STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RIDGEFIELD SCHOOL DISTRICT, Employer.	
ANGELA HUTSON-CUMPSTON and JODI HUNZEKER, Complainants, vs. RIDGEFIELD CLASSIFIED ASSOCIATION, Respondent.	CASE 138698-U-24c DECISION 13912 - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Angela Hutson-Cumpston and Jodi Hunzeker, the complainants.

Margaret Olney, Attorney at Law, Bennett Hartman, for the Ridgefield Classified Association.

On September 22, 2023, complainant Angela Hutson-Cumpston filed an unfair labor practice (ULP) complaint against the Ridgefield Classified Association (union). The Hutson-Cumpston complaint was docketed as case 137685-U-23. The complaint was reviewed under WAC 391-45-110, and a cause of action statement was issued on October 19, 2023. The union's answer was filed on November 9, 2023. Separately, on November 27, 2023, complainant Jodi Hunzeker filed a ULP complaint against the union. The Hunzeker complaint was docketed as case 138002-U-23. This complaint was reviewed under WAC 391-45-110, and a deficiency notice was issued on December 6, 2023. An amended complaint was filed by Hunzeker on December 13, 2023, and a cause of action statement was issued December 19, 2023. The union's answer to the Hunzeker complaint was filed on January 9, 2024.

Both case 137685-U-23 and case 138002-U-23 were assigned to the undersigned Hearing Examiner for further proceedings. On February 12, 2024, the union filed a motion to consolidate

the proceedings. Both Hutson-Cumpston and Hunzeker were permitted to file a response brief. Complainant Hunzeker filed a response brief on February 22, 2024, and complainant Hutson-Cumpston filed a response brief on February 26, 2024. The complainants opposed the motion to consolidate. The union filed a reply brief on February 29, 2024. Both complaints involved a common set of facts, they were both filed against the same party, and the cause of action statements for the complaints were nearly identical. The undersigned Hearing Examiner issued a decision on March 7, 2024, finding consolidation appropriate and directing further proceedings to occur under consolidated case 138698-U-24c.

During a pre-hearing conference held February 13, 2024, the union stated its intent to file a motion for summary judgment. A briefing schedule, consistent with WAC 391-08-155, was established, with the union's opening brief due on April 9, 2024. On April 8, 2024, the union sought, and was granted, a one-week extension to file its opening brief. The union filed a motion for summary judgment on April 12, 2024. The initial motion was supported by exhibits and five separate declarations. On May 3, 2024, the undersigned Hearing Examiner received a request for an extension to file a response brief from complainant Hutson-Cumpston. An extension was granted until May 10, 2024. On May 3, 2024, complainant Hunzeker filed a response brief in opposition to the motion for summary judgment. The Hunzeker brief was supported by a sole declaration from Brian Hunzeker, along with several attached exhibits. Complainant Hutson-Cumpston did not file any brief or supporting evidence. A reply brief was filed by the union on May 17, 2024, with supporting declarations.

ISSUES

1. Are there genuine issues of material fact in dispute that would prevent judgment in this case?
2. If not, did the union interfere in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation owed to Angela Hutson-Cumpston and Jodi Hunzeker by
    a. Using its bargaining authority to negotiate a collective bargaining agreement that benefitted certain bargaining unit employees while at the same time making other

proposals that discriminated against other similarly situated bargaining unit employees?

b. Refusing to respond to Hutson-Cumpston's request for information?

The union's motion is granted as there are no issues of material fact in dispute, and it is entitled to judgment as a matter of law. The union did not interfere with the rights of Hutson-Cumpston and Hunzeker by breaching its duty of fair representation when it negotiated a collective bargaining agreement (CBA) with Ridgefield School District (district or employer) that created two Social Emotional Learning (SEL) Connection Center Mentor classifications at different rates of pay. The undisputed evidence demonstrates that the distinct classifications and pay structure were the consequences of different levels of duties created by the employer for the SEL-Connection Center Mentors at the primary and secondary school levels. The give and take of the collective bargaining process and the union's legitimate interest in creating distinct job classifications and pay structures based on assigned duties are not a basis for finding that the union breached its duty of fair representation. The record also does not support an interference charge against the union for failing to supply bargaining information requested by complainant Hutson-Cumpston.

BACKGROUND

The Ridgefield Classified Association is the exclusive bargaining representative for employees performing work as classified employees within the Ridgefield School District, as detailed in appendix A of the CBA between the parties. The CBA in effect at the time of the events giving rise to the complaint expired on August 31, 2023. A successor CBA became effective September 1, 2023. Historically, the CBA identified two distinct paraprofessional classifications: 1) Class I – Life Skills Paraprofessional and 2) Class II – Paraprofessional, both represented by the union. In approximately June 2019, the employer created a job description titled "Social Emotional Learning-Connection Center Mentor" (SEL-Connection Center Mentor) that included a unique set of job duties but was still categorized within the Class II – Paraprofessional classification and paid the same rate. Prior to the filing of their respective complaints, both Hunzeker and Hutson-Cumpston were hired as SEL-Connection Center Mentors. Both complainants were assigned to specific elementary schools within the district.

On November 4, 2022, the district and the union agreed upon a memorandum of understanding (MOU) to increase the compensation for the Class I Paraprofessional classification for the duration of the 2022-2023 school year. The MOU detailed an increase in the base rate of pay for that classification from $20.88 to $23.56 for entry level employees. Believing that the SEL-Connection Center Mentor position warranted similar treatment, Hunzeker sought a meeting with the then district Superintendent Nathan McCann. The meeting took place on November 22, 2022, and, according to Hunzeker, McCann agreed that the situation for the SEL-Connection Center Mentor position was similar to that of the Class I Paraprofessionals, the circumstances of which had been the subject of the recently executed MOU.

During a phone conversation prior to January 2, 2023, with Alicia Tisch, president of the union, Hunzeker recounted that Superintendent McCann had agreed that SEL-Connection Center Mentors should receive a three dollar per hour raise. Tisch expressed concern that individual bargaining unit members were meeting directly with the district's Superintendent to discuss wages, so Tisch subsequently reached out to the union's UniServe Director Lynn Davidson. Davidson emailed Superintendent McCann on January 6, 2023, following an earlier conversation, and reiterated that any compensation adjustments for members of the bargaining unit would need to occur during the upcoming contract negotiations and that otherwise the union believes that the district should not engage in any direct bargaining with members. Hunzeker subsequently requested a meeting between SEL-Connection Center Mentors and union leadership.

The parties met on January 20, 2023, and Hunzeker expressed frustration that the union had rejected the district's offer to increase SEL-Connection Center Mentor pay by three dollars per hour. Both Tisch and Davidson were surprised by Hunzeker's remarks because their belief was that no such offer had ever been made by the district, nor had the union rejected it. Davidson did express, however, that attempting to negotiate an MOU to change compensation so close to the start of bargaining for a new CBA would not be in the union's best interest. To address any confusion, however, at Tisch's suggestion, Hunzeker agreed to meet directly with Superintendent McCann, Executive Director of Student Services Michael Baskette, and Tisch. This meeting occurred on February 6, 2023, during which time the district officials confirmed that they had not

offered any type of raise for SEL-Connection Center Mentors; although, they did acknowledge the possibility of creating a new job classification.

In early 2023, the union began preparing for the upcoming contract negotiations with the district, with the agreement at that time expiring on August 31, 2023. Tisch recruited a bargaining team of six members of the union, including herself and Davidson. The members of the bargaining team included an SEL-Connection Center Mentor at the high school; a Paraprofessional I at the intermediate/junior high school level; a Paraprofessional I at the elementary school level; a Class II Information Technology Specialist; and an Early Learning Center (ELC) Lead. In preparation for bargaining, the team sent a survey to its members and met with them at each of the schools to develop a list of concerns and priorities for bargaining. Based on member feedback, the bargaining team identified three priorities for the upcoming negotiations: greater recognition of the differences between different jobs and positions, more opportunities for career advancement, and overall higher wages.

Negotiations between the union and the district commenced on May 23, 2023. Consistent with the union's stated bargaining objectives, one of the proposals initially advanced by the union was to create four new distinct paraprofessional classifications. At a separate meeting on May 26, 2023, Tisch and Davidson met with Baskette and Assistant Superintendent Chris Griffith. The district informed the union's representatives of its desire to modify the job description for the SEL-Connection Center Mentors at the high school and possibly middle school level. The change would have required the SEL-Connection Center Mentors at those levels to supervise what the district refers to as "in-school suspensions" (ISS). Prior to the next scheduled bargaining session, the union's bargaining team shared this information with the entire committee, including Pam Riverman, an SEL-Connection Center Mentor working at the high school level. Riverman acknowledged that there was some merit to the idea as it would provide benefits to students but expressed concern with adding what she characterized as a significant new job duty for SEL-Connection Center Mentors.

