STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY, Employer.	
GAIL STENZEL, Complainant, vs. PIERCE COUNTY CORRECTIONS GUILD, Respondent.	CASE 132248-U-19 DECISION 13120 - PECB ORDER OF DISMISSAL

On November 4, 2019, Gail Stenzel filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Pierce County Corrections Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on November 21, 2019, indicated that it was not possible to conclude that a cause of action existed at that time. Stenzel was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. No further information has been filed by Stenzel.

The complaint is dismissed for failed to state a cause of action.

BACKGROUND

The Pierce County Corrections Guild (union) represents a bargaining unit of corrections deputies and sergeants employed by the Pierce County Corrections and Detention Center (employer). The

[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

union and employer are parties to a collective bargaining agreement that expired on December 31, 2018.

According to Stenzel's complaint, the Guild's executive board filed a grievance against the employer on July 10, 2019, claiming the corrections sergeants should now be subject to mandatory overtime. The executive board members apparently did not consult with bargaining unit members, including the corrections sergeants, before filing the grievance in violation of guild bylaws. The complaint asserts that corrections sergeants were not subject to mandatory overtime provisions under previous versions of the collective bargaining agreement or any memorandum of agreement.

On August 10, 2019, the employer denied the union's grievance and asserted that there had not been change to the existing overtime practices for corrections sergeants. On September 5, 2019, the employer reaffirmed its position that there had not been an agreement between the employer and union about changing overtime practices for corrections sergeants and that there had not been a contract violation. However, the employer did sustain the grievance on the basis that it wanted to hold further discussion with the union and sergeants to "attempt to develop a path forward for process." The employer specifically noted that its decision to continue the grievance did "not act as agreement to [union's] recommended solutions that differ from the current practice."

It appears from the complaint that overtime for sergeants had been an issue for the union's executive board as executive board meeting minutes reflect that corrections deputies had been required to work overtime due to vacancies or absences by the corrections sergeants. The minutes also reflect that the union would not seek bargaining to change the overtime rules at this time. The union's president also apparently wrote an e-mail to the sergeants stating that neither the union nor the employer would seek changes to the sergeant's overtime rules unless the sergeants sought such a result. Finally, the complaint asserts that the union president L. Shanahan "has previously made comments that she wants the Sergeants out of the [union]." The complainant did not state when those statements were made.

ANALYSIS

The complainant asserts the union committed an unfair labor practice in violation of RCW 41.56.150(2) by coercing the employer to moving forward with an invalid grievance. The complainant also asserts that the union's proposed solution to the sergeant's overtime issues runs counter to the exiting collective bargaining agreement. The alleged facts fail to state an "inducement" cause of action before this agency.

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). However, in *Municipality of Metropolitan Seattle* the union was seeking limitations on assignments that were made available to part-time drivers. At the bargaining table, the employer could legally agree to restrict part-time drivers' shifts. The Commission explained that the mere designation of "part-time" status does not bring an employee into a classification protected from invidious discrimination. Since the employer ultimately could have legally agreed to what the union was seeking, the union was not asking the employer to commit an illegal act.

Here, the complainant's inducement allegation centers on the executive board's decision to file a grievance without following the union's bylaws and internal policies. Chapter 41.56 RCW regulates relationships between employers and employees and between employers and the organizations representing their employees, but does very little in the arena of regulating the internal affairs of labor organizations. This includes regulating how unions approve grievances for submission. The mere fact that the employer considered a grievance that was submitted contrary to the union's bylaws and internal policies does not constitute an inducement violation.

Furthermore, the complaint fails to allege that the union actually attempted to induce the employer to take action that constituted an illegal act. Chapter 41.56 RCW requires an employer to

collectively bargain with the exclusive bargaining representative of its employees. The union's grievance asked the employer to reinterpret the contact. Nothing in the alleged facts demonstrates the union asked the employer to contemplate a statutory unfair labor practice and nothing in the complaint suggest that the corrections sergeants are a classification protected from invidious discrimination.

Finally, the complaint alleges that the union's president "has previously made comments that she wants the Sergeants out of the [union]." A union interference violation exists when an employee could reasonably perceive actions as a threat of reprisal or force, or promise of benefit, associated with union activity of the employee or other employees. Employee is not required to show intention or motivation to interfere . . . ." *King County (Amalgamated Transit Union, Local 587)*, Decision 8630-A (PECB, 2005). Nothing in the complaint alleges that the union president's statement could reasonably be perceived a threat of reprisal or force, or promise of benefit, associated with the complainant's protected activity.

ORDER

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of January, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 01/06/2020

DECISION 13120 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 132248-U-19

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