Mead School District, Decision 10891 (PECB, 2010)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MEAD CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. MEAD SCHOOL DISTRICT, Respondent.	CASE 23124-U-10-5888 DECISION 10891 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
MEAD EDUCATION ASSOCIATION, Complainant, vs. MEAD SCHOOL DISTRICT, Respondent.	CASE 23125-U-10-5889 DECISION 10892 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Mike Boyer, UniServ Representative, for the Mead Education Association and the Mead Classified Public Employees Association.

Stevens, Clay & Manix, P.S., by *Paul Clay*, Attorney at Law, for the Mead School District.

On March 22, 2010, the Mead Education Association and the Mead Classified Public Employees Association (unions) filed unfair labor practice complaints against the Mead School District (employer) alleging that the employer refused to bargain when it unilaterally adopted a new leave of absence form. The Commission consolidated the two complaints for hearing, along with two unrelated complaints filed by the Mead Classified Public Employees Association, and assigned the matter to Examiner Jamie L. Siegel. The employer filed motions for summary

judgment concerning all of the complaints and the unions responded, opposing the motions. I informed the parties on September 9, 2010, that I was granting the employer's summary judgment motion concerning the leave form complaints and denying the employer's summary judgment motion concerning the two unrelated complaints. This decision only addresses the complaints concerning the leave form.

ISSUES

1. Are there disputed issues of material fact that prevent granting summary judgment?

2. Did the employer refuse to bargain in violation of RCW 41.56.140(4) and RCW 41.59.140(1)(e) when it implemented a new leave form for extended employee absences?

I grant the employer's motion for summary judgment. The parties do not dispute any material facts and the employer is entitled to judgment as a matter of law. The employer did not refuse to bargain or violate RCW 41.56.140(4) or RCW 41.59.140(1)(e). I deny the employer's request for attorney fees or the imposition of sanctions.

ISSUE 1 - MOTION FOR SUMMARY JUDGMENT

APPLICABLE LEGAL STANDARDS

The law authorizes the Commission and its examiners to grant a motion for summary judgment "if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135. The Commission applies the same standards in ruling on summary judgment as do Washington courts. *State - General Administration*, Decision 8087-B (PSRA, 2004). The courts and the Commission define a material fact as one upon which the outcome of the litigation depends. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243 (1993); *State - General Administration*, Decision 8087-B.

When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Atherton Condo Ass'n v. Blume Dev. Co,* 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003). In ruling on a motion for summary judgment, the Commission must consider the material evidence and all reasonable inferences most favorably to the nonmoving party and deny the motion if reasonable people might reach different conclusions as to the facts. *Paul D. Wood v. City of Seattle*, 57 Wn.2d 469 (1960).

ANALYSIS

The unions allege that the employer unilaterally changed a mandatory subject of bargaining. One of the key material facts in a unilateral change case is whether the employer made an actual, material change to the status quo.

Material Facts Asserted by Employer

In February 2010, the employer implemented a new leave form for extended employee absences, defined by the leave form as absences exceeding five days. Prior to February 2010, the employer required employees to submit requests for extended leave in writing and include the reason for the leave. In his Declaration, Kelly Shea, the employer's Executive Director of Human Resources, stated:

> After the February 2010 implementation of the new leave form, the School District continued to require employees to submit a written request for leave along

> with the reason for the leave. Instead of the written request being a handwritten note, it was the newly developed leave form. The leave form was developed as a management aid to easier track and document employee requests for leave and to make sure leave was properly categorized according to the numerous types of leaves now available to employees by law.

According to Shea's Declaration, "The leave form has no bearing on the leave approval process or otherwise limits employees entitled to leave."

Union Does Not Dispute Material Facts

The unions assert that the new leave form materially alters the process for requesting leave. In their opposition to the employer's Motion for Summary Judgment, however, the unions did not deny the above-referenced statements from the employer and offered no evidence disputing the material facts as articulated by the employer. The unions produced nothing to dispute the employer's description of the status quo or how the new leave form was being implemented. The unions provided no evidence that the employer's implementation of the leave form altered the status quo.

The only potentially disputed factual issues that the unions raised is that the leave form is not "entirely consistent" with the current bargaining agreements and that the leave form "attempts to cross jurisdictional boundaries" between the unions and other employees. Presuming that those are true statements, I find that they are not material to whether the employer committed a unilateral change violation.[1]

Summary Judgment Appropriate

As referenced above, and as is described in more detail below, one of the key material facts in a unilateral change case is whether the employer made an actual, material change to the status quo. In the employer's Motion for Summary Judgment, it set forth facts demonstrating it did not. The unions failed to dispute any of the material facts asserted by the employer. As a result, I find that there are no material facts in dispute and decide this case as a matter of law.

