

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE NURSES
ASSOCIATION,

Complainant,

vs.

KITTITAS COUNTY PUBLIC HOSPITAL
DISTRICT 1,

Respondent.

CASE 25347-U-12-6486

DECISION 11992 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Timothy Sears, General Counsel, for the union.

Sebris Busto James, by *M. Edward Taylor*, Attorney at Law, for the employer.

On December 17, 2012, the Washington State Nurses Association (WSNA or union) filed an unfair labor practice complaint alleging that the Kittitas County Public Hospital District 1¹ (employer) made a unilateral change to its past practice of allowing union documents, notices, and other information to be posted on bulletin boards located throughout the employer's facility, without providing notice or an opportunity to bargain to the union. A preliminary ruling and deferral inquiry was issued on December 20, 2012, and the employer filed an answer on January 9, 2013.² Examiner Page Garcia held a hearing on September 20, 2013. The parties filed timely post-hearing briefs.³

¹ The employer's post-hearing brief advises that the employer changed its name to Kittitas Valley Healthcare, effective January 2013.

² The employer's answer did not request a deferral to arbitration.

³ The union's post-hearing brief renews its motion made at the hearing to amend the complaint. At the hearing, the union made a motion to amend its complaint and conform the pleadings to the evidence in the record based on WAC 391-45-070(2)(c). The union's motion requested additional causes of action for interference with employee rights and discrimination in violation of the statute. Transcript at 59, 62. The employer objected to the union's motion to amend the complaint and the motion was denied at the hearing. On November 21, 2013, the Examiner advised the union that per WAC 391-45-070(3), if it wished to pursue the amendment(s) as a separate case, a written complaint would need to be filed per WAC 391-45-030.

ISSUE

Did the employer refuse to bargain in violation of RCW 41.56.140(4), by making a unilateral change to the past practice of allowing the union to post its materials on bulletin boards located throughout the employer's facility, when the employer removed union materials from the employer's property on December 3, 2012?

Based on a totality of the circumstances, including equivocal testimony regarding past practice of union bulletin board usage, lack of any collective bargaining agreement (CBA) provision regarding the union's bulletin board usage, the employer's long-established bulletin board policy, and the union's failure to establish disparate application of that policy to union materials or postings, the Examiner finds that the union failed to establish by a preponderance of the evidence the existence of a relevant status quo or past practice. Absent the finding of a relevant status quo or past practice, the union's complaint alleging a unilateral change must be dismissed.

APPLICABLE LEGAL STANDARDS

"Collective bargaining" is defined as "the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions" RCW 41.56.030(4). A public employer's duty to bargain is enforced through RCW 41.56.140(4) and unfair labor practice complaints are processed by the Commission under RCW 41.56.160 and Chapter 391-45 WAC. A complainant has the burden of proof to show, by a preponderance of the evidence, that the respondent has committed the complained-of unfair labor practice. WAC 391-45-270(1)(a); *Whatcom County*, Decision 8512-A (PECB, 2005). The respondent is responsible for the presentation of its defense, but only has the burden of proof as to any affirmative defense. WAC 391-45-270(1)(b).

Three types of bargaining subjects exist between an employer and union: mandatory, permissive, and illegal. *Kitsap County*, Decision 8292-B (PECB, 2007). Those subjects indicated in RCW 41.56.030(4) – wages, hours, and working conditions – are mandatory

subjects of bargaining. Permissive subjects are matters considered to be remote from employee wages, hours and working conditions, including matters which are regarded as prerogatives of employers or of unions. Illegal subjects are matters where an agreement between a union and employer would contravene other statutes or court decisions. *Kitsap County*, Decision 8292-B.

The duty to bargain imposes a duty to give notice and provide an opportunity for good faith bargaining prior to implementing any change of past practices concerning the wages, hours, and working conditions of bargaining unit employees. RCW 41.56.030(4); *Kitsap County*, Decision 8292-B, citing *METRO (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990).

The determination as to whether a duty to bargain exists is a question of law and fact for the Commission to decide, and is not subject to waiver by the parties by their action or inaction. WAC 391-45-550. When subjects relate to both conditions of employment and managerial prerogatives, the Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining. The inquiry focuses on which characteristic predominates. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 200 (1989) (*City of Richland*); *Snohomish County*, Decision 9770-A (PECB, 2008).