The bargaining process between the parties continued over the next several months, but it was not until August 2023 that the parties reengaged in salary negotiations. At a bargaining session on

August 3, 2023, the union formally advanced a proposal that would create two separate SEL-Connection Center Mentor classifications, with the high school level classification paid more than two dollars per hour higher than the elementary classification. The union explained that the separation of the job classifications and different rates of pay were based on the district's interest in requiring high school level SEL-Connection Center Mentors to supervise ISS students. The district's initial economic counterproposals did not address the union's interest in creating additional classifications at different rates of pay, including for SEL-Connection Center Mentors. Specifically, in its responsive economic proposals of August 3, 2023, and August 7, 2023, the district reaffirmed its position on maintaining the two historical paraprofessional classifications and resisted creating new SEL-Connection Center Mentor classifications. Through its August 18, 2023, economic proposal, however, the district's position shifted, and it also proposed creating two SEL-Connection Center Mentor classifications at different rates of pay.

On August 30, 2023, the parties successfully finalized a tentative agreement on a new CBA. The union scheduled a ratification meeting with its membership for September 5, 2023. At the ratification meeting, members were provided an excerpt of the new CBA with the tentatively agreed upon language along with a copy of the new proposed salary schedule. The tentative agreement included several new paraprofessional classifications and two new SEL-Connection Center Mentor classifications. The new salary schedule detailed a rate of $26.50 per hour for the SEL-Connection Center Mentor classification at the high school and intermediate/middle school level and $24.96 per hour at the elementary school level. A ratification vote was taken by the membership, and the new proposed agreement passed on a vote of 73 votes in favor and 3 votes against.

During the union's ratification meeting, Hunzeker questioned the bargaining team as to why a different rate of pay for SEL-Connection Center Mentors at the high school/intermediate level and elementary level was warranted. The bargaining team explained that the difference was due to the district adding additional job duties at the high school/intermediate level. Following the union's meeting, the complainants attended a school board meeting where the new proposed CBA between the district and union was being considered for ratification. The complainants asserted that there

had been a mistake in creating separate pay structures for the SEL-Connection Center Mentor classifications. The CBA was ratified by the school board.

Following the ratification meetings, Hunzeker and Hutson-Cumpston requested a meeting with union officials to discuss the new agreement. Before the meeting, Hunzeker and Hutson-Cumpston requested copies of the union's constitution and bylaws. In an email exchange on September 18, 2023, Davidson indicated that the constitution and bylaws would be provided to the complainants in a separate email. When both Hunzeker and Hutson-Cumpston stated they had not received them, Tisch emailed back indicating copies would be provided at the meeting. Due to an inability to agree upon meeting parameters, the actual meeting never took place. In an email dated September 25, 2023, Davidson provided Hunzeker and Hutson-Cumpston a copy of the constitution and bylaws for the union.

On October 25, 2023, Hunzeker submitted a request to the district seeking a reclassification of her position from a Social Emotional Learning-Connection Center Mentor at the elementary level, now classified as a Class III Mentor, to a Social Emotional Learning-Connection Center Mentor HS, MS, IS position, now classified as a Class II Mentor. The district denied Hunzeker's reclassification request, and in so doing it confirmed a number of critical points with respect to the parties' new CBA. As noted by the district in its denial letter, "consistent with the contract negotiations between the District and the RCA that occurred this summer, only Class II Mentors (i.e., those at the intermediate, middle, and high schools) are required to supervise students assigned to in-school suspension ("ISS")." The district went on to note that the Class II and Class III Mentors are distinguishable principally because "the former are required to supervise students during ISS." In closing the letter, Interim Superintendent Griffith stated that "the District has made the administrative decision not to require Class III Mentors to perform supervision of ISS, and the District and the RCA have negotiated separate classifications based in large part on that distinction."

ANALYSIS

Applicable Legal Standard(s)

Summary Judgment

Summary judgment is properly granted if there are no material issues of fact and the moving party is entitled to judgment as a matter of law. *Spokane County*, Decision 13510-B (PECB, 2022) (citing *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995)); WAC 10-08-135. A material fact is one upon which the outcome of the litigation depends. *Id.* (citing *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249 (1993)). The trier of fact must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Id.* The motion should be granted if, from all the evidence, a reasonable person could reach but one conclusion. *Id.*

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (PECB, 2001) (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Id.* (citing *City of Seattle*, Decision 4687-A (PECB, 1996)). When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (PSRA, 2021), *aff'd*, Decision 13333-A (PSRA, 2021) (citing *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014)).

