

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF	)	
STATE EMPLOYEES,	)	
	)	CASE 17946-U-04-4627
Complainant,	)	
	)	DECISION 8878 - PSRA
vs.	)	
	)	
UNIVERSITY OF WASHINGTON,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	
	)	

Parr & Younglove, by *Edward E. Younglove*, Attorney at Law, for the union.

Christine O. Gregoire, Attorney General, by *Jeffrey W. Davis*, Assistant Attorney General, for the employer.

On October 10, 2003, the Washington Federation of State Employees (union) filed a complaint with the Public Employment Relations Commission, naming the University of Washington (employer) as the respondent. A preliminary ruling and deferral inquiry was issued on February 13, 2004, finding that a cause of action existed. The allegations concern the skimming of bargaining unit work performed by stockroom attendants, patient service representatives and financial services counselors, in violation of RCW 41.56.140(1) and (4). The employer filed an answer to the complaint on March 5, 2004. On March 10, 2004, an amended complaint was filed by the union. On March 16, 2004, an amended preliminary ruling was issued adding the transfer of work of the clinical laboratory technician position to the charge. The employer's amended answer was filed on April 2, 2004. On July 26, 2004, a hearing was held before

Examiner Christy L. Yoshitomi. Both parties submitted post-hearing briefs.

Prior to 2002, the Washington State Personnel Resources Board (PRB) maintained jurisdiction of higher education institutions under Chapter 41.06 RCW and rules developed under Title 251 of the Washington Administrative Code. In 2002, the authority to regulate higher education unfair labor practices, unit determinations, and representation proceedings was transferred to the Public Employment Relations Commission. The Commission's regulation of higher education institutions continued under Chapter 41.06 RCW until July 1, 2004, when this chapter was replaced by Chapter 41.80 RCW. As this charge was filed on October 23, 2003, Chapter 41.06 RCW is the applicable statute under which the Commission attains authority.

ISSUE

Did the employer skim bargaining unit work previously performed by the following classifications?

- a. Stockroom attendants
- b. Central processing technicians
- c. Patient service representatives
- d. Financial service counselors

On the basis of the record presented as a whole, the Examiner holds that the employer violated RCW 41.46.140(1) and (4), by skimming stockroom attendant and central processing technician work from the bargaining unit.

ANALYSIS

RCW 41.06.340 states that "each and every provision of RCW 41.56.140 through RCW 41.56.160 shall be applicable to this chapter as it relates to state civil service employees." RCW 41.56.140 states:

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

.
(4) To refuse to engage in collective bargaining.

Thus, under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer commits an unfair labor practice if it refuses to engage in collective bargaining with the exclusive bargaining representative of its employees.

This bargaining obligation extends to situations where an employer seeks to remove work from a bargaining unit. Where an employer transfers bargaining unit work to non-unit employees without fulfilling its bargaining obligation, an unfair labor practice will be found for unlawful "skimming" of unit work. See *South Kitsap School District*, Decision 472 (PECB, 1978); and *City of Spokane*, Decision 6232 (PECB, 1998).

As stated in the *Port of Seattle*, 124 Wn. App. 1008 (2004), "the harmful effect of [skimming] results from the prejudicial effect on the status and integrity of the bargaining unit. The detriment from [skimming] may only be felt in the future, such as when transfers of bargaining unit work eventually lead to erosion of work opportunities, loss of promotional opportunities, and adverse

effects on the job security of bargaining unit employees." This can have a detrimental impact on a bargaining unit.

To find a skimming violation, the following three elements must be found:

- (A) The work at issue was bargaining unit work. *City of Tacoma*, Decision 6601 (PECB, 1999).
- (B) The bargaining unit work was transferred to non-unit employees of the same employer. *Kitsap School District*, Decision 472 (PECB, 1978).
- (C) The employer did not provide notice to the union giving it an opportunity to bargain over the transfer of work. Or, if the union received notice, the employer did not bargain in good faith upon request by the union. *Spokane County Fire District 9*, Decision 3484 (PECB, 1990).

This three-prong test is used in the following analysis.

Stockroom Attendants

The work at issue is bargaining unit work. Bargaining unit work is defined as work that has historically been performed by bargaining unit employees. Once an employer assigns unit employees to perform a certain body of work, that work attaches to the unit and becomes bargaining unit work.

From at least 1992, stockroom attendants I, II & leads (hereinafter referred to as stockroom attendants) worked at the employer's Harborview Medical Center (HMC) medical store. These stockroom

attendant positions are included within a broad bargaining unit of "classified staff employees of the University of Washington performing work at Harborview Medical Center . . ." represented by the Washington Federation of State Employees (WFSE).

