Central Washington University, Decision 10967 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. CENTRAL WASHINGTON UNIVERSITY, Respondent.	CASE 23263-U-10-5930 DECISION 10967 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Eric T. Nordlof, Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Alan Smith,* Assistant Attorney General, for the employer.

On June 3, 2010, Public School Employees of Washington (union) filed an unfair labor practice complaint against Central Washington University (employer). In the complaint, the union alleges that the employer interfered with employee rights in violation of RCW 41.56.140(1) by failing to maintain the status quo during the pendency of a representation petition as required by WAC 391-25-140(2). Specifically, the union alleges that the employer reduced work hours of certain employees in the Department of Academic Achievement, the Department of Academic Advising, and the Department of International Studies, who were the subject of a representation petition pending before the Commission.

The Commission assigned Examiner Jessica J. Bradley to conduct further proceedings. A hearing took place on August 31, 2010, and the parties filed written briefs to complete the record.

ISSUE PRESENTED

Did the employer interfere with employee rights in violation of RCW 41.56.140(1) and WAC 391-25-140(2) by reducing certain employees' work hours and wages while a representation petition was pending?

A representation petition concerning certain unrepresented employees in the Department of Academic Achievement, Department of Academic Advising, and Department of International Studies was filed on October 15, 2009, and amended thereafter. The Executive Director's decision dismissing the representation petition was pending appeal before the Commission on May 24, 2010, when the employer announced a reduction of work hours for many counselors and advisors in the petitioned-for bargaining unit. The reduction in work hours was not part of the "dynamic" status quo.

The employer's affirmative defenses that the changes to employees' work hours were due to statutory management rights and/or economic necessity are not supported by the record. RCW 41.56.021(4), which details management rights that are not subject to bargaining, does not alleviate the employer's obligation under WAC 391-25-140(2) to refrain from making changes to the status quo concerning wages, hours or other terms and conditions of employment while a representation petition is pending. The employer did not have the right to reduce employee work hours and wages of petitioned-for employees while the representation petition was pending appeal due to economic necessity. If the employer felt it needed to make "a change in terms and conditions of employment due to circumstances that are beyond [its]... control," the employer should have exercised its right under WAC 391-25-140(5)(b) to petition the Commission to stay its obligation to maintain the status quo.

I find the employer interfered with its employees' rights in violation of RCW 41.56.140(1) and WAC 391-25-140(2) by reducing certain employees' work hours and wages while a representation petition was pending.

APPLICABLE LEGAL STANDARDS

RCW 41.56.040 gives employees the right to organize and designate representatives without interference.

> No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

In order to protect the right of employees to form or join a union without interference or coercion, the Commission has adopted rules placing limitations on employer actions when a representation petition is pending. Under WAC 391-25-140(2), "Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter."

The employer's obligation to maintain the status quo while a representation petition is pending is based on preventing employer interference in the election process in violation of RCW 41.56.140(1). Unrepresented employees who are subject to a representation petition do not have a collective bargaining representative. Maintaining the status quo is important because any change by an employer that occurs during the representation election process could be interpreted by employees to be a result of filing the petition. "Changes by an employer of employee wages, hours and working conditions during the pendency of a question concerning representation improperly affect the laboratory conditions necessary to the free exercise by employees of their right to vote." *Clark County*, Decision 5373 (PECB, 1995) citing *Mason County*, Decision 1699 (PECB, 1983), *aff'd,* Decision 5373-A (PECB, 1996).

In addition to the above "general status quo" obligation, the Commission recognizes that occasionally the status quo "is not static and the employer needs to take action to follow through with changes that were set in motion prior to the union filing a representation petition." *City of Seattle*, Decision 9938-A (PECB, 2009) citing *King County*, Decision 6063-A (PECB, 1998).

This concept is referred to as the "dynamic status quo." Changes which are part of the "dynamic status quo" are not seen as disruptive to laboratory conditions in a representation proceeding, because the changes are already expected by employees. If the changes were set in motion and communicated to employees prior to the filing of the representation petition, employees should recognize that the changes are not related to the petition and therefore should not undermine support for a union. *King County*, Decision 6063-A citing *NLRB v. Katz*, 369 U.S. 736 (1962) and *Spokane County*, Decision 2377 (PECB, 1986).

As the Commission explained in *King County*, Decision 6063-A:

> [W]here wage or benefit increases are previously scheduled, it would be unlawful to withhold them just because a representation petition is filed. See, *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). Conversely, if changes the employees may view as negative merely carry out a "dynamic status quo" (i.e., actions consistent with previously-existing policies and practices), no violation will be found. . . .

