Bellevue School District, Decision 12767 (PECB, 2017)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BELLEVUE COACHES ASSOCIATION, Complainant, vs. BELLEVUE SCHOOL DISTRICT, Respondent.	CASE 128220-U-16 DECISION 12767 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On June 1, 2016, the Bellevue Coaches Association (union) filed a complaint against the Bellevue School District (employer or district) alleging unfair labor practices. The allegations concern the employer's decision to not renew the football coaching contracts of Bellevue High School Head Coach Butch Goncharoff and Assistant Head Coach Patrick Jones as the result of an investigation conducted by the Washington Interscholastic Activities Association.

The union claims the employer discriminated against Goncharoff and Jones and interfered with their protected employee rights when the employer precluded them from meeting or conferring with any coach, parent, student, or individual associated with the employer other than the employees' union representatives. The complaint also alleges the employer unilaterally changed numerous employment practices that are mandatory subjects of bargaining when it created a new "summer season" for coaches, implemented a policy that prohibited coaches from being paid more than $500 for any coaching activity in the summer, prohibited coaches from having outside employment during the summer, and created new disciplinary standards.

On June 16, 2016, the Commission's unfair labor practice manager reviewed the complaint and issued a deficiency notice stating the complaint failed to provide specific dates and descriptions of the alleged violations of Chapter 41.56 RCW. On July 6, 2016, the union filed an amended complaint.

On August 10, 2016, the unfair labor practice manager found discrimination for filing charges, independent interference, domination, refusal to bargain, and unilateral change to mandatory subjects of bargaining causes of action to exist and issued a preliminary ruling. Examiner Dario de la Rosa held a hearing on November 2–4, 21, and 22, 2016, February 13–15, 2017, and March 7, 2017. The parties filed post-hearing briefs on May 26 and 30, 2017, to complete the record.[1]

ISSUES

As framed by the preliminary ruling, the issues presented in the complaint are as follows:

1. Did the employer discriminate against Goncharoff and Jones in violation of RCW 41.56.140(3) by prohibiting them from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives in reprisal for filing unfair labor practice charges?

2. Did the employer interfere with protected employee rights in violation of RCW 41.56.140(1) by notifying Jones that the employer intended not to renew his contract in the middle of collective bargaining negotiations, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with Jones's union activity?

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[1] The union also filed grievances regarding the decision to terminate Jones's employment. An arbitration award was issued after the close of the hearing. The union attached the award to its post-hearing brief without filing a motion under WAC 391-45-270(2). The employer objected to the inclusion of the award as part of the union's post-hearing brief. Although the arbitration award and subsequent correspondence are part of the official record in this matter, they have not been considered.

3. Did the employer interfere with protected employee rights in violation of RCW 41.56.140(1) by prohibiting Goncharoff and Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives?

4. Did the employer dominate or provide unlawful assistance to the union in violation of RCW 41.56.140(2) by prohibiting Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives?

5. Did the employer refuse to bargain in violation of RCW 41.56.140(4) when it unilaterally added a new summer season to bargaining unit coaches' duties, which results in additional work hours, lower pay per hour, and no coverage for overtime, without providing the union with notice and an opportunity to request bargaining?

6. Did the employer refuse to bargain in violation of RCW 41.56.140(4) when it refused to bargain with the union concerning overtime pay for coaches' work during summer months?

7. Did the employer refuse to bargain in violation of RCW 41.56.140(4) when it unilaterally implemented a policy that denies bargaining unit employees the ability to work as coaches in the summer months for other employers or for themselves, without providing the union with notice and an opportunity to request bargaining?

8. Did the employer refuse to bargain in violation of RCW 41.56.140(4) when it unilaterally implemented a policy prohibiting coaches from being paid more than $500 for any coaching activities in the summer, without providing the union with notice and an opportunity to request bargaining?

9. Did the employer refuse to bargain in violation of RCW 41.56.140(4) when it unilaterally implemented a policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy, without providing the union with notice and an opportunity to request bargaining?

The Discrimination, Interference, and Domination Allegations

With respect to the discrimination, interference, and domination allegations, the employer did not discriminate against Goncharoff and Jones in retaliation for the filing of the unfair labor practice charges. The union failed to demonstrate that Goncharoff's and Jones's union activity was the substantial motivating factor for the employer's decision to preclude them from conferring with any other coaches, parents, students, or individuals associated with the employer other than union representatives. The employer also did not interfere with Jones's protected employee rights when it informed him that his contract would not be renewed. The parties had already completed negotiations.

The employer interfered with Goncharoff's protected employee rights when it precluded him from having contact with any coach, parent, or student associated with the employer other than union representatives. A reasonable employee could view the restrictions placed upon Goncharoff as punishment for the union's insistence that the employer strictly follow the reappointment process in the parties' collective bargaining agreement.

The employer interfered with Jones's protected employee rights when it precluded him from having contact with any coach, parent, or student associated with the employer other than union representatives. Chapter 41.56 RCW guarantees employees the right to contact their union representatives, and the employer's initial no-contact order did not recognize that right. Jones, as the elected president of the union, had the right to continue to conduct business on behalf of the bargaining unit while he remained employed by the district. A reasonable employee would view the employer's limitations on Jones's activities as interfering with the employees' right to elect union officers of their own choosing and to rely upon that officer to conduct union business. The employer shall be directed to cease and desist from its unlawful activity.

Finally, the union failed to prove the employer intended to dominate the union through its actions against Jones. No evidence in this record suggested that the employer's actions were an intentional attempt to control the union.

The Refusal to Bargain and Unilateral Change Allegations

The employer did not commit an unfair labor practice when it allegedly implemented a new summer season without first providing notice to the union and an opportunity for bargaining. Although the parties' collective bargaining agreement does not specifically identify a paid summer activities period, the employer and union have operated under a system where certain coaching camps and activities during the summer months are school sponsored. The fact that the union and employer never reached agreement on compensation for employees during the summer activities period is immaterial.

The employer also did not commit an unfair labor practice by failing to bargain overtime pay for coaches' work during the summer months. The evidence demonstrates that the employer and union had already concluded negotiations that required the employer to conduct a study about summer pay for coaches. The employer's failure to complete that study was a contract violation and not a unilateral change. Any remedy for a contract violation will have to come through the grievance and arbitration machinery of the parties' collective bargaining agreement or through the superior courts.

The union failed to demonstrate that the employer implemented a policy that denies bargaining unit employees the ability to work as a coach in the summer months for other employers or for themselves. No evidence suggests that the employer implemented a policy that prohibited coaches from being employed by other employers during the summer months.

The employer unilaterally implemented the policy that prohibits coaches from being paid more than $500 for coaching activities during the summer without first providing the union with notice and an opportunity to request bargaining. The employer adopted its current conflicts of interest policy on November 20, 2012, but took no steps to enforce that policy with respect to

school-sponsored summer activities. While the employer reiterated its conflicts of interest policy at training meetings on August 18, 2014, and August 17, 2015, it only recently took steps to enforce that policy during the summer activities period. The employer did not notify the union of its intent to strictly enforce the policy during the summer activities period and provide the union with an opportunity to request bargaining over the impacts that decision may have had on mandatory subjects.

Finally, the employer committed an unfair labor practice when the school board unilaterally implemented a policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy. The employer presented this new policy to the union as a *fait accompli* at the May 4, 2016, school board meeting. Because the policy concerns a mandatory subject of bargaining—employee discipline—the employer was required to provide the union with notice and an opportunity to bargain about the decision and its effects before implementing the policy. The employer's failure to do so was an unfair labor practice.

BACKGROUND

The employer is a public school district and includes an athletic department that is responsible for controlling and supervising student athletics and extracurricular activities. For athletics, the district is a member of the KingCo Conference. The district is also a member of the Washington Interscholastic Activities Association (WIAA) and is subject to that organization's rules and regulations regarding interscholastic sports. Jeffrey Lowell is the employer's current District Activities and Athletics Director. Lauren McDaniel is the Athletic/Activity Director at Bellevue High School. Dr. Jeffrey Thomas is the employer's Executive Director of Human Resources.

Since 2004, the union has represented the coaches at the district. Jerrold Penney is the current president of the union. He was also instrumental in organizing the coaches into a bargaining unit in 2004 and served as the union's first president between 2004 and 2009. Jones served as the union president between 2009 and 2016. The union and employer are parties to a collective bargaining

agreement that went into effect on August 1, 2015, and expires on July 31, 2018. Jones and Thomas negotiated that agreement in 2015.

