

Community College District 6 - Seattle and Community College District 7 - Shoreline, Decision 9753 (CCOL, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RICCARDO GREEN,)	
)	
Complainant,)	CASE 20920-U-07-5335
)	
vs.)	DECISION 9753 - CCOL
)	
COMMUNITY COLLEGE DISTRICT 6 -)	
SEATTLE,)	
)	
Respondent.)	ORDER OF DISMISSAL
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RICCARDO GREEN,)	
)	
Complainant,)	CASE 20921-U-07-5336
)	
vs.)	DECISION 9754 - CCOL
)	
SEATTLE COMMUNITY COLLEGE)	
FEDERATION OF TEACHERS,)	
LOCAL 1789,)	
)	
Respondent.)	ORDER OF DISMISSAL
<hr/>		
RICCARDO GREEN,)	
)	
Complainant,)	CASE 20918-U-07-5333
)	
vs.)	DECISION 9755- CCOL
)	
COMMUNITY COLLEGE DISTRICT 7 -)	
SHORELINE,)	
)	
Respondent.)	ORDER OF DISMISSAL
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RICCARDO GREEN,)	
)	
Complainant,)	CASE 20919-U-07-5334
)	
vs.)	DECISION 9756 - CCOL
)	
SHORELINE COMMUNITY COLLEGE)	
FEDERATION OF TEACHERS,)	
LOCAL 1950,)	
)	
Respondent.)	ORDER OF DISMISSAL

RICCARDO GREEN,)	
)	
Complainant,)	CASE 20922-U-07-5337
)	
vs.)	DECISION 9757 - CCOL
)	
COMMUNITY COLLEGE DISTRICT 7 -)	
SHORELINE,)	
)	
Respondent.)	ORDER OF DISMISSAL
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RICCARDO GREEN,)	
)	
Complainant,)	CASE 20923-U-07-5338
)	
vs.)	DECISION 9758 - CCOL
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
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On February 13, 2007, Riccardo Green (Green) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against Community College District 6 - Seattle (District 6 - Seattle) and Community College District 7 - Shoreline (District 7 - Shoreline), Seattle Community College Federation of Teachers, Local 1789 (Local 1789), Shoreline Community College Federation of Teachers, Local 1950 (Local 1950), and the Washington Federation of State Employees (WFSE). The Commission docketed the complaints as six case numbers. Case 20920-U-07-5335 concerns allegations against District 6 - Seattle, Case 20921-U-07-5336 concerns allegations against Local 1789, Case 20918-U-07-5333 concerns allegations against District 7 - Shoreline, Case 20919-U-07-5334 concerns allegations against Local 1950, Case 20922-U-07-5337 concerns allegations against District 7 - Shoreline, and Case 20923-U-07-5338 concerns allegations against WFSE.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 30, 2007, indicated that it was not possible to conclude that a cause of action existed at that time. Green was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On May 8 and 14, 2007, Green filed documents in support of his claims. On May 21, Green filed amended complaints for all cases except Case 20921-U-07-5336. On May 24, 2007, Green filed amended complaints for all cases. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state causes of action.

DISCUSSION

Complaints

Green submitted identical statements of facts for all six complaints. Green checked the same boxes on the complaint forms for charges against Local 1789, Local 1950, and WFSE (interference, inducing the employer to commit a violation, refusal to bargain, and "other unfair labor practice"). Green checked the same boxes on the complaint forms for charges against District 6 - Seattle, Case 20920-U-07-5335, and District 7 - Shoreline, Case 20922-U-07-5337 (interference, discrimination, discrimination for filing charges, refusal to bargain, and "other unfair labor practice"). However, in District 7 - Shoreline, Case 20918-U-07-5333, Green checked interference, discrimination, refusal to bargain, and "other unfair labor practice," but did not check discrimination for filing charges. Green's statement of

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

facts also alleges employer discrimination due to race, national origin, color, and gender.

