STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 128632-U-16 DECISION 12964 - FCBA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On December 15, 2016, Faculty Forward, a chapter of the Service Employees International Union, Local 925 (union), filed an unfair labor practice complaint alleging discrimination and derivative interference against the University of Washington (employer). The Commission's unfair labor practice manager issued a preliminary ruling on January 12, 2017, finding that the complaint stated a cause of action. On February 2, 2017, the employer filed its answer to the complaint, and on May 25, 2018, the parties jointly requested to waive a hearing and have the matter decided on stipulated facts. The request was granted, due in part to an ongoing difficulty in setting a hearing date. On May 30, 2018, the parties filed stipulated facts and evidence. The parties filed closing briefs on July 20, 2018, and reply briefs on August 3, 2018. On November 5, 2018, the hearing examiner requested supplemental briefing. The parties filed supplemental briefs on November 29, 2018, to complete the record.

ISSUE

Did the employer discriminate (and commit derivative interference) against the union when it refused to authorize an automatic payroll deduction and remittance (payroll dues deduction) for union faculty members who were involved in an active union organizing campaign?

The employer did not discriminate against the union (or commit derivative interference) by refusing to authorize payroll dues deductions. Under Chapter 41.76 RCW, a four-year public institution of higher education is obligated to authorize payroll dues deductions only for a union designated as the exclusive bargaining representative of its faculty. The union failed to meet its burden of proving its status as a "professional organization" as defined by RCW 41.04.230(5). In addition, RCW 41.04.230(6) applies only to employees who fall under the provisions of Chapter 41.80 RCW.

BACKGROUND

The parties stipulated to the following facts:

The University of Washington (employer) is a public four-year institution of higher education as defined in RCW 41.76.005(12). Service Employees International Union, Local 925 (union) is an employee organization as defined in RCW 41.76.005(6). Faculty Forward is a chapter of the union.

In the spring of 2015, the union started a campaign to organize the faculty of the employer pursuant to Chapter 41.76 RCW. At no time during this dispute did the union have status as the faculty's exclusive bargaining representative, and no petition for a representation election among the faculty had been filed by the union or any other employee organization.

As part of its effort to represent the faculty, the union solicited faculty members to voluntarily pay union dues. At the time it filed its complaint, the union advised the employer that approximately 107 faculty members began voluntarily paying union dues.

On August 22, 2016, the union's Director of Administration, Martha Taylor, requested that the employer create a payroll deduction mechanism on behalf of the union members to have dues deducted from their paychecks and remitted to the union. On August 23, 2016, Taylor forwarded the same request to an employee in the employer's payroll department, Shawna Litterski.

On August 23, 2016, Litterski responded with an e-mail requesting additional details on the category of employees for whom the union sought payroll deductions. Taylor responded, stating; "[T]hey are UW faculty employees who joined SEIU Local 925. The[y] do not have a contract at this time, but have joined as a non-CBA group. There are about 55. We were told the threshold to do payroll deduction is 50 or more."

On August 24, 2016, the employer's Assistant Vice President for Labor Relations, Peter Denis, denied Taylor's request. In his e-mail, Denis acknowledged that the employer provided payroll dues deductions to many other unions, but that in each case the union had been certified by the Public Employment Relations Commission (PERC) as "the exclusive bargaining representative for the proposed group . . . ." Denis explained that because the union did not meet this criteria, its request was denied.

On August 24, 2016, the union's Organizing Director, Paul Dillon, responded to Denis's e-mail. Denis and Dillon subsequently exchanged a series of e-mail communications about the issue. The union stated that its request for payroll dues deductions was being made pursuant to RCW 41.04.230(6), which states that, under certain conditions, public employees may be eligible for payroll deductions when remitting dues and voluntary contributions to "[L]abor, employee, or retiree organizations." Dillon asked why the employer would deny the request to the union but grant the same request to two other organizations: the American Association for University Professors (AAUP) and the Professional Staff Organization (PSO).

