

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON,

Complainant,

vs.

EDMONDS SCHOOL DISTRICT,

Respondent.

CASE 133137-U-20

DECISION 13288 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

Elyse B. Maffeo, General Counsel, for the Public School Employees of Washington.

T. Ray Ivey and *Charles Eberhardt*, Attorneys at Law, Perkins Coie LLP for the Edmonds School District.

On November 6, 2020, the Public School Employees of Washington (union) filed an unfair labor practice complaint against the Edmonds School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on December 3, 2020, notified the union that a cause of action could not be found at that time. 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.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the complaint.

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.

ISSUES

The complaint alleges the following:

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by disciplining Lauri Velasquez in reprisal for union activities protected by chapter 41.56 RCW.

Employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)] on an unidentified date, with unidentified actions.

The discrimination allegation of the complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The domination allegation of the complaint does not state a cause of action and is dismissed.

BACKGROUND

The Public School Employees of Washington (union) represented classified employees in the Edmonds School District (employer). Lauri Velasquez is the president of the union. On or about April 13, 2020, Proclamation 20-46 was issued. The proclamation stated that employees must have access to accommodations to prevent greater risk of contracting COVID-19. The proclamation was subsequently amended and extended twice.

For several months under the proclamation bargaining unit members were provided the opportunity to telework. In September 2020, the employer advised Velasquez, as union president, that it was seeking to have certain staff perform work on-site instead of continuing telework. Velasquez requested that she and the other high-risk members be provided accommodations in accordance with the proclamation.

On or about September 14, 2020, the employer advised Velasquez and several other union members that they would no longer be allowed to perform duties remotely or via telework for more than five hours per week. The employer alleged this accommodation was in accordance with the proclamation.

On or about September 16, 2020, Velasquez responded on behalf of herself and other bargaining unit members that she did not feel it was safe to return to the worksite and she did not want to have to take leave. She asked why she and other members were being treated differently than members of other unions who were permitted to continue to telework. Velasquez told the employer she would continue to work from home because of a health and safety exception. On or about September 18, 2020, Velasquez filed a grievance on behalf of the union alleging the employer refused to engage in a collaborative process prescribed in the proclamation with regard to accommodations provided to high risk bargaining members.

On or about September 22, 2020, Velasquez was placed on administrative leave with pay in order for the employer to engage in an investigation for disciplinary purposes. The employer alleged Velasquez's actions constituted insubordination. On or about September 28, 2020, the employer suspended Velasquez for five days without pay based on the alleged insubordination. Velasquez is a long term employee who had never previously received discipline of any kind. The discipline was allegedly more severe than the discipline other employees have received for insubordination. The union alleges the severity of the discipline imposed was an effort to create a chilling effect on union members' willingness to participate in advocacy relating to the right to safe working conditions. It also alleges the discipline was imposed as retaliation and reprisal for engaging in alleged protected activity.

ANALYSIS

Domination

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute, the complaint does not explain or develop this allegation. None of the facts alleged in the complaint suggest that the employer involved itself

in the internal affairs or finances of the union or that the employer attempted to create, fund, or control a “company union.” A cause of action for employer domination is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test’s second clause, that is, whether an employer has attempted to create, fund, or control a company union. *See State – Washington State Patrol, Decision 2900 (PECB, 1988).*

Although the Commission has issued few decisions on employer domination, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term “domination” is thus directly tied to the term “assistance” and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer’s actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference. It’s appropriate to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.

In this case, the facts alleged do not describe employer domination of the union. There are no facts in the complaint that allege the employer intended to control or interfere with the formation or administration of a union. The union was given time to file an amended complaint and did not do so. Thus the domination allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the discrimination allegation of the complaint states a cause of action, summarized as follows:

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by disciplining Lauri Velasquez in reprisal for union activities protected by chapter 41.56 RCW.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

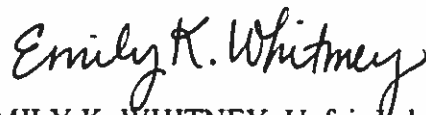
2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge 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 allegation of the complaint concerning domination is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of January, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, 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 01/07/2021

DECISION 13288 - 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 133137-U-20

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