Tumwater School District (Tumwater Office Professionals Association), Decision 12409-A (PECB, 2016)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GINA DOWNES, Complainant, vs. TUMWATER OFFICE PROFESSIONALS ASSOCIATION/WASHINGTON EDUCATION ASSOCIATION, Respondent.	CASE 127451-U-15 DECISION 12409-A - PECB DECISION OF COMMISSION
GINA DOWNES, Complainant, vs. TUMWATER SCHOOL DISTRICT, Respondent.	CASE 127452-U-15 DECISION 12410-A - PECB DECISION OF COMMISSION

Gina Downes, the complainant.

Michael J. Gawley, Attorney at Law, for the Tumwater Office Professionals Association/Washington Education Association.

No appearance was made on behalf of the Tumwater School District.

On July 1, 2015, Gina Downes (complainant) filed unfair labor practice complaints against the Tumwater Office Professionals Association (union) and the Tumwater School District (employer). The Unfair Labor Practice Manager reviewed the complaints under WAC 391-45-110 and dismissed the complaints as untimely.[1] Downes appealed.

[1] *Tumwater School District (Tumwater Office Professionals Association)*, Decision 12409 (PECB, 2015).

ANALYSIS

Legal Standards

Timeliness

"[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). "Filing shall occur only upon actual receipt of the original paper by the agency during office hours." WAC 391-08-120(2)(a)(iii).

The Commission has strictly enforced the timelines for filing. *City of Bellingham (Washington State Council of County and City Employees)*, Decision 11422-A (PECB, 2013). The Commission has only waived the time limits for filing where the agency's staff or rules contributed to a late filing. *City of Tukwila*, Decision 2434-A (PECB, 1987) (the Commission waived the time for filing where the party filing untimely objections had relied upon erroneous advice from an agency staff member); *Island County*, Decision 5147-C (PECB, 1996) (the Commission waived the time for filing based on a conclusion that the then-existing rule prohibiting filings by fax was not clear).

Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.150(1).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Washington State Patrol*, Decision 11863-A (PECB, 2014); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, 98 Wn. App. 809 (2000). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or

force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Washington State Patrol*, Decision 11863-A; *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Washington State Patrol*, Decision 11863-A; *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *remedy aff'd*, 98 Wn. App. 809.

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *Id*.

Application of Standards

Jurisdiction of the Commission

The Legislature delegated to the Public Employment Relations Commission the authority to determine and remedy unfair labor practices under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *See* RCW 41.56.140 through .160.

The employer is a political subdivision of the state of Washington. RCW 41.56.020; RCW 41.56.030(12). The union is a bargaining representative within the meaning of RCW 41.56.030(2). Downes is a public employee because, at one time, she was employed by the employer. RCW 41.56.030(11). Thus, the employer, the union, and Downes are all subject to Chapter 41.56 RCW. The evaluation of whether Downes' complaints against the employer and union stated a cause of action are limited to the rights granted to employees under Chapter 41.56 RCW.

The complaints were timely for events that occurred on or after January 1, 2015.

Downes mailed her complaints by certified mail on June 30, 2015. The agency received the complaints on July 1, 2015. A complaint is considered filed the day it is received in the

Commission's office. WAC 391-08-120(2)(a)(iii). Under the rules, Downes' complaints were only timely for events that occurred on or after January 1, 2015.

The complaints failed to state a cause of action.

The allegations can be grouped into four categories: (1) employer interference by retaliating against employees, (2) employer violation of policies and procedures, (3) employer violations of the collective bargaining agreement between the union and the employer, and (4) the union's failure to investigate the employer.

First, the complaints did not state a cause of action for employer interference with employee rights by retaliating against employees for engaging in activity protected by Chapter 41.56 RCW. The complaints alleged three types of retaliation: retaliation for attempting to join the union, retaliation for filing a grievance, and general retaliation.

Downes alleged that since 2004 the employer interfered with employee rights in violation of Chapter 41.56 RCW[2] by retaliating against employees who attempted to join the union. This allegation was too general to conclude a cause of action existed. It did not contain facts to allow the Commission to determine who was retaliated against, when they were retaliated against, who attempted to join the union, and when they attempted to join the union. The complaints did not provide specific details, including times, dates, places, and participants in the alleged violations, as required under WAC 391-45-050(2). This allegation was untimely.

On October 25, 2013, Downes filed a grievance per New Market Skills Center grievance procedure. The grievance was ignored. In the complaints Downes alleged she had evidence to prove retaliation after October 25, 2013, but did not provide any facts to support the allegations. An allegation alone that facts exist to prove retaliation was insufficient to state a cause of action. These facts fell outside of the time period for which a complaint could have been timely.

Downes was laid off from her employment and her employment ended on December 31, 2014. This allegation did not contain facts that allow the Commission to determine when Downes

[2] Downes alleged violations of RCW 28B.52.073; however, classified employees of school districts have rights under Chapter 41.56 RCW.

received notice that she would be laid off from her employment. Thus, the allegation did not include sufficient detail to allow us to conclude the layoff was related to activity protected by Chapter 41.56 RCW.

From September 2012 through March 2015, Downes was targeted, retaliated against, and separated from other office staff. While allegations of events that occurred on or after January 1, 2015, were timely filed, the complaints did not provide specific facts or dates sufficient for us to conclude that a cause of action existed.

Second, Downes alleged that on May 1, 2014, she expressed concerns about the employer not following its policies and procedures. The allegation was not specific as to what policies and procedures were at issue. The Commission does not have jurisdiction to remedy complaints about an employer's failure to follow its own policies and procedures. This allegation was untimely.

Third, the complaints alleged violations of the collective bargaining agreement. Downes alleged that after her employment ended, the employer hired individuals with less years of service in an educational setting. According to the complaints, this violated the collective bargaining agreement between the union and the employer. The Commission does not assert jurisdiction to remedy alleged violations of collective bargaining agreements. *South Whidbey School District (South Whidbey Education Association)*, Decision 11250-A (EDUC, 2012); *Anacortes School District*, Decision 2464-A (EDUC, 1986); *City of Walla Walla*, Decision 104 (PECB, 1976).

Fourth, the complaints alleged that the union did not investigate the employer. From reading the complaints, we cannot conclude that the union had a duty under Chapter 41.56 RCW to investigate the employer. Thus, we cannot conclude a cause of action existed for union interference with employee rights under Chapter 41.56 RCW.

CONCLUSION

The complaints were timely for events that occurred on or after January 1, 2015. However, the facts as alleged in the complaints and amended complaints did not state a cause of action.

It is not enough for a complainant to allege that retaliation can be proven. A complaint must state sufficient facts, including dates and examples, to allow the Commission and its staff to determine that a cause of action exists. The complaints and amended complaints did not include sufficient details for the Commission to determine that a cause of action existed for either employer or union interference with employee rights.

ORDER

The Order of Dismissal issued by Unfair Labor Practice Manager Jessica J. Bradley is AFFIRMED.

ISSUED at Olympia, Washington, this 14th day of January, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner