City of Seattle*, Decision 2549-C (PECB, 1986).

F. Jurisdictional Analysis and Conclusion

In this case, the union's executive director, Leslie Liddle, wrote in an October 1, 2004, e-mail forwarded to "CLASSIFIED" employees by Geanene Lubinski, the union's chapter president, that the union did not follow its bylaws because it allowed nonmembers to participate in the vote per its agreement with the employer in negotiations. Thus, the union itself deferred to the agreement between the union and employer, not its bylaws, as controlling.

---

[9] *See, e.g., Auburn School District*, Decision 3407 (EDUC, 1990); *City of Seattle*, Decision 2549-C (PECB, 1986).

In conclusion, the Commission can assert jurisdiction as the opportunity to vote on the acceptance or rejection of the tentative agreement is not controlled by internal union contracts. The Commission can assert statutory jurisdiction over the opportunity to vote because the union and employer agreed in collective bargaining to let all bargaining unit employees vote on the acceptance or rejection of the tentative agreement, and the union is alleged to have aligned itself in interest against bargaining unit employees for their lack of union membership and over a subject (the acceptance or rejection of a tentative agreement) that involves wages, hours and working conditions.[10]

Finally, because the complaints involve the union's failure to follow its fiduciary duties, the Commission will process this case as an adjunct to its authority to certify and decertify exclusive bargaining representatives. *See* RCW 41.80.070.

II. ISSUE 2: DID THE UNION INTERFERE WITH THE COMPLAINANTS' RIGHTS BY BREACHING ITS DUTY OF FAIR REPRESENTATION?

Under the statutes and precedent that govern the Commission, a violation of the DFR can amount to a claim of interference and therefore an unfair labor practice.

A. Interference With Employee Rights

The PSRA prohibits employee organizations from interfering with, restraining or coercing state employees in the exercise of their collective bargaining rights:

---

[10] In *International Brotherhood of Teamsters, Local 310 v. NLRB*, 587 F.2d 1176 (C.A.D.C., 1978), the court reasoned that it would be preposterous to argue that depriving members of the opportunity to vote on a contract that would govern them for the next three years had no effect on the terms and conditions of their employment.

> RCW 41.80.050 RIGHT OF EMPLOYEES. Except as may be specifically limited by this chapter, employees shall have the right to self-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.* 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. Under RCW 41.80.050 and RCW 41.80.110(2)(a), it is an unfair labor practice for an employee organization to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the chapter. The Commission has adopted Chapter 391-45 WAC to regulate the processing of unfair labor practice cases.

The legal determination of "interference" is based not upon the reaction of the particular employee involved, but rather on whether a typical employee in a similar circumstance reasonably could perceive the union's actions (or inactions) as a threat of reprisal or force or promise of benefit related to the pursuit of rights protected by the chapter. *City of Port Townsend*, Decision 6433-A (PECB, 1999) and Decision 6433-B (PECB, 2000). Actual intent is not a factor or defense. *King County*, Decision 7108 (PECB, 2000). Nor is it necessary to show that the employees involved were actually interfered with or restrained. *King County*, Decision 8630-A (PECB, 2005).

B. Duty of Fair Representation

A duty of fair representation grows out of the status held by a union once it is certified or recognized as "exclusive bargaining representative" under the PSRA, and the Commission is vested with authority to ensure that exclusive bargaining representatives

safeguard employee rights. *City of Port Townsend*, Decision 6433-B. Under RCW 41.80.005(9), the "exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees in an appropriate bargaining unit. RCW 41.80.080(3) states:

> REPRESENTATION-ELECTIONS-RULES. The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. . . .

This is the Legislature's statutory version of the DFR as developed in the private sector.

Over thirty years ago, the National Labor Relations Board (NLRB) adopted the doctrine of the DFR developed in the courts. *City of Redmond*, Decision 886 (1980); *Vaca v. Sipes*, 386 U.S. 171 (1967). The Board concluded that section 8(b)(1)(A) of the National Labor Relations Act (NLRA) that makes it an unfair labor practice for a union to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7, prohibits unions from violating the DFR. *See City of Redmond*, Decision 886, *citing Miranda Fuel Co., Inc.*, 140 NLRB 181 (1962), *enforcement denied*, 326 F.2d 172 (1963). Section 7 provides employees with the right to refrain from union activity, except as required by a union security agreement. *See also* RCW 41.80.050. Breach of the DFR violates section 8(b)(1)(A), for it tends to encourage workers to join, or discourage them from joining, certain unions, thus restraining them in the free exercise of their section 7 rights. *International Brotherhood of Teamsters, Local 310 v. NLRB*, 587 F.2d 1176. The breach of the DFR is an unfair labor practice. *Fowlkes v. IBEW, Local 76*, 58 Wn. App. 759 (1990), *citing Miranda Fuel Co., Inc.*, 140 NLRB 181.

It has long been undisputed that a union owes an equal DFR to all employees of the bargaining unit it is certified to serve. *Vaca v.*

Sipes, 386 U.S 171. The Commission and the United States Supreme Court have described this duty as:

> The bargaining representative is responsible to, and owes complete loyalty to, the interest of all whom it represents. A wide range of reasonableness must be allowed a statutory representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

City of Redmond, Decision 886, *citing Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The duty is breached when the union's conduct is more than merely negligent: it must be arbitrary, discriminatory, or in bad faith; or be based on considerations that are irrelevant, invidious, or unfair. *C-Tran*, Decision 7087-B (PECB, 2002); *Elma School District*, Decision 1349; *City of Redmond*, Decision 886; *Vaca v. Sipes*, 386 U.S. 171; *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33 (1998); *White v. White Rose Food*, 237 F.3d 174 (2001); *International Brotherhood of Teamsters, Local 310 v. NLRB*, 587 F.2d 1176; *Miranda Fuel Co., Inc*, 140 NLRB 181. The totality of the circumstances is analyzed to determine if a breach has occurred. *City of Redmond*, Decision 886.