Green's allegations concern employer interference with employee rights in violation of RCW 28B.52.073(1)(a), and union interference with employee rights in violation of RCW 28B.52.073(2)(a), by the employers and unions entering into agreements to exclude Green from the bargaining units represented by the unions, and thereby stranding him without access to statutory collective bargaining rights.

Green further alleges that District 6 - Seattle and District 7 - Shoreline discriminated against him in violation of RCW 28B.52.073(1)(c), discriminated against him for filing charges in violation of RCW 28B.52.073(1)(d), and refused to bargain in violation of RCW 28B.52.073(1)(e). Green also alleges that the employer discriminated against him based upon race, national origin, color, and gender.

Green alleges that Local 1789, Local 1950, and WFSE induced the employer to commit an unfair labor practice in violation of RCW 28B.52.073(2)(b), and refused to bargain in violation of RCW 28B.52.073(2)(d).

Complaint against District 6 - Seattle

The allegations of the complaint in Case 20920-U-07-5335 are common to the other employer complaints (with the exception in Case 20918-U-07-5333, noted above). Green claims that District 6 - Seattle committed violations of interference, discrimination, discrimination for filing charges, refusal to bargain, other violations, and discrimination based on protected classes.

The deficiency notice pointed out multiple defects. One, Green claims discrimination based upon race, national origin, color, and gender. The Commission has no jurisdiction over claims involving

violation of civil rights for protected classes. Such claims must be pursued in court.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(5) Information concerning the parties' relationships, including:

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or
(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

Green's statement of facts does not clearly identify the alleged unfair labor practices, nor does it give times, dates, places, and participants. Green did not supply information regarding the parties' contractual relationship. The complaint does not comply with WAC 391-45-050(2) and (5).

Three, regarding Green's claim of "other unfair labor practice," he does not specify the statute allegedly violated, nor the specific unfair labor practice referred to.

Four, regarding the interference claim, while Green alleges facts relevant to a claim that the employer interfered with his rights by excluding him from a union, he does not allege facts sufficient to conclude that the employer made any threats of reprisal or force or promise of benefit in violation of RCW 28B.52.073(1)(a).

Five, in relation to the allegations of discrimination under RCW 28B.52.073(1)(c), the complaint fails to allege facts indicating

that the employer's actions were taken in reprisal for union activities protected under Chapter 28B.52 RCW.

Six, in relation to the allegations of violation of RCW 28B.52.073(1)(d), a violation concerning discrimination for filing an unfair labor practice charge cannot stand absent evidence that Green has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Seven, the duty to bargain under Chapter 28B.52 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 28B.52.073(1)(e) can only be enforced by a union. Individual employees such as Green do not have standing to process a refusal to bargain claim.

Complaints against District 7 - Shoreline

The complaint filed against District 7 - Shoreline in Case 20918-U-07-5333 alleges employer interference, discrimination, refusal to bargain, and "other unfair labor practices." The complaint filed in District 7 - Shoreline, Case 20922-U-07-5337, alleges employer interference, discrimination, discrimination for filing charges, refusal to bargain, and "other unfair labor practices." The defects detailed in the deficiency notice regarding District 6 - Seattle, Case 20920-U-07-5335, apply equally to the District 7 - Shoreline complaints.

Complaint against Local 1789

The allegations against Local 1789 in Case 20921-U-07-5336 are common to the complaints against Local 1950 and WFSE. Green claims that Local 1789 committed violations of interference, inducing the employer (District 6 - Seattle) to commit violations, refusal to bargain, and "other unfair labor practices."

The deficiency notice pointed out multiple defects. One, as in the complaints against the employers, Green fails to comply with WAC 391-45-050(2) and (5).

Two, Green's claim regarding "other unfair labor practices" does not specify the statutes allegedly violated nor the specific violations.

Three, regarding the interference claim, while Green alleges facts relevant to a claim that the union interfered with his rights by excluding him from membership, he does not allege facts sufficient to conclude that the union made any threats of reprisal or force or promise of benefit in violation of RCW 28B.52.073(2)(a).