Article 5.1 of the collective bargaining agreement provides that appointments to coaching and extracurricular positions are made on an annual basis. That provision also states the decision to reappoint a coach is at the complete discretion of the employer, and coaches should have no expectation or guarantee that an appointment will be renewed in a subsequent year. If an appointment is going to be renewed, the agreement provides that the employer will notify the employee within 30 days after the end of the season. If an employee is not informed within 30 days, he or she should not assume that his or her appointment has been renewed.

The Competitive School Year

Under the WIAA's regulations, the competitive "school year" for high school athletics runs from August 1 and ends the first day following the spring sports tournaments, which generally occur in late May of the following year. Each sport has its own season that falls within the competitive school year. A sport is considered "in season" from the first day of permissible practices through the final day of events for that sport, which is typically the state tournament. The sport is considered "out of season" for all other days during the competitive school year. When a sport is out of season, the WIAA's rules prohibit paid coaches or volunteers from coaching present or future players of that particular sport.

The late May to July 31 period between the end of one competitive school year and the start of the next is the summer activities period. Coaches are permitted to conduct a limited number of practices during this period, and school districts may allow the use of school facilities and equipment if approved by the local school board. Coaches are also allowed to work for private coaching services not affiliated with the employer during the summer activities period.

Negotiations for Coaches' Compensation

The parties' collective bargaining agreement contains provisions for coaches' compensation. Appendix A-2 of the collective bargaining agreement states the total compensation that a coach

receives for each coaching season. For example, a head football coach is paid $6,160 at step one for the entire competitive school year and $7,700 at step three, which is the highest rate of pay. Note 1 of Appendix A-2 states that the coaching stipends include "the competitive season and any off-season WIAA-approved coach-directed activities."

Penney testified that the union understood the level of compensation to be based upon the total number of hours a coach typically works during the season. He also testified that the union had unsuccessfully attempted to negotiate compensation for coaching during the summer activities period. The agreement also contains overtime provisions. The rate for overtime pay is calculated from an employee's stipend or minimum wage, whichever is greater.

During the negotiations for the 2015–2018 agreement, Jones and Thomas discussed compensation for summer coaching activities, but they did not reach agreement regarding this issue. However, Jones and Thomas did sign a memorandum of understanding that allowed the parties to continue exploring the summer compensation issue outside of the negotiations for the successor agreement. The memorandum of understanding required the employer to study the issue and provide recommendations to the union by October 1, 2015. The memorandum of understanding also stated that any recommendations would not impact the levels of compensation that the parties had already negotiated for the 2015–2018 agreement.

The employer did not complete the study by October 1, 2015, and had not completed the study when the union filed its complaint. Thomas became sick and missed a significant portion of work in late 2015 and early 2016. Thomas also spent a considerable portion of his time responding to and investigating the results of a WIAA report that was issued in March 2016. The report concerned allegations of misconduct by Bellevue High School football program staff, and the school board tasked Thomas with investigating the allegations in that report.

On May 13, 2016, Jones contacted Thomas about the status of the employer's study. On May 15, 2016, Thomas responded to Jones stating that the "principle agreement ha[d] not changed."

The Bellevue High School Football Program

Goncharoff served as the head coach of the Bellevue High School football team. Jones served as an assistant coach with the program almost continuously since 1982. Under their leadership, the Bellevue High School football program produced numerous successful seasons, many of which included winning state championships. As a mark of the program's success, the Bellevue High School football team routinely traveled out of state to play nationally televised games against other top high school teams.

Since 1983, Bellevue High School football players have attended voluntary summer football camps to hone their football skills. In 1986, the players attended a camp called Camp Crista. Starting in 1987, the summer football camp has been held at Fort Worden, a facility in Jefferson County.[2] The Fort Worden camp is run by Bellevue High School football coaches and attended exclusively by players from Bellevue High School.

The employer's school board approves the football team's travel to Fort Worden, and the Bellevue High School staff assists in making arrangements for the camp. Sue Gray, the Bellevue High School accountant between 2011 and 2016, participated in making arrangements for the camp. She contacted Fort Worden for available dates and collected the necessary paperwork, including the extended field trip form. Because participation in the camp required the school board's approval, Gray also made sure that approval for the camp was included on a school board meeting agenda at least three months prior to the trip. If the dates for the camp were moved, the school board had to be notified. Camp attendees needed to have a physical examination on file and go through concussion baseline testing. Goncharoff was also required to sign the district's high-risk activity form. Finally, the Associated Student Body also needed to approve the trip.

According to the minutes of the school board meetings where participation in the camp was approved, all costs associated with attendance at the camp would be paid through either Associated

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[2] Other high school football programs also use the Fort Worden facility for summer camps. For purposes of this decision, the Fort Worden camp discussed is the camp arranged by Bellevue High School.

Student Body funds, by the attendees, or through a booster club.[3] The Bellevue Wolverine Football Booster Club, a private organization that supports the football program, offers supplemental funding for students who cannot afford the total cost of the camp. Although attendees and their families were responsible for the costs associated with the camp, the minutes specifically state that "[n]o student [would] be denied participation due to lack of funds." The level of school board approval required for the Fort Worden camp is consistent with the approval required for other academic and athletic activities. For example, on May 20, 2014, the school board approved the Newport High School football team to attend a summer camp at Central Washington University.

The success of the Bellevue High School football program has led to greater scrutiny by entities outside of the district, such as local newspapers. Over the years, local newspapers have published several articles detailing the recruitment practices of the football program.[4]

In 2006, it was discovered that the Bellevue Wolverine Football Booster Club paid Goncharoff an additional $55,000 for his coaching services. This compensation was above and beyond the compensation he received from the employer. Although the employer determined that this payment was not inappropriate, news of the arrangement led the WIAA to adopt Rule 23.1.1. That rule provides that "[c]oaching stipends and all gifts to a coach exceeding a total of $500 in a season must be approved by the school's board of directors." At the time this rule was passed, the employer determined that coaches could still work for private entities and not violate the WIAA rule or the employer's policy of following the WIAA's rules.

In 2007, Jones formed Athletic Camps Northwest to conduct summer camps for high school students. Jones runs all aspects of the business, including bookkeeping, and hires coaches to assist in running the camps. For the past several years, Jones hired several Bellevue High School football

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[3] The school board used the same general approval process for 2013, 2014, 2015, and 2016.

[4] Many of the allegations against the football program are subject to additional litigation in other forums. In determining whether the employer violated Chapter 41.56 RCW through its conduct, it may be necessary to provide details about an incident or event to provide context for the employment decisions made by the employer. It is not the role of this Examiner to comment on the truthfulness of those allegations; rather, it is only necessary to ascertain the employer's acts as they relate to its collective bargaining obligations.

coaches, including Goncharoff, to run football camps. The company also rented employer-owned athletic fields to conduct youth and freshmen football camps. Athletic Camps Northwest paid Goncharoff in excess of $500 annually for his services.

Following the WIAA's adoption of Rule 23.1.1, employer officials and booster club supporters engaged in discussions about the potential impacts of the rule on district athletics. At that time, it was made clear to the participants that the school board would strictly follow the WIAA rule limiting gifts to a total of $500 annually and require the school board's approval for all cash and non-cash gifts in excess of that amount. Employer officials also informed the Bellevue Wolverine Football Booster Club that the school board would not approve any additional compensation for coaches. The school board adopted its conflicts of interest policy in early 2008.

On November 20, 2012, the school board adopted a revised conflicts of interest policy, Policy 5251. The policy prohibited staff members from having a "direct financial interest in any activity that conflicts with his/her duties and/or responsibilities." On February 5, 2013, the employer adopted Interscholastic Activities Policy 2151. This policy similarly mirrored the WIAA's rule and prohibited coaches from receiving gifts in excess of $500 without the school board's approval. The policy also provided that coaches could not solicit or accept additional compensation of any kind for services performed for the district from anyone outside of the district. No evidence suggests the employer engaged in a comprehensive review of outside employment practices for coaches following the adoption of the revised conflicts of interest policy.

