



UNFAIR LABOR PRACTICE COMPLAINT

Is this an amended complaint? Yes No If yes, enter the case number: 132172-E-19

PARTIES Include information for all parties involved.

COMPLAINANT Guild of Pacific Northwest Employees

Contact Dean I. Tharp

Title Organizer

Address PO Box 157

City, State, ZIP Bellingham, WA 98226

Telephone 360-303-8734 Ext. _____

Email deantharp0@gmail.com

UNION WSCCCE, AFSCME, Council 2

Contact Bill Keenan

Title Organizing Director

Address PO Box 750

City, State, ZIP Everett, WA

Telephone 1 800 755-6418 Ext. _____

Email c2everett@council2.com

EMPLOYER City of Bellingham

Contact KayCee Johnson

Title Human Resources Manager

Address 104 W Magnolia

City, State, ZIP Bellingham, WA 98225

Telephone 360-778-8234 Ext. _____

Email kdjohnson@cob.org

ALLEGED VIOLATION

Indicate who the alleged violation is against:

Employer Union Both*

*If the alleged violation is against both the union and employer, two separate complaints must be filed with two statements of facts describing the alleged violation(s) against each.

STATEMENT OF FACTS

Prepare and submit with this complaint a statement of facts using numbered paragraphs to clearly and concisely describe the alleged violation(s).

The following must be included:

- Specific allegations and required elements;
- Times, dates, places, and participants in occurrences;
- Whether a related grievance has been filed and its status;
- A description of the remedies requested.

For more information refer to WAC 391-45-050.

BARGAINING UNIT

If the alleged violation relates to more than one bargaining unit, a separate complaint must be filed for each unit.

Identify Bargaining Unit Non-uniform, wall-to-wall

Department or Division City-wide departments

Collective Bargaining Agreement (CBA)

- The parties have never had a CBA.
- A copy of the most current CBA is attached.

AUTHORIZED CONTACT FOR COMPLAINANT

Name Dean I. Tharp

Title Organizer

Address PO Box 157

City, State, ZIP Bellingham, WA 98226

Telephone 360. 303-8734 Ext. _____

Email deantharp0@gmail.com

Signature Dean Tharp/s

Date 10/30/2019

Who Can File a Complaint?

The complainant is the party who files the complaint and may be an individual employee, a union, or an employer.

If the complainant is the union or employer, contact information does not need to be entered twice. Indicate that the union or employer is the same as the complainant.

For more detailed information about violations and required elements, please refer to our website at perc.wa.gov/unfair-labor-practice.

For applicable rules, visit perc.wa.gov/laws-rules and refer to chapters 10-08, 391-08, and 391-45 WAC.

Party Representatives

PERC only sends documents to default contacts currently on file. If a party intends to have another representative as the primary contact that person must file a notice of appearance.

Filing Time Frame

A complaint must be filed within 6 months from the date the complainant knew or should have known of the alleged violation.

Filing and Service

Documents may be submitted to PERC by email attachment, by fax, by mail, or in person. Email filing is preferred and no paper copies are required.

- Email to filing@perc.wa.gov
- Fax to 360.570.7334
- Mail to P.O. Box 40919, Olympia, WA 98504-0919
- Hand Deliver to 112 Henry St. NE, Olympia, WA 98506

Service is required on all parties to the case and is considered complete when the document is received by email, fax, or hand delivery or when the document is put into the mail. A certificate of service is required to show when, how, and on whom the document was served. A certificate of service form can be found at perc.wa.gov/file-a-case.

In the matter of an Unfair Labor Practice Complaint

Guild of Pacific Northwest Employees

v.

PERC Case# 132172-E-19,

Washington State Council of City and County Employees,
American Federation of State County
and Municipal Employees, AFSCME Council 2

Complainant:

Guild of Pacific Northwest Employees

Dean I. Tharp
Organizer
PO Box 157
Bellingham, WA
(360) 303-8734
Deantharp0@gmail.com

Accused Entity

Washington State Council of City and County Employees,
American Federation of State County
and Municipal Employees, AFSCME Council 2

Contact:

Christopher Dugovich
PO Box 750
Everett, WA 98201

Phone: 1800-775-6418
Email: c2everett@council2.com

Applicable Collective Bargaining Statute:

An existing, certified bargaining unit of non-uniformed municipal employees recognized under applicable provisions of RCW Chapter 41.56.

