

Community College District 3 (Olympic) (Washington Public Employees Association), Decision 9486-A (PSRA, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 3)		
(OLYMPIC),)		
)		
Employer.)		
-----))	<u>CASE</u>	<u>DECISION</u>
JAMES STUART, DAVID)	19128-U-05-4862	9486-A - PSRA
BARTELHEIM, JEANNE GARDNER,)	19136-U-05-4863	8899-B - PSRA
CATHRYN GRAY, WILLIAM OLDMAN,)	19157-U-05-4869	8900-B - PSRA
SHIRLEE WILFORD, AND)	19158-U-05-4870	8901-B - PSRA
JACQUELINE BAKER,)	19159-U-05-4871	8902-B - PSRA
)	19204-U-05-4880	9487-A - PSRA
)	19214-U-05-4883	9488-A - PSRA
)		
Complainants,)		
)		
vs.)		
)		
WASHINGTON PUBLIC EMPLOYEES)		
ASSOCIATION, UFCW LOCAL 365,)	DECISION OF COMMISSION	
)		
Respondent.)		
_____)		

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

James Stuart, David Bartelheim, Jeanne Gardner, Cathryn Gray, William Holdman, Shirlee Wilford, and Jacqueline Baker, appeared pro se.

These cases come before the Commission on a timely appeal filed by the Washington Public Employees Association, UFCW Local 365 (union), seeking review and reversal of the Findings of Fact, Conclusions of Law, and Order issued by Examiner Carlos R. Carrion-Crespo.¹ None of the complainants filed a brief in support of the Examiner's decision, and Community College District 3 (Olym-

¹ *Community College District 3 (Olympic) (Washington Public Employees Association, Decision 9486 (PSRA, 2006)).*

pic) (employer) was not a named party and did not participate in these proceedings.

ISSUES PRESENTED

1. Does this Commission have jurisdiction over these complaints concerning the notice and opportunity to vote on the ratification of the particular collective bargaining agreement?
2. If this Commission has jurisdiction, did the union interfere with protected employee rights by failing to provide adequate notice and opportunity to vote in the contract ratification election?

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

ISSUE 1 - THE COMMISSION'S JURISDICTION

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

Employees Association), Decision 9210-A (PSRA, 2006), and we incorporate that discussion by reference.² However, we again stress that although the course of conduct surrounding a ratification election for a collective bargaining agreement is usually an internal union matter, and therefore outside this Commission's jurisdiction, when a union agrees with an employer to grant all bargaining unit employees the opportunity to vote, the union exposes itself to scrutiny from this agency regarding any allegation that the union restrained bargaining unit employees from exercising the right to vote granted to them by the agreement.

Here, the record clearly establishes that the union reached an agreement with the employer on September 16, 2004, that stated that the "[u]nion agrees that . . . all bargaining unit employees will be allowed the opportunity to vote" on the ratification of the collective bargaining agreement.³ This situation is exactly the same as the factual situation presented in all three cases of the *Ratification Trilogy*. Thus, there is no reason to depart from the established precedent establishing this Commission's jurisdiction.

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

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

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

ISSUE 2 - UNION'S DUTY OF FAIR REPRESENTATION

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

We disagree with the union that these cases can be distinguished on their facts from the *Ratification Trilogy*. Although there are certain factual differences between these cases and the *Ratification Trilogy*, the overall pattern of conduct remains similar. This record supports the Examiner's findings that the union failed to adequately inform the complainants of their rights regarding the ratification election, and, in the limited instances where it did provide notice, that notice was confusing and contradictory.

The union's first effort at notifying bargaining unit employees of their voting rights contained erroneous information. On September 18, 2004, Elizabeth Burgess sent an e-mail addressed to "WPEA; Classified" stating that "classified staff who wish to vote may do so by submitting . . . [one] month of membership dues at the voting location." This statement directly conflicts with the agreement reached to allow all bargaining unit employees the right to vote.

The union attempted a second time to communicate to all bargaining unit members their right to vote in the ratification election. On September 23, 2004, the union posted on its web page, which was part of the employer's intranet,⁴ information about the ratification election, including voting locations and times, and also sent a second e-mail notification on that day. Although this information correctly informed employees regarding their right to vote on ratifying the agreement and also included information about the agreed upon collective bargaining agreement, the union failed to adequately communicate to all bargaining unit employees, including non-union members, the availability of this information. Thus, these notices were inadequate to communicate to the non-union member bargaining unit employees their voting rights, particularly in light of the September 18 e-mail which informed employees that only union members would be allowed to vote.

This pattern of contradictory statements to bargaining unit employees mirrors the offending behavior found in the *Ratification Trilogy*. Although the union may have intended for its September 23 postings to communicate that all bargaining unit employees had the right to vote, we agree with the Examiner that those notices failed to adequately inform employees of their true rights. As a whole, these communications, including the September 18 e-mail, failed to adequately reach all bargaining unit employees, and the union erroneously assumed that word of mouth notice of the election would be sufficient.

We also disagree with the union's claims that their communication efforts should be viewed in light of RCW 41.80.010. That statute

⁴ Union members of the bargaining unit maintained the website, but the employer's equipment hosted the website and employees could access the bargaining unit website from their workstations.

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

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

Finally, the union asserts that these complaints essentially allege contract violations, and that this Commission does not enforce contracts through its unfair labor practice jurisdiction. Had the complainants alleged that the union denied them the right to vote in the ratification election, the union's argument would be valid. However, these cases are not about the employees' right to vote under the agreement, rather they concern the notice provided by the

union to the complainants about their right to vote on ratification of the negotiated agreement.

CONCLUSION

Substantial evidence supports the Examiner's findings that the union interfered with the complainants' protected rights. Additionally, we also note that the Examiner's ordered remedy is consistent with the remedies ordered in the *Ratification Trilogy*, so we have no reason to disturb what is already ordered.

NOW, THEREFORE, it is

ORDERED

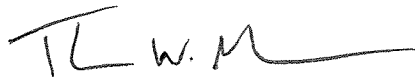
The Findings of Fact, Conclusions of Law, and Order issued by Examiner Carlos R. Carrion-Crespo are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner

Chairperson Marilyn Glenn Sayan did not take part in the consideration or decision in this case.