The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *Id.* (citing *State – General Administration*, Decision 8087-B, PSRA, 2004). Consistent with Civil Rule 56, if the nonmoving party fails to [respond], summary judgment may then be appropriate. *Id.*; *Atherton Condominium Apartment-Owners Association Board of*

Directors v. Blume Development Co., 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states the following:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The facts that the nonmoving party must submit in response to a summary judgment motion cannot be based solely off pleadings or be conclusory in nature; instead, they must come in the form of evidence. As noted by the Washington Court of Appeals, "[t]he 'facts' required by CR 56(e) to defeat a summary judgment motion are evidentiary in nature. Ultimate facts or conclusions of fact are insufficient. Likewise, conclusory statements of fact will not suffice." *Overton v. Consolidated Insurance Co.*, 145 Wn.2d, 417, 431, 38 P.3d 322 (2002) (citing *Grimwood v. University of Puget Sound*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988)). "In opposing summary judgment, a party may not rely merely upon allegations or self-serving statements." *Haley v. Amazon.com Services, LLC*, 25 Wn. App. 2d 207, 220, 522 P.3d 80 (2022) (citing *Newton Insurance Agency & Brokerage, Inc. v. Caledonian Insurance Group, Inc.*, 114 Wn. App. 151, 157 , 52 P.3d 30 (2002)). "[T]he nonmoving party cannot rely on the allegations made in its pleadings." *Id.* at 221 (*citing Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)). The nonmoving party "must respond with affidavits or other documents allowed by Civil Rule 56(e)." *Id.* (citing *Seybold v. Neu*, 105 Wn. App. 666, 676, 19 P.3d 1068 (2001)).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003) (citing *Port of Seattle*, Decision 7000 (PECB, 2000)).

Duty of Fair Representation

The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the "exclusive bargaining representative" under a collective bargaining agreement. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002) (citing *City of Seattle (IFPTE, Local 17)*, Decision 3199-B (PECB, 1991)). The Commission is

vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. *Id*.

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington Supreme Court adopted three standards to measure whether a union has breached its duty of fair representation:

1. The union must treat all factions and segments of its membership without hostility or discrimination.
2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.
3. The union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

A union breaches its duty of fair representation when its conduct is more than merely negligent; it must be arbitrary, discriminatory, or in bad faith or be based on considerations that are irrelevant, invidious, or unfair. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333, *aff'd,* Decision 13333-A (citing *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967)). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (WSCCCE)*, Decision 1825 (PECB, 1984).

A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action unless the member can prove that the union violated rights guaranteed in statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). In collective bargaining, there is no statutory requirement that guarantees each member of the bargaining unit the accomplishment of their individual goals or even adoption of those goals by the union. *City of Seattle*, Decision 3470-A (PECB, 1990). Being involved in a collective process necessarily requires the individual to submit to the will of the majority. *Id.* A wide range of reasonableness must be allowed the statutory bargaining representative in serving the unit it represents. *Id.*

Application of Standard(s)

No Genuine Issues of Material Fact

As the nonmoving party, the complainants failed to produce any evidence demonstrating a material fact in dispute as it pertains to the issues detailed in the cause of action statement. In response to the union's motion for summary judgment, complainant Hunzeker filed a six-page brief, a two-page declaration from her husband, and fourteen pages of emails. Complainant Hutson-Cumpston filed no responsive brief or supporting evidence. In the responsive brief by Hunzeker, the complainant repeatedly asserts that union officials utilized a hostile approach towards her and engaged in a series of alleged arbitrary actions. However, outside of these declarative statements in the responsive brief, the complainants have failed to produce any supporting evidence pertaining to the material facts at issue in this proceeding.

The declaration by complainant Hunzeker's husband, Brian Hunzeker, is centered on refuting specific actions or statements allegedly made by him or describing hearsay statements that he allegedly heard from the district or union members. Nothing in the declaration pertains directly to the issues at hand, that is, whether the union interfered with the rights of Hunzeker and Hutson-Cumpston by breaching its duty of fair representation pertaining to the recent CBA negotiations or by withholding information. The fourteen pages of emails attached to the brief almost exclusively fall outside of the statute of limitations for the Hunzeker complaint and, at best, could only be considered for background purposes. Setting that fatal point aside, the emails themselves only document efforts by the parties to meet about pre-bargaining efforts to adjust SEL-Connection Center Mentors' pay and the outcome of those meetings. The only emails within the six-month statute of limitations pertain to a member rally scheduled by the union in August 2023 and some logistical details around the union's ratification meeting in September. The complainants have produced no additional evidence for the purposes of this dispositive motion.

In ruling on a motion for summary judgment, the Commission applies the same standards as the Washington State courts that require the nonmoving party to produce evidence creating a genuine issue of material fact to defeat the motion. These standards do not treat all potential forms of evidence the same. Information in pleadings or briefs or conclusory statements of fact are not sufficient. The nonmoving party has an affirmative responsibility to support its opposition to the

dispositive motion with actual evidence in the form of declarations or relevant documentary evidence to demonstrate one or more material facts to be in dispute.