C. Same Duty Applies to State Civil Service Collective Bargaining

The statutory mission of the Commission found in Chapter 41.58 RCW provides compelling evidence that the Legislature did not envision the Commission breaking from its own precedents when interpreting the PSRA. *State - Natural Resources*, Decision 8458-B (PSRA, 2005). RCW 41.58.005(1) states:

> It is the intent of the legislature by the adoption of chapter 296, Laws of 1975 1st ex. sess. to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the public employment relations commission from other boards and commissions. It is further the intent of the legislature, by such transfer,

> to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services.

When the Legislature transferred administration of state civil service collective bargaining to this Commission, it undoubtedly was aware of its previous direction that this Commission be as uniform as possible in the administration of the collective bargaining laws and aware of the court's deference to the Commission's interpretations of law. *State - Natural Resources*, Decision 8458-B, *citing Public Employment Relations Commission v. City of Kennewick*, 99 Wn.2d 832 (1983).

Like Chapter 41.56 RCW, Chapter 41.80 RCW parallels the NLRA closely enough so that the same rationale developed in the private sector that supports the existence of the DFR can be extended to the public employees within the purview of Chapter 41.80 RCW as well. *State - Natural Resources*, Decision 8458-B; *City of Redmond*, Decision 886. Therefore, in both the federal scheme and in our state scheme, the statutory authority given to a union to act as the exclusive bargaining representative for employees implies a statutory duty owed to those employees. *City of Redmond*, Decision 886.

D. Burden of Proof

As with any unfair labor practice case, an employee claiming that the union interfered with his or her rights through its breach of the DFR has the burden of proof. WAC 391-45-270(1)(a). Questions asked by a party examining a witness (not under oath and not subject to cross examination) are not evidence of any fact admissible at hearing, and thus are given no weight. RCW 34.05.452. Pro se complainants may testify at Commission hearings if they choose.[11] RCW 34.05.452.

---

[11] Neither complainant in this case chose to testify at hearing.

E. Analysis of Facts in the Instant Case

The union has a DFR that it owes to all bargaining unit employees equally. Here, that duty entailed the responsibility to provide all bargaining unit employees who are not union members with an opportunity to vote on the acceptance or rejection of the tentative agreement, and implicitly included providing adequate notice to all non-union members of that opportunity (notice of eligibility as well as notice of the specifics of the vote, *i.e.*, date, time and place). In this case, it is undisputed that different notice of the opportunity to vote was provided to non-union members as opposed to union members.[12] Thus, the question presented is not whether the notice to nonmembers was "unequal" but whether it was "unfair" and inadequate. The right at issue is not the opportunity to vote, as that is not a statutory right, rather it is the right to refrain from union membership and still receive fair representation from the union. The test to determine if "interference" with this right has occurred through a breach of the DFR is whether the union engaged in arbitrary, discriminatory or bad faith conduct that was "unfair" and inadequate so that a typical employee in similar circumstances reasonably could perceive the action (or inaction) of the union as interfering with, restraining or discouraging protected activity.

New Collective Bargaining Statute

The PSRA created an entirely new collective bargaining process for civil service employees of the state of Washington.[13] First, the scope of collective bargaining under the PSRA included, for the

---

[12] It is conceivable that nonmembers could receive different notice and yet still be given notice adequate so as not to interfere with statutorily protected rights.

[13] A more detailed history is contained in *Community College 7 (Shoreline)*, Decision 9094.

first time, union security provisions.[14] Second, collective bargaining agreements under the PSRA were to go into effect no earlier than July 1, 2005, and RCW 41.80.010(3)(a) effectively required the union to complete its negotiations (including contract ratification) for its first PSRA contracts by October 1, 2004.[15]

Negotiation Process at Columbia Basin College

Bargaining for the first collective bargaining agreement under the PSRA began at Columbia Basin College in June of 2004. Columbia Basin College joined a coalition of institutions of state community college districts that used a joint employer representative to bargain with the union. *See* RCW 41.80.010(4). Liddle was the union's chief negotiator at the table in those negotiations, and Lubinski provided background assistance through the collective bargaining support committee.

A tentative agreement on a successor collective bargaining agreement was reached by the union and the employer around midnight on Friday, September 17, 2004. In a counter proposal at the very end of these negotiations on September 17, 2004, the employer proposed and the union agreed to allow all bargaining unit employees the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement in exchange for the inclusion of a union security provision. Late that evening the employer and union signed an agreement that read:

---

[14] "Union security" provisions may require that some or all bargaining unit employees join the union and/or pay a representation fee.

[15] 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)).

> Additionally, the Union agrees that ratification votes will be taken by institution, and that all bargaining unit employees will be allowed the opportunity to vote.

The agreement was silent as to what voting process or procedures (including notification) would be followed, and other than agreeing that the union would allow all bargaining unit employees the opportunity to vote, there were no other discussions on the matter.

Voting on the Acceptance or Rejection of the Tentative Agreement

Initially, the union planned to vote on the tentative agreement in accordance with its bylaws: only union members would be allowed to vote by mail ballot. However, the union's agreement with the employer required that non-union members have the opportunity to vote as well as union members. Since negotiations did not end until midnight on September 17, 2004, the union decided it did not have enough time to conduct a vote by mail ballot if it was to meet the October 1, 2004 deadline. Therefore, on Sunday, September 26, 2004, the union conducted a ballot box election from 10:00 a.m. until 2:00 p.m. in a parking lot at Columbia Basin College. No evidence was presented on the number of bargaining unit employees who voted. However, it can reasonably be deduced from the statement of facts in these consolidated cases that the complainants did not vote.

