STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. STATE – AGRICULTURE, Respondent.	CASE 128145-U-16 DECISION 12676 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Michael Robinson, Attorney at Law, Schwerin Campbell Barnard Iglitzin & Lavitt LLP, for the Washington Public Employees Association.

Ohad M. Lowy, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Agriculture.

On April 22, 2016, the Washington Public Employees Association (union) filed an unfair labor practice complaint against the Washington State Department of Agriculture (employer). The union alleged employer interference in violation of RCW 41.80.110(1)(a) and employer discrimination in violation of RCW 41.80.110(1)(c).[1] The Commission's Unfair Labor Practice Manager reviewed the complaint under WAC 391-45-110 and on May 12, 2016, issued a preliminary ruling with a cause of action for both employer interference and discrimination. On June 2, 2016, the employer filed its answer to the complaint. Examiner Elizabeth Snyder held a hearing on October 24, 25, and November 2, 2016. On January 6, 2017, the parties submitted post-hearing briefs to complete the record.

[1] Although the preliminary ruling referenced Chapter 41.56 RCW, Chapter 41.80 RCW is the applicable statute in this case. The unfair labor practice provisions in RCW 41.80.110 resemble those in RCW 41.56.140 and .150. The statutes require employers and unions to bargain in good faith, and they prohibit employers and unions from discriminating against employees, from interfering with employees, and from inducing employers to commit unfair labor practices. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

ISSUES

1. Did the employer interfere with employee rights by Area Manager David Bryson telling Investigator Matt West that "getting the union involved would hurt [his] career"?

2. Did the employer interfere with employee rights by Bryson stating to West that he was upset that West raised the issue of having a right to talk with the union and with the employer's Human Resources department?

3. Did the employer discriminate by denying West's leave requests on March 10, 2016, or March 29, 2016?

4. Did the employer discriminate by changing West's work hours and schedule?

5. Did the employer discriminate by refusing to sign off on daily time submittals on days West worked more than eight hours?

The union did not prove by a preponderance of the evidence that the employer interfered with West's protected employee rights in violation of RCW 41.80.110(1)(a). It did not prove through testimony or with exhibits that the statement, "getting the union involved would hurt your career" was ever made by Bryson. Similarly, the union did not prove that a reasonable person would perceive Bryson's comments to West concerning his contact with the union over the Spanish line work assignment to be a threat of reprisal or force, or a promise of benefit, associated with the union activity of West.

The union also did not prove by a preponderance of the evidence that the employer discriminated against West in violation of RCW 41.80.110(1)(c). The union did not make a prima facie case for discriminatory denial of West's leave requests. The union did not show a causal connection between the employee's exercise of a protected activity and the employer's action, but the employer was able to show a legitimate reason for the denial of the leave requests and show similar

treatment of other employees. The union also did not make a prima facie case for discriminatory changes to West's work hours and schedule. The causal link made by the union seemed attenuated, while the employer was able to provide a credible, non-pretextual reason for West's schedule. Lastly, the union did not make its prima facie case concerning the employer's initial refusal to sign off on daily time submittals for days West worked more than eight hours. No evidence was brought forward to show that a refusal occurred and that West was denied an ascertainable benefit. The complaint is dismissed.

BACKGROUND

The union represents classified employees of the employer working in the pesticide compliance program. The bargaining unit's collective bargaining agreement (CBA) is a master contract which encompasses multiple other state bargaining groups. The CBA is effective July 1, 2015 through June 30, 2017. The pesticide compliance program has multiple offices throughout the state. The two offices at issue in this case are referred to collectively as the "central region" because they are located in central Washington, in Wenatchee and Yakima. The inspectors that work for the compliance program investigate complaints and go out into the field to collect samples and other evidence. Because of the wide geographic area the region spans, the two offices are managed separately. During the time relevant for this complaint, the Wenatchee office had three inspectors, one of whom announced an impending retirement and was on a full-time, special school inspection assignment. At that time, two employees were working in the Yakima office.