On September 29, 2016, Dillon e-mailed Denis asking about the employer's response to the union's request. Denis responded to Dillon's e-mail on October 3, 2016, and offered additional reasons for denying the union's request. Specifically, Denis stated that "starting dues deduction during the existence of an active organizing campaign would place the UW in a situation where it

has knowledge of individuals who have shown interest in supporting the union. As you can appreciate, that knowledge could prove problematic." Denis also explained that, while the employer did offer dues deductions for AAUP and PSO, those organizations were different because they were professional organizations while the union was a "labor union in the process of organizing the faculty." According to Denis, the employer was "not inclined to create a policy of beginning automatic payroll deductions for unions during organizing campaigns" because doing so might cause employees to feel pressured into making contributions and collecting union dues was primarily an internal union function.

In a letter dated November 3, 2016, the union's organizing committee responded to Denis's October 3, 2016, letter. The union addressed the employer's concern that offering payroll dues deduction would result in its knowledge of which employees had shown an interest in unionization. The union stated; "[W]e believe that UW already has knowledge of many of these individuals . . ." and that "[H]undreds of UW faculty have already made their support for unionization publicly available to UW in numerous ways . . . ." Second, the union observed that faculty members were provided payroll dues deductions for both multiple nonunion organizations and multiple unions representing staff and graduate students. According to the union, by denying it a similar benefit on the basis of its organizing campaign and status as a labor organization, the employer's actions would appear to be "disparate treatment and to constitute an unfair labor practice for discrimination . . . in violation of RCW 41.76.050." The letter concluded by urging reconsideration and by indicating that an unfair labor practice complaint would follow if the parties could not reach a mutually agreeable understanding.

In a letter dated November 10, 2016, Denis responded to the issues raised in the union's November 3, 2016, letter with four main points. First, Denis restated the prior concern that possessing a list of employees who supported unionization "could give rise to allegations of improper conduct" and stated that "creating a situation where perceptions of claims of retaliation are possible is something we wish to avoid." He further stated that, while the employer already possessed knowledge of faculty members who publicly supported unionization, the employer preferred not to expand that knowledge of supporters beyond what was publicly known. Second, Denis addressed the union's concerns about disparate treatment by stating that the union was not

similarly situated to other organizations on campus that received remittances from payroll dues deductions. Those organizations, he pointed out, were either nonunion organizations (such as professional organizations); labor organizations that receive the benefit pursuant to a collective bargaining agreement or statutory requirement; or professional organizations that converted into labor organizations and in doing so retained their payroll dues deduction benefit. Third, Denis stated that providing the union with payroll dues deductions would potentially obligate the employer to provide the same benefit to any other unrecognized unions that requested it, even in situations where multiple unions were competing against one another, and that the employer declined to set this precedent. Fourth, Denis explained that the employer's denial of the request for payroll dues deduction did not prevent faculty members from organizing or contributing to the union.

The employer deducts dues and remits them to labor organizations when required by law and by fully negotiated collective bargaining agreements. The employer does not provide payroll dues deductions for any labor organization seeking to represent employees for the purposes of collective bargaining that has not been certified by PERC as the exclusive representative of a bargaining unit.

The parties were unable to reach resolution on the payroll dues deduction issue, and on December 15, 2016, the union filed this unfair labor practice complaint.

ANALYSIS

Applicable Legal Standards

Relevant Statutory Provisions

Chapter 41.76 RCW, first adopted by the Washington State Legislature in 2002, provides the statutory framework for faculty bargaining at public four-year institutions of higher education. RCW 41.76.001 provides, in pertinent part,

> The legislature finds and declares that:
>
> . . .