Method, Date and Location of Election

Although the union's bylaws specify voting by mail ballot, and the vote was taken by ballot box, this factor is not dispositive as the agreement and not the bylaws are controlling. There is nothing inherently unfair about a vote conducted on a Sunday, and there is no requirement that voting on any tentative agreement must occur in the same manner from year to year. The union chapter president explained that the voting occurred on a Sunday in a parking lot because voting on the higher education agreement started east of the college, and moved its way west with the union delivering the ballots to Olympia by car. The critical inquiries are addressed below.

Notice Via Meetings

Classified employee meetings are held every two months and are open to both union and non-union members, and collective bargaining issues are discussed.[16] The union provided a great deal of testimony about how it informed bargaining unit employees of union business at classified employee meetings. The PSRA, preparations for bargaining, union security and negotiations were discussed at the meetings for "months and months" prior to the vote. The union discussed how important it was that "everyone" stay informed to be prepared to vote when the time came.

Nevertheless, when asked how many non-union members regularly attended classified employee meetings, the union chapter president testified that generally "attendance as a whole was not that great." The union chapter president also admitted that it was very possible that people might not have known what was going on through information exchanged at meetings due to nonattendance. Leanna Rodgers, a nonsupervisory, classified employee, who was also a bargaining unit employee, testified that she did not regularly attend classified employee meetings as the topics of discussion did not interest her as a non-union member. Thus, considering the evidence presented, such meetings were not an adequate way to notify non-union members of their opportunity to vote on the acceptance or rejection of the tentative agreement.

Furthermore, the union provided testimony that it first saw the employer's proposal that all bargaining unit employees be allowed to vote in a counter proposal from the employer at the very end of the negotiation process on the evening of September 17, 2004. The union chapter president testified that she first learned that all

---

[16] These meetings are described in Article 13 of the collective bargaining agreement effective at the time. Employees are allowed to use work time to attend, and the meetings are set to occur within a limited time period and to cover a limited agenda.

bargaining unit employees had the opportunity to vote on the morning of September 20, 2004. Finally, the union has cited no example and the Examiner could find no example where all bargaining unit employees have had the opportunity to vote to accept or reject a tentative collective bargaining agreement per negotiated agreement between the union and the employer - this is a very unique situation. Thus, even had bargaining unit employees who are not union members attended such meetings where "union security" had been discussed, they would not have been informed of the opportunity to vote because the union did not know that this opportunity existed at the time.

Union district meetings were held around the state on September 21, 2004, and an overview of the tentative collective bargaining agreement was available. Everyone in attendance was told of the short voting time frame and to check the website every other day to stay informed. However, no testimony was provided on whether the union allows non-union members to attend these meetings. Testimony was also given that union chapter meetings were held, but only chapter officers and other members were referenced as attending.

In-Person Notification

On September 20, 2004, via e-mail, the union told its leaders to notify everyone "they could" in their individual areas, in "whatever way" they could, of the opportunity to vote and to check the union website. The union chapter president testified that after receiving the e-mail from the union office, she walked through her area in admissions and registration and told everyone that the vote was coming and that they would be allowed to vote. This method of in-person notification was not adequate as undoubtedly some bargaining unit employees who were not union members would not receive notice though this procedure.

The First Notice Via E-mail To Nonmembers and Members

On September 20, 2004, the union sent all bargaining unit employees an e-mail titled "Check your WPEA Website." The e-mail consisted

of a link to the union's website, and the website contained specific notification of the opportunity to vote, along with where and when to vote and information that the locations and times were tentative. However, neither the title nor body of the e-mail indicated that information was being sent regarding the opportunity of all bargaining unit employees to vote on the acceptance or rejection of the tentative agreement.

Testimony was provided that it is not unusual for members and nonmembers to receive these types of e-mails from the union informing them of meetings. Rodgers credibly testified that she did not receive the "Check Your WPEA Website" e-mail containing a link to information about the opportunity to vote; however, she also testified that she did not pay attention to such e-mails as they usually had to do with union business that she was not interested in. Lubinski testified that after the vote she received about half a dozen inquiries asking when the vote was held; however she credibly testified that she sent the "Check Your WPEA Website" e-mail to all bargaining unit employees. Based on the evidence presented, it is reasonable to infer that the complainants received the e-mail but as non-union members did not pay attention to it and so do not remember having received it given that the header and body of the e-mail did not reference their opportunity to vote.

During testimony, the union made several assertions to the effect that the complainants made a "choice" to ignore the first e-mail and not to attend meetings. While these assertions may be true, the totality of the circumstances must be considered to determine if the union breached its DFR. All bargaining unit employees did not receive only the first e-mail: members also received a second and third e-mail. Therefore, any assignment of "responsibility" must necessarily come after analysis of the two additional e-mails.

The Second and Third Notice Via E-mail to Union Members

Also on September 20, 2004, two other e-mails regarding notification were sent by the union chapter president to union members.[17] The second e-mail was titled "Vote to Ratify the New Master Contract." The body of the e-mail stated that:

> Negotiations have been completed!
>
> As we discussed at our last meeting, we are facing a real time crunch to ratify the master contract and get the ballots to Olympia. We asked you to prepare to vote next weekend. Herb Harris[18] will be driving the ballot box from Clarkston, WA to Yakima to Tri-Cities and then on to Olympia. Time is of the utmost importance. The ballot box will be here for four hours on Sunday, September 26th.
>
> We need EVERY CHAPTER MEMBER to VOTE in this ratification process.
>
> Date: Sunday, September 20, 2004
> Time: 10:00 am - 2:00 pm
> Where: CBC "A" building parking lot
>
> Herb will be parked in the "A" building parking lot. He will have WPEA signs on his vehicle to identify his car.
>
> Please DO NOT FORGET to plan a time during that four hour period to VOTE! It is vitally important to all of us that WE ALL VOTE!
>
> ---
>
> DISTRICT MEETINGS: Tuesday, Sept. 21st in the HUB Senate Room at 7:00 p.m.
>
> Get the latest information on Master Contract final negotiations. This is your opportunity to ask questions and learn the details of the final contract.
>
> FYI: We will be receiving 1 additional personal holiday for the 2-yr contract period. That is ½ day average per year.
>
> Employees who are underpaid in comparison to their public counterparts, will receive raises that will bring them within 25% of their equivalents. Some individuals who will be effected are:

---

[17] Six bargaining unit employees who work nights, but who were not union members were also sent the e-mail.