Four, regarding the claim that the union induced the employer to commit a violation, the complaint states no facts alleging that the union requested the employer to act unlawfully. *Metro (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989).

Five, regarding the refusal to bargain allegation, Green has no standing to bring this claim, as noted above.

Complaints against Local 1950 and WFSE

Green's claims against Local 1789 in Case 20921-U-07-5336 are duplicated in Case 20919-U-07-5334 against Local 1950, and in Case 20923-U-07-5338 against WFSE. The defects found in Green's claims against Local 1789 apply equally to the complaints against Local 1950 and WFSE.

Amended Complaints

The amended complaints filed on May 21 and May 24, 2007, are identical in content. The May 24 amended complaints contained a complaint omitted in the May 21 filings, as noted above, and provided proof of service.

The deficiency notice detailed two defects common to all complaints. One, the complaints claim discrimination based upon race, national origin, color, and gender. The amended complaints all claim employment discrimination under Chapter 49.60 RCW. The Commission has no jurisdiction over claims involving the aforementioned statute.

Two, the complaints failed to comply with WAC 391-45-050. The amended complaints substantially cure this defect.

District 6 - Seattle, Case 20920-U-07-5335

The amended complaint does not reassert refusal to bargain or identify "other violations." Those claims are considered withdrawn. The amended complaint reasserts claims for employer interference, discrimination, and discrimination for filing charges.

The amended complaint alleges employer interference in violation of RCW 28B.52.073(1)(a), by excluding Green from a bargaining unit represented by the union, thereby stranding him without access to statutory collective bargaining rights. It is an unfair labor practice for an employer to enter into an agreement with one or more unions to exclude a position from a bargaining unit contrary to a recognized right or status, thereby stranding the employee. *Castle Rock School District*, Decision 4722-B (EDUC, 1995). In order to state a cause of action, Green needs to allege facts sufficient to conclude that he was unlawfully excluded from the bargaining unit. Green states that he was a tai chi and self defense instructor for the employer's continuing education department, but alleges no facts indicating that this position was in the bargaining unit. Green does not allege facts sufficient to conclude that he was unlawfully excluded from the bargaining unit, or that the employer unlawfully entered into an agreement with the union to exclude this position from the bargaining unit. Green has

not alleged facts sufficient to conclude that a cause of action could be found for employer interference with employee rights.

Regarding the claims of employer discrimination and discrimination for filing charges, the amended complaint does not allege facts sufficient to conclude that causes of action could be found for those claims.

The amended complaint adds a new charge: employer domination or interference with a union in violation of RCW 28B.52.073(1)(b). However, none of the facts alleged in the amended complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." *City of Anacortes*, Decision 6863 (PECB, 1999). The amended complaint does not state a cause of action for that claim.

District 7 - Shoreline, Case 20922-U-07-5337

The amended complaint does not reassert "other violations" and this claim is considered withdrawn. Green adds the claim of employer domination or interference with a union and reasserts employer interference, discrimination, discrimination for filing charges, and refusal to bargain. As with the claims against District 6 - Seattle, Green fails to allege facts sufficient to conclude that causes of action could be found for interference,² discrimination, discrimination for filing charges, and domination. Further, Green lacks standing to assert a refusal to bargain violation.

District 7 - Shoreline, Case 20918-U-07-5333

The amended complaint does not reassert claims for employer refusal to bargain or "other violations." Those claims are

² Green states that he was a tai chi instructor for the District 7 - Shoreline continuing education department.

considered withdrawn. Green reasserts employer interference and discrimination, and adds claims for employer domination and discrimination for filing charges. As with the foregoing claims regarding both employers, he fails to allege facts sufficient to conclude that causes of action could be found.

Local 1789, Case 20921-U-07-5336

The amended complaint does not reassert union refusal to bargain or "other violations" and those claims are considered withdrawn. Green reasserts claims for union interference and inducing an employer to commit a violation. He adds a claim for union violation of RCW 28B.52.073(2)(c), discrimination against an employee for filing charges.