Between at least 2012 and 2016, the Bellevue Wolverine Football Booster Club and Goncharoff entered into an independent contract under which the Bellevue Wolverine Football Booster Club would pay Goncharoff $60,000 annually to provide services in support of the club's mission, including coaching summer camps.[5] The agreement stated that Goncharoff would neither provide any services nor be compensated "during the high school football season." Jones testified that he

[5] It appears that Goncharoff and the booster club entered into this annual agreement prior to 2012, although there is no documentary evidence affirmatively demonstrating this fact.

did not believe this arrangement violated the WIAA rule or district policy because the work and payments occurred outside of the competitive school year.

On August 18, 2014, and August 17, 2015, the employer conducted coach training meetings, where Thomas explained WIAA Rule 23.1.1 and the district's policy concerning conflicts of interest. Goncharoff and Jones attended both meetings. During the 2015 meeting, Thomas explained the purpose of the rule and policy and provided specific examples of how they could be violated. No evidence in this record suggests that the union attempted to request bargaining about Thomas's interpretation of the WIAA's rule or the employer's conflicts of interest policy at the time they were adopted or as they were presented during the 2014 or 2015 training meetings. Additionally, no evidence suggests the employer engaged in a comprehensive review of outside employment practices for coaches following these meetings and no evidence suggests the union asked the district to review Goncharoff's employment agreement with the booster club or Athletic Camps Northwest.

On May 4, 2016, the school board passed a resolution that precluded any coach found to have violated the district's conflicts of interest policy from employment with the district for a period of two years. The employer did not provide the union with notice that it intended to adopt this policy.

The 2015–2016 Investigations Into the Football Program

Following an incident between an adult trainer and a student, the WIAA conducted a lengthy investigation into the operation of the Bellevue High School football program. In March 2016, the WIAA issued a report that was critical of the Bellevue High School football program. The school board subsequently directed Thomas to investigate several issues mentioned in the report, including allegations that the football coaches received excessive payments for coaching. As part of his investigation, Thomas interviewed Goncharoff and Jones. He did not interview any other coach employed by the district.

Thomas issued a report of his investigation to the school board on May 17, 2016. He found certain claims made by the WIAA to be unfounded. However, he did find that the coaches violated the

employer's conflicts of interest policy because, according to Thomas, Goncharoff and Jones financially benefitted directly or indirectly from their coaching activities. The employer directed McDaniel to start questioning coaches about their outside employment activities during the summer. Thomas recommended a comprehensive review of all athletic programs that received support through booster programs as well as another revision to the conflicts of interest policy to create more transparency through disclosure of activities. Thomas also recommended paying the football coaches for summer work. Finally, Thomas recommended corrective action for Jones and Goncharoff.

On May 25, 2016, Thomas informed Goncharoff that his employment would be terminated. On May 27, 2016, Thomas informed Jones that his employment would also be terminated. Jones argued that his termination was improper because he had already been assured that he would be coaching in 2016 consistent with Article 5.1 of the parties' collective bargaining agreement. Jones stated that he also believed that the employer assured Goncharoff that he would be brought back to coach in 2016.

On May 27, 2016, Jones issued a statement to the "Bellevue Wolverine Football Community" informing them that he had been fired as assistant coach. Jones also explained his viewpoint on the summer activities period and the steps that he thought were taken to avoid violating the employer's conflicts of interest policies. He vowed to fight the dismissal.

Thomas discussed the matter with McDaniel and determined that Jones had been assured of a coaching appointment for the 2016 season. Thomas rescinded the termination letters for Goncharoff and Jones and elected to pay their stipends for the 2016 season. However, the employer determined that it still wanted new leadership for the football program.

On June 16, 2016, Thomas sent letters to Goncharoff and Jones informing them that their coaching appointments would not be renewed after the 2016 season and they would both be placed on non-disciplinary administrative leave for the 2016 season. The employer required each employee to turn in identification, keys, and any district property. The employer also informed Goncharoff

and Jones that they were not to have any contact with district football players or students, parents of players or students, district support organizations, or other district staff; that they were precluded from being on district property at any time; and that they were not allowed to attend football practices, trainings, or games. Thomas did state in the letter that Goncharoff and Jones could contact their union representatives.

Although the employer placed Jones on administrative leave, he was still technically the president of the union. However, due to the restrictions that Thomas placed on his ability to contact bargaining unit employees, Jones felt that he could not adequately represent the bargaining unit employees. Jones arranged for Penney to replace him as union president.

ANALYSIS

General Applicable Legal Standards

The union's complaint is governed by Chapter 41.56 RCW and all claims are governed by certain universal principles. RCW 41.56.160 directs this Commission to prevent unfair labor practices and to issue appropriate remedial orders when necessary. *See also King County*, Decision 9075-A (PECB, 2007). RCW 41.56.160(1) provides that a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. The six-month statute of limitations begins to run when the complainant knows, or should know, of the violation. *City of Bellevue*, Decision 10830-A (PECB, 2012), *citing City of Bellevue*, Decision 9343-A (PECB, 2007). Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice. *City of Bellevue*, Decision 10830-A, *citing Community College District 17 (Spokane)*, Decision 9795-A (PSRA, 2008).

In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Id.*

The Preliminary Ruling Process

A preliminary ruling issued under WAC 391-45-110 and a detailed complaint that conforms to WAC 391-45-050 serve to provide sufficient notice to the responding party regarding complained-of facts and issues to be heard before an examiner. *King County*, Decision 9075-A (PECB, 2007). As part of the preliminary ruling process, the Commission's unfair labor practice manager specifies the types of statutory violations that the complaining party has asserted in its complaint. Once an examiner is assigned to hold an evidentiary hearing, the examiner can rule only upon the issues framed by the preliminary ruling unless a motion to amend the complaint is properly made. *See King County*, Decision 6994-B (PECB, 2002).

After the preliminary ruling is issued by the unfair labor practice manager framing the issues to be heard at hearing, the Commission's rules allow a complaining party to attempt to change the scope of the proceedings. A complainant may disagree with the causes of action identified in the preliminary ruling and may request that the unfair labor practice manager reconsider his or her ruling. WAC 391-45-110(2); *see also Central Washington University*, Decision 12588-B (PSRA, 2016). If an agency examiner has already been assigned to hear the matters, a complainant may move to amend its complaint prior to the opening of an evidentiary hearing. WAC 391-45-070(2)(b); *see also Central Washington University*, Decision 12588-B. In the event an amended complaint is filed under this rule, the examiner shall issue the amended preliminary ruling. *Id.* Finally, a complainant may move to amend its complaint after the opening of an evidentiary hearing only to conform the pleadings to the evidence received without objection. WAC 391-45-070(2)(c). Such a motion must be made before the close of the evidentiary hearing. *Id.*

The union claims that the employer discriminated against Goncharoff and Jones when it prohibited them from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the Bellevue School District other than a union representative in reprisal for the filing of unfair labor practice charges. The union also claims the employer independently interfered with protected employee rights through these actions and when it notified Jones that the employer intended not to renew his contract in the middle of collective bargaining

negotiations. Finally the union claims the employer attempted to unlawfully dominate the union when it prohibited Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the Bellevue School District other than a union representative. These allegations are substantially similar, involve the same set of facts and will be analyzed together.

Applicable Legal Standards – Discrimination, Interference, Domination

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.56.140(1); *Jefferson County Public Utility District No. 1*, Decision 12332-A (PECB, 2015). The complainant maintains the burden of proof in a discrimination case. To prove discrimination, the complainant must first establish a prima facie case by showing:

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.

City of Vancouver, Decision 10621-B (PECB, 2012), *aff'd in part*, *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 348-349 (2014); *Educational Service District 114*, Decision 4361-A (PECB, 1994). Because this test is derived from the Washington Supreme Court's *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991), and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991) decisions, this agency has historically referred to this test as the *Wilmot* and *Allison* test.

Ordinarily, an employee may use circumstantial evidence to establish the 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 proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *Id.* If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040; *Kitsap County*, Decision 12022-A (PECB, 2014). It is an unfair labor practice for a public employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.140(1).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Washington State Patrol*, Decision 11863-A (PECB, 2014), *citing Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 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. *Washington State Patrol*, Decision 11863-A, *citing Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A. 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.*

Domination

It is unlawful under RCW 41.56.140(2) for an employer to control, dominate or interfere with a bargaining representative. The union bears the burden of proof and must establish that the employer intended to control or interfere with the administration of the union and/or intended to dominate the internal affairs of the union. *King County*, Decision 2553-A (PECB, 1987).