[18] A union organizer.

Campus Security
Maintenance Supervisor 2
Maintenance Mechanic 2
Electrician
There are others, come and see if you are one of them!

Both the title and content of the second e-mail demonstrates discrimination or bias under the DFR test against non-union members. The title of the e-mail gives members explicit notice of the vote. The body of the e-mail gives specific information regarding the vote. It stated that "every chapter member" needs to vote, not that every "bargaining unit employee" needs to vote, and stressed "[p]lease DO NOT FORGET . . . to VOTE."

The third e-mail to union members contained two sentences: one to correct a typographical error and one to change the date of the vote from September 20 to 26, 2004. The e-mail was titled "VOTING DAY."

Justifications Why Different E-mails Sent to Members and Nonmembers

The union provided several reasons why different notice was given to members and nonmembers. Looking at the totality of the circumstances, the reasons were discriminatory or biased under the DFR test in the sense that the union aligned itself in interests with members and referred to them as "my people," thereby interfering with or restraining non-union members in the exercise of their right to refrain from union membership.

"My People" -

The union chapter president testified that the second e-mail was sent to union members to reinforce information that had been sent in the first e-mail to all bargaining unit employees. She testified that she wanted to reinforce the first e-mail to members because she wanted "my people" to vote. This statement raises the inference that the union does not consider nonmembers to be "my people" and colors the reasonableness of all other justifications provided by the union for not giving members and nonmembers the

same notice. The Examiner finds this to be the most telling piece of evidence.

Notice to People Who Work Nights and People Without Computers - When asked why the second e-mail was not sent to non-union members, the union explained that the primary purpose of the two e-mails to the members was to inform those people who worked nights and therefore could not attend meetings, and those people who were custodians and therefore did not have access to e-mail of the union meeting on September 21, 2004. In an effort to make the e-mail sound like one sent in the normal course of business and thereby to explain why information concerning the opportunity to vote was included, the union chapter president testified that classified employee announcements are summarized in conjunction with all meeting notices.

The union's reasoning for sending union members additional notice was discriminatory in that it displayed bias under the DFR test when looking at the totality of the circumstances. It is understandable that the union would want to make sure people who work nights and who do not have access to e-mail were notified of the opportunity to vote. However, the great majority of those people did not even receive the additional e-mails via e-mail, but rather a paper copy was specially delivered to their box by Deborah Madere, a program coordinator in plant operations. Furthermore, the second e-mail was not even e-mailed to, but rather was "delivered to," Madre. Thus, the only "group" of people notified by the second e-mail was the union members, and they had already received the first e-mail that nonmembers received. In fact, the union chapter president admitted that she was trying to "kill two birds with one stone" by specifically including the union members in the e-mail, because many had not attended meetings, and she wanted to make sure they were informed. However, she did not express such concern for informing nonmembers who also had not attended meetings.

Furthermore, the union could have easily sent the second and third e-mails to all bargaining unit employees. The union chapter president testified that she has an e-mail list of members ("WPEA CHAPTER") and a list of classified employees ("CLASSIFIED") that she maintains. Therefore, it would have been just as easy to send those e-mails to members and nonmembers as it would have been to send them to members.

Duplicative Information -

When asked why the union did not send the second and third e-mails to all bargaining unit employees, the union chapter president answered that she did not do this because she had already sent the same information to nonmembers in the first e-mail, and she would have been duplicating her efforts to send it to them again. Looking at the totality of the circumstances, the union's rationale appears discriminatory or biased under the DFR test since the information was already sent to members, too, and the union was not worried about duplicating information to them.

De Minimis Use -

Lubinski testified that the first e-mail sent to all bargaining unit employees was just "informational" in an effort to comply with the state's policy on *de minimis* use of state resources. She explained that more information was not put in the "Check your WPEA Website" e-mail "because this is an area when we're talking votes that the state regulations are very specific about when it comes to anything to do with any types of voting or anything." She also explained that the state did not want union business conducted using their resources.

The union chapter president's rationale for not putting more information in the first e-mail to all bargaining unit employees does not explain why more information was put in the second and third e-mails to union members because the *de minimis* rule applies equally to members and nonmembers. The union chapter president

explained that she put more information in the second e-mail because the night and custodial workers did not have the advantage of being able to attend classified employee meetings as the daytime workers had. The *de minimis* rationale is understandable to the extent it affects the night and custodial workers and to the extent it was sent out to a smaller group of bargaining unit employees than the first e-mail. However, again the night and custodial workers did not receive the e-mail via e-mail, and by limiting the group to only members an inference of discrimination or bias under the DFR test is raised when looking at the totality of the circumstances.

The Timing of the Notice

After the tentative agreement was reached and up until the vote to accept or reject the tentative agreement, the union was working under a "time crunch." While it may have known long before that union security was an issue in the negotiations, it was not until late in the evening of September 17, 2004, after agreeing to a counter proposal that it knew all bargaining unit employees would have the opportunity to vote the acceptance or rejection of the tentative agreement. Therefore, it is reasonable that any specific notice of the opportunity to vote would necessarily come after September 20. Under the circumstances, the timing of any notice, a week before the election, would be adequate.

