

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BOONE HANKINS,

Complainant,

vs.

YAKIMA COUNTY,

Respondent.

CASE 133350-U-21

DECISION 13347 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

Boone Hankins, the complainant.

Stefanie Weigand, Senior Deputy Prosecuting Attorney, for Yakima County.

On February 22, 2021, Boone Hankins (complainant) filed an unfair labor practice complaint against Yakima County (employer) alleging the employer committed certain unfair labor practices. The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 18, 2021, notified the complainant that a cause of action could not be found at that time. Hankins was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

On April 5, 2021, Hankins filed an amended complaint. The amended complaint alleges:

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by:

1. Threats of reprisal or force or promise of benefit made to Boone Hankins in response to his exercise of protected activity.

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.

2. Denial of Boone Hankins' right to union representation (*Weingarten* right) in connection with an investigatory interview.
3. By continuing to include Ken Hellums in the nonsupervisory bargaining unit represented by Yakima County Employees Independent Local #1 notwithstanding Hellum's alleged status as a supervisor.

The allegation that the employer interfered with protected employee rights through threats of reprisal or force or promise of benefit made to Hankins in response to his exercise of protected activity states a cause of action that will be subject to further processing before this agency. All other allegations in the complaint are dismissed.

BACKGROUND

Hankins works for Yakima County Public Services Road Maintenance department and is represented by Yakima County Employees Independent Union Local 1. Ryan Calhoun serves as the Roads Maintenance Manager for the employer. Hankins directly reports to Lead Road Maintenance Technician Ken Hellums. According to the complaint, Calhoun considers Hellums to be part of the "management team" even though Hellums' position is included in the same bargaining unit as Hankins. Hellums also holds a leadership position with Local 1.

Hankins asserts that Hellums's role with the employer as well as Hellum's role with the union have created a conflict of interest. For example, the complaint asserts that on January 29, 2021, Hellums threatened Hankins with discipline when Hankins raised issues of workplace safety and protocol. Hankins asks for this agency to review Hellums bargaining unit status and to remove him from the existing bargaining unit as a supervisor.

The complaint also alleges that Hankins was subject to hostility and intimidation by Sunnyside Shop Supervisor John Hood. Hankins also asserts that on January 12, 2021, Hood and Road Maintenance Manager Ryan Calhoun requested that Hankins attend an investigative meeting. Hankins declined to attend that meeting because no union representation was available. The complaint does not allege that the employer attempted to continue the meeting with Hankins absent union representation.

Finally, Hankins asserts that he has contacted the employer's Human Resources department regarding his hostile work environment allegations and has not received a response.

ANALYSIS

Applicable Legal Standards

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). The Commission recently clarified the standard for employer interference in *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 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. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

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. *City of Tacoma*, Decision 6793-A.

Weingarten Rights

In *NLRB v. Weingarten*, 420 U.S. 251 (1975) (*Weingarten*), the Supreme Court of the United States affirmed a National Labor Relations Board (NLRB) decision holding that under the National Labor Relations Act (NLRA), employees have the right to be accompanied and assisted by their union representatives at investigatory meetings that the employee reasonably believes may result in disciplinary action. *Seattle School District*, Decision 10732-A (PECB, 2012). In *Okanogan County*, Decision 2252-A (PECB, 1986), the Commission held that the rights announced in *Weingarten* are applicable to employees who exercise collective bargaining rights under chapter 41.56 RCW. See also *Methow Valley School District*, Decision 8400-A (PECB, 2004).

As examiners explained in *State – Washington State Patrol*, Decision 4040 (PECB, 1992) and *Seattle School District*, Decision 10066-B (PECB, 2010), there are four elements necessary for *Weingarten* rights to be applicable:

1. The right to representation attaches only where the employer compels the employee to attend an investigatory meeting.
2. A significant purpose of the interview must be (or becomes) to obtain facts related to a disciplinary action.
3. The employee must reasonably believe potential discipline might result from the information obtained during the interview. *Mason County*, Decision 7048 (PECB, 2000).
4. The employee must request the presence of a union representative.