West is a 13-year investigator working in the Wenatchee office of the central region. From May 1, 2015, until January 31, 2016, West served as the Interim Area Manager for the region. West's position was not permanent, and on February 1, 2016, Bryson was promoted to the Area Manager position. When West accepted the position as Interim Area Manager, he also assumed responsibility for fielding all calls on the Spanish Spray Drift Reporting line (Spanish line). West did not receive bilingual pay as a manager, but did receive a five percent pay increase as Interim Area Manager, which was equal to the bilingual pay he received as an investigator. During the time West acted as Area Manager, he received two phone calls on the Spanish line.

On February 2, 2016, West sent an e-mail to Alberto Isiordia, Pesticide Compliance Manager, requesting that multiple phone lines, that were previously assigned to West as part of his duties as Area Manager, be routed to Bryson, including the Spanish line. Isiordia responded that the employer wanted West to continue manning the Spanish line, and that it would consider changing his formal expectations. At that point, West brought this issue to the attention of the union.

He e-mailed his union representative, Steve Sloniker, who advised West to agree to take up to four to five calls a year on the Spanish line.

Isiordia believed the issue could be handled without union involvement because the additional work was not a significant part of West's work. He told Bryson to speak with West regarding the Spanish line. Bryson testified he asked West if he would agree to have the Spanish line transferred back to him on his anniversary date, giving him time to complete any outstanding work. He also testified that he told West he could talk to his union about the work issue, and that he viewed West favorably and saw him as a future leader.

West testified that Bryson asked to speak with him about the Spanish line. However, West stated that Bryson asked him why he was not cooperating with Isiordia's request to take calls on the Spanish line, wondered why he felt those were not a part of his duties, and wondered why they needed to be renegotiated. West said that Bryson told him he was being perceived as acting like he had been "kicked in the teeth" for not getting the Area Manager position. He told West that management thought favorably of him and his future as a leader, but that if he continued pushing the issue it could be bad for his career. Additionally, Bryson said this was not a union issue and to trust him as his supervisor. West stated that immediately afterwards he went to his desk and took notes on the conversation.

On March 8, 2016, West and Bryson were having a conversation about workloads and Bryson brought up that West had filed a complaint against him as a result of their February 2, 2016, conversation. In February, West had told Sloniker about this conversation and how he had felt threatened by Bryson's comments. Even though West said he felt the issue had been resolved, the

union proceeded to file a complaint or grievance against Bryson. Bryson stated he was disappointed that West did not come to him first to talk about the issue. West responded that he had not filed any sort of complaint, but that he did tell the union he felt intimidated by the comments made to him on February 2, 2016. After this conversation, both parties wrote notes describing the discussion that were similar in content. West called Sloniker, relayed the conversation, and suggested additional training for Bryson. Sloniker did not contact the employer's labor relations manager, Lorna Mance, until approximately three weeks later to relay the information provided by West, and to suggest additional training for Bryson.

On March 10, 2016, West sent Bryson a vacation leave request for three days in April 2016. Bryson denied the leave request for all three days stating that the region would be short staffed. Bryson explained that of the other employees in the Wenatchee office, one employee was on a separate school inspection assignment, due to his pending retirement, and the other employee had already requested those days off. On March 29, 2016, West submitted another request for vacation leave which Bryson denied because another investigator in the office had already requested that day off as part of a recovery period for surgery. Bryson also quoted the CBA in his response to West, citing Article 11.5B which states, "When considering requests for vacation leave the employing agency shall give due regard to the needs of the employee but may require that leave be taken when it will least interfere with the work of the agency." Prior to March 10, 2016, West had never been denied leave. On April 5, 2016, Isiordia sent a program-wide e-mail stating all Area Managers needed to evaluate leave requests from that point through the end of June.

Coverage is a concern for the employer, not only because of the wide geographical range of territory that must be covered, but also because of the flexible scheduling allowed to employees. Due to the nature of their work, investigators will sometimes work longer than eight hours in a day. If an investigator reaches 40 hours worked before the end of the week, the investigators will end their day early on Friday, or possibly Thursday. For example, if by the end of the day on a Thursday an investigator has worked 36 hours, then that person would only work 4 hours on Friday. This could lead to possible coverage problems on Fridays.