Posting on Union Website

On September 20, 2004, the union placed a copy of the tentative agreement on its website along with a bulletin that had to be viewed before entry into the website. The bulletin contained information concerning the dates, times and places the vote would be conducted. It also noted that the locations and times were tentative so interested parties should check for changes on Friday, September 24, 2004. Finally, the bulletin stated that "all WPEA bargaining unit members have an opportunity to vote on ratifying the contract." An overview of the higher education master

agreement was also placed on the union website on September 20, and although it discussed union security, it did not state that all bargaining unit employees would be allowed the opportunity to vote on the tentative agreement.

Given the totality of the circumstances, it is not reasonable to assume that non-union members would check the union website for information regarding the opportunity to vote, especially considering nonmembers were not given adequate notification either in person, at meetings, or via e-mail that they should check the website in the first place. Thus, union website postings were not adequate to notify nonmembers of the opportunity to vote.

F. Conclusion

In conclusion, the totality of the circumstances supports finding a violation of the DFR sufficient to sustain an interference claim. The notice provided to non-union members was not adequate. The union's efforts to inform bargaining unit employees about the vote demonstrate that the union favored its own members and treated nonmembers unfairly by providing them with different and inadequate notice. The union's actions and justifications for this different notice are discriminatory or biased under the DFR test. Therefore, a typical employee in similar circumstances could reasonably perceive that the union's actions interfered with or restrained their right to refrain from union membership as those actions supported "my people" voting, and not non-union members opportunity to vote.

III. ISSUE 3: WHAT REMEDY IS APPROPRIATE?

The complainants request that the ratified collective bargaining agreement be declared null and void and that another vote be conducted. However, the collective bargaining agreement is between the union and employer, and the employer is not a party to the

instant case. Thus, there are at least two reasons why the remedy requested by the complainants is not appropriate.

A. The Employer is An Indispensable Party

Two essential tests have been used to determine if a party is an "indispensable party." The tests are the following: (1) can relief be afforded to the plaintiff without the presence of the other party, and (2) can the case be decided on the merits without prejudicing the rights of the other party? *See Sandobal v. Armour & Co.*, 429 F.2d 249 (C.A.Neb. 1970) (where an employee sought monetary damages for an alleged wrongful discharge in an action against his employer for breach of a collective bargaining agreement and union was found not to be an indispensable party); *Case v. IBEW, Local 1547,* 438 F.Supp. 856 (D.C.Alaska 1977), *citing 7 Wright & Miller, Federal Practice and Procedure*, § 1613, 135-36 (where members of a local union brought action against their international union challenging the international's action in entering into an agreement with a national employer's association and requesting to void the contract, the national employer's association was seen as an indispensable party). In the instant case, it is clear that the employer is an indispensable party in the sense that granting the requested remedy would necessarily prejudice its rights; however, other adequate remedies can be granted that would not be prejudicial.

Specifically, status quo relief has not been ordered in the context of a vote to accept or reject a collective bargaining agreement where an indispensable party has not been joined.[19] *International Brotherhood of Teamsters, Local 310, v. NLRB*, 587 F.2d 1176 (union and constituent union but not employer were parties). In *International Brotherhood of Teamsters, Local 310, v. NLRB*, 587 F.2d 1176, a union was found to have denied a constituent union the opportu-

---

[19] *But see Western Washington University*, Decision 8849-A; *Community College 7 (Shoreline)*, Decision 9094.

nity to accept or reject the collective bargaining agreement and in so doing violated its DFR. The court indicated that the collective bargaining agreement the unions negotiated on behalf of all bargaining unit employees was nevertheless valid and binding on the employer. The NLRB, on remand from the United States Court of Appeals, ordered the union to post notices and to cease and desist from restraining or coercing unit employees in the exercise of their section 7 rights by failing to represent them in an impartial manner, but did not order a new election. *United Steelworkers of America, AFL-CIO (Duval Corp.)*, 243 NLRB 1157 (1979).

Here, in an effort to obtain the requested relief, complainants could have filed a complaint against the employer if the facts warranted, perhaps for interference as well; however they chose not to. Another option for the complainants could have been to move for joinder of the employer, although the granting of such a motion would not have been automatic or routine. *See City of Richland*, Decision 6120-C (PECB, 1998). In an effort to join the employer, they may have argued that the employer was a party whose absence would make complete relief unavailable. *See* Fed. R. Civ. P. 19. In federal courts, this may be done even if there is no cause of action against the employer. *Burman v. Trans World Airlines*, 570 F.Supp. 1303, 1309 n.5 (D.C.Ill. 1983)(group of employees filed DFR claim against a union, and the employer was made a party to the lawsuit to ensure complete and meaningful relief). Although this would be a novel approach at the Commission, this case is novel. Again, however, the complainants chose not to. Finally, the complainants could have filed a complaint in Superior Court as third party beneficiaries to the collective bargaining agreement, but did not.

B. Commission Does Not Grant Class Action Remedies

The complainants request that a new election, involving all bargaining unit employees, be conducted. However, "class action"

remedies are not available under the Commission's procedures. *State - Revenue (Washington Public Employees Association)*, Decision 8972 (PSRA, 2005); WAC 391-45-010. An individual employee may file a complaint charging unfair labor practices to enforce his or her own rights, but lacks legal standing to enforce the rights of other employees.[20] *City of Bellingham*, Decision 6951 (PECB, 2000); *Community Transit*, Decision 5801 (PECB, 1997), *citing C-Tran*, Decision 4005 (PECB, 1992); *Enumclaw School District*, Decision 5979. A major goal of the DFR is to identify and protect individual expectations as far as possible without undermining collective interests. *Burman v. Trans World Airlines*, 570 F. Supp. 1303. Thus, allowing two pro se complainants a remedy that affects the entire bargaining unit would impact a majority of bargaining unit employees, and no other bargaining unit employees of the employer have filed unfair labor practice complaints of the type alleged here.