> (2) Teachers in the public school system and instructors in the community colleges in the state have been granted the opportunity to bargain collectively. It is desirable to expand the jurisdiction of the public employment relations commission to cover faculty in the state's public four-year institutions of higher education.
>
> (3) It is the purpose of this chapter to provide the means by which relations between the boards of regents and trustees of the public four-year institutions of higher education of the state of Washington and their faculty may assure that the responsibilities and authorities granted to these institutions are carried out in an atmosphere that permits the fullest participation by faculty in determining the conditions of employment which affect them. It is the intent of the legislature to accomplish this purpose by providing a uniform structure for recognizing the right of faculty of the public four-year institutions of higher education to engage in collective bargaining as provided in this chapter, if they should so choose.
>
> (4) It is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining and dispute resolution, and to define and prohibit certain practices that are contrary to the public interest.

In 2016, when the union filed the instant complaint, RCW 41.76.045, provided as follows:[1]

> (1) Upon filing with the employer the voluntary written authorization of a bargaining unit faculty member under this chapter, the employee organization *which is the exclusive bargaining representative* of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit faculty member the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. . . . Such dues and fees shall be deducted from the pay of all faculty members who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization. (emphasis added).

RCW 41.04.230 provides as follows:

> **Payroll deductions authorized.**
>
> Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

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[1] The statute was amended in 2018. The amendment includes similar, but not identical language, which is inapplicable to the present dispute.

. . .

> (5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.
>
> (6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

Employer Discrimination.

An employer commits an unfair labor practice when it "encourage[s] or discourage[s] membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment." RCW 41.76.050(1)(c). When a discrimination violation is alleged, the complainant must first establish a prima facie case by showing the following:

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

Educational Service District 114, Decision 4361-A (PECB, 1994); *King County (Amalgamated Transit Union, Local 587)*, Decision 12815 (PECB, 2018), *citing Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). Ordinarily, a

complainant may use circumstantial evidence to establish a prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which, according to common experience, give rise to a reasonable inference of the truth of the fact sought to be proved. *See Jefferson County Public Utility Dist. No. 1*, Decision 12332-A (PECB, 2015), *citing Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

Once the complainant establishes a prima facie case, the respondent has the opportunity to articulate a legitimate, nonretaliatory reason for its actions. *Educational Service District 114*, Decision 4361-A. The respondent must produce relevant admissible evidence of another motivation, but need not do so by a preponderance of the evidence necessary to sustain the burden of persuasion. *Id.* If the respondent meets its burden, the complainant bears the burden of persuasion to show that the employer's stated reason was either pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Application of Standards

The union engaged in protected activity.

When evaluating whether activity is protected, the Commission will first look at whether, on its face, the activity was taken pursuant to a statutorily protected right. *City of Seattle*, Decision 10803-B (PECB, 2012). In the present case, union organization is protected under the statutory scheme contained in Chapter 41.76 RCW. Once it is established that actions were taken pursuant to a statutorily protected right, a "reasonableness" standard is applied to determine whether those actions are protected under state collective bargaining laws. *Vancouver School District v. Service Employees International Union, Local 92*, 79 Wn. App. 905 (1995); *Public Employment Relations Commission v. City of Vancouver*, 107 Wn. App. 694 (2001).

In applying this reasonableness standard, the Commission has acknowledged it is a fundamental principle of modern labor law that employees are engaged in protected activity under state collective bargaining statutes when they are participating in a union organization effort. *Valley General Hospital*, Decision 1195-A (PECB, 1981); *Lewis County*, Decision 2424 (PECB, 1986), *aff'd*, Decision 2424-A (PECB, 1986).

Here, the parties have stipulated that "the [u]nion started an active organizing campaign to represent faculty at [the University of Washington] pursuant to RCW 41.76," and it was in the course of this campaign that the union made its request for payroll dues deductions. As such, the union's request was reasonably related to its organizing activity and falls within the above-mentioned principle that union organizing efforts are inherently protected. The record thus supports a finding that the union's request for payroll dues deductions is protected union activity.

The union failed to show it was deprived of a right, benefit, or status.