On Friday, April 1, 2016, West sent Bryson an e-mail saying he was going home, presumably early. Bryson responded that because of coverage issues he should work eight hours each day, and if more than eight hours was needed then he should gain prior approval. On April 4, 2016, West worked 8.8 hours without prior approval. There was a mistake entering the hours in the system, but West did get paid for his full time. However, Bryson made a note on the time sheet stating that West was told not to work more than 8 hours without prior approval. In his supervisor notes, Bryson referred to this incident as an act of insubordination.

DISCUSSION

Applicable Legal Standards

Burden of Proof

When an unfair labor practice violation is alleged, the complainant has the burden of proving its case by a preponderance of the evidence. WAC 391-45-270(1)(a); *Cowlitz County*, Decision 7007-A (PECB, 2000). In determining whether an unfair labor practice has occurred, the totality of the circumstances must be analyzed. *Walla Walla County*, Decision 2932-A (PECB, 1988).

Interference

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.*

Discrimination

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.80.110(1)(c). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.80 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a prima facie case establishing the following:

> 1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;
>
> 2. The employer deprived the employee of some ascertainable right, benefit, or status; and
>
> 3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish a prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proven. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual or that union animus was a substantial motivating factor behind the employer's actions. *Id.*

Application of Standards

The union did not prove that a reasonable person could perceive Bryson's comments to be a threat of reprisal or force, or a promise of benefit, associated with the union activity of West.

I do not believe that, looking at the totality of the circumstances, a reasonable person could believe that the employer's actions constituted a threat of reprisal or force, or a promise of benefit, associated with West's union activity.

The union argues that the employer interfered with West's protected activity by alleging in its complaint that on February 3, 2016, Bryson told West that "getting the union involved would hurt your career." However, the union did not prove through testimony or with exhibits that the statement, "getting the union involved would hurt your career" was ever made by Bryson. The union attempts to support this allegation based on other statements allegedly made by Bryson. These statements include:

1. Told wasn't being cooperative and coming across as being kicked in the teeth.
2. Management thinks favorably of me in the future as a leader.
3. If continues pushing this, it might be bad for my career.

First, to consider the union's position, an assumption must be made that the statements above are true, and that West's transcriptions in his journal are accurate. Second, since the wording in the complaint/preliminary ruling and the statements West testified to in the hearing are not the same, one would have to look at West's statements as supportive of the cause of action in the preliminary ruling.

Looking at the totality of the circumstances I do not believe that Bryson's comments, were a threat of reprisal or promise of benefit connected to West's union activities. Bryson was told by Isiordia to try and work out the issue of the Spanish line with West on the lower level. It appears as though the conversation, which may have started about the Spanish line, took a turn toward West's work performance and his feelings toward not receiving the promotion to Area Manager. Bryson, though his timing may not have been optimum considering he just stepped into the Area Manager position on February 3, was addressing West's attitude toward his work, and not his union activity. The union failed to prove that a reasonable employee could perceive Bryson's comments to be a threat of reprisal or force, or a promise of benefit, associated with the union activity.

The employer did not interfere with employee rights by Bryson becoming upset that West raised the issue of having a right to talk with the union and with the employer's Human Resources department.

In the complaint, the union alleges that Bryson contacted West stating that he was upset with West for filing a formal complaint against him with Human Resources. West denied he filed the complaint, and Bryson continued to say that he was upset and West should not have filed the complaint. The preliminary ruling stretches the complaint further by saying that Bryson was upset West had raised the issue of having a right to talk with this union and with the employer's Human Resources department. At the hearing, both Bryson and West testified to similar events. Additionally, both men took notes after the meeting which were presented into evidence, further corroborating each other's stories. The only difference in narratives is whether Bryson was upset when he spoke to West. The union argues interference occurred because Bryson encouraged West to speak to him about concerns before he spoke to the union and asked West why he filed a complaint.

