

City of Bellingham (Washington State Council of County and City Employees), Decision 13299-A (PECB, 2021)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BELLINGHAM, Employer.	
GUILD OF PACIFIC NORTHWEST EMPLOYEES, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	CASE 132831-U-20 DECISION 13299-A - PECB DECISION OF COMMISSION

Nicholas Power, Attorney at Law, The Law Office of Nicholas Power, PLLC, for the Guild of Pacific Northwest Employees.

Ed Stemler, General Counsel, for the Washington State Council of County and City Employees.

The Washington State Council of County and City Employees (WSCCCE) represented a bargaining unit of nonuniformed public employees at the City of Bellingham. On October 14, 2019, the Guild of Pacific Northwest Employees (Guild) filed a petition to replace the WSCCCE as the exclusive bargaining representative of those employees. On May 21, 2020, the Public Employment Relations Commission (agency) certified the Guild as the bargaining unit employees' exclusive bargaining representative. *City of Bellingham*, Decision 13202 (PECB, 2020).

On May 22, 2020, the day after the agency's certification of the election result, WSCCCE President/Executive Director Chris Dugovich sent a memorandum to bargaining unit employees. The memorandum characterized the Guild as a minority union, explained employees' ability to maintain their WSCCCE membership, explained the benefits of continued membership, explained when employees could change their representative, encouraged employees to ensure the Guild operated fairly, and reminded employees that paying dues was voluntary.

On June 10, 2020, the Guild filed this unfair labor practice complaint alleging the WSCCCE had interfered with employee rights by sending the Dugovich memorandum to the members of the bargaining unit. In addition, the Guild charged that WSCCCE representative Joe Downes improperly requested two employees to sign a waiver and release document. Examiner Chris Casillas conducted a hearing and concluded that the union did not meet its burden of proving that the waiver and release document interfered with employee rights. *City of Bellingham (Washington State Council of County and City Employees)*, Decision 13299 (PECB, 2021). The Examiner further concluded that the memorandum Dugovich sent to bargaining unit members interfered with employee rights in violation of RCW 41.56.150(1). *Id.* The WSCCCE appealed the Examiner's latter ruling.

ISSUES

The issue before the Commission is whether the Examiner erred in ruling that statements in Dugovich's May 22, 2020, memorandum constitute interference under RCW 41.56.150(1).

The context in which statements are made is important in the consideration of an alleged violation of RCW 41.56.150(1). Here, Dugovich sent the memorandum after the Guild was certified as the employees' exclusive bargaining representative. To determine whether the WSCCCE interfered, we must determine whether the memorandum contained threats of reprisals or force, or promises of benefit. Applying that standard, we conclude that Dugovich's May 22, 2020, memorandum to bargaining unit employees did not interfere with employee rights. We reverse the Examiner.

ANALYSIS

Applicable Legal Standards

Standard of Review

The Commission reviews conclusions of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006). The Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

Interference

It is an unfair labor practice for a bargaining representative to interfere with, restrain, or coerce public employees in the exercise of rights guaranteed by chapter 41.56 RCW. RCW 41.56.150(1). A showing of intent is not required to prove an interference violation under RCW 41.56.150(1). *King County*, Decision 10183-A (PECB, 2008). To establish union interference and coercion in violation of RCW 41.56.150(1), a complainant must establish the existence of "union tactics involving violence, intimidation and reprisals." *Community College District 13 (Lower Columbia College)*, Decision 8117-B (PSRA, 2005) (citing *National Labor Relations Board v. Drivers Local 639*, 362 U.S. 274 (1960)). The standard for establishing an interference violation is whether the typical employee in similar circumstances reasonably could perceive the conduct as a threat of

reprisal or force, or a promise of benefit, related to the pursuit of rights protected by the statute. *Community College 13 (Lower Columbia College)*, Decision 8117-B.

Application of Standard

The Examiner analyzed the May 22, 2020, memorandum and found four misrepresentations. The Examiner concluded that a typical employee could perceive the combination of those misrepresentations with the tone of the memorandum as a threat of reprisal or force or a promise of benefit associated with their right to select their bargaining representative.

On appeal, the WSCCCE argues that chapter 41.56 RCW restricts free speech only to a limited degree. The WSCCCE contends that the Guild did not prove that the WSCCCE made threats of reprisal or force against an employee. Further, the WSCCCE argues that the May 22, 2020, memorandum did not meet the standard for union interference of violence, intimidation, or reprisals.

In response, the Guild argues that the memorandum contained misrepresentations and misstatements that impaired bargaining unit employees' ability to deal with the employer through their chosen exclusive bargaining representative. The Guild supports the Examiner's conclusion that the memorandum was coercive and violated RCW 41.56.150(1).