C. Analysis and Conclusion on Remedy

First, the relief requested - voiding the ratified collective bargaining agreement - cannot be granted due to the employer's absence in these complaints. The employer is an indispensable party because voiding the collective bargaining agreement would prejudice its rights as the collective bargaining agreement is a contract between the union and the employer, not between the union and its bargaining unit employees. Only the union, and not the employer, owes a duty of fair representation to bargaining unit employees. Thus, as a matter of law, no relief can be granted against the employer. The complainants in these consolidated cases did not file complaints against or join the employer and have made no allegations against the employer.

---

[20] In this case, evidence was presented as affecting all bargaining unit employees who are not union members and thereby applicable to the complainants.

Second, the Commission does not entertain class action complaints, but the remedy requested is a class action style remedy because it would affect all bargaining unit employees (members and nonmembers). Because the Commission does not grant class action remedies the relief the complainants seek cannot be granted. The pro se complainants in this case do not represent all bargaining unit employees, but granting the requested remedy would affect all bargaining unit employees.

Under statute and case law, the Commission has broad discretion to order remedies. RCW 41.80.120 directs the Commission to formulate an appropriate remedy where an unfair labor practice violation is found. The Supreme Court of the State of Washington has given a broad interpretation to the Commission's authority under RCW 41.56.160 and would under Chapter 41.80 RCW as well. *See Community College 7 (Shoreline)*, Decision 9094; *State - Natural Resources*, Decision 8458-B; *Municipality of Metropolitan Seattle*, Decision 2845-A (PECB, 1988), *aff'd*, 118 Wn.2d 621 (1992).

Therefore, the Examiner will grant an order against the union instructing it to cease and desist from interfering with and restraining employees in the exercise of their statutory rights by providing unfair and inadequate notice of the opportunity to vote to non-union members. However, the Examiner will allow some discretion to the union in this area, and will not dictate specific notice requirements. Where bargaining unit employees have been allowed the opportunity to vote on the acceptance or rejection of a tentative agreement, the procedures used to notify bargaining unit employees must not be arbitrary, discriminatory, or in bad faith such that it is unfair or inadequate, but within those parameters the union gets to decide the procedures. *See International Brotherhood of Teamsters, Local 310 v. NLRB*, 587 F.2d 1176; *United Steelworkers of America, AFL-CIO*, 243 NLRB 1157.

Furthermore, to assure the remedy granted to the complainants is adequate and equitable, the union should not enforce or seek to enforce the union security provision in the union and employer's collective bargaining agreement effective July 1, 2005, through June 30, 2007, upon the two complainants, and any dues, fees or payments previously paid by the complainants to the union under the collective bargaining agreement effective from July 1, 2005, through June 30, 2007, shall be reimbursed.

FINDINGS OF FACT

1. Community College District 19, d/b/a Columbia Basin Community College (Columbia Basin College), is an institution of higher education of the state of Washington within the meaning of RCW 41.80.005(10).

2. The Washington Public Employees Association (union), an employee organization within the meaning of RCW 41.80.005(7), was the exclusive bargaining representative for all nonsupervisory, classified employees and is the exclusive bargaining representative for all bargaining units certified by the Public Employment Relations Commission at Columbia Basin College.

3. Columbia Basin College and the union were parties to a collective bargaining agreement covering all nonsupervisory, classified employees, with an effective date from March 1, 2003, through June 30, 2005, and are parties to a collective bargaining agreement covering all bargaining units certified by the Public Employment Relations Commission at Columbia Basin College, with an effective date of July 1, 2005, through June 30, 2007.

4. Chapter 41.80 RCW, State Collective Bargaining, was enacted as part of the Personnel System Reform Act of 2002 (PSRA), and

created a 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 July 1, 2004, established a duty to bargain that for the first time concerned union security obligations.

5. The operative effect of a PSRA provision that took effect on July 1, 2004 (RCW 41.80.010), was that negotiations for first contracts under the new collective bargaining process 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 commenced negotiations with the employer's representative (representing a coalition of institutions of the state's community college districts, including Columbia Basin College), during or about June 2004. The union's executive director, Leslie Liddle, was the union's chief negotiator during those negotiations. Geanene Lubinski, the union's chapter president, was on the collective bargaining assistance committee during 2004.

7. At or about midnight on September 17, 2004, the union and the employer reached a tentative agreement on a collective bargaining agreement under the PSRA.

8. Late in the evening of September 17, 2004, and as one of the last issues agreed upon in collective bargaining negotiations for the tentative agreement reached in paragraph 7 of these findings of fact, the employer proposed, and the union agreed, to allow all bargaining unit employees the opportunity to vote on the acceptance or rejection of the tentative agreement in exchange for inclusion of a union security provision in the collective bargaining agreement.

9. The agreement described in paragraph 8 of these findings of fact was silent as to what voting process or procedures (including notification) would be followed. Other than agreeing that the union would allow all bargaining unit employees the opportunity to vote, there were no other discussions on the matter.

10. During the period from June 2004 through September 16, 2004, the union held at least one classified employee meeting where collective bargaining issues, including preparations for bargaining, union security and negotiations, were discussed. Attendance as a whole was not that great; it was very possible that union members and non-union members might not have known what was going on through information exchanged at meetings due to nonattendance. At least one nonsupervisory, classified employee, who was also a bargaining unit employee, did not regularly attend classified employee meetings as the topics of discussion did not interest her as a non-union member.

11. During the period from June 2004 through September 16, 2004, the union did not know that all bargaining unit employees would have the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement per negotiated agreement between the union and employer as described in paragraph 8 of these findings of fact.

12. The union chapter president first learned that all bargaining unit employees had the opportunity to vote on the morning of September 20, 2004.