If employees who are the subject of a pending representation petition already have an exclusive bargaining representative, WAC 391-25-140(4) requires the employer to suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement and maintain the status quo. There are specific events that trigger the end of an employer's obligation to maintain the status quo. As described in WAC 391-25-140:

> (5) When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.
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> (a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.
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> (b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining, any party to the proceeding may petition the commission to stay either of those obligations where the petitioning party demonstrates a need for a change in terms and conditions of employment

> due to circumstances that are beyond that party's control, or where the failure to resume bargaining would substantially harm the petitioned-for employees and leave them without an adequate administrative remedy. A petition filed under this subsection shall be accompanied by affidavits and evidence.

In order for a complainant to prevail on a claim of interference for changes to the status quo, "the complainant must establish the existence of a status quo and a change in the wages, hours, or working conditions." *City of Seattle*, Decision 9938-A citing *METRO (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990).

ANALYSIS

Timeline

October 15, 2009 - The union filed a representation petition with the Commission seeking to represent a bargaining unit of 11 employees "assigned as counselors or advisors" in the Departments of International Studies and TRIO Student Support Services at Central Washington University.[1] The petition was timely and properly supported under Chapter 391-25 WAC.

November 20, 2009 - The union amended its petition to add coordinators to the petitioned-for bargaining unit, and to change TRIO to Academic Achievement as the correct name of the administrative office. The amendment added one employee to the petitioned-for unit for a total of 12 employees. The amendment to the petition was timely and properly supported under Chapter 391-25 WAC.

January 26, 2010 - The union filed a second amendment to the petition that expanded the petitioned-for bargaining unit to "counselors, advisors, coordinators, or recruiters in the Departments of International Studies, Academic Achievement, and Academic Advising on the main campus of the university." The second amended petition was timely and properly supported under Chapter 391-25 WAC. There were 22 employees in the newly proposed unit.

April 5, 6, and 9, 2010 - A Hearing Officer for the Commission conducted a hearing on the appropriateness of the proposed bargaining unit. During the hearing, the union moved to amend

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[1] Case 22787-E-09-3506

its petition a third time to describe the proposed unit as all employees who are exempt from Chapter 41.06 RCW who are assigned as "counselors, advisors, coordinators, or recruiters in the Departments of International Studies, Academic Achievement, Academic Advising, the College Assistance Migrant Program (CAMP), and the Student Transitions and Academic Resources (STAR) program."

April 12, 2010 - The union filed its third amended petition with the Commission.[2]

April 12, 2010 - James L. Gaudino, the president of Central Washington University, sent all staff an e-mail informing them that the supplemental budget approved by the Washington State Legislature reduced state support for the employer by about 6.3 percent. The e-mail stated: "The bill requiring furloughs was also referenced in the budget bill, although more flexibility has been provided to universities. While we are authorized to enact furloughs, it is also possible for us to submit a plan to meet salary cuts without furloughs."

May 14, 2010 - Gaudino sent all staff an e-mail indicating that the employer was facing a serious budget shortfall. The e-mail explained: "The cabinet is currently in the final stages of building a draft budget that we will present to the Board of Trustees on June 12th." The e-mail went on to explain the general principles the budget was based upon included implementation of a voluntary unpaid leave and voluntary retirement/separation program. The e-mail explained:

> Once we have completed our review and have received more information from OFM [Washington State Office of Financial Management], we will make a full announcement of proposals. If we determine that we can provide voluntary incentives and if there is adequate response to them, additional reductions—to include involuntary leave or furlough, layoff, or other restructuring—may be unnecessary.

May 20, 2010 - The Executive Director for the Commission issued a decision on the representation petition finding: 1) the union's third amended petition could not be accepted because it denied the employer due process; and 2) the bargaining unit proposed in the union's

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[2] The petition sought to add several employees in the CAMP and STAR programs although the number on the face of the petition remained at 22.

second amended petition was not an appropriate unit for the purpose of collective bargaining. The representation petition was dismissed.[3]

May 21, 2010 - The union filed a notice of appeal challenging the dismissal of the representation petition and put the employer on notice that an appeal was filed. The union also sent the employer an e-mail reminding it of its continuing obligation to maintain status quo terms and conditions of employment for employees in the petitioned-for bargaining unit.

