

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WA INTERPRETERS,

Complainant,

vs.

WASHINGTON STATE LANGUAGE
ACCESS PROVIDERS,

Respondent.

CASE 133420-U-21

DECISION 13355 - PECB

DECISION OF COMMISSION ON
MOTION FOR TEMPORARY RELIEF

Juan Medina Bloise, President, for WA Interpreters.

M. Kate Garcia, Assistant Attorney General, and *Cheryl L. Wolfe*, Senior Counsel, Attorney General Robert W. Ferguson, for Washington State Language Access Providers.

On March 30, 2021, WA Interpreters (union) filed an unfair labor practice complaint against Washington State Language Access Providers (employer). The union included notice of its intent to file a motion for temporary relief in the complaint as required by WAC 391-45-430(1). An Unfair Labor Practice Administrator reviewed the complaint in accordance with WAC 391-45-110 and issued a preliminary ruling. On April 20, 2021, WA Interpreters filed a motion for temporary relief. On April 27, 2021, the employer filed a response to the motion for temporary relief.

In the unfair labor practice complaint, the union claimed the employer unilaterally implemented a new scheduling system during the pendency of a representation petition. In its motion for temporary relief, the union cited the changed scheduling system and alleged that the employees were unable to register for the scheduling system and lost work opportunities. The union further alleged the traditional remedies were inadequate because the language access providers do not work a fixed schedule, thereby making it impossible to calculate the lost wages. That is not the case.

The employer responded that the union failed to establish that the Commission's traditional remedies are inadequate. The employer made other arguments that may be relevant in the unfair labor practice proceedings.

ISSUES

The issue before the Commission is whether the motion for temporary relief should be granted. We deny the union's motion.

ANALYSIS

Applicable Legal Standard

The Commission is empowered to prevent unfair labor practices and may petition the superior court for appropriate temporary relief. RCW 41.56.160. In appropriate circumstances, the Commission has granted requests that it seek temporary relief in the courts. *See Olympia School District*, Decision 517-H (EDUC, 1978); *Steilacoom Historical School District*, Decision 2527 (EDUC, 1986); *City of Tacoma*, Decision 5686 (PECB, 1996).

WAC 391-45-430 governs motions for temporary relief. The Commission does not seek temporary relief in superior court unless it appears that one or more of the allegations in the unfair labor practice complaint "is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo" is preserved pending the completion of the administrative proceedings. WAC 391-45-430(5).

Application of Standard

The complainant has not shown that the allegations of the complaint are of such a nature the complainant would not have a fair or adequate remedy. The standard remedy for a unilateral change violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo; make employees whole; post notice of the violation; and order the parties to bargain from the status quo. *City of Anacortes*, Decision 6863-B (PECB, 2001).

When employees have lost work as a result of an employer's unilateral action, the Commission has used its remedial authority to craft a remedy to make employees whole. The remedy for lost work opportunities as a result of an unfair labor practice is an award of back pay. *See Central Washington University*, Decision 12305-A (PSRA, 2016); *Port of Seattle*, Decision 11763-A (PORT, 2014); *Southwest Snohomish County Public Safety Communications Agency*, Decision 11149 (PECB, 2011). For example, in *Central Washington University*, the employer unlawfully contracted out bargaining unit work. The testimony conflicted over the amount of lost work. The Commission ordered the employer to pay employees who would have been available to perform the job overtime for the amount of time it took the contractor to complete the work. *See also Kitsap Transit*, Decision 9667 (PECB, 2007) (ordering the employer to pay employees who would have performed the work at the contract rate for the work illegally removed from the bargaining unit); *Kennewick School District*, Decision 3330 (PECB, 1989) (ordering the employer to pay employees in order of seniority for cancelled field trips). It is possible for the Commission to make employees whole for lost work.

The union asserts that it would be "impossible" to ascertain the number of lost shifts thereby making a remedy inadequate. For example, should a violation be found, it is possible to base an order of back pay on the average number of shifts worked by each provider in a period leading up to the alleged violation. The motion and supporting declarations do not demonstrate how the standard remedy—an order of back pay for lost work opportunities—would not be an adequate remedy.

The union argued that employees are unable to register for the new scheduling system, that employees cannot present the documentation to register for the new scheduling system, and that some employees have technical barriers to the new scheduling system. If an unfair labor practice violation is found, the remedies could include, for example, an order returning the status quo if access to the new scheduling system cannot be fairly provided. While the union expresses the concerns of its members, it has not shown that the employees are suffering irreparable harm that could not be remedied by the traditional unfair labor practice remedies.

CONCLUSION

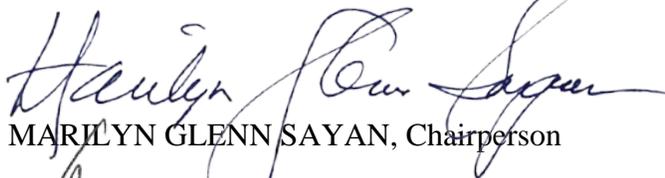
The Commission is not prejudging the merits of the underlying case. We express no opinion on the employer's arguments that are more responsive to whether an unfair labor practice has occurred. We hold only that the union has failed to establish that the bargaining unit would suffer irreparable harm under WAC 391-45-430(5) if the status quo is not maintained until the unfair labor practice proceeding is completed.

ORDER

The motion for temporary relief is DENIED.

ISSUED at Olympia, Washington, this 3rd day of June, 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 06/03/2021

DECISION 13355 - 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 133420-U-21

EMPLOYER: WASHINGTON STATE LANGUAGE ACCESS PROVIDERS

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

M. KATE GARCIA
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE STE 100
SPOKANE, WA 99201-1106
katieg1@atg.wa.gov

CHERYL L. WOLFE
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE STE 100
SPOKANE, WA 99201-1106
cheryl.wolfe@atg.wa.gov

PARTY 2: WA INTERPRETERS

REP BY: JUAN MEDINA BLOISE
WA INTERPRETERS
PO BOX 584
AURBURN, WA 98071
independentniunion@wainterpreters.org