The element of intent in the case of control, domination or interference in RCW 41.56.140(2) is in contrast to the standard for interference previously discussed regarding RCW 41.56.140(1), where the showing of intent is not required. *See Community College District 13 – Lower Columbia*, Decision 8117-B (PSRA, 2005).

Application of Standards – Discrimination, Interference, Domination

Discrimination

The union failed to establish that the employer discriminated against Goncharoff and Jones in reprisal for the filing of this unfair labor practice complaint. Although the union established a prima facie case for discrimination, the union failed to establish that the substantial motivating factor for the employer's decision to place Goncharoff and Jones on administrative leave with restrictions was the filing of the instant complaint.

Thomas initially informed Goncharoff and Jones that their employment would be terminated on May 25 and 27, 2016, respectively. Shortly thereafter, Jones met with Thomas to discuss the situation and protest Thomas's decision. At that time, Thomas did not place any restrictions on

either employee because he thought their employment had been terminated. The union filed its complaint on June 1, 2016. The unfair labor practice manager found that complaint deficient. On June 16, 2016, Thomas issued his letter rescinding the terminations but placing both employees on administrative leave with restrictions. That same day, the union filed its amended complaint. The union engaged in protected activity on behalf of Goncharoff and Jones when it challenged their terminations and filed the instant complaint.

The union also established that Goncharoff and Jones were deprived a benefit or right. In Thomas's June 16 letter, he gave both employees strict direction that precluded them from conferring with any other coaches, parents, students, or individuals associated with the employer other than union representatives. These restrictions were an identifiable right that all other coaches at the district enjoyed.

Finally, the union established that a causal connection existed between the exercise of the protected activity and the employer's action. The sequence of events is important. The employer initially terminated Goncharoff's and Jones's employment, and the union filed its complaint shortly thereafter. Only after Jones discussed the matter with Thomas did Thomas ultimately reconsider his initial decision to terminate the coaches' employment. Instead, he placed them on administrative leave with restrictions. A reasonable inference could be made that the restrictions in Thomas's June 16, 2016, letter were in retaliation for the filing of the June 1, 2017, complaint.

Although the union established its prima facie case for discrimination, the employer unequivocally demonstrated nondiscriminatory reasons for its actions. Thomas credibly testified that the filing of the unfair labor practice complaint had no bearing on the employer's decision to take the action it did against Goncharoff and Jones. Rather, Thomas testified that the employer took action based on the WIAA report as well as Thomas's own investigation. Thomas also credibly testified that the restrictions placed on Goncharoff and Jones resulted from the employer's desire to have a fresh start in leadership for the Bellevue High School football program.

The union failed to establish that union animus was nevertheless the substantial motivating factor for the restrictions placed on Goncharoff and Jones. While the union claimed that the restrictions were implemented as punishment in retaliation for the filing of the unfair labor practice complaint and other union activity, nothing in this record substantiated those claims. Thomas reached his decision to terminate Goncharoff's and Jones's employment *before* the unfair labor practice complaint was filed. The decision to place the coaches on administrative leave with restrictions produced a result that was substantially similar to the employer's initial decision to terminate their employment. It was only after Thomas realized that both coaches had most likely been assured continued employment for the 2016 football season did the employer then make the decision to place the coaches on administrative leave with restrictions. Neither decision was motivated by union animus. The union's discrimination allegations are dismissed.

Interference

The facts and allegations in this case warrant a brief discussion of this agency's interference precedents. In *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998), the Commission held that "[i]ndependent interference violations cannot attach to facts where a 'discrimination' claim is dismissed under the test established in *Wilmot* and *Allison*." To establish an interference violation independent from an alleged discrimination violation, the complainant must establish that a party engaged in *separate* conduct which could reasonably be perceived by employees as a threat of reprisal or force, or promise of benefit, associated with their union activity. *City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (PECB, 1989) (emphasis added). The Commission reiterated this policy as recently as 2012. *See Seattle School District*, Decision 10732-A (PECB, 2012). As mentioned above, however, an examiner must rule on the issues framed by the preliminary ruling unless a motion to amend the complaint is properly made. *See King County*, Decision 9075-A. Examining these two legal principles together creates a conflict in agency precedent as applied to the facts of this case.

The preliminary ruling framed an issue for employer independent interference with protected employee rights when it prohibited Goncharoff and Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer

other than union representatives. These are the same facts that the union alleged constituted the already dismissed discrimination allegations. A stringent application of *Reardan-Edwall School District* would require dismissal of the union's interference allegations.

The discrimination and independent interference tests are substantially different. Each have separate elements of proof and, more importantly, different remedies if a violation is found. *See, e.g., Klickitat Public Hospital District 1*, Decision 9635 (PECB, 2007) (Where an interference violation is found, the typical result is a "cease and desist" order; where a discrimination violation is found, the typical result is an order making employee(s) whole). Furthermore, the union's amended complaint was sufficiently detailed to prompt the unfair labor practice manager to separate the discrimination and interference violations into different allegations. Accordingly, the *King County* rule of examining each allegation framed by the preliminary ruling shall be applied in this matter.

The employer did not interfere with Jones's protected rights when the employer informed him that it intended not to renew his contract in the middle of collective bargaining negotiations. The employer and union had already completed negotiations for their 2015–2018 collective bargaining agreement. Thus, the employer's decision to place Jones on administrative leave with restrictions did not have a material impact on those negotiations, and a reasonable employee could not perceive the employer's act as trying to frustrate bargaining. This particular interference allegation is dismissed.

However, the employer interfered with Goncharoff's protected employee rights when it prohibited him from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives. A reasonable employee could infer that the employer's decision to place Goncharoff on non-disciplinary administrative leave with the aforementioned restrictions was a direct response to the union's insistence that Thomas followed Article 5.1 of the parties' collective bargaining agreement and the reappointment clause. This particular interference allegation is sustained.[6]

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[6] A different outcome may have been reached had Thomas placed Goncharoff on disciplinary leave.

The employer also interfered with Jones's employee rights when the employer prohibited Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives. The fact that an employee is an executive board member implies union activism. Being a union officer does not, however, insulate an employee from corrective or disciplinary action. *City of Seattle*, Decision 9420 (PECB, 2006). Here, the employer did not terminate Jones's employment and therefore he arguably had the right to continue as union president. In that role, Jones arguably had the right to be on district property when conducting union business, and bargaining unit employees had a reasonable belief to expect Jones to continue to act as their representative for collective bargaining matters. Jones testified that the restrictions precluded him from acting as the bargaining unit's duly appointed president and from processing at least one grievance. The employer's action could reasonably be perceived as interfering with the union's right to self-governance.

The employer argues that interference should not be found because Jones arranged for Penney to serve as the new union president and that union business was basically unaffected by the change in leadership. The employer also points out that the restrictions were intended to ensure a fresh start for the football program without interference from the previous coaches. While the employer's stated goal is plausible, when the employer placed Jones on what it called "non-disciplinary" administrative leave, it had an obligation to work with Jones as the elected union president to maintain the employees' selected choice in leadership. This particular interference allegation is sustained.[7]

Domination

Finally, the union failed to prove the employer intended to dominate the union through its actions against Jones. No evidence in this record suggested that the employer's actions were an intentional attempt to control the union. Rather, the employer's decision to restrict Jones centered on ensuring that the Bellevue High School football program had new leadership that was free from the influence of the previous coaches. There is no evidence that Thomas or anyone associated with

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[7] A different outcome may have been reached had Thomas placed Jones on disciplinary leave.

the employer intended to use this opportunity to influence how the union was run. The union's domination allegation is dismissed.

Applicable Legal Standards – Duty to Bargain and Unilateral Change

The union alleges the employer implemented a new summer season without first providing notice to the union and an opportunity for bargaining and that the employer also failed to bargain overtime pay for coaches' work during the summer months. The union also claims the employer unilaterally implemented a policy that denies bargaining unit employees the ability to work as a coach in the summer months for other employers or for themselves and implemented the policy that prohibits coaches from being paid more than $500 for any coaching activities during the summer without first providing notice to the union and an opportunity for bargaining. Finally, the union alleges the school board implemented a policy establishing a two year ban on coaching in the district for coaches who violate the employer's conflicts of interest policy. These allegations are substantially similar, involve the same set of facts and will be analyzed together.