May 24, 2010 - The employer met with counselors and advisors who were the subject of the representation petition. The employer informed the employees that many of them would have their annual work hours reduced effective July 1, 2010. Of the 22 employees in the proposed bargaining unit, 10 were given written notice of work hour reductions, commonly referred to by the parties as cyclic leave or reductions in cyclic calendars. All of the positions targeted for cuts were funded, at least in part, by state funds. The exact reduction in hours varied by position. The following table contains the names and hour reductions of employees in the proposed bargaining unit:

Employee Name	Cyclic calendar prior to July 1, 2010 (in months)	Cyclic calendar as of July 1, 2010 (in months)
C. White	12	11
Clarice Tan	12	11.5
Davida Stafford	11	10.5
Edward Esparza	12	10
Janine Graves	10	9.5
Juana Rios	10	9.5
Lawren Lutrin	11	10.5
Lisa Berthon	11	10.5
Robert Spencer	10	9.5
Roslyn Moes	12	11.5

The employee who experienced the greatest reduction in hours, Edward Esparza, saw his 12-month position reduced to a 10-month position. Other employees saw their positions reduced by

[3] *Central Washington University*, Decision 10765 (PECB, 2010).

either one month or one-half of a month. Employees' work assignments were not reduced as a result of the cyclic hour reductions. The employees were told to work with their supervisors to schedule the unpaid time off. The result was a significant decrease in take-home pay and a reduced rate of benefit accrual. Employees whose salaries were funded by grants did not experience a reduction in hours.

June 3, 2010 - The union filed the complaint at issue in this decision.

June 4, 2010 - The union filed a new representation petition[4] seeking to represent a bargaining unit of:

> All full time and regular part-time employees exempt from RCW 41.06 pursuant to the provisions of RCW 41.06.070(2)(b) as counselors, advisors, coordinators, or recruiters, excluding faculty, confidential employees, supervisors and all other employees of the employer.

June 4, 2010 - The union withdrew the original petition it had filed in case 22787-E-09-3506, which was on appeal. As a result of the withdrawal, the petition was dismissed.

July 1, 2010 - The reductions to employee work hours became effective. Employees were required to schedule unpaid time off in accordance with the hours reductions announced on May 24, 2010.

Obligation to Maintain Status Quo

Starting on October 15, 2009, when the union filed a representation petition until the Executive Director dismissed the representation petition on May 20, 2010, the employer had an obligation to comply with WAC 391-25-140(2) and refrain from making changes to the status quo concerning wages, hours or other terms and conditions of employment of the petitioned-for employees. The employer's obligation to maintain the status quo was reinstated on May 21, 2010, when the union appealed the decision to dismiss the petition using the process described in WAC 391-25-140(5)(a).

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[4] Case 23266-E-10-3561.

Reduction of Hours Occurred while Petition was Pending

While the representation petition was pending, the employees at issue were assigned regular work hours. The employees' work hours were part of the status quo concerning wages, hours or other terms and conditions of employment. The employer's decision to craft an alternative plan to the state-mandated furloughs and reduce work hours (and as a result the wages and benefits) of some of the petitioned-for employees was announced on May 24, 2010, while the petition was pending before the Commission.

Dynamic Status Quo

The employer argues that the hour reductions were part of the dynamic status quo. Specifically, the employer points out that it started to implement cost savings measures prior to October 15, 2009, when the petition was filed. The employer argues that at the time the petition was filed, and later amended, the employer could not have known what further reductions would be required until the Legislature adopted a supplemental budget in the spring of 2010. The employer argues that it knew in the fall of 2009 that involuntary leave in the form of cyclic reductions remained a likely prospect. In support of its position, the employer cites Adams County, Decision 7961 (PECB, 2003).

The facts in the case before me are distinguishable from the fact pattern in Adams County, Decision 7961. In Adams County, the employer passed a budget on December 24, 2001, that included reducing the work week from 40 hours to 35 hours effective February 1, 2002. A representation petition was filed on December 31, 2001. The Examiner concluded that the employer had an obligation to go through with the hour reductions because they had been adopted prior to the filing of the representation petition and were, therefore, part of the dynamic status quo.

The May 14 e-mail from the president of the university illustrates that the employer's decision to make cyclic hour reductions occurred sometime after May 14, 2010. The decision to reduce employees' cyclic hours was made while the petition was pending, which distinguishes this case from Adams County, where the employer had passed a budget that included hours reductions prior to the filing of the representation petition.