A. Under RCW 41.76.045 the union was not the exclusive bargaining representative, so it was not entitled to payroll dues deductions.

The legislation covering faculty bargaining at four-year institutions is comprehensively set forth in Chapter 41.76 RCW. In adopting this statutory framework, the legislature indicated its desire to provide a "uniform structure for recognizing the right of faculty . . . to engage in collective bargaining as provided in this chapter, if they should so choose." In addition, the legislature indicated that "it is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining . . . ." The statute is comprehensive in its scope, covering such matters as duty of representation, bargaining unit determination, compensation, designation of what constitutes an unfair labor practice complaint, and procedures for grievance arbitrations, etc. Specifically relevant to the present case, RCW 41.76.045(1)(b) provides:

> (b) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

The payroll dues deduction language set forth in RCW 41.76.045 closely reflects the language set forth in RCW 41.56.110. RCW 41.56.110 expressly provides: "[U]pon the written authorization of any public employee within the bargaining unit and after the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues . . . and shall transmit [the dues] to . . . the exclusive bargaining representative."

The Commission has long-standing case precedent interpreting RCW 41.56.110, and has expressly limited the right to dues deductions to exclusive bargaining representatives. *Renton School District (United Classified Workers Union)*, Decision 1501-A (PECB, 1982) and *City of Edmonds*, Decision 3019 (PECB, 1988). Following the precedent set in an examiner-issued decision in *Renton School District*, the Commission in *City of Edmonds* found that "[I]f the Legislature had intended the right of dues checkoff to be available to any labor organization representing any public employees of any public employer, it could easily have done so. We thus will not minimize or ignore the Legislature's limitation of checkoff in RCW 41.56.110 to an exclusive bargaining representative." These cases look directly at the express language contained in RCW 41.56.110.

The union's attempts to limit *Renton School District*, Decision 1501-A and *City of Edmonds*, Decision 3019 to situations where two or more bargaining representatives are competing to be an exclusive bargaining representative does not withstand close scrutiny.

Under RCW 41.76.045, only the certified exclusive bargaining representative is entitled to payroll dues deductions. In adopting its framework for faculty bargaining, the Legislature could have extended the employer's dues deduction obligation to unions not holding the status of the faculty's exclusive bargaining representative. It did not do so. The close correlation between RCW 41.76.045 and RCW 41.56.110 dictates the same conclusion here. Only the exclusive bargaining representative is entitled to payroll dues deductions. The union in this case is not an exclusive bargaining representative. Thus, the union's claim that it was entitled to payroll dues deductions fails.

The union is not entitled to dues deductions under RCW 41.04.230(5) and (6).

The provisions of Chapter 41.04 RCW pertain to various laws governing public employment, civil service, and pensions. Under RCW 41.04.230, a public employer has the discretion to make automatic payroll deductions from a public employee's paycheck and remit those deductions to certain third-party organizations. The statute contains nine subsections, each of which sets forth specific circumstances under which an employee may be eligible for a deduction. The union asserts its entitlement to dues deduction under two of the nine subsections.

According to the union, it is eligible for payroll dues deduction as a "professional organization" under subsection 5 and as a "labor" or "employee" organization under subsection 6. The union concedes the employer's discretion in granting these payroll dues deductions (as indicated by the phrase "[a]ny official . . . is authorized"), but claims that the employer, in exercising this discretion, unlawfully considered the union's protected organizing activity in violation of RCW 41.76.050(1)(c) and (a). Subsections 5 and 6 must therefore be analyzed to determine whether the union was deprived of a right, benefit, or status under the second prong of the test for showing a prima facie case.

A. The union failed to establish its status as a professional organization under RCW 41.04.230(5).

The union in the present case argues that it is entitled to payroll dues deductions as a professional organization. Under RCW 41.04.230(5), an employer may (but is not required to) deduct dues or fees from an employee's wages and remit those dues or fees to a "professional organization formed primarily for public employees or college and university professors." As with all of the enumerated categories under RCW 41.04.230, an employer may initiate a payroll deduction under subsection 5 only upon written request of the employee.