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4); *King County*, Decision 12451-A (PECB, 2016). "[N]either party shall be compelled to agree to a proposal or be required to make a concession . . . ." *Id.* Thus, a balance must be struck between the obligation of the parties to bargain in good faith and the requirement that parties not be forced to make concessions. *City of Snohomish*, Decision 1661-A (PECB, 1984). This fine line reflects the natural tension between the obligation to bargain in good faith and the statutory mandate that there is no requirement that concessions be made or an agreement be reached. *Walla Walla County*, Decision 2932-A (PECB, 1988).

Distinguishing between good faith and bad faith bargaining can be difficult. *Mansfield School District*, Decision 4552-B (EDUC, 1995); *Spokane County*, Decision 2167-A (PECB, 1985). A party may violate its duty to bargain in good faith by one per se violation, such as a refusal to meet at reasonable times and places or refusing to make counterproposals. *Snohomish County*, Decision

9834-B (PECB, 2008). A party may also violate its duty to bargain in good faith through a series of questionable acts which when examined as a whole demonstrate a lack of good faith bargaining but none of which by themselves would be per se violations. *Id.* When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an unfair labor practice has occurred. *Kitsap County*, Decision 11675-A (PECB, 2013), *citing Shelton School District*, Decision 579-B (EDUC, 1984).

Good faith is inconsistent with a predetermined resolve not to budge from an initial position. However, a party may stand firm on a position and an adamant insistence on a bargaining position is not, by itself, a refusal to bargain. *Mansfield School District*, Decision 4552-B, *citing Atlanta Hilton and Tower*, 271 NLRB 1600 (1984).

Unilateral Change

The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except when any changes to mandatory subjects of bargaining are made in conformity with the statutory collective bargaining obligation or terms of a collective bargaining agreement. *King County*, Decision 12451-A, *citing City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991). As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

The Commission applies a balancing test to determine whether a topic is a mandatory subject of bargaining. The balancing test weighs the competing interests of the employees in wages, hours, and working conditions against "the extent to which the subject lies 'at the core of [the employer's] entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113

Wn.2d 197, 203 (1989). Recognizing that public sector employers are not "entrepreneurs" in the same sense as private sector employers, when weighing entrepreneurial control the balancing test should consider the right of a public sector employer, as an elected representative of the people, to control management and direction of government. *See Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977).

To prove a unilateral change, 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. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007), *citing King County*, Decision 4893-A (PECB, 1995).

The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer's action has already occurred when the employer notifies the union (a *fait accompli*), the notice would not be considered timely and the union would be excused from the need to demand bargaining. *Id.* If the union is adequately notified of a contemplated change at a time when there is still an opportunity for bargaining which could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain, if requested, then a *fait accompli* will not be found. *Id.*, *citing Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

Application of Standards – Duty to Bargain and Unilateral Change

The Summer Activities Period

The employer did not unilaterally create a new summer season for coaching, and the employer did not refuse to bargain in good faith concerning employee wages. Employee wages and hours for summer coaching activities are mandatory subjects of bargaining. Both subjects directly concern terms and conditions of employment, and neither subject lies at the core of the employer's entrepreneurial control. The employer is required to provide the union with notice and an opportunity to request bargaining before making any changes to the hours and wages applicable to the summer activities period. Having determined that wages and hours for the summer activities period are mandatory subjects of bargaining, the next step is to determine the relevant status quo at time of the alleged change.

For this employer, coaching during the summer activities period is distinct from coaching during the competitive school year. The parties' collective bargaining agreement contains wage provisions for coaches' compensation during the competitive school year but does not specifically address payment for coaching activities during the summer. While the summer activities period is considered separate and apart from the competitive school year, the parties have been operating under a system where bargaining unit coaches participate in school-sponsored activities without receiving compensation from the employer.

The Fort Worden football camp is one of these school-sponsored summer activities. Since at least 2013, the school board has approved student participation at the camp.[8] Only Bellevue High School football players attended the camp and the school's football equipment was used. District employees assisted in planning for the camp by reserving the facility and assembling the necessary paperwork. Goncharoff signed a district high-risk activity form as part of the district's approval process. The Associated Student Body approved participation for the camp. Lowell and McDaniel credibly testified that they believed that the Fort Worden camp was a school-sponsored activity.

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[8] The record lacks any evidence as to how the school board approved student participation at the Fort Worden camp prior to 2013.

The Bellevue High School football program has conducted the Fort Worden camp since 1987 and, with the exception of a brief period, Jones coached at that camp each year. However, Athletic Camps Northwest has only participated in the football camp since 2007, right after the WIAA adopted Rule 23.1.1. Furthermore, the union and employer discussed back pay for coaching work during the summer activities period, and the employer told the union that it would need to file a grievance on the issue. All of these characteristics demonstrate by a preponderance of the evidence that the employer maintained significant control over the camp.

The union presented no evidence demonstrating that Athletic Camps Northwest and the employer entered into a private contractual agreement to have Athletic Camps Northwest coaches independently conduct the Fort Worden camp on behalf of Bellevue High School. This is substantially different from the other camps run by Athletic Camps Northwest, such as the youth football camp and freshman football camp, where Athletic Camps Northwest paid for use of the district's fields. The union also failed to explain why the school board needed to approve attendance at the camp. The union provided no evidence distinguishing the Fort Worden football camp from any other school-sponsored athletic activity that required the school board's approval. While the union provided anecdotal testimony and statements from certain individuals about there not being a "summer season" for high school sports, these statements do not outweigh the concrete evidence regarding the parties' historical conduct for the summer activities period.

The fact that the employer and union have not bargained a stipend for the summer activities period is irrelevant to the conclusion that the Fort Worden camp is a school-sponsored event. Finally, the fact that Athletic Camps Northwest paid coaches for their time, paid for their Department of Labor and Industries workers' compensation insurance, and obtained other supplemental insurance for the camp does not convert the Fort Worden camp into a private activity. The documentary evidence demonstrates that the school board approved school sponsored activities that secured funds through private sources and teachers and parents volunteered their time to chaperone students for those events.

Having determined that the employer and union have a historic practice of conducting school-sponsored activities during the summer, the union's allegation that the employer unilaterally implemented a summer season must be dismissed. There is no evidence that an actual change occurred that differed from the existing practice. This unilateral change allegation is dismissed.

Compensation for Summer Activities Period

The union's allegation that the employer refused to bargain over compensation for the summer activities period is dismissed. The record clearly established that the employer and union reached agreement for a 2015–2018 collective bargaining agreement that did not include pay for the summer activities period. However, the parties did agree that the employer would study the issue and present findings to the union by October 1, 2015. The employer satisfied its good faith collective bargaining obligation when it reached agreement on the memorandum of understanding with the union.

The fact that the employer failed to complete the study by the agreed-upon deadline did not constitute a unilateral change or an unfair labor practice. Although the parties agreed to study summer compensation, a mandatory subject, the study itself was not a term or condition of the employer. Rather, the study was simply an agreement between the two principles to further explore an issue.

The employer's failure to complete the study was potentially a violation of the parties' memorandum of understanding. However, this agency does not enforce provisions of collective bargaining agreements through the unfair labor practice provisions. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). Remedies for contract violations must be secured through the grievance and arbitration machinery of the parties' collective bargaining agreement or through the superior courts. *Bremerton School District*, Decision 5722-A (PECB, 1997).

Outside Employment

The union failed to prove by a preponderance of the evidence that the employer implemented a new policy that precluded bargaining unit coaches from obtaining outside coaching employment during the summer months. Thomas credibly testified that the employer never adopted a policy that prohibited bargaining unit coaches from coaching at private youth camps during the summer activities period. He also testified that coaches were permitted to work for private coaching companies. This conclusion is supported by the fact that the employer never sanctioned Jones for operating the youth or freshmen summer camps. The unilateral change allegation concerning outside employment is dismissed.

Conflicts of Interest Policy

The employer committed an unfair labor practice when it decided to strictly enforce its conflicts of interest policy for coaching during the summer activities period without first providing notice and an opportunity for bargaining the effects of its decision. The employer's decision to implement the conflicts of interest policy was not a mandatory subject of bargaining. The employer, as a member of the WIAA, had a legitimate interest in following that organization's practices to ensure that the employer's membership remained in good standing. The employer, as a public entity, also had a legitimate interest in ensuring that its employees were not using their positions as district coaches to profit for themselves or for another private entity. Additionally, the evidence and testimony demonstrated that the employer narrowly tailored the conflicts of interest policy to apply only to gifts surrounding an employee's official coaching duties.