"Operation of the dynamic status quo ensures that [representation] petitions do not block routine, non-discretionary changes to employee working conditions." *City of Seattle*, Decision 9938-A. In the case at hand, the employer decided to make discretionary cuts in employee work hours as an alternative to implementing state-mandated furlough days. Unlike the state-mandated furlough days that were outside of the control of the employer, the cyclic hour reductions were made as part of an alternative reduction plan that was drafted at the employer's discretion. In April and May of 2010, the employer drafted its plan to avoid state-mandated furloughs by making equivalent reductions in spending. The proposed cyclic reductions in hours did not affect all employees evenly. The employer determined which positions would have reduced cyclic hours and at what levels. Ten of the 247 positions that the employer identified for hours reductions were in the proposed bargaining unit that was the subject of an ongoing representation petition. The employer's decision to cut work hours occurred while the representation petition was pending before the Commission.

I find that in May of 2010 the employer made the decision to reduce the cyclic hours of certain job positions throughout the campus, including 10 positions in the petitioned-for bargaining unit. These targeted reductions in cyclic hours were not part of the dynamic status quo at the time the petition was filed or amended.

Affirmative Defense- Changes Permitted by Statutory Management Rights

The employer has the burden of proof on affirmative defenses. WAC 391-45-270(1)(b). The employer argues that statutory management rights given to institutions of higher education in RCW 41.56.021(4) permit the employer to reduce employee work hours when the employees are the subject of a pending representation petition. The statute reads:

> (4) Institutions of higher education and the exclusive bargaining representative shall not bargain over rights of management that, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:
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> (a) The functions and programs of the institution, the use of technology, and the structure of the organization;
>
> (b) The institution's budget and the size of its workforce, including determining the financial basis for layoffs;
>
> (c) The right to direct and supervise employees;

> (d) The right to take whatever actions are deemed necessary to carry out the mission of the state and the institutions of higher education during emergencies;
>
> (e) Retirement plans and retirement benefits; or
>
> (f) Health care benefits or other employee insurance benefits, except as provided in RCW 41.80.020.

The employer's defense regarding prohibited subjects of bargaining is not applicable to the factual situation in this complaint. The employer's analysis confuses the obligation under WAC 391-25-140(2) to maintain the status quo during the pendency of a representation petition, with its obligations to bargain with an exclusive bargaining representative under Chapter 41.56 RCW. The legal limitations on employer conduct relating to representation petitions are fundamentally different than requirements to maintain the status quo during bargaining with a represented group of employees after contract expiration or during first contract bargaining. In periods of contract bargaining, the employer's obligation to maintain the status quo comes out of the parties' obligation under Chapter 41.56 RCW to bargain over mandatory subjects.

WAC 391-25-140(2) prohibits changes of the status quo concerning wages, hours or other terms and conditions of employment while a representation petition is pending. This requirement is intended to prevent an employer from interfering with the right of employees to freely choose whether or not they desire union representation. The maintenance of the status quo is critical to the laboratory conditions that are necessary for a representation election. Management rights in RCW 41.56.021(4) do not allow an employer to reduce employees' work hours, and ultimately wages, while a representation petition is pending.

Affirmative Defense: Economic Necessity

The employer argues that the reduction to employee work hours was required by economic necessity. Specifically, the employer points out that it reduced employees' cyclic work hours in response to a serious budget shortfall. The employer argues that is was not able to capture enough economic savings through restructuring, cost savings, and voluntary unpaid leave and retirement programs to balance its budget. The employer points out that making cyclic reductions to positions was necessary to make up for the reductions in state funding.

The Commission recognizes that there can be legitimate circumstances that are beyond a party's control that make it necessary to implement changes to terms and conditions of employment while a representation petition that has been dismissed is pending appeal. In order to prevent hardship to employers and account for these types of special circumstances, the Commission adopted WAC 391-25-140(5)(b). This rule establishes a process for employers to petition the Commission for permission make a change to the status quo by providing evidence to demonstrate "a need for a change in terms and conditions of employment due to circumstances that are beyond that party's [the employer's] control. . . ."

If the employer felt it needed to make reductions in hours due to cuts in the state higher education budget, the employer should have exercised its right under WAC 391-25-140(5)(b) to petition the Commission to stay its obligation to maintain the status quo. The employer did not attempt to utilize this procedure. The budget cuts the employer faced were real, but that did not excuse the employer from its obligation to either maintain the status quo or to utilize the process for lawfully gaining approval to change the status quo.