RCW 41.56.040

Right of employees to organize and designate representatives without interference.

No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

Synopsis of Charges

Charge 1 Interference by violating PERC Status Quo Order and threat of benefit loss

The Guild of Pacific Northwest Employees (PNWE) alleges Washington State Council of City and County Employees (WSCCCE) violated applicable Washington State laws and regulations, including RCW 41.56.040 and WAC 391-25-140, when WSCCCE representatives met and negotiated with the City of Bellingham (“the employer”) after PERC issued a Status Quo Order. Two days after PERC issued the Status Quo Order, WSCCCE further violated the Order by communicating to Local 114 members the contents of a proposal discussed at the improper meeting with the employer. Lastly, WSCCCE violated the PERC Status Quo Order by stating that local members would lose certain employer medical plan options if a response was not received by a deadline set by the employer. These acts all have had the specific intent to interfere with and threaten union members from considering or otherwise supporting PNWE under the pending Petition for Change of Representation.

Charge 2 Interference through misinformation and legal threats

WSCCCE’s lawyer sent a letter threatening Local 114 elected leadership with loss of their bargaining rights by improperly defining PNWE’s change of representation petition as a “Decertification” petition. In addition, WSCCCE’s lawyer threatened “serious consequences,” by not meeting the demands for loyalty to WSCCCE / Council 2. The purpose of this threat of legal action from WSCCCE’s lawyer was to frighten union members, illegally persuade them not to support PNWE’s pending Petition for Change of Representation, and to interfere with PNWE’s efforts to organize.

STATEMENT OF FACTS GUILD OF PACIFIC NORTHWEST EMPLOYEES

Charge I

Union Interference Involving Employees in violation of RCW.41.56.040

PNWE alleges that WSCCCE and its agent(s) made statements and took action that caused employees to reasonably perceive WSCCCE’s actions as a threat of reprisal , or a promise of a benefit (or depriving of a benefit), and otherwise interfered with PNWE’s organizing efforts; more specifically, undermining PNWE’s exercise of its rights protected by the applicable collective bargaining law.

Background

WSCCCE, Local 114 is a large bargaining unit comprised of approximately 379 City of Bellingham employees. These employees perform a variety of duties within the City of Bellingham including non-professional, non-essential work in Streets, Parks, Finance, Planning, Water/Waste Water, Inspection, Parking Enforcement, Library and Museum Departments.

WSCCCE also represents two other bargaining units; a small unit of City of Bellingham professional librarians, and small unit of essential employees of the City of Bellingham Fire Department. These bargaining units are not parties to the Change of Representation Petition filed by PNWE.

On October 12, 2019 the Guild of Pacific Northwest Employees filed a Change of Representation Petition along with a sufficient showing of signed authorization cards. To date, PNWE has received almost 70% of the total number of signed authorization cards.

On October 14, PERC issued its formal "Notice" and imposed a Status Quo Order on all parties.

Violation of Status Quo Order

Purpose of Meeting: City of Bellingham Benefits Renewal Meeting with Bargaining Groups

Time and Date: 1 p.m.; October 14, 2019.

Place: City of Bellingham Offices

Witnesses:

Butela, Ryann T.
Beatty, Angela M
Singh, Parvindar K.
Bray, Katie N.
Sullivan, Ameleah M
Bronson, Allysa D.
Morga, Miguel

Heinrich, Brian M.
Joe Downes'
Almer, Donald L.
Jennifer Thompson
Rasmussen, Justin J.
Francis, Shayla

On October 14, 2019, which is the same day that PERC issued its Status Quo Order, at 1:00 pm the City of Bellingham convened a meeting of some bargaining units of the City of Bellingham. The purpose of this meeting was to meet and negotiate over terms and conditions of employment pertaining to the employer's medical contributions and medical plan benefits.

Attending this bargaining session were two paid WSCCCE representatives, Joe Downes and Miguel Morga. Morga attended as the representative for WSSSCE,

Council 2, Local 114. Both Morga and Downes actively participated in this meeting and by speaking on behalf Local 114 members. The City made a proposal and Morga agreed to take it back to the local for consideration. By this action, Morga, Downes, and Council 2 / WSCCCE are directly responsible for participating in bargaining with the City related to employee medical plans and benefits, and all in violation of PERC's Status Quo Order.

