

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GRANT COUNTY PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

vs.

GRANT COUNTY,

Respondent.

CASE 133077-U-20

DECISION 13260 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

Sydney D. Vinnedge, Attorney at Law, Emmal Skalbania & Vinnedge, for the Grant County Public Employees Association.

Anthony F. Menke, Attorney at Law, Menke Jackson Beyer, LLP for Grant County.

On October 9, 2020, the Grant County Public Employees Association (union) filed an unfair labor practice complaint against Grant County (employer). The complaint was reviewed under WAC 391-45-110¹ and on October 20, 2020, a preliminary ruling and partial deficiency notice issued notifying the union that a cause of action could be found on certain claims but not for others. Specifically, the union's complaint stated a cause of action for employer interference in violation of RCW 41.56.140(1). However, the complaint lacked facts demonstrating that bargaining unit employees were deprived of a right, status, or benefit and therefore a discrimination cause of action could not be found. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

No further information has been filed by the union. The union's discrimination allegation is dismissed and a preliminary ruling is issued for the interference allegations of the complaint.

BACKGROUND

The Grant County Public Employees Association (union) represents a bargaining unit of nonsupervisory employees at Grant County (employer). Karen Maedke is the union's president. Tina Brissey and Ruth Mina are bargaining unit employees.

According to the complaint, on March 9, 2020, the union advanced a grievance concerning the employer's failure to promote Brissey to arbitration. On July 22, 2020, Maedke and Mina directed the union to advance a complaint concerning the skimming of bargaining unit work. That same day the union's attorney sent the employer an email outlining the skimming allegation, including the facts that Mina's work was directly impacted by the alleged skimming violation.

On September 14, 2020, Brissey received notice from the Grant County Prosecuting Attorney's Office regarding allegations of spreading false information related to her grievance. On September 14, 2020, Mina received notice from the Grant County Prosecuting Attorney's Office regarding allegations of spreading false information regarding work skimming. On September 14, 2020, Maedke received notice from the Grant County Prosecuting Attorney's Office regarding allegations of performing work activities during the workday without supervisory approval.

The complaint only alleges the employer initiated an investigation against the employees but does not allege that the employer deprive Brissey, Mina, or Maedke of a right, status, or benefit.

ANALYSIS

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by chapter 41.56 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District*

114, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a prima facie case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

The union's complaint fails to allege facts demonstrating that the employer deprived the employees of some ascertainable right, benefit, or status. Absent such facts, a discrimination cannot be found.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint state a cause of action, summarized as follows:

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promise of benefit by:

1. initiating disciplinary investigations against bargaining unit employees Karen Maedke, Tina Brissey, and Ruth Mina in response to their union activity.
2. initiating investigations into the union activity of bargaining unit employee Karen Maedke.

These allegations will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and
 - (b) assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegations of the complaint concerning employee discrimination are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 19th day of November, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 11/19/2020

DECISION 13260 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in black ink, appearing to read "Debbie Bates", is written over a horizontal line.

BY: DEBBIE BATES

CASE 133077-U-20

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