Effects Bargaining-Not Applicable

The employer argues that the reduction to employee hours was lawful because it bargained with the union about the effects of the hour reductions on petitioned-for employees. The union acknowledges that it engaged in effects bargaining on behalf of employees in other bargaining units that it represents, but denies engaging in any effects bargaining on behalf of the petitioned-for employees.

Analysis and case law relating to effects bargaining is not relevant to evaluating claims of interference with a pending representation petition under WAC 391-25-140(2) and RCW 41.56.140(1). The petitioned-for employees were not represented by any labor organization when the employer decided to reduce their hours in May of 2010. "[T]he law is well settled that a union may not bargain for the employees until such time as it represents them." *Central Washington University*, Decision 9963-A (PSRA, 2008), citing *Kitsap County Fire District 7*, Decision 2872-A (PECB, 1988), *aff'd*, Decision 9963-B (PSRA, 2010). The union was not the exclusive bargaining representative of employees in the proposed bargaining unit at the time the employer alleges it engaged in effects bargaining.

CONCLUSION

On May 24, 2010, the employer announced reductions to work hours of 10 employees who were the subject of a representation petition. The reductions to employee work hours became effective July 1, 2010. The reductions in work hours altered the status quo concerning wages, hours or other terms and conditions of employment while the representation petition was pending before the Commission.

I find the employer interfered with its employees' rights in violation of RCW 41.56.140(1) and WAC 391-25-140(2).

REMEDY

The Commission has broad jurisdiction to fashion equitable remedies. *Pasco Housing Authority v. PERC*, 98 Wn. App. 809 (2000). "[T]he remedial orders issued by the Commission are designed to put the employee(s) affected by unfair labor practices back to the same position they would have enjoyed if no unfair labor practice had been committed." *City of Kalama*, Decision 6739-A (PECB, 2001) citing *City of Kalama*, Decision 6853-A (PECB, 2000). In the case at hand the affected employees suffered a reduction in work hours, and resulting wages and benefits, that they would not have experienced if the employer had maintained the status quo as required by WAC 391-25-140(2) while the representation petition was pending before the Commission. I am ordering that the employer restore the status quo, which includes making employees whole for the hours, and resulting wages and benefits, they lost as a result of the employer's unlawful actions.

FINDINGS OF FACT

1. Central Washington University (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. Public School Employees of Washington (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. On October 15, 2009, the union filed a representation petition with the Commission seeking to represent a bargaining unit of 11 employees "assigned as counselors or

advisors" in the Departments of International Studies and TRIO Student Support Services at Central Washington University. The petition was timely and properly supported under Chapter 391-25 WAC.

4. On November 20, 2009, the union amended its petition to add coordinators to the petitioned-for bargaining unit, and to change TRIO to Academic Achievement as the correct name of the administrative office. The amendment added one employee to the petitioned-for unit for a total of 12 employees. The amendment to the petition was timely and properly supported under Chapter 391-25 WAC.

5. On January 26, 2010, the union filed a second amendment to the petition that expanded the petitioned-for bargaining unit to "counselors, advisors, coordinators, or recruiters in the Departments of International Studies, Academic Achievement, and Academic Advising on the main campus of the university." The second amended petition was timely and properly supported under Chapter 391-25 WAC. There were 22 employees in the newly proposed unit.

6. On April 12, 2010, the union filed a third amendment to the petition with the Commission.

7. On April 12, 2010, James L Gaudino, the president of Central Washington University, sent all staff an e-mail informing them that the supplemental budget approved by the Washington State Legislature reduced state support for the employer by about 6.3 percent. The e-mail stated: "The bill requiring furloughs was also referenced in the budget bill, although more flexibility has been provided to universities. While we are authorized to enact furloughs, it is also possible for us to submit a plan to meet salary cuts without furloughs."

8. On May 14, 2010, Gaudino sent all staff an e-mail explaining that "the cabinet is currently in the final stages of building a draft budget that we will present to the Board of Trustees on June 12." The e-mail further stated: "Once we have completed our review and have received more information from OFM [Washington State Office of Financial Management], we will make a full announcement of proposals. If we determine that we can provide voluntary incentives and if there is adequate response to them, additional

reductions—to include involuntary leave or furlough, layoff, or other restructuring—may be unnecessary."

9. May 20, 2010, the Executive Director for the Commission issued a decision on the representation petition concluding: 1) the union's third amended petition could not be accepted because it denied the employer due process; and 2) the bargaining unit proposed in the union's second amended petition was not an appropriate unit for the purpose of collective bargaining. The representation petition was dismissed.