While the decision to implement the conflicts of interest policy was not a mandatory subject, the union still had the right to be notified of the employer's decision and be afforded an opportunity to request bargaining over the impacts of the decision. The employer adopted its first conflicts of interest policy in 2008, and the current version of the rule was adopted in 2012. There is no evidence that the union requested impacts bargaining at the time of those decisions. Arguably, the union failed to request bargaining about the effects. *See, e.g., City of Yakima*, Decision 11352-A (PECB, 2013) (discussing waiver by inaction).

However, the specific facts of this case demonstrated that the employer did not enforce its policy with respect to coaching activities that occurred during the summer activities period. The employer knew as early as 2011 that Athletic Camps Northwest was involved with the Fort Worden football camp. Gray testified that she processed all of the paperwork including the supplemental insurance forms that named Athletic Camps Northwest as a cosponsor. Lance Gatter, who served as the Bellevue High School Athletic Director between 2010 and 2013, testified that he was aware of Athletic Camps Northwest's involvement with the Fort Worden camp. He also testified that he knew Goncharoff was being paid by Athletic Camps Northwest for some coaching activities during the summer, though not necessarily the Fort Worden camp. The employer did not undertake any examination of Athletic Camps Northwest's involvement with the Fort Worden camp following the 2012 readoption of the employer's conflicts of interest policy. McDaniel's testimony also revealed that the employer did not have any procedures to enforce that policy prior to 2016.

Because the employer did not enforce its policy with respect to school-sponsored coaching that occurred during the summer activities period, the union's allegation must be sustained. When Thomas informed Jones of the potential violation of the policy, he presented the employer's decision to now strictly enforce that policy as a *fait accompli*.

The WIAA report highlighted the fact that Goncharoff was paid for the Fort Worden camp. The employer then decided to act on that information and apply the conflicts of interest policy to the summer activities period. Thomas's June 16, 2016, report concluded that Goncharoff violated the employer's conflicts of interest policy. Thomas also wrote that both the employer and employees have the responsibility to be aware of that policy. The report also called for a systemic review of all athletic and activities programs through the lens of the conflicts of interest policy as well as the creation of new policies to address booster club support of athletic and activities programs.

While Thomas believed the employer had adequately informed employees of the conflicts of interest policy, the employer's decision to now enforce that policy was essentially a new term and condition of employment. The union had reasonable belief that participation in the Fort Worden

camp did not violate the conflicts of interest policy because the employer knew of Athletic Camps Northwest's involvement with the camp and did not enforce the policy for several years. The employer's witnesses consistently testified that they believed the Fort Worden camp was a school-sponsored activity. While this belief was ultimately incorrect, it was nevertheless reasonable. The employer offered no adequate explanation, aside from the WIAA report, as to why it elected to now scrutinize the summer activities period.

Two-Year Ban on Coaching

Finally, the employer unilaterally implemented a new policy that precluded the renewal of a coach's appointment for two years if that coach was found to have violated the employer's conflicts of interest policy. Neither party directly addressed whether this policy constituted a mandatory subject of bargaining. However, standards for employee discipline directly impact terms and conditions of employment. Furthermore, while the employer had a legitimate interest in ensuring that its workforce followed its conflicts of interest policy, that interest does not outweigh the impact that discipline has on employee working conditions. Thus, the decision to implement a new policy was a mandatory subject of bargaining, and the employer was required to bargain the decision to implement such a policy.

The employer argues that the union cannot request decision bargaining over this policy. To support this argument, the employer points out that the parties' collective bargaining agreement provides the employer with complete discretion as to whether a coach is reappointed in a subsequent year, and therefore the union effectively waived its right to bargain this issue.[9] The employer also claims that the union never requested effects bargaining on the subject.

A contractual waiver of statutory collective bargaining rights must be consciously made, must be clear, and must be unmistakable. *City of Yakima*, Decision 3564-A (PECB, 1991); *City of Yakima*, Decision 11352-A (PECB, 2013). When a knowing, specific, and intentional contract waiver exists, an employer may lawfully make changes as long as those changes conform to the

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[9] The employer's answer asserted that many of the union's claims in the complaint were waived by negotiations. Therefore, the employer has properly raised a waiver defense.

contractual waiver. *City of Wenatchee*, Decision 6517-A (PECB, 1999). The burden of proving the existence of the waiver is on the party seeking enforcement of the waiver. *Lakewood School District*, Decision 755-A (PECB, 1980).

Although Article 5.1 of the parties' collective bargaining agreement grants the employer the discretion to make all decisions concerning reappointments, Article 5.2 also provides that no employee shall be disciplined without just cause. Article 5.2 also calls for progressive discipline. Article 5.1 of the agreement does not serve as a contractual waiver for disciplinary standards in this instance. Article 5.1 is not specifically tied to disciplinary matters, and the employer has not carried its burden of proving Article 5.1 of the agreement is a waiver.

Having determined that the disciplinary standard in this case concerns mandatory subjects of bargaining and the union did not waive its right to bargain those standards, the next question is whether the employer satisfied its bargaining obligation. It did not.

The employer did not provide any meaningful notice to the union that it intended to adopt a new policy concerning disciplinary standards. Rather, the evidence demonstrated that the first time the union heard about this policy was when the school board adopted the policy at its May 4, 2016, meeting. The employer presented its decision to the union as a *fait accompli*, and the union was not required to request bargaining over the subject. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998).

Remedies

Fashioning remedies is a discretionary act of the Commission. *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989); *State – Department of Corrections*, Decision 11060-A (PSRA, 2012). The statutes the Commission administers are remedial in nature, and those "provisions should be liberally construed to effect its purpose." *Local Union No. 469, International Association of Fire Fighters v. City of Yakima*, 91 Wn.2d 101, 109 (1978).

"Appropriate remedial orders" are those necessary to effectuate the purposes of the statute and to make the Commission's lawful orders effective. *Municipality of Metropolitan Seattle v. Public*

Employment Relations Commission, 118 Wn.2d 621, 633 (1992) (*METRO*). The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo; make employees whole; post notice of the violation; publicly read the notice; and order the parties to bargain from the status quo. *State – Department of Corrections*, Decision 11060-A; *City of Anacortes*, Decision 6863-B (PECB, 2001). Requiring an employer to read a copy of the notice at a meeting of its governing body has become part of the standard remedy in an unfair labor practice proceeding. *Seattle School District*, Decision 5542-C (PECB, 1997); *University of Washington*, Decision 11414 (PSRA, 2012), *aff'd*, Decision 11414-A (PSRA, 2013); *City of Yakima*, Decision 10270-A (PECB, 2011); *Port of Seattle*, Decision (PECB, 2000). Deviation from the standard remedy, including not ordering a portion of the standard remedy, is an extraordinary remedy.

Extraordinary remedies are used sparingly and ordered only when a defense is frivolous or when the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation. *State – Department of Corrections*, Decision 11060-A; *Seattle School District*, Decision 5542-C (PECB, 1997). The Commission is not authorized to issue remedies that are punitive. *City of Burlington*, Decision 5841-A (PECB, 1997); *Pierce County*, Decision 1840-A (PECB, 1985); RCW 41.56.160. When asked to review an extraordinary remedy that has been properly explained in an examiner's decision, the Commission generally will not disturb a remedial order that is consistent with the purposes of Chapter 41.56 RCW. *See State – Department of Corrections*, Decision 11060-A, *citing METRO*, 118 Wn.2d 621. An extraordinary remedy is not appropriate when a standard remedy will suffice.

The employer interfered with Goncharoff's and Jones's protected employee rights when it precluded them from having contact with any coach, parent, or student associated with the employer. The standard remedy for all of these violations is to require the employer to cease and desist from the complained-of actions and to post notices of their unfair labor practices in the workplace. The employer's school board shall also be required to read a copy of the notice at a regular meeting. No extraordinary remedies are ordered for these violations.

The employer unilaterally implemented its conflicts of interest policy without providing an opportunity for effects bargaining. The employer also unilaterally implemented a new policy establishing a two-year ban for violations of the employer's conflicts of interest policy without providing an opportunity for decision bargaining.