It is not uncommon for parties to try and resolve disputes at the lowest level. Conversations can occur between a supervisor and an employee without necessitating involvement from the union. In this case, Bryson believed they resolved the Spanish line issue and was surprised to learn that West filed a complaint against him. The union claims that Bryson became upset about the complaint, however, during the hearing Bryson appeared to be very mild-mannered in nature, even

during intense questioning. He credibly testified that he was not upset during their conversation, and it is hard to imagine that Bryson became so angry as to intimidate West and chill further union activity.

Looking at the totality of the circumstances, the union failed to prove by a preponderance of the evidence that the employer interfered with West's protected rights. Both parties' recollection of events were similar, and credible testimony from Bryson negates the union's argument that he became angry enough at West to chill further union activity.

The employer did not discriminate by denying West's leave request on March 10, 2016, or March 29, 2016.

The union argues that employer discrimination occurred on March 10, 2016, and March 29, 2016, by denying West's leave requests, in reprisal for his union activities. The union provided evidence that up until West's request was denied, no other investigator in 26 years had been denied leave and argues the denial of West's leave was in retaliation for the complaint filed against Bryson.

Here, West engaged in protected activity when a complaint by the union was filed on his behalf. He was deprived of an ascertainable benefit when Bryson denied his leave request. There is no legitimate causal connection that can be made between the employee's exercise of a protected right and the employer's actions. Although the timing of the leave request denial is very close in proximity to the conversation about the complaint that occurred between Bryson and West, these facts do not take in the whole picture.

First, even though Bryson denied West leave for April 4, 5, and 8, 2016, Bryson granted West's request for seven other days of leave. The employer argues that Bryson denied West's request for leave because of issues with coverage. At that point, of the three investigators in the Wenatchee office, one had already requested leave, and the other was on a special school assignment. Isiordia and Bryson had a meeting with West on February 26, 2016, to discuss issues concerning coverage, weeks before Bryson denied West's request for leave.

Second, due to coverage issues, Bryson denied other employees requests for leave. On March 8, 2016, the same day West's request was denied, Bryson denied another investigator's request for leave in July and August 2016, but approved leave for October 31 through November 7, 2016. Bryson indicated in an e-mail to the other investigator that his request was denied because coverage would be low.

On March 29, 2016, West sent an e-mail to Bryson requesting leave for April 22, 2106. Bryson denied that request for leave because another employee, one whom was referred to as a "work-horse" with a very good work ethic, told West that morning he would be out for three to six weeks to recover from a surgery. Although this employee worked in the Yakima office, the Wenatchee office would help cover that area as well because there were only two investigators in the Yakima office.

The union argues in its brief that at no other time in West's career was he, nor any other inspector, denied leave because of coverage issues. Although this may be true, management may change their priorities without necessarily being discriminatory.

Even though West fulfills the first two elements of the prima facie case to establish a discrimination claim, participating in an activity protected by the CBA and being deprived of that benefit, there is no causal connection between the employee's exercise of this right and the employer's action.

The employer did not discriminate by changing West's work hours and schedule.

The union argues that the employer discriminated against West on April 1, 2016, by changing West's work hours and schedule in reprisal for union activities. The union makes a causal link between the conversation Bryson and West had a month earlier concerning the complaint made against Bryson and Bryson requesting that West work eight hours a day.

As above, West engaged in protected activity when he spoke to Sloniker about his conversation with Bryson on March 8, and Sloniker filed a complaint against Bryson. West was not deprived of an ascertainable benefit since the working conditions described in the job description for an

Investigator 4 are characterized as normally a 40-hour week, with irregular extended days and weeks to meet program needs. Isiordia testified that the offices are expected to have staff available during core business hours, Monday through Friday from 9:00 a.m. until 5:00 p.m. Because the employer was not deprived of an ascertainable benefit, no further analysis is required.

The employer did not discriminate by refusing to sign off on daily time submittals on days West worked more than eight hours.