The amended complaint alleges union interference in violation of RCW 28B.52.073(2)(a), by excluding Green from a bargaining unit represented by the union, thereby stranding him without access to statutory collective bargaining rights. It is an unfair labor practice for a union to enter into an agreement with an employer to exclude a position from a bargaining unit contrary to a recognized right or status, thereby stranding the employee. *Castle Rock School District*, Decision 4722-B (EDUC, 1995). In order to state a cause of action, Green needs to allege facts sufficient to conclude that he was unlawfully excluded from the bargaining unit. Green states that he was a tai chi and self defense instructor for the employer's continuing education department (District 6 - Seattle), but alleges no facts indicating that this position was or is in the bargaining unit. Green does not allege facts sufficient to conclude that he was unlawfully excluded from the bargaining unit, or that the union unlawfully entered into an agreement with the employer to exclude this position from the bargaining unit. Green has not alleged facts sufficient to conclude that a cause of action could be found for union interference with employee rights.

Green alleges no facts supporting the inducement claim. Regarding the allegation of union discrimination for filing charges, Green provides no evidence that he had previously filed an unfair labor practice complaint against the union and so does not state a cause of action for that claim.

Local 1950, Case 20919-U-07-5334

WFSE, Case 20923-U-07-5338

The amended complaints in the above noted cases do not reassert union refusal to bargain or "other violations" and those claims are considered withdrawn. Green reasserts claims for union interference and inducing the employer to commit a violation and adds a claim for union discrimination for filing charges. As with the claims set forth against Local 1789, Green fails to allege facts sufficient to conclude that causes of action could be found.

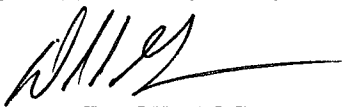
NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 20th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


DAVID I. GEDROSE, Unfair Labor Practice Manager

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

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PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/20/2007

The attached document identified as: **DECISION 9753 - CCOL** 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: 20920-U-07-05335 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Employer
COMMENTS:

EMPLOYER: C COL DIST 6 - SEATTLE
ATTN: CHARLES MITCHELL
SEATTLE COMM COLLEGES
1500 HARVARD AVE
SEATTLE, WA 98122
Ph1: 206-587-3872 Ph2: 206-587-4100

REP BY: DAVID BITTENBENDER
C COL DIST 6 - SEATTLE
N SEATTLE COMM COLLEGE
9600 COLLEGE WAY N
SEATTLE, WA 98103-3599
Ph1: 206-526-7792

REP BY: DEREK L EDWARDS
OFFICE OF THE ATTORNEY GENERAL
800 5TH AVE STE 2000
SEATTLE, WA 98104-3188
Ph1: 206-389-2054 Ph2: 206-389-2059

PARTY 2: RICCARDO GREEN
ATTN:
PO BOX 45181
SEATTLE, WA 98145

PARTY 3: SEATTLE COMM COLL FED/TEACHERS
ATTN: DAVE EBERHARDT
1500 HARVARD AVE
SEATTLE, WA 98122
Ph1: 206-587-5478 Ph2: 206-291-6645

REP BY: DMITRI IGLITZIN
SCHWERIN CAMPBELL BARNARD
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Ph1: 206-285-2828

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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The attached document identified as: **DECISION 9754 - CCOL** 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: 20921-U-07-05336 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Union
COMMENTS:

EMPLOYER: C COL DIST 6 - SEATTLE
ATTN: CHARLES MITCHELL
SEATTLE COMM COLLEGES
1500 HARVARD AVE
SEATTLE, WA 98122
Ph1: 206-587-3872 Ph2: 206-587-4100

REP BY: DAVID BITTENBENDER
C COL DIST 6 - SEATTLE
N SEATTLE COMM COLLEGE
9600 COLLEGE WAY N
SEATTLE, WA 98103-3599
Ph1: 206-526-7792