The employer is not required to rescind its conflicts of interest policy because the decision to implement that policy was permissive. When an employer has refused to bargain the effects of a permissive subject, the Commission typically orders effects bargaining without requiring the employer to undo the decision because the employer acted within its statutory rights or within its entrepreneurial rights. *Wapato School District*, Decision 10743 (PECB, 2010), *aff'd*, Decision 10743-A (PECB, 2012); *Central Washington University*, Decision 10413-A (PSRA, 2011); *State – Social and Health Services*, Decision 9690-A (PSRA, 2008). A remedy restoring the status quo ante deprives the employer of its right to make changes to permissive subjects of bargaining. *Port of Seattle*, Decision 11763-A (PORT, 2014). Accordingly, the employer shall be required to provide notice to the union that the employer intends to strictly apply the conflicts of interest policy to the summer activities period. The employer shall also, upon request, bargain in good faith with the union about any effect that the employer's decision has on mandatory subjects identified by the union before enforcing that policy.

The employer shall rescind its policy that established a two-year ban on coaching for violations of the employer's conflicts of interest policy. Should the employer desire to implement such a policy in the future, the employer shall first give notice to the union of its intent and provide an opportunity for the union to request bargaining.

Finally, the union's request for reinstatement of Goncharoff and Jones is not warranted in this case. While it is clear that the employer's initial decision to terminate their employment was based upon violations of the conflicts of interest policy, the employer rescinded its decision to terminate their employment and instead paid the two employees for the 2016–2017 competitive school year. The employer also exercised its right under Article 5.1 of the collective bargaining agreement to inform

both employees that their coaching appointments would not be renewed for the 2017–2018 competitive school year. No other remedies are awarded.

FINDINGS OF FACT

1. The Bellevue School District (employer) is a public school district and includes an athletic department that is responsible for controlling and supervising student athletics and extracurricular activities. For athletics, the district is a member of the KingCo Conference. The district is also a member of the Washington Interscholastic Activities Association (WIAA) and is subject to that organization's rules and regulations regarding interscholastic sports.

2. Jeffrey Lowell is the employer's current District Activities and Athletics Director. Lauren McDaniel is the Athletic/Activity Director at Bellevue High School. Dr. Jeffrey Thomas is the employer's Executive Director of Human Resources.

3. Since 2004, the Bellevue Coaches Association (union) has represented the coaches at the district. Jerrold Penney is the current president of the union. He was also instrumental in organizing the coaches into a bargaining unit in 2004 and served as the union's first president between 2004 and 2009. Patrick Jones served as the union president between 2009 and 2016.

4. The union and employer are parties to a collective bargaining agreement that went into effect on August 1, 2015, and expires on July 31, 2018. Jones and Thomas negotiated that agreement in 2015.

5. Article 5.1 of the collective bargaining agreement provides that appointments to coaching and extracurricular positions are made on an annual basis. That provision also states the decision to reappoint a coach is at the complete discretion of the employer, and coaches should have no expectation or guarantee that an appointment will be renewed in a

subsequent year. If an appointment is going to be renewed, the agreement provides that the employer will notify the employee within 30 days after the end of the season. If an employee is not informed within 30 days, he or she should not assume that his or her appointment has been renewed.

6. Under the WIAA's regulations, the competitive "school year" for high school athletics runs from August 1 and ends the first day following the spring sports tournaments, which generally occur in late May of the following year. Each sport has its own season that falls within the competitive school year. A sport is considered "in season" from the first day of permissible practices through the final day of events for that sport, which is typically the state tournament. The sport is considered "out of season" for all other days during the competitive school year. When a sport is out of season, the WIAA's rules prohibit paid coaches or volunteers from coaching present or future players of that particular sport.

7. The late May to July 31 period between the end of one competitive school year and the start of the next is the summer activities period. Coaches are permitted to conduct a limited number of practices during this period, and school districts may allow the use of school facilities and equipment if approved by the local school board. Coaches are also allowed to work for private coaching services not affiliated with the employer during the summer activities period.

8. The parties' collective bargaining agreement contains provisions for coaches' compensation. Appendix A-2 of the collective bargaining agreement states the total compensation that a coach receives for each coaching season.

9. During the negotiations for the 2015–2018 agreement, Jones and Thomas discussed compensation for summer coaching activities, but they did not reach agreement regarding this issue. However, Jones and Thomas did sign a memorandum of understanding that allowed the parties to continue exploring the summer compensation issue outside of the negotiations for the successor agreement. The memorandum of understanding required the

employer to study the issue and provide recommendations to the union by October 1, 2015. The memorandum of understanding also stated that any recommendations would not impact the levels of compensation that the parties had already negotiated for the 2015–2018 agreement.

10. The employer did not complete the study by October 1, 2015, and had not completed the study when the union filed its complaint. The report concerned allegations of misconduct by Bellevue High School football program staff, and the school board tasked Thomas with investigating the allegations in that report.

11. On May 13, 2016, Jones contacted Thomas about the status of the employer's study. On May 15, 2016, Thomas responded to Jones stating that the "principle agreement ha[d] not changed."

12. Since 1983, Bellevue High School football players have attended voluntary summer football camps to hone their football skills. In 1986, the players attended a camp called Camp Crista. Starting in 1987, the summer football camp has been held at Fort Worden, a facility in Jefferson County. The Fort Worden camp is run by Bellevue High School football coaches and attended exclusively by players from Bellevue High School.

13. The employer's school board approves the football team's travel to Fort Worden, and the Bellevue High School staff assists in making arrangements for the camp. Sue Gray, the Bellevue High School accountant between 2011 and 2016, participated in making arrangements for the camp. She contacted Fort Worden for available dates and collected the necessary paperwork, including the extended field trip form. Camp attendees needed to have a physical examination on file and go through concussion baseline testing. Head Football Coach Butch Goncharoff was also required to sign the district's high-risk activity form. Finally, the Associated Student Body also needed to approve the trip.

14. All costs associated with attendance at the camp would be paid through either Associated Student Body funds, by the attendees, or through a booster club. The Bellevue Wolverine Football Booster Club, a private organization that supports the football program, offers supplemental funding for students who cannot afford the total cost of the camp. Although attendees and their families were responsible for the costs associated with the camp, the minutes specifically state that "[n]o student [would] be denied participation due to lack of funds." The level of school board approval required for the Fort Worden camp is consistent with the approval required for other academic and athletic activities.

15. In 2007, Jones formed Athletic Camps Northwest to conduct summer camps for high school students. Jones runs all aspects of the business, including bookkeeping, and hires coaches to assist in running the camps. For the past several years, Jones hired several Bellevue High School football coaches, including Goncharoff, to run football camps. The company also rented employer-owned athletic fields to conduct youth and freshmen football camps. Athletic Camps Northwest paid Goncharoff in excess of $500 annually for his services.

16. In 2006, it was discovered that the Bellevue Wolverine Football Booster Club paid Goncharoff an additional $55,000 for his coaching services. This compensation was above and beyond the compensation he received from the employer. Although the employer determined that this payment was not inappropriate, news of the arrangement led the WIAA to adopt Rule 23.1.1. That rule provides that "[c]oaching stipends and all gifts to a coach exceeding a total of $500 in a season must be approved by the school's board of directors." At the time this rule was passed, the employer determined that coaches could still work for private entities and not violate the WIAA rule or the employer's policy of following the WIAA's rules.

17. Following the WIAA's adoption of Rule 23.1.1, employer officials and booster club supporters engaged in discussions about the potential impacts of the rule on district athletics. At that time, it was made clear to the participants that the school board would

strictly follow the WIAA rule limiting gifts to a total of $500 annually and require the school board's approval for all cash and non-cash gifts in excess of that amount. Employer officials also informed the Bellevue Wolverine Football Booster Club that the school board would not approve any additional compensation for coaches. The school board adopted its conflicts of interest policy in early 2008.

18. On November 20, 2012, the school board adopted a revised conflicts of interest policy, Policy 5251. The policy prohibited staff members from having a "direct financial interest in any activity that conflicts with his/her duties and/or responsibilities." No evidence suggests the employer engaged in a comprehensive review of outside employment practices for coaches following the adoption of the revised conflicts of interest policy.

19. Between at least 2012 and 2016, the Bellevue Wolverine Football Booster Club and Goncharoff entered into an independent contract under which the Bellevue Wolverine Football Booster Club would pay Goncharoff $60,000 annually to provide services in support of the club's mission, including coaching summer camps. The agreement stated that Goncharoff would neither provide any services nor be compensated "during the high school football season."