10. On May 21, 2010, the union filed a notice of appeal challenging the dismissal of the representation petition. The union also sent the employer an e-mail reminding it of its continuing obligation to maintain status quo terms and conditions of employment for employees in the petitioned-for bargaining unit.

11. In May of 2010 the employer made the decision to reduce the cyclic hours of certain job positions throughout the campus, including 10 positions in the petitioned-for bargaining unit.

12. On May 24, 2010, the employer met with counselors and advisors who were the subject of the representation petition. The employer informed the employees that many of them would have their annual work hours reduced effective July 1, 2010. Ten employees in the proposed bargaining unit, per the second amended petition described in Finding of Fact 5, had their hours reduced as follows:

Employee Name	Cyclic calendar prior to July 1, 2010 (in months)	Cyclic calendar as of July 1, 2010 (in months)
C. White	12	11
Clarice Tan	12	11.5
Davida Stafford	11	10.5
Edward Esparza	12	10
Janine Graves	10	9.5
Juana Rios	10	9.5
Lawren Lutrin	11	10.5
Lisa Berthon	11	10.5
Robert Spencer	10	9.5
Roslyn Moes	12	11.5

13. On July 1, 2010, the reduction of work hours became effective.

14. The targeted reductions in cyclic hours of some employees in the petitioned-for bargaining unit were not part of the dynamic status quo at the time the petition, as described in Findings of Fact 3 through 5, was filed or amended.

15. The employer reduced work hours for employees involved in the representation proceeding while the petition was pending before the Commission.

16. The petitioned-for employees were not represented by any bargaining representative when the employer decided to reduce their hours.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By the actions described in Findings of Fact 11 through 13, the employer interfered with employee rights in violation of RCW 41.56.140(1) and WAC 391-25-140(2) by failing to maintain the *status quo* during the pendency of a representation petition.

ORDER

CENTRAL WASHINGTON UNIVERSITY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

    a. Making changes to the status quo concerning wages, hours or other terms and conditions of employment of employees who are the subject of a representation petition pending before the Commission.

b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Restore the status quo ante by reinstating the work hours, also known as cyclic calendars, and resulting wages and benefits which existed for the employees in the proposed bargaining unit prior to the reduction in work hours found unlawful in this order.

b. Make C. White, Clarice Tan, Davida Stafford, Edward Esparza, Janine Graves, Juana Rios, Lawren Lutrin, Lisa Berthon, Robert Spencer, and Roslyn Moes whole by payment of back pay and benefits in the amounts equivalent to what they would have earned or received had there been no reduction to their work hours from July 1, 2010, until such time as the employer restores the employees' hours of work, pay and benefits. Back pay shall be computed in conformity with WAC 391-45-410.

c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Regents of Central Washington University and

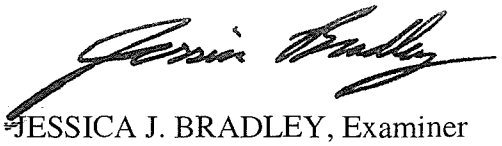
permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, 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 the complainant with a signed copy of the notice provided by the Compliance Officer.

f. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 12th day of January, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, 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.

CASE 23263-U-10-5930
DECISION 10967 - PECB

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 *CENTRAL WASHINGTON UNIVERSITY* COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

State law gives you the right to organize or join a union without interference.

WE UNLAWFULLY interfered with employee rights by reducing the cyclic work hours and wages of certain counselors, advisors, coordinators, and recruiters in the Departments of International Studies, Academic Achievement, and Academic Advising on the main campus of the university while they were the subject of a representation petition pending before PERC.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL restore the work hours, also known as cyclic calendars, and resulting wages and benefits which existed for employees in the proposed bargaining unit to the levels that existed prior to July 1, 2010.

WE WILL make C. White, Clarice Tan, Davida Stafford, Edward Esparza, Janine Graves, Juana Rios, Lawren Lutrin, Lisa Berthon, Robert Spencer, and Roslyn Moes whole by payment of back pay and benefits in the amounts equivalent to what they would have earned or received had there been no reduction to their work hours from July 1, 2010, until we restore the employees' hours of work, pay and benefits.

WE WILL NOT make changes to employees' wages, hours or other terms and conditions of employment while employees are the subject of a pending representation petition.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23263-U-10-05930	FILED:	06/03/2010	FILED BY:	PARTY 2
DISPUTE:	ER INTERFERENCE				
BAR UNIT:	PROFESSIONAL				
DETAILS:	Hours reduction				
COMMENTS:					

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