The union argues that because it is a "professional organization" within the meaning of subsection 5, it is eligible to receive remittances from employees who request that their membership dues be paid via payroll deductions. Under subsection 5, in order to qualify for a dues deduction, the professional organization must be "formed primarily for public employees or college and university professors . . . ." In its briefs, the union compares itself to two groups for which the employer allows remittances to be made: The AAUP and the PSO. According to the union, these two organizations perform work similar to its own, and thus treating the AAUP and PSO as professional organizations but denying the union that same designation is evidence of the employer's union animus.

Here, the union has not offered sufficient evidence to support a finding that it meets the definition of a professional organization under RCW 41.04.230(5). To support its claim, the union offered

into evidence webpages from the AAUP and PSO's websites that summarize these organizations' mission statements and organizational objectives. Among them are statements indicating that the PSO "advocates for the interests and benefits of the professional staff as a whole," and that the AAUP "promote[s] discussion about collective bargaining as a resource for [the employer's] faculty." However, even assuming that the AAUP and PSO are professional organizations, it does not necessarily follow that the union is a professional organization within the meaning of subsection 5. Missing from the record is sufficient evidence concerning the union's own activities that would establish the union as a professional organization independently of the AAUP and PSO.

While comparisons to the AAUP and PSO are helpful, the union has not shown that these organizations receive their remittances on the basis of subsection 5. For instance, notwithstanding the parties' stipulations that the AAUP and PSO are "professional organizations," it is possible that one or both of these groups receive their remittances under some other legal authority. Also missing from the record is evidence that is helpful in making the connection between the union and the AAUP and PSO. For example, the union has not submitted evidence concerning what activities the union performs that are similar to AAUP and PSO, or what percentage of time each group spends on these activities compared to the union. In short, the union points to the AAUP and PSO as relevant comparators but does not provide an adequate basis for comparing and contrasting.[2]

Here, the record does not support a conclusion that faculty members in this case are eligible to have their dues deducted and remitted to the union on the basis of RCW 41.04.230(5). Even if it did, and such deductions are subject to the employer's discretion, the union has failed to show that this employer has made deductions for any similarly situated employees. The employer's concern that providing a deduction to the union might be construed as unlawful assistance and is a sufficient reason for it to deny the union's request for the deduction. As a result, the union has failed to show that it was deprived of an ascertainable right, benefit, or status under RCW 41.04.230(5).

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[2] "The collective bargaining statutes do not regulate a public employer's dealing with social, political, recreational, or charitable organizations. [citation omitted]. There can be no legitimate complaint concerning the employer's check off of dues [for an organization] engaging exclusively in such activities." Once an organization takes steps to convert itself into a bargaining representative, however, the employer has an affirmative obligation to cease dues deductions. *City of Edmonds*, Decision 3019, *citing Pierce County (Pierce County Sheriffs Guild)*, Decision 1786 (PECB, 1983).

B. The union is not eligible for payroll dues deduction under RCW 41.04.230(6), which applies only to employees subject to Chapter 41.80 RCW.

The parties offer two competing statutory constructions of RCW 41.04.230(6). The employer argues that RCW 41.04.230(6) serves to limit payroll deduction eligibility to employees falling under the state collective bargaining rules of Chapter 41.80 RCW, and even further only to those employees not already covered by a payroll deduction clause of an applicable collective bargaining agreement. The union disagrees, arguing that the subsection's reference to Chapter 41.80 RCW does not contain such a restriction.