20. On August 18, 2014, and August 17, 2015, the employer conducted coach training meetings, where Thomas explained WIAA Rule 23.1.1 and the district's policy concerning conflicts of interest. Goncharoff and Jones attended both meetings. During the 2015 meeting, Thomas explained the purpose of the rule and policy and provided specific examples of how they could be violated. No evidence in this record suggests that the union attempted to request bargaining about Thomas's interpretation of the WIAA's rule or the employer's conflicts of interest policy at the time they were adopted or as they were presented during the 2014 or 2015 training meetings.

21. On May 4, 2016, the school board passed a resolution that precluded any coach found to have violated the district's conflicts of interest policy from employment with the district

for a period of two years. The employer did not provide the union with notice that it intended to adopt this policy.

22. Following an incident between an adult trainer and a student, the WIAA conducted a lengthy investigation into the operation of the Bellevue High School football program. In March 2016, the WIAA issued a report that was critical of the Bellevue High School football program. The school board subsequently directed Thomas to investigate several issues mentioned in the report, including allegations that the football coaches received excessive payments for coaching. As part of his investigation, Thomas interviewed Goncharoff and Jones.

23. Thomas issued a report of his investigation to the school board on May 17, 2016. He found certain claims made by the WIAA to be unfounded. However, he did find that the coaches violated the employer's conflicts of interest policy because, according to Thomas, Goncharoff and Jones financially benefitted directly or indirectly from their coaching activities. The employer directed McDaniel to start questioning coaches about their outside employment activities during the summer.

24. Thomas recommended a comprehensive review of all athletic programs that received support through booster programs as well as another revision to the conflicts of interest policy to create more transparency through disclosure of activities. Thomas also recommended paying the football coaches for summer work. Finally, Thomas recommended corrective action for Jones and Goncharoff.

25. On May 25, 2016, Thomas informed Goncharoff that his employment would be terminated. On May 27, 2016, Thomas informed Jones that his employment would also be terminated. Jones argued that his termination was improper because he had already been assured that he would be coaching in 2016 consistent with Article 5.1 of the parties' collective bargaining agreement. Jones stated that he also believed that the employer assured Goncharoff that he would be brought back to coach in 2016.

26. On May 27, 2016, Jones issued a statement to the "Bellevue Wolverine Football Community" informing them that he had been fired as assistant coach. Jones also explained his viewpoint on the summer activities period and the steps that he thought were taken to avoid violating the employer's conflicts of interest policies. He vowed to fight the dismissal.

27. On June 1, 2016, the union filed the instant unfair labor practice complaint.

28. Thomas discussed the matter with McDaniel and determined that Jones had been assured of a coaching appointment for the 2016 season. Thomas rescinded the termination letters for Goncharoff and Jones and elected to pay their stipends for the 2016 season.

29. On June 16, 2016, Thomas sent letters to Goncharoff and Jones informing them that their coaching appointments would not be renewed after the 2016 season and they would both be placed on non-disciplinary administrative leave for the 2016 season. The employer required each employee to turn in identification, keys, and any district property. The employer also informed Goncharoff and Jones that they were not to have any contact with district football players or students, parents of players or students, district support organizations, or other district staff; that they were precluded from being on district property at any time; and that they were not allowed to attend football practices, trainings, or games. Thomas did state in the letter that Goncharoff and Jones could contact their union representatives.

30. Thomas took the actions described in Finding of Fact 29 based on the WIAA report as well as Thomas's own investigation. Thomas placed the restrictions on Goncharoff and Jones based upon the employer's desire to have a fresh start in leadership for the Bellevue High School football program.

31. Although the employer placed Jones on administrative leave, he was still technically the president of the union. However, due to the restrictions that Thomas placed on his ability

to contact bargaining unit employees, Jones felt that he could not adequately represent the bargaining unit employees. Jones arranged for Penney to replace him as union president.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By its actions described in Findings of Fact 5, 8 through 11, and 22 through 29, the employer did not discriminate against Goncharoff and Jones in violation of RCW 41.56.140(3) by prohibiting them from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives in reprisal for filing unfair labor practice charges.

3. By its actions described in Findings of Fact 5, 8 through 11, and 22 through 29, the employer did not interfere with Jones's protected employee rights in violation of RCW 41.56.140(1) by notifying Jones that the employer intended not to renew his contract in the middle of collective bargaining negotiations.

4. By its actions described in Findings of Fact 25 through 31, the employer interfered with protected employee rights in violation of RCW 41.56.140(1) by prohibiting Goncharoff and Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives.

5. The Association failed to demonstrate that the employer attempted to dominate the union in violation of RCW 41.56.140(2) by prohibiting Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives.

6. By its actions described in Findings of Fact 6 through 20, the employer did not unilaterally implement a new summer activities season in violation of RCW 41.56.140(4) without providing the union with notice and an opportunity to request bargaining.

7. By its actions described in Findings of Fact 4, 5, and 8 through 11, the employer did not refuse to bargain overtime pay for coaching work during the summer activities period in violation of RCW 41.56.140(4).

8. The Association failed to demonstrate that the employer violated RCW 41.56.140(1) by unilaterally implementing a policy that denied bargaining unit employees the ability to work as coaches in the summer months for other employers or for themselves.

9. By its actions described in Findings of Fact 12 through 20, the employer refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1) when it unilaterally enforced its conflicts of interest policy that prohibited coaches from being paid more than $500 for any coaching activities in the summer, without providing the union with notice and an opportunity to request effects bargaining?

10. By its actions described in Finding 21, the employer refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1) when it unilaterally implemented a policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy, without providing the union with notice and an opportunity to request bargaining.

ORDER

The Bellevue School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interfering with protected employee rights by precluding bargaining unit employees and union officers from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the employer other than union representatives for non-disciplinary reasons.

   b. Unilaterally enforcing its conflicts of interest policy that prohibited coaches from being paid more than $500 for any coaching activities in the summer, without providing the union with notice and an opportunity to request effects bargaining.

   c. Unilaterally implementing a policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy, without providing the union with notice and an opportunity to request bargaining.

   d. 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 ceasing enforcement of the conflicts of interest policy for coaching work during the summer activities period until the employer notifies the union of its intent to strictly enforce the policy for the summer activities period.

   b. Restore the status quo ante by rescinding the policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy. Provide a copy of the written document rescinding the policy to the Compliance Officers and the complainant.

c. Give notice to and, upon request, negotiate in good faith with Bellevue Coaches Association, the effects of the employer's decision to strictly enforce the conflicts of interest policy for coaching work during the summer activities period.

d. Give notice to and, upon request, negotiate in good faith with Bellevue Coaches Association, the decision establish a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy.

e. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting within 20 days of the date this order becomes final. 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.

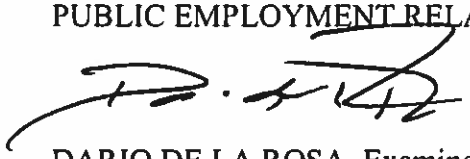
f. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Directors of the Bellevue School District, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

g. Notify the complainant, in writing, within 20 days following the date this order becomes final 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.

h. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final 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 25th day of August, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, 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 128220-U-16
DECISION 12767 - PECB

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 *BELLEVUE SCHOOL DISTRICT* COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with protected employee rights by precluding bargaining unit Goncharoff and Jones from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the district.

WE UNLAWFULLY enforced a conflicts of interest policy that prohibited coaches from being paid more than $500 for any coaching activities in the summer, without providing the coaches union with notice and an opportunity to request effects bargaining.

WE UNLAWFULLY implemented a policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy, without providing the union with notice and an opportunity to request bargaining.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL respect the rights of our employees to meet, confer, organize, or speak with other coaches, parents, students, or individuals associated with the district and union representatives.

WE WILL restore the status quo ante by ceasing enforcement of the conflicts of interest policy for coaching work during the summer activities period and WE WILL notify the union before we begin to strictly enforce the policy for the summer activities period.

WE WILL restore the status quo ante by rescinding the policy establishing a two-year ban on coaching in the district for coaches that violate the employer's conflicts of interest policy.

WE WILL NOT preclude bargaining unit employees and union officers from meeting, conferring, organizing, or speaking with any other coaches, parents, students, or individuals associated with the Bellevue School District.

WE WILL NOT establish new disciplinary penalties, without first notifying our employees' union and providing the union with an opportunity for bargaining.

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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 08/25/2017

DECISION 12767 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128220-U-16

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