Lastly, the union asserts West was discriminated against on April 5, 2016, when the employer refused to sign off on daily time submittals in retaliation for union activities. The union argues that the ascertainable benefit denied was a notation made by Bryson on West's time card sheet stating that West did not ask for prior approval for overtime and that this was an act of insubordination.

The evidence in the record does not establish that West was not deprived of any ascertainable benefit when the employer refused to sign off on daily time submittals on days West worked more than eight hours because Bryson did sign off on his daily time submittals.

For the hours worked on April 4, 2016, West incorrectly entered his work hours in PISCES, the record keeping system, and therefore was required by the system for supervisor approval to change his hours. An e-mail from Bryson was sent to West on April 5, 2016, denying the incorrect hours and requesting that West put his correct hours for April 4, 2016. Testimony from West during the hearing showed that he was paid for all overtime worked in April, including the hours he worked on April 4, 2016.

The union did not establish a prima facie case for discrimination on this issue since no ascertainable benefit was denied.

CONCLUSION

Looking at the evidence presented, the union did not establish that the employer interfered with West's protected employee rights because the union did not prove that a reasonable person would feel threatened by Bryson's comments or believe a promise of reward would be given.

The union did not prove by a preponderance of the evidence that the employer interfered with West's protected employee rights in violation of RCW 41.80.110(1)(a). Based on a totality of the circumstances, the union did not prove Bryson's comments to West would be considered by a reasonable person as a threat of reprisal or promise of reward, nor did the union prove that the employer interfered with West's protected employee rights when Byson was upset that West raised the issue of having a right to talk with the union and with the employer's Human Resources department.

The union also did not prove by a preponderance of the evidence that the employer discriminated against West in violation of RCW 41.80.110(1)(c). The union did not make its prima facie case regarding the denial West's leave request on March 10, 2016, or March 29, 2016, because the union did not show a causal connection between the employee's exercise of a protected activity and the employer's action. The employer was able to show a legitimate reason for the denial of the leave request and show similar treatment of other employees. The union also did not make its prima facie case for discrimination by changing West's work hours and schedule because no ascertainable benefit was lost. Lastly, the union did not make its prima facie case for employer discrimination by refusing to sign off on daily time submittals on days West worked more than eight hours. No evidence was brought forward to show that a refusal occurred and that West was denied an ascertainable benefit. The complaint is dismissed.

FINDINGS OF FACT

1. The Washington State Department of Agriculture is a public employer within the meaning of RCW 41.80.005(8).

2. The Washington Public Employees Association (union) is a bargaining representative within the meaning of RCW 41.80.005(7).

3. The union and employer are parties to a collective bargaining agreement effective July 1, 2015, through June 30, 2017.

4. The union is the exclusive bargaining representative for classified employees of the employer working in the pesticide compliance program.

5. Matt West is a 13-year pesticide compliance investigator working in the employer's Wenatchee office of the central region. From May 1, 2015, until January 31, 2016, West served as the Interim Area Manager for the region. On February 1, 2016, David Bryson was promoted to the Area Manager position.

6. As Interim Area Manager, West assumed responsibility for fielding all calls on the Spanish Spray Drift Reporting line (Spanish line). On February 2, 2016, West sent an e-mail to Alberto Isiordia, Pesticide Compliance Manager, requesting the Spanish line be routed to Bryson. Isiordia wanted West to continue manning the Spanish line. West brought this issue to the attention of the union.

7. West testified that Bryson asked to speak with him about the Spanish line. However, West stated that Bryson asked him why he was not cooperating with Isiordia's request to take calls on the Spanish line, wondered why he felt those were not a part of his duties, and wondered why they needed to be renegotiated. West said that Bryson told him he was being perceived as acting like he had been "kicked in the teeth" for not getting the Area Manager position. He told West that management thought favorably of him and his future as a leader, but that if he continued pushing the issue it could be bad for his career. Additionally, Bryson said this was not a union issue and to trust him as his supervisor.