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[1] I do not have jurisdiction in this proceeding to determine whether the employer violated the collective bargaining agreements. Additionally, whether a form applies to bargaining unit employees as well as other employees bears no relevance to the issue before me.

Before proceeding with the remainder of this decision, it bears noting that this decision, like most examiner and Commission decisions, results from unique facts. In reaching this decision, I considered the Court of Appeals' recent decision in *Arnold v. Saberhagen Holdings, Inc.*, Docket No. 39055-8 (Court of Appeals, Division II, August 31, 2010) in which the Court stated:

> We are reluctant to grant summary judgment when 'material facts are particularly within the knowledge of the moving party.' Riley v. Andres, 107 Wn. App. 391, 395, 27 P.3d 618 (2001). In such cases, the matter should proceed to trial 'in order that the opponent may be allowed to disprove such facts by cross-examination and by the demeanor of the moving party while testifying.' Mich. Nat'l Bank v. Olson, 44 Wn. App. 898, 905, 723 P.2d 438 (1986).

This reluctance to grant summary judgment when "material facts are particularly within the knowledge of the moving party" is apt in Commission proceedings where Commission rules do not set forth a process for formal discovery. While the Court of Appeals' concern may apply in many Commission proceedings, it does not apply in this case. In this case, the material facts are particularly within the knowledge of the non-moving parties. Here, the unions have access to their bargaining unit employees and can learn directly from them how they requested extended leaves prior to February of 2010 and what, if any, impacts using the new form has had on working conditions.[2] Based upon the unions' failure to dispute any of the material facts, facts which are particularly within the unions' knowledge, I decide this case as a matter of law.

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[2] In fact, the e-mail communication between the parties demonstrated that the employer sought information from the unions concerning impacts. For example, in one of the emails from Shea to the unions' representative, Shea explained that the form did not affect employees' ability to access leave provided by the collective bargaining agreement and stated:

> As such, the District does not understand how the use of this form constitutes a mandatory subject of bargaining. However, in order to determine if this is a mandatory subject of bargaining, we're asking for clarification as to what impact this has on the wages, hours, and working conditions of the Mead Education Association members.

Several other emails sought the same information. Jill Christiansen, the employer's Director of Personnel, sent an e-mail to one of the union representatives stating:

> We still do not understand how this in any way impacts the CBA or the leave provisions and remain open to specifics regarding this concern. This form is only meant to provide an organized means of notification as allowed in the contract. It involves filling in a name, dates, two or three checkmarks and a signature.

ISSUE 2 – BARGAINING OBLIGATION

APPLICABLE LEGAL STANDARDS

Chapters 41.56 and 41.59 RCW require a public employer to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining including wages, hours and working conditions. RCW 41.56.030(4), 41.59.020(2). The Commission utilizes a balancing test under *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989), to determine whether a particular proposal or topic is a mandatory subject. Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of changes affecting mandatory subjects of bargaining and, upon request, bargain in good faith until reaching agreement or impasse.

When a union alleges that an employer made a unilateral change, it bears the burden of establishing that the dispute involves a mandatory subject of bargaining and that the employer's actions constituted an actual, material change to the status quo. *Kitsap County*, Decision 8292-B (PECB, 2007); *Snohomish County*, Decision 4995-B (PECB, 1996).

ANALYSIS

The unions allege that the employer's implementation of the extended leave form constituted a unilateral change to a mandatory subject of bargaining. For purposes of this decision, I have chosen not to address whether the leave form is a mandatory subject of bargaining. Such a determination is unnecessary to the outcome of this decision. Instead, for simplicity of this decision only, I will presume that it is a mandatory subject.

Presuming that the leave form is a mandatory subject of bargaining, the unions bear the burden of establishing that the employer unilaterally changed the status quo. No duty to bargain arises when an employer reiterates established policy or makes a change which has no material effect on employee wages, hours or working conditions. *City of Yakima*, Decision 3564-A (PECB, 1991). In this case, based upon the undisputed facts, the employer made no material changes to employee wages, hours or working conditions that give rise to a duty to bargain.

As addressed above, prior to February of 2010, the employer required employees to submit requests for extended leave in writing and include the reason for the leave. The new leave form did not alter the requirement that employees submit information in writing concerning requests for extended leave. The method of submitting the information changed. Instead of writing a letter, employees complete a standardized form. Use of the form changed nothing concerning employee access to leave or the approval process. The union submitted nothing to dispute these material facts. The union offered no evidence that the employer changed the status quo.