In the present case, the union's argument that the phrase "under 41.80" contained in RCW 41.04.230(6) does not limit the provision's application to employees bargaining under Chapter 41.80 RCW is misplaced. The legislative history of the statute provides insight into the Washington State Legislature's intent. In 1967, the Legislature adopted the Public Employees Collective Bargaining Act (Chapter 41.56 RCW). At that time, the Legislature delegated the authority for collective bargaining by state employees to the State Personnel Resources Board. In 1969, the Legislature enacted Laws of 1969, ch. 59, § 6 the precursor to RCW 41.04.230(6). In its initial format, the statute stated; "[L]abor or employee organization dues may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of RCW 41.06.150." RCW 41.06.150 falls under the state's civil service rules, codified in Chapter 41.06 RCW. Over the years since its adoption, the RCW 41.04.230(6) has been modified. The most relevant amendment to the present dispute came in 2006. At that time, the language referring to RCW 41.06.150 was eliminated and replaced with its current reference to Chapter 41.80 RCW. Chapter 41.80 RCW is known as the Personnel System Reform Act of 2002 (PSRA). RCW 41.80.907.

As stated above, any faculty union organizing activity at the University of Washington falls under Chapter 41.76 RCW, which was adopted by the Legislature in 2002. The Legislature could have easily added a reference to the Faculty Collective Bargaining Act when it modified the language of RCW 41.04.230(6) in 2006. Instead, it let stand a long-standing reference to collective bargaining for employees falling under state PSRA rules. In addition, at the same time, the

Legislature adopted specific rules relating to union dues deduction for union faculty under RCW 41.76.045.

Shortly after PSRA Chapters 41.80 RCW and 41.76 RCW were first adopted by the legislature in 2002, PERC ordered an election in *State – General Administration*, Decision 8087-A (PSRA, 2003). In that case, the agency's Executive Director Marvin L. Schurke determined that "[T]he employer is a state general government agency that is subject to both the State Civil Service Law, Chapter 41.06 RCW, and the Personnel System Reform Act of 2002 (PSRA), portions of which are codified in Chapter 41.80 RCW." In determining whether the union had abandoned its representation of certain employees, part of the Executive Director's consideration was whether the employer continued to collect dues on behalf of the union. In that case, the Executive Director determined that RCW 41.04.230(6) "permits employees covered by the State Civil Service law to pay dues to a union of their choice, without regard to whether that union is their exclusive bargaining representative." This interpretation was based upon the State Personnel Board's reading of the statute. The Commission reversed the Executive Director's decision on grounds not relevant to the present case.[3] Notably, the Executive Director specifically stated that the dues deduction provision of RCW 41.04.230(6) applies to employees covered under the State Civil Service law.

The legislative history of RCW 41.04.230(6) makes it hard to challenge any interpretation that expands its application beyond employees covered under Chapter 41.80 RCW (and its precursor, RCW 41.06.150). To find otherwise would be an offense to the legislature's intent.

The Commission's standard for statutory construction is set forth in *State – Transportation*, Decision 8317-B (PRSA, 2005). In that case, the Commission held that "in ascertaining the meaning of a particular word or words within a statute, this Commission must consider both the statute's subject matter and the context in which the word is used." *Id.* Statutes must be interpreted and construed so that all language used is given effect, and no portion is rendered meaningless or

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[3] This hearing examiner takes judicial notice that at the time the executive director rendered his decision in that case, he had served as PERC's executive director for well over 25 years. He was well-versed in the language of the newly-adopted PSRA and the Faculty Collective Bargaining Act, their impacts, and differences amongst the new and existing collective bargaining statutes.

superfluous. *Id.* The courts (and administrative agencies performing quasi-judicial functions) "cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *State v. Taylor*, 97 Wn.2d 724 (1982) (citations omitted). *See also International Association of Fire Fighters v. Public Employment Relations Commission*, 128 Wn.2d 375 (1995).