REP BY: ALAN SMITH
OFFICE OF THE ATTORNEY GENERAL
800 FIFTH AVE STE 2000
SEATTLE, WA 98104-3188
Ph1: 206-389-2059

PARTY 2:
ATTN: RICCARDO GREEN
PO BOX 45181
SEATTLE, WA 98145

PARTY 3:
ATTN: SEATTLE COMM COLL FED/TEACHERS
DAVE EBERHARDT
1500 HARVARD AVE
SEATTLE, WA 98122
Ph1: 206-587-5478 Ph2: 206-291-6645

REP BY: DMITRI IGLITZIN
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 20918-U-07-05333 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Employer
COMMENTS:

EMPLOYER: C COL DIST 7 - SHORELINE
ATTN: LEE LAMBERT
SHORELINE COMM COLLEGE
16101 GREENWOOD AVE N
SEATTLE, WA 98133-5696
Ph1: 206-546-4101 Ph2: 206-546-4551

REP BY: BERNICE VONNEGUT
C COL DIST 7 - SHORELINE
SHORELINE COMM COLLEGE
16101 GREENWOOD AVE N
SHORELINE, WA 98133-5667
Ph1: 206-546-4694 Ph2: 206-546-4101

REP BY: ALAN SMITH
OFFICE OF THE ATTORNEY GENERAL
800 FIFTH AVE STE 2000
SEATTLE, WA 98104-3188
Ph1: 206-389-2059

PARTY 2: RICCARDO GREEN
ATTN: PO BOX 45181
SEATTLE, WA 98145

PARTY 3: SHORELINE CC FED OF TEACHERS
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SEATTLE, WA 98133
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REP BY: DMITRI IGLITZIN
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Ph1: 206-285-2828

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 20919-U-07-05334 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Union
COMMENTS:

EMPLOYER: C COL DIST 7 - SHORELINE
ATTN: LEE LAMBERT
SHORELINE COMM COLLEGE
16101 GREENWOOD AVE N
SEATTLE, WA 98133-5696
Ph1: 206-546-4101 Ph2: 206-546-4551

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PARTY 2:
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ATTN: SHORELINE CC FED OF TEACHERS
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16101 GREENWOOD AVE NORTH
SEATTLE, WA 98133
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REP BY: DMITRI IGLITZIN
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SEATTLE, WA 98119-3971
Ph1: 206-285-2828

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DOUGLAS G. MOONEY, COMMISSIONER
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY/S/ ROBBIE DUFFIELD

CASE NUMBER: 20922-U-07-05337 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Employer - including WFSE
COMMENTS:

EMPLOYER: C COL DIST 7 - SHORELINE
ATTN: LEE LAMBERT
SHORELINE COMM COLLEGE
16101 GREENWOOD AVE N
SEATTLE, WA 98133-5696
Ph1: 206-546-4101 Ph2: 206-546-4551

REP BY: BERNICE VONNEGUT
C COL DIST 7 - SHORELINE
SHORELINE COMM COLLEGE
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Ph1: 206-546-4694 Ph2: 206-546-4101

REP BY: ALAN SMITH
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PARTY 2:
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SEATTLE, WA 98145

PARTY 3:
ATTN: WA FED OF STATE EMPLOYEES
GREG DEVEREUX
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501
Ph1: 800-562-6002 Ph2: 360-352-7603

REP BY: GARY HILL
WA FED OF STATE EMPLOYEES
444 NE RAVENNA BLVD ROM108
SEATTLE, WA 98115
Ph1: 206-525-5363 Ph2: 800-924-5754

PUBLIC EMPLOYMENT RELATIONS COMMISSION

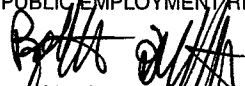
112 HENRY STREET NE
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DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 20923-U-07-05338 FILED: 02/13/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: ACADEMIC
DETAILS: Against the Union - including WFSE
COMMENTS:

EMPLOYER: C COL DIST 7 - SHORELINE
ATTN: LEE LAMBERT
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