Prior to the recent reorganization of the HMC stockroom, the stockroom attendants were centralized in the basement of the hospital. In the basement, the attendants stocked and inventoried medical supplies. When requested, an attendant would distribute the supplies to the nursing staff of the HMC. This procedure is initiated by nurses calling the store and requesting medical supplies be provided to them. The attendant would then find the requested supplies and transport them to the appropriate location within the HMC. As stated in evidence presented at the hearing, the basic function of the stockroom attendant is to "receive and dispense stockroom supplies and equipment using a manual or automated inventory system."

The work described above has traditionally been performed by bargaining unit employees.¹ Because this work had been performed by members of the bargaining unit represented by the WFSE, this particular work belongs to that bargaining unit.

The bargaining unit work was transferred to non-unit employees of the employer when it reclassified the stockroom attendants to program assistants. When the above process was used to stock and distribute medical supplies within HMC, the employer determined there were many inefficiencies and frustrations for everyone involved. A task committee was developed to brainstorm for a new

¹ A complete list of classifications included in the bargaining unit is listed in the parties' collective bargaining agreement.

process that could provide supplies to the nurses in a more efficient and user friendly environment.² In 2002, the task committee developed a new process which involved reclassifying former stockroom attendant positions to unit supply technicians. These newly titled positions were placed under the job title of program assistant (hereinafter referred to as PA).

The basic duties of the PA are similar to the stockroom attendant in that the position is required to stock, inventory and provide medical supplies within HMC. To create a more efficient and user friendly service for the nurses, the PA's are based on the floors and are assigned to a specific unit. The PA's maintain a stockroom of supplies on the assigned floor. This entails knowing what supplies will be needed in the unit and making sure the floor stockroom is appropriately equipped. If more supplies are needed, the PA's are to acquire the supplies from the basement stockroom and restock the floor stockroom. In explaining the difference between the stockroom attendants and the program assistants, the administrator of resource management, Doug Knorr, stated "[w]hat is done is the same, how it's done is different . . ."

The primary difference found between the stockroom attendant and the PA position is that the PA's are more involved in problem solving and engaged in dialogue with the unit to which they are assigned. There are also additional duties placed on the PA. Knorr describes the additional duties in the PA position in that they are required to "wear pagers, and they're expected to respond to emergent situations". The PA's also have work hours that

² The task committee consisted of nurses, the nursing administration, the administrator for resource management, and the resource management staff.

coincide with the nurses to provide consistency in a working relationship.³

To test the efficiency and effectiveness of this new process with a PA position, a pilot program was initiated in units seven, eight and nine east at the HMC. The trial PA team consisted of four employees, one of which was formerly a stockroom attendant. The stockroom attendant maintained his/her original position, but was placed on a temporary salary increase at the PA wage rate. After finding the pilot program to be successful, the employer decided to progressively implement changes throughout the hospital. The hospital implemented this new system with employees, some of which were hired from the outside or were former part-time employees while others were reclassified from the stockroom attendant position.

The employer's human resource department reclassified volunteering stockroom assistants to the program assistant position. As Knorr explained, "[w]e did not want . . . to ask them [stockroom attendants] to do higher level work and more work and more challenging, more responsive work and not recognize that with some type of recognition and reward . . ." This reclassification from stockroom attendant to program assistant placed the work at a higher wage rate and into a different bargaining unit. The reclassification eliminated some stockroom assistant positions by moving the work into a different classification performed by a different bargaining unit.

The duties performed by the program assistant not only carried over the work from the stockroom attendant, but also consists of

³ The PA's work 12-hour shifts with three days on and four days off.

additional responsibilities. The work performed by stockroom attendants prior to the reclassification, belongs to the WFSE bargaining unit. The employer removed this bargaining unit work from the initial bargaining unit and placed it into a different unit under the direction of the same employer.

The employer did not provide notice to the union giving it an opportunity to bargain over the transfer of work. To fulfill its bargaining obligation, an employer must give notice to the union and provide an opportunity for bargaining prior to changing the wages, hours or working conditions of bargaining unit employees. However, the statutory obligation to bargain in good faith does not require a party to always grant a concession or agree to a specific proposal. See RCW 41.56.030(4); *City of Snohomish*, Decision 1661-A (PECB, 1984).

The employer added duties to the bargaining unit when the stockroom attendant worked PA duties and was provided a temporary salary increase.⁴ The employer may have believed it was fulfilling an obligation to provide the stockroom attendant the pay of PA's when performing these duties. However, it did not provide the union an opportunity to bargain mandatory subjects of bargaining in regards to the additional duties performed or the effects of the reclassification. Regardless, the employer gave the program assistant work to the bargaining unit when it had the stockroom attendant perform the PA work during the pilot program.