Applying this guidance to the facts at hand, it is clear that adopting the union's interpretation of subsection 6 would render the reference to Chapter 41.80 RCW superfluous. Under the union's narrow reading, all state civil service employees would be eligible for payroll dues deductions *except* those employees who are covered by Chapter 41.80 RCW who also have a collective bargaining agreement providing for a payroll dues deduction benefit. Even employees excluded by this ostensible exception would enjoy a payroll dues deduction benefit pursuant to their Chapter 41.80 RCW collective bargaining agreement. As a consequence, the subsection's reference to Chapter 41.80 RCW would be rendered meaningless because an employee would be eligible for payroll dues deduction regardless of whether he or she falls inside or outside the Chapter 41.80 RCW limitation.

To the contrary, subsection 6 is more properly interpreted to mean that, for its terms to apply, an employee must be covered by the provisions of Chapter 41.80 RCW and must not already be covered by a payroll dues deduction clause pursuant to a collective bargaining agreement. The Legislature could easily have added reference to Chapter 41.76 RCW, but it did not do so. In this case, because the union is seeking to organize employees covered by Chapter 41.76 RCW and not Chapter 41.80 RCW, it has not been deprived of an ascertainable right, benefit, or status contemplated by RCW 41.04.230(6). In addition, as even the union acknowledges, the employer is not obligated to collect dues under RCW 41.04.230(6), so the employer's refusal to collect union dues does not deprive the union of an ascertainable right, benefit, or status.

CONCLUSION

The union failed to show that the employer engaged in unlawful discrimination under RCW 41.76.050(1)(a) by refusing to authorize an automatic payroll deduction and remittance

mechanism. The union enjoys no ascertainable right, benefit, or status under RCW 41.04.230(5) because the union has not introduced sufficient evidence to show that it meets the definition of a "professional organization." Concerning payroll deduction under RCW 41.04.230(6), that subsection provides a payroll deduction benefit only to state employees covered by Chapter 41.80 RCW and not to university faculty members covered by Chapter 41.76 RCW. The case is dismissed.

FINDINGS OF FACT

1. The University of Washington (employer) is a public four-year institution of higher education as defined in RCW 41.76.005(12). Service Employees International Union, Local 925 (union) is an employee organization as defined in RCW 41.76.005(6). Faculty Forward is a chapter of the union.

2. In the spring of 2015, the union started a campaign to organize the faculty of the employer pursuant to Chapter 41.76 RCW. At no time during this dispute did the union have status as the faculty's exclusive bargaining representative, and no petition for a representation election among the faculty had been filed by the union or any other employee organization.

3. As part of its effort to represent the faculty, the union solicited faculty members to voluntarily pay union dues. At the time it filed its complaint, the union advised the employer that approximately 107 faculty members began voluntarily paying union dues.

4. On August 22, 2016, the union's Director of Administration, Martha Taylor, requested that the employer create a payroll deduction mechanism on behalf of the union members to have dues deducted from their paychecks and remitted to the union. On August 23, 2016, Taylor forwarded the same request to an employee in the employer's payroll department, Shawna Litterski.

5. On August 23, 2016, Litterski responded with an e-mail requesting additional details on the category of employees for whom the union sought payroll dues deductions. Taylor

responded, stating "[T]hey are UW faculty employees who joined SEIU Local 925. The[y] do not have a contract at this time, but have joined as a non-CBA group. There are about 55. We were told the threshold to do payroll deduction is 50 or more."

6. On August 24, 2016, the employer's Assistant Vice President for Labor Relations, Peter Denis, denied Taylor's request. In his e-mail, Denis acknowledged that the employer provided payroll dues deductions to many other unions, but that in each case the union had been certified by the Commission as "the exclusive bargaining representative for the proposed group . . . ." Denis explained that because the union did not meet this criteria, its request was denied.

7. On August 24, 2016, the union's Organizing Director, Paul Dillon, responded to Denis's e-mail. Denis and Dillon subsequently exchanged a series of e-mail communications about the issue. The union stated that its request for payroll dues deductions was being made pursuant to RCW 41.04.230(6), which states that, under certain conditions, public employees may be eligible for payroll deductions when remitting dues and voluntary contributions to "[L]abor, employee, or retiree organizations." Dillon asked why the employer would deny the request to the union but grant the same request to two other organizations: the American Association for University Professors (AAUP) and the Professional Staff Organization (PSO).