On October 16, 2019 Council 2 / WSCCCE distributed a letter to all bargaining unit members in an attempt to persuade members to ask their signed authorization cards be returned to them, and that those members request PNWE withdraw its pending Petition for Change of Representation. (Exhibit #1) This letter describes Council 2 / WSCCCE's illegal conduct in meeting and negotiating with the employer, collaborating on a proposal, and scheming to set an arbitrary deadline for the loss of certain medical benefits in the event that certain employees continue to exercise their rights to collectively organize and bargain. These boldly illegal actions the set the stage for WSCCCE / Council 2 cynically and deviously report to bargaining unit members the sad news that this proposal cannot be taken to a vote and that the deadline they set cannot be met unless PNWE abandons and withdraws its pending Petition for Change of Representation. This letter speaks for itself. (Exhibit #1)

WSCCCE / Council 2 cannot claim to be ignorant of the existence of a Status Quo Order or their obligations under that Order, since by their own admission, WSCCCE / Council 2 understood that they were under a PERC Status Quo Order as of October 14, 2019. Here is what WSCCCE writes on October 15, 2019 to all bargaining unit members (See Exhibit #2):

:

"The President of the Local resigned her position on October 11th 2019 and a petition to dissolve Local 114 was filed with PERC of October 12th, 2019. By State law this petition blocks all negotiations which includes changes to your medical benefits." (Emphasis added)

Additional evidence of WSCCCE / Council 2's prior knowledge of the PERC Status Quo order comes from a letter sent by WSCCCE / Council 2's attorney, Ed Stemler, to Local 114 elected leaders. Mr. Stemler writes on October 14, 2019, the same day (and hour) that WSCCCE staff Morga and Downes were meeting and negotiating with the employer (Exhibit #2):

"Now is the time for contract negotiations, but the filing of a de-cert petition suspends contract negotiations. That is bad for your members who want to move forward now with getting the best contract possible."

Threats of Reprisal to Defeat the Guild of PNWE Petition for Change of Representation

Witnesses:

- Shayla Francis, Vice President of Local #114.
- All members of Local 114 who provided WSCCCE with private email addresses. (estimated to be over 300 names).
- Dean I. Tharp, Organizer, Guild of PNWE

Date: October 16, 2019

On October 16, 2019 WSCCCE / Council 2 emailed a letter (See Exhibit #) to all of the witnesses urging them withdraw their representation cards offered in support of the Guild of PNWE, and threatened them with the loss of a contract benefit should they continue to support the Change of Representation Petition filed by the Guild of PNWE. This threat is best described in WSCCCE / Council 2's own words:

"Maintaining the Status Quo means most everyone not on a high deductible plan will pay a premium share. In order to have these changes in place for the November open enrollment the City needed an agreement from all the Bellingham Unions by October 29th. The fact that our group does not have the opportunity to vote on this proposal will also prevent other Unions from making this change as well.

The ONLY opportunity we have to act on this proposal is if the petition was immediately withdrawn. Those that have signed cards authorizing the petition could contact Dean Tharp at 360-303-8734 and ask that he withdraw your card from the showing of interest he provides to PERC and request he withdraw the petition. (Emphasis in original.)

As one can imagine, this communication raised many questions and concerns among Local #114 members who had theretofore offered support of the PNWE's Petition for Change of Representation.

Charge II. Threats of Reprisal

Date: October 14, 2019

Letter from WSCCCE lawyer Ed Stemler to Local Leaders (Exhibit 2)

Witnesses:

- All elected officers and executive board members of Local #114.

Loss of Bargaining Rights

There are two threats contained in the letter from WSCCCE / Council 2's Lawyer, Mr. Stemler. The first threat is designed to instill fear in local leaders and to suggest that they will lose certain bargaining rights by joining the Guild of PNWE. (Exhibit #2) Mr. Stemler deliberately misled bargaining unit leadership by wrongly characterizing PNWE's *Change of Representation* Petition as a "decertification" petition. Mr. Stemler writes:

"A de-cert petition for your local has been filed with PERC. That has major consequences for you and your members.