An employer violates RCW 41.56.140(4) if it presents a union with a *fait accompli* or if it fails to bargain with a union in good

⁴ The employer followed Article 17 of the parties' collective bargaining agreement by compensating the employees for working at a higher level.

faith upon request. *Federal Way School District*, Decision 232-A (EDUC, 1977), *aff'd*, *Federal Way Education Association vs. Washington State Public Employment Relations Commission* (King County Superior Court, 1978). In this instance, the employer provided the union with a *fait accompli*. The union did not receive notice of the changes and reclassification until it was informed by the bargaining unit members in the spring of 2003. The union then requested a meeting between labor and management to discuss the impacts of these changes. This meeting occurred in August of 2003, which was after the changes and reclassification had been implemented. Thus, the union did not have an opportunity to bargain over the effects of the reclassification prior to the change being made.

As shown through evidence, it is clear and undisputed that some stockroom attendant positions were reclassified to program assistants. In its implementation, this first created additional duties for the bargaining unit over which the employer did not bargain. Then, by reclassifying the positions, bargaining unit work was transferred outside of the bargaining unit to other positions working under the control of the same employer. In the act of reclassifying the positions, the employer may have maintained its obligation as required under the civil service rules; however, the employer failed to bargain with the union over the effects of this reclassification; the removal of work from the bargaining unit. Here, the employer illegally engaged in skimming bargaining unit work violating RCW 41.56.140(4).

Central Processing Technicians

The work at issue was bargaining unit work. The central processing technicians I and II (hereinafter referred to as CPT's) are also

included in the WFSE bargaining unit which covers "all classified staff employees of the University of Washington performing work at the Harborview Medical Center . . ." The CPT's in this bargaining unit receive and record specimen in the laboratory as well as perform phlebotomies and aliquot fluids.⁵

The bargaining unit work was transferred to non-unit employees of the employer when it reclassified the central processing technicians to clinical laboratory technicians. Little evidence was provided on the duties performed by the clinical laboratory technicians (CLT's). However, Karen Halloway, the associate administrator for the Department of Laboratory Medicine, clearly explained that between the CPT's and CLT's "the duties are basically the same. The complexity of the environment changed." Evidence provided shows that the fundamental work performed by the CPT's is now being performed by the CLT's.

The employer reclassified the CPT's to CLT's and by doing so, removed WFSE bargaining unit work from the bargaining unit. This work is currently performed by CLT's who are under the direction of the same employer and not included in the same bargaining unit.

The employer did not provide notice to the union giving it opportunity to bargain over the transfer of work. The union was presented with a *fait accompli* when it found the CPT positions had been reclassified to CLT positions. The employer provided no notice to the union that work was going to be removed from this bargaining unit. This work was removed from the WFSE bargaining unit and is now performed by positions not within this bargaining unit and therefore a violation of RCW 41.56.140(4) is found.

⁵ Drawing blood.

Patient Service Representatives

Bargaining unit work was not removed from the admitting department.

Althea Lute, the WFSE field representative, explained that the employer had intended to change the admitting patient service representatives (PSR's) to program assistants (PA's). After the bargaining unit members signed a petition stating they did not want to be reclassified, the employer did not make any changes to the PSR position in the admitting department. Because no changes were made and none of the work performed by the bargaining unit was removed from the bargaining unit, no skimming violation is found.

Bargaining unit work was not removed from the outpatient department.

Lute provided testimony that the employer also had planned to change PSR positions in the outpatient department, which was originally in the bargaining unit, to a PA position outside the bargaining unit. In June of 2003, negotiations began between the employer and the union regarding the change and placements of these positions within the outpatient department. After negotiating, the PSR's were reclassified to patient service coordinators. These new positions of patient service coordinator were placed within the same bargaining unit as the PSR's. Although work may have been moved from one position to another, it remained within the same bargaining unit. There was no removal of work from the bargaining unit and no skimming violation is found.

Financial Service Counselors

Bargaining unit work was not removed from the bargaining unit.

The union was informed through its members that the position of financial service counselor (FSC), within the WFSE bargaining unit, would be abolished. It was believed that the FSC employees would

have to compete for program assistant (PA) positions that are not within the same bargaining unit if they wanted to continue working for the employer. Lute testified that after a labor/management meeting, some of the FSC's were reclassified to patient service coordinator (PSC) positions which are in the same bargaining unit. Thus, no bargaining unit work was removed by reclassifying the FSC position to the PSC position. There was no removal of work from the bargaining unit and no skimming violation is found.

