

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 839,

Complainant,

vs.

BENTON COUNTY,

Respondent.

CASE 128595-U-16
DECISION 12790-A - PECB

CASE 128900-U-17
DECISION 12791-A - PECB

DECISION OF COMMISSION

Thomas A. Leahy, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for
the Teamsters Local 839.

Stephen J. Hallstrom, Deputy Prosecuting Attorney, Benton County Prosecuting
Attorney Andy Miller, for Benton County.

On November 1, 2016, the Benton County Auditor's Office discovered that Benton County (employer) overpaid employees in the Sheriff's Department. The employer notified the employees of the overpayments and began the statutory process for recovering the overpayments. The employer did not notify the union.

Initially, the employer gave employees three options for repayment (1) deduct the full amount of the overpayment from the employee's next paycheck; (2) deduct the overpayment from future paychecks in an amount specified by the employee; or (3) deduct the overpayment from future paychecks, with each deduction not to exceed 5 percent of the employee's disposable earnings in a pay period. The employer later offered the employees the opportunity to cash out accrued leave or compensatory time to pay the overpayment.

On November 30, 2016, the union requested bargaining. The Sheriff responded that he was willing to meet with the union, but was unable to negotiate. The employer began recovering the overpayments in January 2017.

Teamsters Local 839 (union) filed two unfair labor practice complaints. The first unfair labor practice complaint alleged the employer circumvented the union when it presented options for repayment without negotiating with the union. The employer unilaterally announced that it would collect overpayments without providing an opportunity to bargain, and the employer refused to bargain with the union over the employer's plan to recover the overpayments. The second unfair labor practice complaint alleged that the employer refused to bargain by unilaterally deducting overpayments from employees' wages without providing the union an opportunity to bargain. The unfair labor practice manager reviewed the complaints and found they stated causes of action. The case was forwarded to Examiner Sean Bratner for processing.

The union and employer filed cross motions for summary judgment with supporting declarations, responses to the motions for summary judgment, and reply briefs. Examiner Sean Bratner granted the union's motion for summary judgment. *Benton County*, Decision 12790 (PECB, 2017). The Examiner concluded that the employer circumvented the union and refused to bargain the decision of how the employees would repay the overpayments and unilaterally deducted the overpayments without bargaining. *Id.* The employer appealed.

The standard of review on summary judgment is de novo. *Washington Federation of State Employees v. State of Washington*, 127 Wn.2d 544, 551 (1995); *Kiona Benton School District (Kiona Benton Education Association)*, Decision 11862-A (EDUC, 2014). On review, the Commission performs the same inquiry as the Examiner. *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694 (2013); *Kiona Benton School District (Kiona Benton Education Association)*, Decision 11862-A. On appeal, the issue is whether there are any genuine issues of material fact that would contravene the motion for summary judgment. *Jacobsen v. State*, 89 Wn.2d 104, 108 (1977); *Cowlitz County*, Decision 12483-A (PECB, 2016).

We have reviewed the record in this case, including all briefing and declarations on the motions for summary judgment. We conclude that no issue of material fact exists. The union was entitled to summary judgment.

We affirm the Examiner's conclusion that the employer's decision in how to recoup the overpayments was a mandatory subject of bargaining. Wages are a mandatory subject of bargaining. RCW 41.56.030(4). The employees' interest in wages outweighed the employer's interest in unilaterally determining how it would recoup overpayments.

On appeal, the employer argued that the Examiner erred in concluding that Chapter 41.56 RCW "trump[ed]" RCW 49.48.200 and .210. The employer asserts that RCW 49.48.200 and .210 are controlling because they were more recently enacted and more specific. We disagree.

Chapter 41.56 RCW is a remedial statute and "shall be liberally construed" to accomplish its purpose. *City of Bellevue v. International Ass'n of Fire Fighters, Local 1604*, 119 Wn.2d 373, 379-80 (1992), citing *PUD 1 v. Public Employment Relations Commission*, 110 Wn.2d 114, 119 (1988); RCW 41.56.905. Nothing in RCW 49.48.200 and .210 prohibits the employer from bargaining the method of overpayment with the union. Requiring the employer to bargain its decision on how to recoup the overpaid wages would further the purpose of Chapter 41.56 RCW to improve the relationship between the employer and the employees. RCW 41.56.010. The employer's reading of the two statutes would strictly construe Chapter 41.56 RCW and not effectuate the purposes of the statute.

We agree that RCW 49.48.210(10) required the employer to provide written notice to employees. We disagree that RCW 49.48.210(10) prohibits bargaining and limits the union to grieving the overpayment. The parties are required to use the grievance procedure to resolve disputes "relating to the occurrence or amount of the overpayment." RCW 49.48.210(10). Here, the union did not dispute that the overpayments occurred, the amounts of the overpayments, or that the employees were required to repay the overpayments. Therefore, the union was not required to avail itself of the grievance procedure.

RCW 49.48.200 established a cap on the percentage of wages an employer may deduct to recoup an overpayment. However, the statute is otherwise silent on how the employees are to pay back overpayments. The employer initially offered the employees three repayment methods: the

employer could deduct the full amount of the overpayment from the employee's next paycheck; the employer could deduct the overpayment from future paychecks in an amount specified by the employee; or the employer could deduct the overpayment from future paychecks with each deduction not to exceed 5 percent of the employees' disposable earnings in a pay period other than a final pay period. The employer later decided to offer employees a fourth option, the ability to repay the overpayment by cashing out accrued leave. By offering the employees multiple options, including later adding the leave cash out option, the employer proved that it had discretion to determine how it might recoup the overpayment. The union wanted to bargain the method of overpayment, or, more simply stated how employees would pay back the employer. The collective bargaining process would have been an appropriate means to determine how the employees were required to pay back the overpayments.


The union requested bargaining over wages, which are statutorily a mandatory subject of bargaining, RCW 41.56.030(4), and the employer refused. We affirm the Examiner.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Sean Bratner are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 6th day of March, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


MARK E. BRENNAN, Commissioner


MARK BUSTO, Commissioner



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DECISION 12790-A and 12791-A has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBERS: 128595-U-16 and 128900-U-17

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