The context in which the communication takes place is relevant.

Union elections can be hard-fought, tumultuous events. During the pendency of representation elections, the Commission strives to maintain the "laboratory conditions" necessary to the determination of the "uninhibited desires of the employees." *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462 (PECB, 1986) (citing *General Shoe Corporation*, 77 N.L.R.B. 124 (1948)). Election misconduct that does not constitute an unfair labor practice "may yet destroy the laboratory conditions necessary to a free election." *Lake Stevens-Granite Falls Transportation Cooperative*, Decision 2462. Once an election has concluded, however, and the results have been certified by the agency, there is no ongoing mandate for the Commission to

regulate speech by a union to unit members not involving “violence, intimidation and reprisals.” *Community College District 13 (Lower Columbia College)*, Decision 8117-B.

Whether considered alone or in combination, given that the results of the representation election had been certified by the agency, the statements in the Dugovich memorandum cannot be said to express any threats involving violence, intimidation, or reprisals under *Community College District 13 (Lower Columbia College)*, Decision 8117-B. The statements in the Dugovich memorandum discussed by the Examiner are best identifiable as expressions of bitter disappointment in the outcome of a representation election. However ill-advised, sending the memorandum did not violate RCW 41.56.150(1).

CONCLUSION

The May 22, 2020, memorandum was sent after the union election results were certified by the agency, and hence presented no threat to the laboratory conditions that the agency is charged with maintaining during elections. Nor did the statements therein express any threats involving violence, intimidation, or reprisals, and hence they are not violative of RCW 41.56.150(1). A typical employee could not reasonably perceive the statements in the May 22, 2020, memorandum as a threat of reprisal or force, or a promise of benefit, related to the pursuit of rights protected by the statute. Therefore, we reverse the Examiner.

FINDINGS OF FACT

The findings of fact issued by Examiner Christopher J. Casillas are 1 through 9 and 15 AFFIRMED and adopted as the findings of fact of the Commission. Findings of fact 10, 11, and 14 are VACATED. The Commission substitutes and renumbers the following findings of fact:

10. The May 22 memorandum continued on to represent that employees could still maintain their membership in the WSCCCE and that it would be “available to assist [them] with any

work place issues that [they] can help with.” The Public Employees’ Collective Bargaining Act authorizes a public employer to engage in collective bargaining with the exclusive bargaining representative to include the mutual obligation of both parties to execute a written contract on personnel matters, including wages, hours, and working conditions. As of May 21, 2020, the Guild was certified as the exclusive bargaining representative.

11. Dugovich also stated in the May 22 memorandum that “exactly one year from the date of the certification” employees could return to the WSCCCE.
12. Dugovich advised members of the guild that “dues are voluntary!”
13. Following the distribution of the May 22 memorandum from Dugovich, the evidence showed that Komac received about 100 emails and a large number of phone calls from Guild members questioning the meaning and purpose of the memorandum. Komac’s unrefuted testimony was that the May 22 memorandum caused a “big disruption” and that it created “a lot of confusion and spread misinformation.”

CONCLUSIONS OF LAW

Conclusion of law 1 is **AFFIRMED** and adopted by the Commission. Conclusion of law 2 is **VACATED**. We substitute the following conclusion of law 2:

2. Through its actions described in findings of fact 5 through 12, the WSCCCE did not interfere with employee rights in violation of RCW 41.56.150(1).

ORDER

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

ISSUED at Olympia, Washington, this 6th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



RECORD OF SERVICE

ISSUED ON 07/06/2021

DECISION 13299-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132831-U-20

EMPLOYER: CITY OF BELLINGHAM

REP BY: SETH FLEETWOOD
CITY OF BELLINGHAM
210 LOTTIE ST
BELLINGHAM, WA 98225
mayorsoffice@cob.org

PARTY 2: GUILD OF PACIFIC NORTHWEST EMPLOYEES

REP BY: DEAN THARP
GUILD OF PACIFIC NORTHWEST EMPLOYEES
PO BOX 157
BELLINGHAM, WA 98226
deantharp0@gmail.com

NICHOLAS POWER
THE LAW OFFICE OF NICHOLAS POWER, PLLC
540 GUARD STE 150
FRIDAY HARBOR, WA 98250
nickedpower@gmail.com

PARTY 3: WSCCCE

REP BY: CHRIS DUGOVICH
WSCCCE
PO BOX 750
EVERETT, WA 98206-0750
c2everett@council2.com

ED STEMLER
WSCCCE
PO BOX 750
EVERETT, WA 98206
ed@council2.com