FINDINGS OF FACT

1. The University of Washington is a state institution of higher education within the meaning of Chapters 41.06 and 41.80 RCW.
2. The Washington Federation of State Employees, an employee organization within the meaning of Chapter 41.80 RCW, is the exclusive bargaining representative of "all classified staff employees of the University of Washington performing work at the Harborview Medical Center in the classifications" including, but not limited to: laboratory technicians I and II; stockroom attendants I, II and lead; central processing technicians I and II; financial services counselor; and patient services representative coordinator.
3. The classifications of program assistant and clinical laboratory technician are not included in the bargaining unit described in Finding of Fact 2.
4. The work performed by stockroom attendants in the WFSE bargaining unit belongs to the WFSE bargaining unit as described in Finding of Fact 2.

5. Work previously performed by stockroom attendants is now performed by program assistants who are not part of the bargaining unit as described in Finding of Fact 2.
6. The employer did not notify the union before removing stockroom attendant work from the bargaining unit as described in Finding of Fact 5.
7. The union was not provided the opportunity to bargain the effects of the decision to remove stockroom attendant work from the bargaining unit.
8. The work performed by central processing technicians in the WFSE bargaining unit belongs to the WFSE bargaining unit as described in Finding of Fact 2.
9. Work previously performed by central processing technicians is now performed by clinical laboratory technicians who are not part of the bargaining unit as described in Finding of Fact 2.
10. The employer did not notify the union before removing central processing technician work from the bargaining unit as described in Finding of Fact 9.
11. The union was not provided the opportunity to bargain the effects of the decision to remove central processing work from the bargaining unit.
12. Work performed by the patient service representatives in the admitting department continues to be performed by this classification. The patient service representatives

classification continues to be part of the bargaining unit as described in Finding of Fact 2.

13. Work performed by patient service representatives in the outpatient department is now performed by patient service coordinators who are included within the bargaining unit as described in Finding of Fact 2.
14. Work performed by the financial service counselors is now performed by patient service coordinators who are included in the bargaining unit as described in Finding of Fact 2.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.06 RCW and Chapter 41.56 RCW.
2. As described in Findings of Fact 5, 6 and 7, the employer illegally removed bargaining unit work of the stockroom attendant from the WFSE bargaining unit in violation of RCW 41.56.140(1) and (4).
3. As described in Findings of Fact 9, 10 and 11, the employer illegally removed bargaining unit work of the central processing technicians from the WFSE bargaining unit in violation of RCW 41.56.140(1) and (4).
4. As described in Findings of Fact 12, 13 and 14, the employer did not remove the work of patient service representatives and financial service counselors from the bargaining unit and did not violate RCW 41.56.140(1) and (4).

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

- a. Interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.
- b. Deciding upon or implementing transfers of work historically performed by employees in the HMC bargaining unit represented by the Washington Federation of State Employees, to employees outside of that bargaining unit without having first given notice to WFSE and providing an opportunity for collective bargaining.
- c. Failing to notify the union of an intent to remove bargaining unit work from the bargaining unit through reclassification of positions.
- d. Failing to afford the union the opportunity to bargain prior to implementing any changes in the working conditions of bargaining unit members.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.06 RCW:

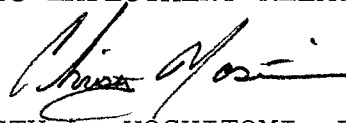
- a. Restore the *status quo ante* by restoring the work of stockroom attendant to the WFSE bargaining unit at HMC.

- b. Restore the *status quo ante* by restoring the work of central processing technicians to the WFSE bargaining unit at HMC.
- c. Give notice to and, upon request, negotiate in good faith with Washington Federation of State Employees, before transferring bargaining unit work outside the bargaining unit.
- d. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
- e. Read the notice attached to this order into the record at a regular public meeting of the Board of Regents of the University of Washington, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.
- f. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

- g. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

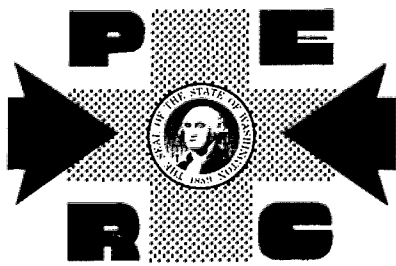
Issued at Olympia, Washington, this 2nd day of March, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTY L. YOSHITOMI, 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL restore the work of the stockroom attendant to the affected bargaining unit represented by the Washington Federation of State Employees.

WE WILL restore the work of the central processing technician to the affected bargaining unit represented by the Washington Federation of State Employees.

WE WILL give notice to and, upon request, negotiate in good faith with the Washington Federation of State Employees before transferring bargaining unit work outside the bargaining unit.

WE WILL post in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of this notice.

WE WILL read this notice at the next Board of Regents meeting at the University of Washington, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

UNIVERSITY OF WASHINGTON

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.