Unilateral Change

An employer is prohibited from making changes to mandatory subjects of bargaining until it has satisfied its collective bargaining obligations. A complainant alleging a unilateral change must establish the following:

1. The existence of a relevant status quo or past practice.
2. That the relevant status quo or past practice was a mandatory subject of bargaining.
3. That notice and an opportunity to bargain the proposed change was not given, or that notice was given but an opportunity to bargain was not afforded and/or the change was a *fait accompli*.
4. That there was an actual change to the status quo or past practice.

Val Vue Sewer District, Decision 8963 (PECB, 2005); *City of Tukwila*, Decision 10536-A (PECB, 2010).

Past Practice

A complainant alleging a unilateral change must establish the existence of a relevant status quo or past practice. Generally, the past practices of the parties are properly utilized to construe provisions of a CBA that may be rationally considered ambiguous or where the CBA is silent as to a material issue. A past practice may also occur where, in a course of the parties' dealings, a practice is acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a CBA is deemed superfluous. *Kitsap County*, Decision 8292-B.

For a "past practice" to exist, two basic elements are required: (1) a prior course of conduct; and (2) an understanding by the parties that such conduct is the proper response to the circumstances. *Kitsap County*, Decision 8292-B, citing generally, *Whatcom County*, Decision 7288-A (PECB, 2002) (no unilateral change violation found where employer lacked knowledge of past practice). A complaining party must also prove that the conduct was known and mutually accepted by the parties. *Kitsap County*, Decision 8292-B. When a unilateral change is alleged, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain.

ANALYSIS

The employer maintains two types of bulletin boards on its premises – information bulletin boards and department break room bulletin boards (department bulletin boards). The information bulletin boards are mostly labeled with the content the reader should find on a particular bulletin board, such as safety, staff development, quality assurance, nurse education, committee, workers' compensation, and legal. These bulletin boards are located down what the parties refer to as "the back hallway" which leads to the hospital's cafeteria and is accessible to employees, patients, and visitors.

The department bulletin boards are used to post department staff schedules or educational materials for the nursing staff. These bulletin boards, only accessible to employees, are located

within the respective hospital department break rooms such as the operating room, emergency room, medical/surgical, critical care, and obstetrics.

The parties' CBA does not address the union's usage of the employer's bulletin boards. Nor does the CBA provide that the employer will furnish a bulletin board for the union's exclusive use. Neither party submitted evidence of mid-term bargaining, such as a memorandum of understanding, letter of understanding, *etc.*, that provides for the union's use of the employer's bulletin boards or for the employer to furnish a bulletin board for the union's exclusive use. However, by practice, the employer has provided the union with the exclusive use of a bulletin board which is labeled with a blue sign reading, "WSNA News." The union's designated bulletin board (union bulletin board) is located down the back hallway adjacent to the staff development bulletin board. None of the issues in the present dispute relate to the employer removing or adding materials to the union bulletin board.

Since 2004, the employer has maintained a written policy titled "Bulletin Boards/Human Resources." The policy provides that all materials placed on employer bulletin boards must first be approved and date stamped by Human Resources. Absent approval from Human Resources and/or Administration, materials cannot be posted for more than one month. The policy states:

Purpose

The purpose of this policy is to provide guidelines for an orderly system to allow the placement of information on hospital bulletin boards.

Policy

All materials and information placed on bulletin boards in the hospital must be reviewed and date stamped for approval by Human Resources.

Guidelines

All hospital bulletin boards will be labeled to indicate the general category of information to be placed on the different bulletin boards.

All information posted will also be given a removal date submitted by a hospital employee, in order to better control the amount of information posted and the currency of the information. Materials cannot be posted for longer than 1 month without specific approval from Human Resources and/or Administration.

All buy/trade/sell items submitted by employees for posting must include the employee's home address and/or home phone number (or other contact information separate from the hospital phone number and address). This information should be written on the back of the item to be posted.

Unauthorized information will be removed upon discovery.

Any and all information approved for posting does not necessarily reflect the views or endorsement of the hospital.