This distinction between these two mechanisms is significant—decertification means not only removal of WSCCCE / Council 2, but also the termination of the collective bargaining agreement and all rights and protections afforded to bargaining unit members under Washington State law. While this is clearly not the case, the typical bargaining unit member is likely not to understand the difference between a decertification and a Petition for Change in Representation, and would likely be inclined to believe what a lawyer working for WSCCCE / Council 2 tells them. Any member conducting an internet search will quickly learn the definition and consequences of “decertification”.

Clearly this “decertification” threat is intended to frighten and intimidate bargaining unit members into staying with WSCCCE / Council 2 and to withdraw support for and vote against PNWE’s Petition for Change in Representation.

Second Threat: “Legal Trouble Awaits You”

One must consider the intimidating effects on leaders of Local 114 when they receive threats from their union’s lawyer. Here is what Mr. Stemler told local leaders:

“A de-cert petition for your local has been filed with PERC. That has major consequences for you and your members.”

“Some individuals may advise you to take those actions and spend the treasury. You are now on notice that each of these activities is prohibited. Other local officers have gotten themselves into trouble for fraud or theft.”

“Please make sure not to take any actions that might make things worse for your local, your members, and you personally”.

These statements are not friendly legal advice from the attorney that purports to represent and protect the members of Local 114. These are intimidating threats intended to discourage, prohibit, and otherwise interfere with a bargaining unit member’s free exercise of their rights under Washington State law. These threats are of continuing concern due to the history of reprisals, harassment, and bullying, demonstrated by WSCCCE / Council 2 leadership against local leaders in the past.

Remedy Requested

For the above reasons we respectfully request PERC take the necessary steps to defend the rights of employees to exercise their right to select a bargaining representative of their own choosing, and without interference from WSCCCE / Council 2.

We request PERC issue an Order finding WSCCCE / Council 2 has violated applicable Washington State law and has committed an unfair labor practice. We request PERC order WSCCCE / Council 2 cease and desist all actions

Respectfully Submitted:

Dean I. Tharp/s

Organizer

October 30, 2019

391-25-140

Notice to employees—Limitations on employer actions

(1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, to inform employees of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of the petition and notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

(4) Where a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition, and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

(5) When an order of dismissal issued under WAC [391-25-390](#) (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.



TELL THE PROPOSED GUILD TO WITHDRAW THE PETITION

CALL DEAN THARP AT 360-303-8734

And ask him to REMOVE YOUR NAME if you signed a petition or card

A petition to eliminate your local union has been filed with the Public Disclosure Relations Commission (PERC). This petition blocks contract negotiations so your union and the employer are prevented from providing you with better benefits than you have now. The employer offered you a medical plan that would cost members less money, but we cannot bring that to our members for a vote due to the petition.

Council 2 has been working hard over the years to keep strong health insurance options for members at the lowest employee cost possible. In early October the City of Bellingham provided notice to the local officers of 114 of a health benefits renewal meeting on October 14th 2019.

The President of the Local resigned her position on October 11th 2019 and a petition to dissolve Local 114 was filed with PERC on October 12th, 2019. By State law this petition blocks all negotiations which includes changes to your medical benefits.

WAC 391-25-140 (2) states "Changes to the status quo concerning wages, hours and conditions of employment in the bargaining unit are prohibited during the period that a petition is pending." Sec (4) states "Where a petition is filed...the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition."

On October 14th the City of Bellingham presented all the bargaining units with a proposal on medical insurance that saves money for most members. The monetary impact of these changes would result in NO EMPLOYEE PREMIUM SHARE for any plan other than the zero-deductible plan. Maintaining the status quo means most everyone not on a high deductible plan will pay a premium share. In order to have these changes in place for the November open enrollment the City needed an agreement from all of the Bellingham Unions by October 29th.

Due to the timing of the petition that was filed with PERC, State Law prohibits an opportunity for the Union to negotiate and the members to vote on this proposal by the October 29th deadline to make the changes. The fact that our group does not have the opportunity to vote on this proposal will also prevent the other Unions from making this change as well.