In this case, the complainants have failed to meet this requirement. Complainant Hutson-Cumpston submitted no filings in response to the motion for summary judgment. The declaration filed by complainant Hunzeker's husband, who is not a member of the bargaining unit, contains no evidence about what occurred between the union and the district during CBA negotiations in the spring and summer of 2023 or information allegedly withheld by the union regarding either complainant. The attached emails, most of which fall outside the statute of limitations, only confirm some details around meetings that occurred outside of the CBA bargaining process and, separately, document a few logistical details associated with the union's ratification meeting. Although the complainants assert arbitrary actions and bad faith behavior by the union, the record is devoid of any evidence that could remotely support such an allegation, even when viewed in the light most favorable to the complainants.

What remains is uncontested evidence submitted by the union in support of its motion for summary judgment that details a series of events regarding negotiations between the union and the district during the spring and summer months of 2023 and the union's response to information requested by complainants. That evidence makes clear the following narrative.

In preparing for the upcoming CBA negotiations for a successor agreement with the district, the union compiled a bargaining team of individuals from a range of jobs within the union's bargaining unit, including an SEL-Connection Center Mentor. One of the priorities identified by the union's bargaining team was to create more distinct job classifications to better recognize, and compensate for, the different jobs done by its members. During the bargaining process, the district informed the union that it wanted to add a new job duty for the SEL-Connection Center Mentors at the high school and intermediate school levels to include ISS supervision. Ultimately through the course of negotiations, the parties agreed to create two separate SEL-Connection Center Mentor classifications, with a higher rate of pay for the high school and intermediate levels due to the added duty of ISS supervision.

Absent their ability to raise a genuine issue of material fact as it relates to the legal allegations in this case, the union is entitled to judgment as a matter of law so long as this record does not support a finding that it breached its duty of fair representation. The limited evidence supplied by the complainants in opposition to the motion for summary judgment does not contest any of the material facts that are dispositive to the outcome of this case. Complainant Hunzeker's opposition brief to the motion for summary judgment only contains minimal evidence about events that either occurred outside of the statute of limitations or that weren't relevant to the topics at issue in the cause of action statement. Separately, the complainants offer no evidence to refute a showing by the union that it supplied the requested information to the complainants. Even when viewing that limited evidence in favor of the nonmoving party, the record does not support a finding that there is a dispute over any genuine issue of material fact. If, based on the record, the facts do not support a finding that the union breached its duty of fair representation and unlawfully interfered with the rights of the complainants, then summary judgment is appropriate.

The Union Did Not Breach Its Duty of Fair Representation

The record cannot support a finding that the union acted with a discriminatory purpose, in bad faith, or in an arbitrary manner when negotiating its most recent CBA with the district that resulted in the creation of two SEL-Connection Center Mentor classifications at different rates of pay. Collective action and managing groups of diverse individuals is an inherently risky business. In such endeavors, it is nearly impossible to satisfy all individuals, at all times, in all ways. Individual preferences, even when there is general alignment in a broader cause or purpose, will always vary. Within this structure some individuals are inevitably dissatisfied with group decisions, as those decisions impact them personally, even though they broadly support the group as a whole. So is the paradox of collective bargaining.

The union's confrontation with this paradox during the spring and summer of 2023, when negotiating a successor CBA, comported with its duty of fair representation owed to the complainants. Consistent with the standard practice of most unions, the union prioritized certain group goals and negotiated for an expansion of job classifications within the bargaining unit and a rate of pay commensurate with assigned duties. When confronted with the district's stated intent of adding ISS as an additional duty for SEL-Connection Center Mentors at the high school and

intermediate levels, the union acted within the bounds of reasonableness, consistent with its earlier stated bargaining objectives, to insist on a higher level of pay for a classification requiring more responsibility. During the bargaining process, the district eventually came to the same conclusion, and the parties were able to reach a tentative agreement on this, and other points, and the resulting agreement was overwhelmingly ratified by the respective parties. Contrary to acting in bad faith or in an arbitrary manner, the decision to separate the job classifications and vary pay rates for each classification based on required duties has a clear and benign rationale that is, frankly, consistent with the dominant approach by most labor representatives.