As noted, the union originally asserted a broader approach when it filed the complaint, claiming that the parties had established a past practice of allowing union materials on bulletin boards located throughout the employer's facility (*i.e.* information bulletin boards *and* department bulletin boards). The union's post-hearing brief, however, narrows the alleged past practice, arguing that the long-established condition of employment was the employer's allowance of the union posting its materials on department bulletin boards. This alleged past practice, claims the union, was "open and notorious" prior to December 3, 2012, and the employer never raised objection to union postings on the department bulletin boards. The union avers that the employer committed an unfair labor practice in its unilateral change to the alleged past practice, a mandatory subject of bargaining, when the employer's agents removed union materials from, and prohibited future posting of, such materials on the department bulletin boards.

The employer's post-hearing brief argues that the union has not proven a past practice of the employer allowing the union to post materials on information bulletin boards and department bulletin boards. The employer points to its policy in effect on December 3, 2012, and that the union did not supply proof that the policy was disparately applied. Further, the employer argues the union has not established proof of a "course of conduct," nor that the employer knew about the course of conduct and accepted it. Finally, the employer argues that the alleged unilateral change did not materially or substantially impact the terms and conditions of employment. As an affirmative defense, the employer claims that the union waived by its inaction – that the policy was in effect since 2004 and the union did not present evidence that it sought to bargain regarding access to the employer's bulletin boards, inclusive of the parties' successor CBA negotiations which began in December 2011.

The employer and union are parties to a CBA, effective January 1, 2009, through December 31, 2011, which recognizes the union as the sole bargaining representative for all non-supervisory professional registered nurses (RN's) and temporary licensed nurses.⁴ At the time of the disputed employer's December 3, 2012 removal of union materials from employer bulletin boards, the parties had been in protracted negotiations for a successor CBA since approximately October, 2011. On December 3, 2012, yellow signs, approximately half of a standard 8 1/2" x 11" sheet of paper, stating "Support KVCH Nurses" were posted throughout the employer's property. Testimony from both the union and employer witnesses varies as to the location of the union postings on that day. Neither party submitted a copy of the actual sign, but an admitted exhibit depicting the union bulletin board contains what witnesses testified was a copy of the yellow sign. The words "Support KVCH Nurses" are clearly indicated on the yellow sign in the exhibit, but the union's name (WSNA) is harder to distinguish.

The employer's witnesses testified that the yellow union signs were found posted on December 3, 2012, on many, if not all, of the information bulletin boards and taped on the walls down "the back hallway." In addition, testimony and an admitted photograph indicate that the yellow union signs were also posted on vehicles parked in one of the employer's parking lots that day. The Examiner finds this testimony credible.

In response to the union's December 3, 2012 postings of the yellow signs, the employer responded on the same date by removing the yellow union signs from all employer property except the union bulletin board. The employer's CEO, Paul Nurick, issued a memo on the same date to all employees regarding "Vehicle Leaflets." Nurick indicates in his memo that the employer is responding to complaints that leaflets were placed that day on vehicles in the employer's parking lot without the respective vehicle owner's permission. The memo encouraged employees to "utilize the appropriate employee bulletin boards in the back hallway as a means of distributing information." The memo advised that employees may place signage on their own cars, but not on the cars of others without permission. The memo also advised that the failure to comply with the directive would lead to appropriate discipline.

⁴ The union cites RCW 41.56.123 to support that the CBA's terms and conditions remained in effect at the time of the December 3, 2012 incident in dispute and the employer does not dispute that proposition.

Mandatory Subject of Bargaining

While the employer's brief does not dispute that the union's use of bulletin boards is a mandatory subject of bargaining, the question of whether the duty to bargain exists is a question of law and fact for the Commission to decide, and is not subject to waiver by the parties by their action or inaction. WAC 391-45-550.

In light of the *City of Richland* balancing test, the employer's stated interests in the union's use of bulletin boards include: respect of employer property, controlling the amount and currency of information posted, employer bulletin boards for specific categories of information, and providing an orderly, efficient, and professional means of communicating with both employees and patients. The union's stated interests in the bargaining unit employees' working conditions include: communicating with bargaining unit employees and their access to union information, not just on the union bulletin board, but on employer bulletin boards in the department break rooms. The union's argument behind the latter proposition is that employees could read union materials in break rooms on their own time.