13. On September 20, 2004, via e-mail, the union told its leaders to notify everyone "they could" in their individual areas, in "whatever way" they could, of the opportunity to vote and to check the union website. The union chapter president walked through her area in admissions and registration and told

everyone that the vote was coming and that they would be allowed to vote.

14. On September 20, 2004, the union chapter president sent all bargaining unit employees an e-mail titled "Check your WPEA Website." The e-mail consisted of a link to the union's website, and the website contained specific notification of the opportunity to vote, along with information on where and when to vote and information that the locations and times were tentative. Neither the title nor body of the e-mail indicated that information was being sent regarding the opportunity of all bargaining unit employees to vote on the acceptance or rejection of the tentative collective bargaining agreement as described in paragraph 8 of these findings of fact.

15. It is not unusual for members and nonmembers to receive the type of "Check your WPEA Website" e-mails described in paragraph 14 of these findings of fact from the union informing them of meetings.

16. A nonsupervisory, classified employee who was a bargaining unit employee but not a union member did not remember receiving the "Check Your WPEA Website" e-mail described in paragraph 14. The union chapter president sent the "Check Your WPEA Website" e-mail described in paragraph 14 to all bargaining unit employees but after the vote on September 26, 2004, she received about half a dozen inquiries asking when the vote was held. Based on the evidence presented it is reasonable to infer that the complainants received the e-mail but did not pay attention to it as the title and body of the e-mail did not reference their opportunity to vote and so do not remember having received it.

17. On September 20, 2004, the union chapter president sent a second e-mail to union members. The second e-mail was titled

"Vote to Ratify the New Master Contract." The body of the second e-mail detailed specific information regarding the vote on the acceptance or rejection of the tentative agreement. It stated that "every chapter member" needed to vote, and stressed "[p]lease DO NOT FORGET . . . to VOTE."

18. On September 20, 2004, the union chapter president sent a third e-mail to union members. It contained two sentences: one to correct a typographical error and one to change the date of the vote from September 20 to 26, 2004. The e-mail was titled "VOTING DAY."

19. The union chapter president sent the second e-mail to union members to reinforce the information that had been sent in the first e-mail to all bargaining unit employees. She testified that she wanted to reinforce the first e-mail to union members because she wanted "my people" to vote. This statement raises the inference that the union does not consider nonmembers to be "my people" and colors the reasonableness of all other justifications provided by the union for not giving members and nonmembers the same notice. The Examiner finds this to be the most telling piece of evidence.

20. The union chapter president explained that the primary purpose of the second e-mail to union members was to inform those people who worked nights and therefore could not attend meetings, and those people who were custodians and therefore did not have access to e-mail of the union meeting on September 21, 2004. However, people who worked nights and custodians did not receive the additional e-mail via e-mail, but rather a paper copy was specially delivered to their boxes by Deborah Madere, a program coordinator in plant operations. Madre did not receive the e-mail via e-mail either. The only "group" of people notified by the second e-mail were union members.

21. The union chapter president was trying to "kill two birds with one stone" by specifically including union members in the second e-mail, because many had not attended meetings, and she wanted to make sure they were informed. She did not express such concern for informing non-union members who also had not attended meetings.

22. The union chapter president has an e-mail list of members ("WPEA CHAPTER") and a list of classified employees ("CLASSIFIED") that she maintains. Therefore, it would have been just as easy to send the second and third e-mails to members and nonmembers as it would have been to send them to union members.

23. The union chapter president stated that she did not send non-union members the second e-mail because she had already sent them the same information in the first e-mail, and she would have been duplicating her efforts to send it to them again. She did not express concern for duplicating information to union members.

24. The union chapter president stated that the first e-mail sent to all bargaining unit employees was just "informational" in an effort to comply with the state's policy on *de minimis* use of state resources. She explained that more information was not put in the "Check your WPEA Website" e-mail "because this is an area when we're talking votes that the state regulations are very specific about when it comes to anything to do with any types of voting or anything." She also explained that the state did not want union business conducted using their resources. However, the union chapter president did include more information in the second and third e-mails to union members.

25. During the time from September 17, 2004, until September 26, 2004, the union was working under a "time crunch." While it may have known long before that union security was an issue in the negotiations, it was not until late in the evening of September 17, 2004, that it knew all bargaining unit employees would have the opportunity to vote the acceptance or rejection of the tentative agreement. Therefore, it is reasonable that any specific notice of the opportunity to vote would necessarily come after September 20, 2004.

26. On September 20, 2004, the union placed a copy of the tentative agreement on its website along with a bulletin that had to be viewed before entry into the website. The bulletin contained information concerning the dates, times and places the vote to accept or reject the tentative agreement would be conducted. It also noted that the locations and times were tentative so interested parties should check for changes on Friday, September 24, 2004. Finally, the bulletin stated that "all WPEA bargaining unit members have an opportunity to vote on ratifying the contract." An overview of the higher education master agreement was also placed on the union website on September 20, 2004, and although it discussed union security, it did not state that all bargaining unit employees would be allowed the opportunity to vote on the tentative agreement. It is not reasonable to assume that non-union members would check the union website for information regarding the opportunity to vote, especially considering nonmembers were not given adequate notification either in person, at meetings, or via e-mail that they should check the website in the first place.

27. On September 21, 2004, a union district meeting was held, and an overview of the tentative agreement was available. Everyone in attendance was told of the short voting time frame and to check the website every other day to stay informed. No

testimony was provided on whether the union allows non-union members to attend these meetings. Testimony was also given that union chapter meetings were held, but only chapter officers and other members were referenced as attending.