The complainants have asserted that these events, in and of themselves, evidence arbitrary and bad faith conduct, such as the union's belief and assumption that SEL-Connection Center Mentors at the elementary level do not do ISS work, and they argue that the hostility of union representatives toward the complainants was the reason for creating this distinction in classifications. The problem with these assertions is that the evidence does not support these claims or flatly contradicts them. The complainants are adamant that the union breached its duty of fair representation in distinguishing the SEL-Connection Center Mentors at the high school/intermediate levels and elementary levels because the ISS responsibility is done by all mentors across all levels. The problem with this assertion is that it is contradicted by the evidence, which shows that *the district* created this distinction. It was *the district* who approached the union early in bargaining to inform it of the district's desire to add ISS work to the high school/intermediate levels only. In denying Hunzeker's reclassification, *the district* again confirmed that it was the one that proposed this distinction and agreed with the union that the addition of this job duty warranted a higher rate of pay for the mentors at the high school/intermediate levels. Far from a mistake, the evidence shows this was a deliberate outcome following a decision by the district to assign new work to specific SEL-Connection Center Mentors.

Likewise, while the complainants believe that there was a significant amount of animosity between them and union officials, there is no evidence that this was a shared perspective from the union or that, even if such feelings existed, they in any way impacted the bargaining process. The unrefuted evidence shows that prior to the start of bargaining, based on membership input, the union prioritized expanding the number of job classifications in the unit to capture distinct jobs being

performed that, historically, had been limited to just two separate paraprofessional classifications. The outcome here—the creation of multiple new paraprofessional classifications, including two new SEL-Connection Center Mentor classifications—is entirely consistent with this pre-established rationale taken by the union's bargaining team and derived from member feedback. The record lacks any evidence to show that during negotiations the union's bargaining team members had, at any time, advocated for a distinction in the SEL-Connection Center Mentor classifications and corresponding rates of pay based off any personal animosity among members of that bargaining committee toward the complainants or to discriminate against particular members.

The duty of fair representation is a legal accountability standard imposed on unions as an outgrowth of their right to serve as the exclusive bargaining representative to ensure that in exercising this right, the union does not act in an arbitrary, discriminatory, or bad faith manner. It is not, however, a standard that permits tribunals like this one to second guess the wisdom of otherwise good-faith decisions even when decisions were mistaken or when particular members fervently object to those choices. The standard inherently permits the union a wide berth in navigating a way forward, particularly within the confines of the messiness of collective bargaining. It is almost always the case that a particular path selected by a union will upset or frustrate individual members. But this is an unfortunate consequence of collective actions and not, by itself, a violation of the duty of fair representation. To prove that duty was violated, the complainants would need to produce sufficient evidence showing actions by the union that are arbitrary, discriminatory, or done in bad faith. The failure to do so here means that the union did not interfere with the rights of the complainants in violation of RCW 41.56.150(1) by breaching the duty of fair representation.

The complainants' assertion that union's failure to supply Hutson-Cumpston with requested information interferes with their rights under RCW 41.56.150(1) must also fail because the undisputed facts do not support this charge. The unrefuted evidence in the record demonstrates that information requested from the union by the complainants was provided in a timely manner. A copy of the agenda and materials provided at the ratification meeting on September 5, 2023, shows that the union supplied its members attending the meeting a copy of the new CBA showing

where changes were made, a copy of an MOU regarding AA degree requirements, and the new salary schedule for all bargaining unit classifications. Separately, an email dated September 25, 2023, from Davidson to both Hunzeker and Hutson-Cumpston confirms that copies of the union's constitution and bylaws were supplied to the complainants. Despite assertions to the contrary, the evidence shows that information sought by the complainants from the union was supplied within a reasonable period of time following their request. The absence of any evidence that the union acted in an arbitrary, discriminatory, or bad faith manner in responding to the information requests must result in the dismissal of an interference charge in violation of RCW 41.56.150(1).

CONCLUSION

Summary judgment is appropriate because there are no genuine issues of material fact and the union is entitled to judgment as a matter of law. The union did not breach its duty of fair representation owed to complainant Hunzeker or complainant Hutson-Cumpston in negotiating a collective bargaining agreement that created two distinct SEL-Connection Center Mentor classifications with different rates of pay. The lack of evidence that the union withheld any information requested by the complainants also necessitates dismissal of this charge. The union did not unlawfully interfere with the rights of Hunzeker or Hutson-Cumpston in violation of RCW 41.56.150(1).

FINDINGS OF FACT

1. Ridgefield School District is a public employer as defined by RCW 41.56.030(13).

2. Ridgefield Classified Association is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of employees performing work as classified employees within the Ridgefield School District.

3. Complainants Angela Hutson-Cumpston and Jodi Hunzeker are members of the bargaining unit described in finding of fact 2 and are employees of the Ridgefield School District described in finding of fact 1.

4. During the events giving rise to the complaints, two collective bargaining agreements between the parties described in findings of fact 1 and 2 existed, with the first agreement operating from September 1, 2020, and expiring on August 31, 2023, and a successor agreement taking effect September 1, 2023.