In general, union use of bulletin boards is a mandatory subject of bargaining. *King County*, Decision 7819 (PECB, 2002), footnote 6, citing *NLRB v. Proof Co.*, 242 F.2d 560 (7th Cir., 1957), cert. denied, 355 U.S. 831 (1957). More recent National Labor Relations Board (NLRB) cases also support the proposition that bulletin board matters are mandatory subjects of bargaining. *In re ATC/Vancom of California, L.P.*, 338 NLRB 1166 (2003), *Tenneco Automotive, Inc.*, 357 NLRB No. 84 slip op. 1 (2011), 2011 WL 4590190, *enf'd in rel. part, rev'd in part, and vacated in part, Tenneco v. NLRB*, 716 F.3d 640 (2013).

However, a blanket designation of a subject of bargaining is not what *City of Richland* and subsequent Commission decisions envisioned. In determining whether a bargaining subject is mandatory or permissive, each case before the Commission must be evaluated under the totality of the circumstances. Applying the *City of Richland* balancing test to this case, evaluating the circumstances as a whole, and taking into account the managerial prerogatives of the employer and the interests of the employees' working conditions, I find that the interests of the bargaining unit employees predominate over the employer's interests. The union's use of bulletin boards located throughout the employer's facility is a mandatory subject of bargaining.

Past Practice

As noted, two basic elements are required to establish a past practice: (1) a prior course of conduct; and (2) an understanding by the parties that such conduct is the proper response to the circumstances.

Where a union was furnished a bulletin board for its exclusive use per the parties' CBA, and union materials "occasionally appeared" on employer bulletin boards used for general administrative announcements, commuter information, and safety information, the employer's removal of these formerly union-accessible bulletin boards from one building and replacement with a single, designated, glass-encased bulletin board for the union's exclusive use in another building led the examiner to find that there was no change in the past practice between the parties. *Snohomish County*, Decision 9291-A (PECB, 2007). Rather, the examiner found that the past practice *was* for the employer to provide one bulletin board for the exclusive use of the bargaining unit. Where the union failed to establish that the employer maintained a consistent practice which would create any kind of enforceable expectation of the parties, an Examiner found the union did not establish a past practice. *Edmonds Community College*, Decision 10250-A (CCOL, 2009).

The union has the burden of proof to establish that a past practice exists. The union claims that a past practice exists for the employer's allowance of the union posting its materials on department break room bulletin boards, in addition to use of the union designated bulletin board. The witnesses' testimony as to whether union materials had ever been posted on the employer's bulletin boards was divided right down party lines: the union's witnesses, two RN's with 23 and 35 years of service at the hospital, and the union's staff representative, with seven years of experience representing RN's at the hospital, all testified that union materials had been allowed to be posted on the employer's bulletin boards in various department break rooms; conversely, the employer's three witnesses, ranging from four to 23 years experience for the employer, each testified that they were not aware of union materials being posted anywhere except on the union bulletin board.

Judi Lyons, RN at the hospital since 1978, past union president, former union cabinet and committee member, and currently on the union's grievance conference committee, testified that

prior to December 2012, no one from management had ever told her that posting union materials on employer bulletin boards violated a company rule. Lyons testified that posted union materials stayed up for an extended period on employer bulletin boards and she didn't get management approval to post union materials in those locations. On cross-examination, Lyons testified that although she was working at the hospital on December 3, 2012, and did go down the hallway that adjoins the cafeteria, she did not see the yellow "Support KVCH Nurses" signs posted anywhere in the hospital except on the union bulletin board.

Vonda Jennings, RN at the hospital since 1990 and former local unit chair for the union, testified that the department break room bulletin boards are used to post schedules and other hospital information. On cross-examination, Jennings testified that the department bulletin boards are used by "anybody in that department." Jennings answered cross-examination questions specific to December 3, 2012, as follows:

- Q: Are you familiar with the yellow, one-page signs that say support KVCH nurses?
- A: Yes.
- Q: On December 3rd, did you see those taped up on various bulletin boards throughout the hospital?
- A: I don't know when December 3rd was or what I was doing. I mean, I don't know what I was doing on December 3rd. I don't recall seeing things plastered -- those signs plastered on bulletin boards besides the back.
- Q: When you say, besides the back, what do you mean?
- A: I mean the back hallway, the permitted WSNA board.