This case is similar to *Kitsap County*, Decision 8402-B (PECB, 2007), where the employer implemented a new sick leave tracking system that monitored employee sick leave use. In that case, the Commission found that implementation of the new tracking system had little, if any, impact, on the terms and conditions of employment and that the system did not change existing employer policies concerning sick leave. "Thus, even though the employer utilized technology to more closely track employee hours, the technology itself was simply a tool to more efficiently monitor and enforce existing employer policies."

In *Kitsap County*, the Commission pointed to *Rust Craft Broadcasting*, 225 NLRB 327 (1976), as a similar example. In that case, the employer implemented a new time clock, replacing the existing policy of employees manually entering their arrival/departure time. The National Labor Relations Board (NLRB) determined that "absent discrimination, an employer is free to choose more efficient and dependable methods for enforcing its workplace rules."

Similarly, in *Goren Printing Co., Inc.*, 280 NLRB 1120 (1986), *aff'd, NLRB v Goren Printing Co., Inc.*, 843 F2d 1385 (CA 1, 1988), the NLRB affirmed that the employer did not commit an unfair labor practice by requiring employees to submit written notes when leaving work early. Previously, employees were required to provide oral notice if they were leaving work early. The NLRB reasoned: "Thus, the note requirement is merely a more dependable method of enforcing Respondent's rule that its employees must give notice if they leave work early. The rule itself remains intact and the procedural change has an inconsequential impact on those employees who complied with the earlier notice requirement."

Similarly in this case, the employer's action represents an update in the technology and how it collects leave information; it does not amount to a substantive change. Implementation of the leave form did not alter any existing policy or process regarding leave eligibility or use. The employer's actions had no actual, material impact on the terms and conditions of employment.

EMPLOYER'S REQUEST FOR ATTORNEY FEES

The employer seeks an order requiring the unions to pay the employer's attorney fees and impose other sanctions. The employer asserts that the unions' claims are frivolous and that an extraordinary remedy is warranted based upon the unions' disrespectful and uncivil behavior and its misuse of the Commission's proceedings.

In developing orders and remedies, my authority stems from RCW 41.56.160 and RCW 41.59.150. Those statutes authorize remedial orders to prevent unfair labor practices. There is no unfair labor practice complaint before me alleging that the unions committed an unfair labor practice. As a result, I lack authority to award the requested remedies. *Anacortes School District*, Decision 2464-A (EDUC, 1986).

FINDINGS OF FACT

1. The Mead School District is a public employer within the meaning of RCW 41.56.030(13) and 41.59.020(5).

2. The Mead Classified Public Employees Association (MCPEA) and the Mead Education Association (MEA) (unions) are bargaining representatives within the meaning of RCW 41.56.030(2) and 41.59.020(6).

3. In February 2010, the employer implemented a new leave form for extended employee absences, defined by the leave form as absences exceeding five days.

4. Prior to February 2010, the employer required employees to submit requests for extended leave in writing and include the reason for the leave.

5. In the unions' responses to the employer's summary judgment motion, the unions did not deny or dispute the statements included in Findings of Fact 3 and 4.

6. In the unions' responses to the employer's summary judgment motion, the unions presented no evidence demonstrating that there are material facts in dispute.

7. By implementing a new leave form, as described in Findings of Fact 3 and 4, the employer made no actual, material change in the wages, hours or working conditions of bargaining unit employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under Chapters 41.56 and 41.59 RCW and Chapter 391-45 WAC.

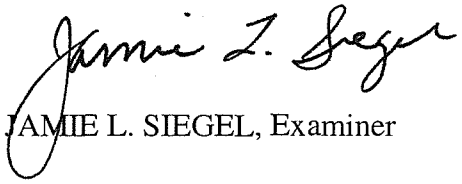
2. By implementing the leave form as described in Findings of Fact 3 through 7, the Mead School District did not refuse to bargain or violate RCW 41.56.140(4) or RCW 41.59.140(1)(e).

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are dismissed.

ISSUED at Olympia, Washington, this 15th day of October, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JAMIE L. SIEGEL, 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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE SUFFIELD

CASE NUMBER:	23124-U-10-05888	FILED:	03/22/2010	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	CUSTOD/MAINT				
DETAILS:	Leave Form				
COMMENTS:					

EMPLOYER: MEAD S D
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12828 N NEWPORT HWY
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