An employee has a right to union representation at an “investigatory” interview which the employee reasonably believes could result in discipline. *City of Bellevue*, Decision 4324-A (PECB, 1994) (citing *NLRB v. Weingarten*, 420 U.S. 251 (1975); *Okanogan County*, Decision 2252-A). It is the nature of an “investigatory” interview that the employer is seeking information from the employee. A union representative is present to assist the employee at an investigatory interview, not to speak in place of that individual. *City of Bellevue*, Decision 4324-A. Discipline often can and does result from “investigatory” meetings, and the Commission has found interviews to be “investigatory” where they were part of an investigation concerning improper conduct. *Snohomish*

County, Decision 4995-B (PECB, 1996). If the interview is not investigatory in nature, *Weingarten* rights do not apply.

Here, Hankins alleged that he was compelled to attend an investigatory interview that he reasonably believed that the interview was investigatory in nature. Hankins also alleged that he requested union representation and that no union representative was available to attend that meeting. Hankins has not alleged that the employer insisted on continuing the meeting despite the lack of union representation. Absent such facts, a *Weingarten* violation cannot be found. This allegation is dismissed.

Improper Unit Placement

As referenced above, it is an unfair labor practice for a public employer to discriminate against, interfere with, restrain, or coerce public employees in the exercise of their collective bargaining rights. RCW 41.56.140(1). RCW 41.56.150(1) similarly prohibits interference by unions.

Commission precedents recognize the right of an individual employee to file unfair labor practice complaints against both an employer and union, where the employee claims that the position the employee holds has been improperly included in or excluded from an existing bargaining unit by agreement of the employer and union. *Shoreline School District (SEIU Local 6)*, Decision 5560 (PECB, 1996); *Castle Rock School District (Castle Rock Education Association)*, Decision 4722-B (EDUC, 1995); *Richland School District (PSE of Washington)*, Decision 2208 (PECB, 1985), *aff'd*, 2208-A (PECB, 1985). The Commission has exclusive jurisdiction to determine appropriate bargaining units, which could include imposing sanctions upon an “exclusive bargaining representative” which is found guilty of a breach of the duty of fair representation by aligning itself in interest against bargaining unit employees on unlawful grounds. *See University of Washington*, Decision 8216 (PSRA, 2003); *Shoreline School District (SEIU Local 6)*, Decisions 5560 (PECB, 1996).

While an employee can utilize the unfair labor practice procedures to challenge the agreements of an employer or union to include or exclude their own status in a bargaining unit, an individual employee cannot challenge the bargaining unit placement of *other* employees. Individual

employees lack legal standing to file or process a unit clarification petition under chapter 391-35 WAC.

Here, Hankins asserts that Hellums is a supervisor who has been improperly included in the nonsupervisory bargaining unit. This allegation must be dismissed because Hankins cannot challenge the bargaining unit status of other employees through the unfair labor practice provisions and he is limited to only challenging his own status.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegation of the amended complaint states 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 made to Boone Hankins in response to his exercise of protected activity.

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 amended 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 amended 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 amended complaint concerning violations of *Weingarten* rights and improper unit placement are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of May, 2021.

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 05/11/2021

DECISION 13347 - 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 133350-U-21

EMPLOYER: YAKIMA COUNTY

REP BY: JACQUI LINDSAY
YAKIMA COUNTY
128 N 2ND ST RM B27
YAKIMA, WA 98901
jacqui.lindsay@co.yakima.wa.us

STEFANIE WEIGAND
CITY OF YAKIMA
128 N 2ND ST RM 211
YAKIMA, WA 98901
stefanie.weigand@co.yakima.wa.us

PARTY 2: BOONE HANKINS

REP BY: BOONE HANKINS
PO BOX 475
SUNNYSIDE, WA 98944
8018hankins@gmail.com