Marlo Willis, Benefits Administrator in the HR Department, testified she is responsible for maintaining the employer information bulletin boards regarding legal and safety issues. Willis stated she had taken down materials she deemed inappropriate from the bulletin boards and that the union had never come to HR to notify that it was posting materials on the employer's bulletin boards. She testified that on December 3, 2012, she removed the yellow signs saying "Support KVCH Nurses" with WSNA on the bottom from the safety, committee, quality assurance, and nurse education boards, as well as from the back hallway wall near the bulletin boards. On the safety board, the yellow sign was posted on the outside of the locked board, while other signs were covering the legal posters. Willis testified that in her 23 years at the hospital, she did not recall seeing union signs posted on bulletin boards other than the union bulletin board. On cross-

examination, she testified she hadn't really looked at the department break room bulletin boards and it's not her job function to go into the break rooms. Willis stated she was not aware of union materials posted on break room bulletin boards.

Lisa McDaniel, the employer's former HR Administrator at the time of the dispute, when asked what the practice was for the employer to allow union materials to be posted on employer bulletin boards rather than the union bulletin board, answered, "To my knowledge, there was never any need to post any other materials anywhere else but their board. They had a board, so materials were always posted on that board." McDaniel testified she was not aware of union materials posted on other bulletin boards (besides the union bulletin board), and did not recall anyone from the union asking her to post materials on bulletin boards other than the union board.

Rhonda Holden, Chief Officer and Administrator for Patient Care Services since 2009, and also involved in collective bargaining for the employer, testified that the department directors are responsible for the department break room bulletin boards used for posting schedules or educational materials for the nursing staff. Holden also testified that the first time she learned of the union posting materials on break room bulletin boards was in September 2012. At that time, she directed the department directors to remove the union materials from the break room bulletin boards. Holden testified that the union did not object to the September 2012 removal of the union materials. On cross-examination, Holden affirmed that by making her rounds to the various departments or being part of the "huddle," she usually goes to every department every day and sees the department break room bulletin boards.

The Examiner finds that some of the testimony is not credible: Lyons' and Jennings' respective testimony about if or where each of them saw the yellow "Support KVCH Nurses" signs on December 3, 2012; McDaniel's response to the question about the practice for allowing union materials on employer bulletin boards (she testified as to the union's "need" to post anywhere else but the union's board, but didn't clearly answer the question as to the actual practice); Willis' equivocal testimony that in 23 years she didn't recall seeing union materials posted on any employer bulletin boards besides the union bulletin board, then later testifying she hadn't really looked at the break room bulletin boards.

The contradictory testimony as indicated above does not tip the scales in either direction to find a past practice by a preponderance of the evidence. The union did not meet its burden of proof to establish that a past practice exists for the union's use of the employer's department break room bulletin boards. Absent a provision in the CBA for a union bulletin board, and with the above contradictory testimony, the Examiner is left to evaluate the employer's 2004 bulletin board policy. The policy mandates that "[a]ll materials and information placed on bulletin boards in the hospital must be reviewed and date stamped for approval by Human Resources." Both the union and employer witnesses' testimony confirm that no union agent ever sought the approval of Human Resources prior to posting union materials on the employer's bulletin boards. Neither party submitted evidence that other materials indicated in the admitted exhibits, including pictures of various employer bulletin boards, contained materials that lacked the requisite Human Resources approval and date stamp. Nor was the application of the policy's one-month limitation for postings refuted by evidence of long-past date stamps. The only evidence to belie the application of the employer's policy was Lyons' testimony that posted union materials stayed up for an extended period on employer bulletin boards.

The exception to the policy is that the employer has designated a bulletin board for the union's exclusive use located down the back hallway close to several other employer bulletin boards. Based on both union and employer testimony, the employer's bulletin board policy provisions do not apply to the union bulletin board. With the exception of what Willis identified as the safety board, admitted photographs of the employer bulletin boards in that hallway, including the union bulletin board, appear to be labeled with what content the reader should expect to find there. The record is not clear whether the department break room bulletin boards are also labeled according to the employer policy.

