

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Complainant,

vs.

GREEN RIVER COLLEGE,

Respondent.

CASE 127715-U-15

DECISION 12611 - PSRA

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Edward Earl Younglove III, Attorney at Law, Younglove and Coker, P.L.L.C., for
the Washington Federation of State Employees.

Laura Wulf, Assistant Attorney General, Attorney General Robert W. Ferguson, for
Green River College.

On November 12, 2015, the Washington Federation of State Employees (union) filed an unfair labor practice complaint against Green River College (employer). The union alleged the employer discriminated and interfered with employee rights under RCW 41.80.110(1)(a) by selecting a union shop steward for a special “desk audit” and changing his work schedule. A preliminary ruling was issued on November 25, 2015, finding the complaint stated a cause of action for further case processing. The parties waived their right to an evidentiary hearing and stipulated to facts regarding the interference charge related to an employee’s desk audit. The union withdrew the remaining allegations.

ISSUE

Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) by sending an e-mail on May 14, 2015, to a union shop steward concerning his selection for a desk audit,

which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employee's union activity?

The employer interfered with an employee's bargaining rights by sending him an e-mail regarding his selection for a desk audit, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employee's union activity.

ANALYSIS

Applicable Legal Standards

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutorily protected rights. RCW 41.80.110(1)(a).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *aff'd*, 98 Wn. App. 809. The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *Id.*

Application of Standards

The Washington Federation of State Employees represents a bargaining unit of both full-time and part-time, non-supervisory civil service employees who work more than 350 hours annually. The union has a collective bargaining agreement (CBA) with the State of Washington and the union's Higher Education Community College Coalition. The CBA is effective from July 1, 2015, through June 30, 2017.

The parties jointly submitted a stipulated statement of facts on May 16, 2016, and agreed to waive a hearing and briefing. The union withdrew all other remaining charges. The parties stipulated:

GREEN RIVER COLLEGE (GR) Human Resources sent an email to a represented employee on May 1[4], 2015¹ that stated a desk audit would be conducted of his work and suggesting that the desk audit was a result of the amount of time the employee spent performing union activities, and that while not intended as a discouragement, would be perceived by a typical employee as discouraging his union activities, a violation of RCW 41.80.110(1)(a).

Based on the foregoing, an order should be entered in PERC No. 127715-U-15 finding an interference violation and requiring GR to post a notice of the order with the stipulated finding; read the order at the next regular meeting of the board of Regents; and refrain from future interference.

The May 14, 2015, e-mail suggested that the employee's selection for a desk audit was a result of the amount of time the employee spent performing union activities. While the employer may not have intended to interfere with employee rights, I find that this message would be perceived by a typical employee as discouraging union activities in violation of RCW 41.80.110(1)(a).

Conclusion

An employee could reasonably perceive that the employer's e-mail concerning the shop steward's selection for a desk audit was a threat of reprisal or force associated with his protected union activity. The stipulated facts describe employer interference with protected union activity in violation of RCW 41.80.110(1)(a).

¹ On June 29, 2016, the parties stipulated that the date contained in their May 16, 2016, stipulation was incorrect. The parties stipulated that the correct date of the e-mail at issue in the interference allegation is May 14, 2015.

FINDINGS OF FACT

1. Green River College is a public employer within the meaning of RCW 41.80.005(8) and (10).
2. The Washington Federation of State Employees (union) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).
3. The parties stipulated the employer sent an e-mail to a represented employee on May 14, 2015, that stated a desk audit would be conducted of his work and suggesting that the desk audit was a result of the amount of time the employee spent performing union activities, and that while not intended as a discouragement, would be perceived by a typical employee as discouraging his or her union activities, a violation of RCW 41.80.110(1)(a).
4. Based upon their stipulation described in Finding of Fact 3, the parties stipulated that an order should be entered in this case finding an interference violation and requiring the employer to post a notice of the order with the stipulated finding, read the order at the next regular meeting of the Board of Regents, and refrain from future interference.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.
2. Based upon Findings of Fact 3 and 4, the employer interfered with protected employee rights in violation of RCW 41.80.110(1)(a).

ORDER

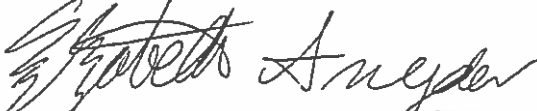
Green River College, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Sending e-mails to bargaining unit members that could be perceived as discouraging union activity.
 - 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 41.80 RCW:
 - a. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer 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.
 - b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Regents of Green River College 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.
 - c. 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.

- d. Notify the Compliance Officer, 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 her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 18th day of August, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ELIZABETH L. SNYDER, 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

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union).**
- **Bargain collectively with your employer through a union chosen by a majority of employees.**
- **Refrain from any or all of these activities, except you may be required to make payments to a union or charity under a lawful union security provision.**

THE WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT GREEN RIVER COLLEGE COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY sent an e-mail to a union shop steward on May 14, 2015, regarding the employee's selection for a desk audit, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employee's union activity.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL respect the rights of our employees to serve as union shop stewards and to engage in protected union activities.

WE WILL NOT select employees for desk audits or otherwise single out employees based on their protected union activities.

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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RECORD OF SERVICE - ISSUED 08/18/2016

DECISION 12611 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 127715-U-15

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