5. Complainants Hutson-Cumpston and Hunzeker initially held the job title of Social Emotional Learning-Connection Center Mentor (SEL—Connection Center Mentor), which was formally classified as a Class II – Paraprofessional under the CBA in effect between September 1, 2020, and August 31, 2023. Hutson-Cumpston and Hunzeker were assigned to work in specific elementary schools within the district. Under the successor agreement effective September 1, 2023, both Hutson-Cumpston and Hunzeker were reclassified as Class III Mentors.

6. On November 4, 2022, the district and the union agreed upon a memorandum of understanding (MOU) to increase the compensation for the Class I Paraprofessional classification for the duration of the 2022-2023 school year. The MOU detailed an increase in the base rate of pay for that classification from $20.88 to $23.56 for entry level employees.

7. Believing that the SEL-Connection Center Mentor position warranted similar treatment, Hunzeker sought a meeting with the then district Superintendent Nathan McCann. The meeting took place on November 22, 2022, and, according to Hunzeker, McCann agreed that the situation for the SEL-Connection Center Mentor position was similar to that of the Class I Paraprofessionals, the circumstances of which had been the subject of the recently executed MOU.

8. During a phone conversation prior to January 2, 2023, with Alicia Tisch, president of the union, Hunzeker recounted that Superintendent McCann had agreed that SEL-Connection Center Mentors should receive a three dollar per hour raise. Tisch expressed concern that individual bargaining unit members were meeting directly with the district's Superintendent to discuss wages, so Tisch subsequently reached out to the union's UniServe Director Lynn Davidson. Davidson emailed Superintendent McCann on January 6, 2023, following an earlier conversation, and reiterated that any compensation

adjustments for members of the bargaining unit would need to occur during the upcoming contract negotiations and that otherwise the union believes that the district should not engage in any direct bargaining with members. Hunzeker subsequently requested a meeting between SEL-Connection Center Mentors and union leadership.

9. Hunzeker and some members of the union's leadership team met on January 20, 2023, and Hunzeker expressed frustration that the union had rejected the district's offer to increase SEL-Connection Center Mentor pay by three dollars per hour. Both Tisch and Davidson were surprised by Hunzeker's remarks because their belief was that no such offer had ever been made by the district, nor had the union rejected it. Davidson did express, however, that attempting to negotiate an MOU to change compensation so close to the start of bargaining for a new CBA would not be in the union's best interest.

10. To address any confusion, however, at Tisch's suggestion, Hunzeker agreed to meet directly with Superintendent McCann, Executive Director of Student Services Michael Baskette, and Tisch. This meeting occurred on February 6, 2023, during which time the district officials confirmed that they had not offered any type of raise for SEL-Connection Center Mentors; although, they did acknowledge the possibility of creating a new job classification.

11. In early 2023, the union began preparing for the upcoming contract negotiations with the district, with the agreement at that time expiring on August 31, 2023. Tisch recruited a bargaining team of six members of the union, including herself and Davidson. The members of the bargaining team included an SEL-Connection Center Mentor at the high school; a Paraprofessional I at the intermediate/junior high school level; a Paraprofessional I at the elementary school level; a Class II Information Technology Specialist; and an Early Learning Center (ELC) Lead.

12. In preparation for bargaining, the team sent a survey to its members and met with them at each of the schools to develop a list of concerns and priorities for bargaining. Based on member feedback, the bargaining team identified three priorities for the upcoming negotiations: greater recognition of the differences between different jobs and positions, more opportunities for career advancement, and overall higher wages.

13. Negotiations between the union and the district commenced on May 23, 2023. Consistent with the union's stated bargaining objectives, one of the proposals initially advanced by the union was to create four new distinct paraprofessional classifications.

14. At a separate meeting on May 26, 2023, Tisch and Davidson met with Baskette and Assistant Superintendent Chris Griffith. The district informed the union's representatives of its desire to modify the job description for the SEL-Connection Center Mentors at the high school and possibly middle school level. The change would have required the SEL-Connection Center Mentors at those levels to supervise what the district refers to as "in-school suspensions" (ISS). Prior to the next scheduled bargaining session, the union's bargaining team shared this information with the entire committee, including Pam Riverman, an SEL-Connection Center Mentor working at the high school level. Riverman acknowledged that there was some merit to the idea as it would provide benefits to students but expressed concern with adding what she characterized as a significant new job duty for SEL-Connection Center Mentors.

15. The bargaining process between the parties continued over the next several months, but it was not until August 2023 that the parties reengaged in salary negotiations. At a bargaining session on August 3, 2023, the union formally advanced a proposal that would create two separate SEL-Connection Center Mentor classifications, with the high school level classification paid more than two dollars per hour higher than the elementary classification. The union explained that the separation of the job classifications and different rates of pay were based on the district's interest in requiring high school level SEL-Connection Center Mentors to supervise ISS students.