Even if the union materials in this case "occasionally appeared," as in *Snohomish County*, Decision 9291-A, the past practice here, just as in that case, is that the employer provides one bulletin board for the exclusive use of the union. The union did not establish a consistent practice which would create any kind of enforceable expectation of the parties. *Edmonds Community College*, Decision 10250-A. As such, the Examiner finds the union has not established a past practice of: (1) a prior course of conduct allowing the union to post materials on employer bulletin boards; and (2) an understanding by the parties that such conduct is the proper response to the circumstances.

A complainant alleging a unilateral change must first establish the existence of a relevant status quo or past practice. As the union failed to meet this requirement, the union's complaint must be dismissed.

FINDINGS OF FACT

1. The Kittitas County Public Hospital District 1 is a public employer within the meaning of RCW 41.56.030(12).
2. The Washington State Nurses Association is a bargaining representative within the meaning of RCW 41.56.030(2), and is the exclusive bargaining representative for all non-supervisory professional registered nurses and temporary licensed nurses of the employer.
3. The employer and union are parties to a collective bargaining agreement effective January 1, 2009, through December 31, 2011. This is the parties' most recent agreement.
4. The parties' collective bargaining agreement does not address the union's usage of the employer's bulletin boards. Nor does the agreement provide that the employer will furnish a bulletin board for the union's exclusive use.
5. Neither party submitted evidence of mid-term bargaining, such as a memorandum of understanding, letter of understanding, *etc.*, that provides for the union's use of the employer's bulletin boards or for the employer to furnish a bulletin board for the union's exclusive use.
6. The employer maintains two types of bulletin boards on its premises – information bulletin boards and department break room bulletin boards. The information bulletin boards are located down what the parties refer to as “the back hallway” which leads to the hospital's cafeteria and is accessible to employees, patients, and visitors. The department bulletin boards, only accessible to employees, are located within the respective hospital department break rooms such as the operating room, emergency room, medical/surgical, critical care, and obstetrics.

7. By practice, the employer has provided the union with the exclusive use of a bulletin board which is labeled with a blue sign reading, "WSNA News." The union's designated bulletin board (union bulletin board) is located down the back hallway adjacent to the staff development bulletin board, an information bulletin board.
8. Since 2004, the employer has maintained a written policy titled "Bulletin Boards/Human Resources." The policy provides that all materials placed on employer bulletin boards must first be approved and date stamped by Human Resources. Absent approval from Human Resources and/or Administration, materials cannot be posted for more than one month.
9. Yellow union signs, stating "Support KVCH Nurses," were found posted on December 3, 2012, on many, if not all, of the information bulletin boards and taped on the walls down "the back hallway." In addition, testimony and an admitted photograph indicate that the yellow union signs were also posted on vehicles parked in one of the employer's parking lots that day.
10. The employer responded on December 3, 2012, by removing the yellow union signs from all employer property except the union bulletin board, and issued a memo by the employer's CEO Paul Nurick. Nurick's December 3, 2012 memo indicates that the employer is responding to complaints that leaflets were placed that day on vehicles in the employer's parking lot without the respective vehicle owner's permission. The memo encouraged employees to "utilize the appropriate employee bulletin boards in the back hallway as a means of distributing information." The memo advised that employees may place signage on their own cars, but not on the cars of others without permission. The memo also advised that the failure to comply with the directive would lead to appropriate discipline.
11. Both the union and employer witnesses' testimony confirm that no union agent ever sought the approval of Human Resources prior to posting union materials on the employer's bulletin boards.

12. Neither party submitted evidence that other materials indicated in the admitted exhibits, including pictures of various employer bulletin boards, contained materials that lacked the requisite Human Resources approval and date stamp. Nor was the application of the policy's one-month limitation for postings refuted by evidence of long-past date stamps.
13. The parties' past practice is that the employer provides one bulletin board for the exclusive use of the union. The union did not establish a past practice of: (1) a prior course of conduct allowing the union to post materials on employer bulletin boards; and (2) an understanding by the parties that such conduct is the proper response to the circumstances.

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. Based upon Findings of Fact 4 through 13, the employer did not refuse to bargain or make a unilateral change to its bulletin board policy or practice by the removal of union materials from employer bulletin boards and property on December 3, 2012, or violate RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 13th day of February, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAGE A. GARCIA, 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.