28. On Sunday September 26, 2004, from 10:00 a.m. until 2:00 p.m. in a parking lot at Columbia Basin College, the union conducted a ballot box election for all bargaining unit employees to vote on the acceptance or rejection of the tentative agreement (described in paragraph 7 of these findings of fact). The union did not follow its bylaws which would have entailed only union members voting by mail ballot. No evidence was presented on the number of bargaining unit employees who voted. It can reasonably be deduced from the statement of facts in these consolidated cases that the complainants did not vote.

29. In an October 1, 2004, e-mail forwarded to "CLASSIFIED" employees by the union's chapter president, the union's executive director wrote that the union did not follow its bylaws because it allowed nonmembers to participate in the vote described in paragraph 28 of these findings of fact per its agreement with the employer in negotiations as described in paragraph 8 of these findings of fact.

30. Looking at the totality of the circumstances, the Washington Public Employees Association's actions (and inactions) described in paragraphs 10 through 27 of these findings of fact failed to fairly and adequately notify all bargaining unit employees who were not union members of the opportunity to vote on the acceptance or rejection of the tentative agreement as described in paragraph 8 of these findings of fact.

CONCLUSIONS OF LAW

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

2. Kathleen Paxton and Gene Wagner (as bargaining unit employees who are not union members) have legal standing to file, and the Commission has jurisdiction under RCW 41.80.110 to determine and remedy complaints that the employee organization described in paragraph 2 of the above findings of fact has interfered with or restrained such employees in the exercise of their statutory rights under RCW 41.80.050 by its breach of its DFR that entailed an agreement reached with the employer in collective bargaining as described in paragraph 8 of the foregoing findings of fact.

3. By not fairly and adequately notifying all bargaining unit employees who are not union members in the bargaining unit it represents at Columbia Basin College (described in paragraph 2 of the above findings of fact) of the opportunity to vote on the acceptance or rejection of the tentative collective bargaining agreement (as described in paragraph 8 of the above findings of fact), and thereby breaching its DFR, the Washington Public Employees Association interfered with and 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 Public Employees Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. 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.

b. 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 negotiated agreement calls for such opportunity (and notice).

c. Enforcing or seeking to enforce the union security provision in the union's and employer's collective bargaining agreement effective July 1, 2005, through June 30, 2007, upon Kathleen Paxton or Gene Wagner.

d. In any other manner interfering with or restraining bargaining unit employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

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

a. Reimburse Kathleen Paxton and Gene Wagner within 30 days following the date of this order for any dues, fees, or payments previously paid by the complainants to the union under the terms of the union security provision in the collective bargaining agreement described in paragraph 3 and 7 of the above findings of fact and effective July 1, 2005, through June 30, 2007.

b. Post copies of the notice marked "Appendix A" attached to this order in conspicuous places on the employer's

premises where union notices to all employees are usually posted. These notices shall be duly signed by an authorized representative of the Washington Public Employees Association and shall remain posted for 60 consecutive days from the date of initial posting. The union shall take reasonable steps to ensure that such notices are not removed, altered, defaced or covered by other material.

c. Read the notice marked "Appendix A" attached to this order at a meeting of all employees in the bargaining unit represented by the union at Columbia Basin College and described paragraph 2 of the above findings of fact, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

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 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.

Issued at Olympia, Washington, on the 23rd day of January, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Dianne E. Ramerman

DIANNE E. RAMERMAN, 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.

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 HAS 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 Columbia Basin Community College and ourselves, the Washington Public Employees Association.

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 enforcing or seeking to enforce the union security provision in the union and employer's collective bargaining agreement effective July 1, 2005, through June 30, 2007, upon the two complainants, Kathleen Paxton and Gene Wagner.

WE WILL reimburse Kathleen Paxton and Gene Wagner for any dues, fees or payments previously paid by the complainants to the union under the terms of the union security provision in the collective bargaining agreement effective July 1, 2005, through June 30, 2007.

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 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 PUBLIC EMPLOYEES ASSOCIATION

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 NE, Suite 300, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G.MOONEY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/23/2006

The attached document identified as: DECISION 9210 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	18916-U-04-04812	FILED:	10/20/2004	FILED BY:	PARTY 2
DISPUTE:	UN INTERFERENCE				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Non supervisory				
COMMENTS:					

EMPLOYER: C COL DIST 19 - COLUMBIA BASIN
ATTN: LEE R THORNTON
COLUMBIA BASIN COLLEGE
2600 N 20TH AVE
PASCO, WA 99301-3379
Ph1: 509-547-0511

REP BY: CAMILLA GLATT
C COL DIST 19 - COLUMBIA BASIN
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

PARTY 2: KATHLEEN PAXTON
ATTN:
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

PARTY 3: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: GEANENE LUBINSKI
WA PUBLIC EMPLOYEES ASSN
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

REP BY: LAWRENCE R SCHWERIN
SCHWERIN CAMPBELL BARNARD
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828 Ph2: 800-238-4231

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G.MOONEY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/23/2006

The attached document identified as: DECISION 9211 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	18917-U-04-04813	FILED:	10/20/2004	FILED BY:	PARTY 2
DISPUTE:	UN INTERFERENCE				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Classified				
COMMENTS:					

EMPLOYER: C COL DIST 19 - COLUMBIA BASIN
ATTN: LEE R THORNTON
COLUMBIA BASIN COLLEGE
2600 N 20TH AVE
PASCO, WA 99301-3379
Ph1: 509-547-0511

REP BY: CAMILLA GLATT
C COL DIST 19 - COLUMBIA BASIN
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

PARTY 2: EUGENE WAGNER
ATTN:
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

PARTY 3: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: GEANENE LUBINSKI
WA PUBLIC EMPLOYEES ASSN
2600 N 20TH AVE
PASCO, WA 99301
Ph1: 509-547-0511

REP BY: LAWRENCE R SCHWERIN
SCHWERIN CAMPBELL BARNARD
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828 Ph2: 800-238-4231