The ONLY opportunity we have to act on this proposal is if the petition was immediately withdrawn. **Those that have signed cards authorizing the petition could contact Dean Tharp at 360-303-8734 and ask that he withdraw your card from the showing of interest that he provided to PERC and request he withdraw the petition.**

From: C2everett <C2everett@council2.com>
Date: October 14, 2019 at 2:07:46 PM PDT
To: Undisclosed recipients;
Subject: Responsibility of Union Officials

Hello Local 114 executive board,

We learned that on Friday Jael resigned as president of your local. We at Council 2 have been hoping for a more productive relationship with your local for a long time now. With her leaving, this provides an excellent opportunity to reset and improve the relationship between Council 2 and your local. I hope that you will take the time to really look into what is best for your local, and your members, before taking actions that are suggested by someone who's judgement is affected, and who is so motivated by settling scores. A de-cert petition for your local has been filed with PERC. That has major consequences for you and your members. You will be receiving additional information about that in the near future.

Today I write to make sure you understand your obligation to Local 114 and to Council 2 as officers of your local. You are prohibited from using union funds in any way to support the effort to de-certify your union. Doing so can have serious consequences, not just to your local but, **you personally can be held liable**. Funds cannot be distributed back to the members, or spent on items to drain the treasury in an attempt to prevent the funds from coming to WSCCCE in the future. Some individuals may advise you to take those actions and spend the treasury. You are now on notice that each of these activities is prohibited.

Other local officers have gotten themselves into trouble for fraud or theft. Your local is currently under audit, and evidence of unauthorized expenditures has already been uncovered. Please make sure not to take any actions that might make things worse for your local, your members, and you personally.

If you support the de-cert petition, you are required to resign your union leadership position. An officer of the union cannot work to undermine and eliminate that union, which is what a de-cert effort does. We sincerely hope that you do not make that choice. We look forward to working with those executive board members who want to maintain Local's 114's 75 year relationship with Council 2. We want to continue working to improve the wages, hours, and working conditions of our members. Now is the time for contract negotiations, but the filing of a de-cert petition suspends contract negotiations. That is bad for your members who want to move forward now with getting the best contract possible.

Please feel free to contact us with any questions you have at 1-800-775-6418.

Ed Stemler

General Counsel

Washington State Council of

County and City Employees

AFSCME Council 2 AFL-CIO

Cell:(425) 312-4210

Phone: (425)303-8818

E-mail: Ed@council2.com

**BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
STATE OF WASHINGTON**

Petitioner/Complainant/Filing Party

v.

Respondent/Responding Party

Case Number _____

CERTIFICATE OF SERVICE

I certify that I served a copy of this *(title of document)* _____
on all parties or their counsel of record on *(date)* _____

To:	Name Organization Address City, State, ZIP Email Fax	<input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> Registered U.S. Mail
To:	Name Organization Address City, State, ZIP Email Fax	<input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> Registered U.S. Mail
To:	Name Organization Address City, State, ZIP Email Fax	<input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> Registered U.S. Mail

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date signed and submitted _____

Print Name _____

Signature _____



From: [Dean Tharp](#)
To: [PERC Filing \(PERC\): c2everett@council2.com](mailto:c2everett@council2.com)
Subject: ULP Guild v. WSCCCE, Council 2 # 132172-E-19 (City of Bellingham/Guild of Pacific Northwest Employees)
Date: Wednesday, October 30, 2019 2:11:19 PM
Attachments: PERC ULP Guild v WSCCCE103019.pdf
Guild PNW ULP v WSCCCE-103019 F.docx
Exhibit 1 Important Union Notice 114.pdf
ULP PNWE v C2 Exhibit #2.pdf

Re: ULP Guild v. WSCCCE, Council 2 PERC Case # 132172-E-19
City of Bellingham/Guild of Pacific Northwest Employees/WSCCCE

Dear PERC Representatives and WSCCCE,

Attached please find documents pertaining to a Unfair Labor Practice Charge the Guild of Pacific Northwest Employees is filing in the above captioned case.

Thank you for your assistance in resolving this matter.

Sincerely,

Dean Tharp
Organizer
Guild of Pacific Northwest Employees

Exhibit#1
Exhibit #2

From: [Dean Tharp](#)
To: [PERC Filing \(PERC\)](#)
Subject: Certificate of Service ULP 10/30/19 Case #132172-E-19
Date: Wednesday, October 30, 2019 2:18:03 PM
Attachments: WebPage.pdf

<https://perc.wa.gov/wp-content/uploads/2019/02/Certificate-of-Service.pdf>