8. On September 29, 2016, Dillon e-mailed Denis asking about the employer's response to the union's request. Denis responded to Dillon's e-mail on October 3, 2016, and offered additional reasons for denying the union's request. Specifically, Denis stated that "starting dues deduction during the existence of an active organizing campaign would place the UW in a situation where it has knowledge of individuals who have shown interest in supporting the union. As you can appreciate, that knowledge could prove problematic." Denis also explained that, while the employer did offer dues deductions for AAUP and PSO, those organizations were different because they were professional organizations while the union was a "labor union in the process of organizing the faculty." According to Denis, the employer was "not inclined to create a policy of beginning automatic payroll deductions

for unions during organizing campaigns" because doing so might cause employees to feel pressured into making contributions and because collecting union dues was primarily an internal union function.

9. In a letter dated November 3, 2016, the union's organizing committee responded to Denis's October 3, 2016, letter. The union addressed the employer's concern that offering payroll dues deduction would result in its knowledge of which employees had shown an interest in unionization. The union stated; "[W]e believe that UW already has knowledge of many of these individuals . . . " and that "[H]undreds of UW faculty have already made their support for unionization publicly available to UW in numerous ways . . . ." Second, the union observed that faculty members were provided payroll dues deductions for both multiple nonunion organizations and multiple unions representing staff and graduate students. According to the union, by denying it a similar benefit on the basis of its organizing campaign and status as a labor organization, the employer's actions would appear to be "disparate treatment and to constitute an unfair labor practice for discrimination . . . in violation of RCW 41.76.050." The letter concluded by urging reconsideration and by indicating that an unfair labor practice complaint would follow if the parties could not reach a mutually agreeable understanding.

10. In a letter dated November 10, 2016, Denis responded to the issues raised in the union's November 3, 2016, letter with four main points. First, Denis restated the prior concern that possessing a list of employees who supported unionization "could give rise to allegations of improper conduct" and stated that "creating a situation where perceptions of claims of retaliation are possible is something we wish to avoid." He further stated that, while the employer already possessed knowledge of faculty members who publicly supported unionization, the employer preferred not to expand that knowledge of supporters beyond what was publicly known. Second, Denis addressed the union's concerns about disparate treatment by stating that the union was not similarly situated to other organizations on campus that received remittances from payroll dues deductions. Those organizations, he pointed out, were either nonunion organizations (such has professional organizations); labor organizations that receive the benefit pursuant to a collective bargaining agreement

or statutory requirement; or professional organizations that converted into labor organizations and in doing so retained their payroll dues deduction benefit. Third, Denis stated that providing the union with payroll dues deduction would potentially obligate the employer to provide the same benefit to any other unrecognized unions that requested it, even in situations where multiple unions were competing against one another, and that the employer declined to set this precedent. Fourth, Denis explained that the employer's denial of the request for payroll dues deduction did not prevent faculty members from organizing or contributing to the union.

11. The employer deducts dues and remits them to labor organizations when required by law and by fully negotiated collective bargaining agreements. The employer does not provide payroll dues deductions for any labor organization seeking to represent employees for the purposes of collective bargaining that has not been certified by PERC as the exclusive representative of a bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.76 RCW.

2. RCW 41.04.230(5) and (6) do not apply to university faculty members covered by Chapter 41.76 RCW.

3. The union has not proven that the employer engaged in unlawful discrimination in violation of RCW 41.76.050(1)(c) by refusing to authorize an automatic payroll deduction and remittance mechanism for certain unrepresented faculty members paying voluntary dues to the union.

ORDER

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

ISSUED at Olympia, Washington, this 22nd day of January, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, 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

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 01/22/2019

DECISION 12964 - FCBA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 128632-U-16

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