8. Bryson testified that he asked West in February 2016 if he would agree to have the Spanish line transferred back to him on his anniversary date. Bryson testified he told West he could

talk to his union about the work issue, and that he viewed West favorably and saw him as a future leader.

9. On March 8, 2016, Bryson brought up that West had filed a complaint against him as a result of their February 2, 2016, conversation. West told Sloniker about this conversation and how he felt threatened by Bryson's comments. The union proceeded to file a complaint or grievance against Bryson. Bryson stated to West that he was disappointed that West did not come to him first to talk about the issue.

10. The union did not prove through testimony or with exhibits that the statement, "getting the union involved would hurt your career" was ever made by Bryson.

11. On March 10, 2016, West sent Bryson a vacation leave request. . Bryson denied the leave request for three days in April 2016 stating that the region would be short staffed. Even though Bryson denied West leave for April 4, 5, and 8, 2016, Bryson granted West's request for seven other days of leave. The employer argues that Bryson denied West's request for leave because of issues with coverage. At that point, of the three investigators in the Wenatchee office, one had already requested leave, and the other was on a special school assignment. Isiordia and Bryson had a meeting with West on February 26, 2016, to discuss issues concerning coverage, weeks before Bryson denied West's request for leave. Due to coverage issues, Bryson denied other employees requests for leave. On March 8, 2016, the same day West's request was denied, Bryson denied another investigator's request for leave in July and August 2016, but approved leave for October 31 through November 7, 2016. Bryson indicated in an e-mail to the other investigator that his request was denied because coverage would be low.

12. On March 29, 2016, West submitted a request for vacation leave which Bryson denied because another investigator in the office had already requested that day off. Bryson cited Article 11.5B which states, "When considering requests for vacation leave the employing

agency shall give due regard to the needs of the employee but may require that leave be taken when it will least interfere with the work of the agency."

13. Coverage is a concern for the employer, not only because of the wide geographical range of territory that must be covered, but also because of the flexible scheduling allowed to employees. If an investigator reaches 40 hours worked before the end of the week, the investigators will end their day early on Friday.

14. On Friday, April 1, 2016, West sent Bryson an e-mail saying he was going home. Bryson responded that because of coverage issues he should work eight hours each day, and if more than eight hours was needed then he should gain prior approval.

15. On Friday, April 1, 2016, West sent Bryson an e-mail saying he was going home, presumably early. Bryson responded that because of coverage issues he should work eight hours each day, and if more than eight hours was needed then he should gain prior approval. West was not deprived of an ascertainable benefit since the working conditions described in the job description for an Investigator 4 are characterized as normally a 40-hour week, with irregular extended days and weeks to meet program needs. Isiordia testified that the offices are expected to have staff available during core business hours, Monday through Friday from 9:00 a.m. until 5:00 p.m.

16. For the hours worked on April 4, 2016, West incorrectly entered his work hours in PISCES, the record keeping system, and therefore was required by the system for supervisor approval to change his hours. An e-mail from Bryson was sent to West on April 5, 2016, denying the incorrect hours and requesting that West put his correct hours for April 4, 2016. The error was corrected and the employer paid West for his full time worked. Bryson made a note on the time sheet stating that West was told not to work more than 8 hours without prior approval.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-45 WAC.

2. By the actions described in Findings of Fact 1 through 10 the union failed to sustain its burden of proof to establish that the employer interfered with protected employee rights in violation of RCW 41.80.110(1)(a).

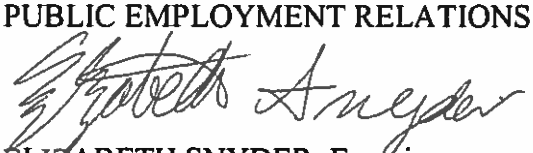
3. By the actions described in Findings of Fact 11 through 16 the union failed to sustain its burden of proof to establish that the employer discriminated (and derivatively interfered) against Bryson in violation of RCW 41.80.110(1)(c).

ORDER

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

ISSUED at Olympia, Washington, this 7th day of April, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ELIZABETH 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 04/7/2017

DECISION 12676 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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