16. The district's initial economic counterproposals did not address the union's interest in creating additional classifications at different rates of pay, including for SEL-Connection Center Mentors. Specifically, in its responsive economic proposals of August 3, 2023, and August 7, 2023, the district reaffirmed its position on maintaining the two historical paraprofessional classifications and resisted creating new SEL-Connection Center Mentor classifications. Through its August 18, 2023, economic proposal, however, the district's

position shifted, and it also proposed creating two SEL-Connection Center Mentor classifications at different rates of pay.

17. On August 30, 2023, the parties successfully finalized a tentative agreement on a new CBA. The union scheduled a ratification meeting with its membership for September 5, 2023. At the ratification meeting, members were provided an excerpt of the new CBA with the tentatively agreed upon language along with a copy of the new proposed salary schedule. The tentative agreement included several new paraprofessional classifications and two new SEL-Connection Center Mentor classifications. The new salary schedule detailed a rate of $26.50 per hour for the SEL-Connection Center Mentor classification at the high school and intermediate/middle school level and $24.96 per hour at the elementary school level. A ratification vote was taken by the membership, and the new proposed agreement passed on a vote of 73 votes in favor and 3 votes against.

18. During the union's ratification meeting, Hunzeker questioned the bargaining team as to why a different rate of pay for SEL-Connection Center Mentors at the high school/intermediate level and elementary level was warranted. The bargaining team explained that the difference was due to the district adding additional job duties at the high school/intermediate level.

19. Following the union's meeting, the complainants attended a school board meeting where the new proposed CBA between the district and union was being considered for ratification. The complainants asserted that there had been a mistake in creating separate pay structures for the SEL-Connection Center Mentor classifications. The CBA was ratified by the school board.

20. Following the ratification meetings, Hunzeker and Hutson-Cumpston requested a meeting with union officials to discuss the new agreement. Before the meeting, Hunzeker and Hutson-Cumpston requested copies of the union's constitution and bylaws. In an email exchange on September 18, 2023, Davidson indicated that the constitution and bylaws would be provided to the complainants in a separate email. When both Hunzeker and Hutson-Cumpston stated they had not received them, Tisch emailed back indicating copies would be provided at the meeting. Due to an inability to agree upon meeting parameters,

the actual meeting never took place. In an email dated September 25, 2023, Davidson provided Hunzeker and Hutson-Cumpston a copy of the constitution and bylaws for the union.

21. On October 25, 2023, Hunzeker submitted a request to the district seeking a reclassification of her position from a Social Emotional Learning-Connection Center Mentor at the elementary level, now classified as a Class III Mentor, to a Social Emotional Learning-Connection Center Mentor HS, MS, IS position, now classified as a Class II Mentor. The district denied Hunzeker's reclassification request, and in so doing it confirmed a number of critical points with respect to the parties' new CBA. As noted by the district in its denial letter, "consistent with the contract negotiations between the District and the RCA that occurred this summer, only Class II Mentors (i.e., those at the intermediate, middle, and high schools) are required to supervise students assigned to in-school suspension ("ISS")." The district went on to note that the Class II and Class III Mentors are distinguishable principally because "the former are required to supervise students during ISS." In closing the letter, Interim Superintendent Griffith stated that "the District has made the administrative decision not to require Class III Mentors to perform supervision of ISS, and the District and the RCA have negotiated separate classifications based in large part on that distinction."

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. As described in findings of fact 5-19 and 21, the union did not interfere with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation owed to Hutson-Cumpston and Hunzeker by using its bargaining authority to negotiate a collective bargaining agreement that benefitted certain bargaining unit employees while at the same time making other proposals that discriminated against other similarly situated bargaining unit employees.

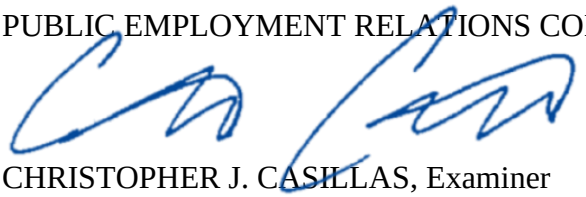
3. As described in finding of fact 20, the union did not interfere with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation owed to Hutson-Cumpston and Hunzeker by refusing to respond to Hutson-Cumpston's request for information.

ORDER

The complaints charging unfair labor practices filed in the above-captioned matter are DISMISSED.

ISSUED at Olympia, Washington, this 17th day of July, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTOPHER J. CASILLAS, 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.