

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

vs.

KITSAP REGIONAL LIBRARY SYSTEM,

Respondent.

CASE 134657-U-21

DECISION 13463 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

Amanda Hacker, Staff Representative, for the Washington Public Employees Association.

Jesse Taylor, Attorney at Law, Summit Law Group PLLC for the Kitsap Regional Library System.

On November 18, 2021, the Washington Public Employees Association (union) filed an unfair labor practice complaint against Kitsap Regional Library System (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on December 2, 2021, 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 interference with employee rights 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 promises of benefit made to Olivia Muzzy regarding Muzzy's communications as a shop steward during meetings.

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 its unidentified deprivation of ascertainable rights, status, or benefit of Olivia Muzzy in reprisal for union activities protected by chapter 41.56. RCW.

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

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

BACKGROUND

The Washington Public Employees Association (union) represents library employees at the Kitsap Regional Library System (employer). Oliva Muzzy is an employee and a shop steward for the union.

On August 25, 2021, the union and employer met to bargain the reopening to the public and workplace safety surrounding COVID. Muzzy was present for the meeting. During the meeting an issue arose about contact tracing and notification exposure. The discussion was related to an incident that had directly involved Muzzy. Muzzy allegedly shared her experience related to the discussion. Monica Houston, Human Resources Director, allegedly became frustrated and agitated while Muzzy shared her experience. Houston allegedly loudly expressed that Muzzy was lying about what had occurred. Muzzy allegedly attempted to restate the circumstances to clarify any

misunderstanding, but Muzzy was immediately cut off by Houston. Houston allegedly stated she would defend herself if Muzzy continued to lie about the circumstances. The union requested a caucus. During a sidebar discussion it was determined that it would not be productive to finish the August 25 session. After the August 25 session the union sent an email to Houston expressing concerns about Houston's behavior toward Muzzy in the meeting.

On September 23, 2021, the employer held an IT meeting and presented the budget. Jill Jean, Director, and Dan Baer, CFO and COO, made the presentation. After the presentation was finished Jean opened the meeting up for questions. Muzzy allegedly stated that she had questions, but quite a few, so Muzzy deferred to other IT staff to ask questions first. No other employees had questions. Muzzy allegedly explained that as the union show steward, many staff had provided her questions. Muzzy had printed up the questions. The questions related to long-term budgetary concerns.

Immediately after the IT budget meeting management allegedly briefed Houston on the budget meeting. Jean was also allegedly aware of a later planned meeting between Muzzy; Liz Steyer, Muzzy's supervisor; and Kwang Kye, CTS Director.

In the afternoon of September 23, Steyer asked Muzzy to step into Kye's office for a meeting. Steyer allegedly told Muzzy the meeting was not a disciplinary meeting. The meeting was to discuss the earlier budget meeting. During the afternoon meeting Steyer allegedly told Muzzy that Muzzy's questions were not asked in an appropriate forum, that Muzzy had hijacked the budget meeting, that Muzzy is an IT employee first before a shop steward, and that Muzzy's questions made other IT staff in the room uncomfortable. Kye allegedly asked if Muzzy's questions were something being discussed in bargaining. Muzzy allegedly clarified that the contract bargaining was focused on staff salaries and budgetary impacts related to salaries. Kye allegedly asked again if there was a more appropriate venue to ask Muzzy's questions. Muzzy allegedly stated that the questions could have been asked in an LMCC meeting, but no meetings had been regularly scheduled due to COVID and contract bargaining. Steyer allegedly acknowledge that if staff were made to feel uncomfortable during the budget meeting questions, administrators should have stepped in at the time to handle the situation. Kye also asked Muzzy how the staff had the

questions. Muzzy allegedly explained how the staff had become familiar with the issues through the Board of Trustees meetings and documents.

On October 6, 2021, Steyer allegedly emailed Muzzy and proposed taking a hiatus from their regularly scheduled one-on-one meetings and proposed discussing relevant action items in the IT office when the need arose and continue to communicate through email.

On November 8, 2021, Steyer forwarded an email string that had been initiated by Muzzy and originally sent to Megan Burton, STEM and Learning Supervisor, on November 6. In Steyer's email to Muzzy Steyer allegedly stated "In your message to Megan you wrote, 'The work I had been doing with mobile device management has now been assigned to Gianni.' This is not the case . . . if you continue to misrepresent department operations, I will have to begin the disciplinary process."

ANALYSIS

Discrimination

Applicable Legal Standard

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).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Application of Standard

The complaint lacks facts alleging the employer deprived Muzzy of an ascertainable right, benefit, or status. The complaint alleges that Muzzy participated in activity protected by the collective bargaining statute when Muzzy spoke up during two separate meetings as either a bargaining representative or shop steward. The complaint also alleges that on November 8 that Muzzy was told she may be disciplined in the future if misrepresentations continued. The complaint lacks facts of Muzzy actually being deprived of an ascertainable right, benefit, or status. It also lacks facts alleging a causal connection between Muzzy's exercise of protected activity and an employer's deprivation. The union was notified of the deficiency and provided an opportunity to correct the deficiency by filing an amended complaint. The union did not file an amended complaint. The complaint must be dismissed.

ORDER

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

Employer interference with employee rights 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 promises of benefit made to Olivia Muzzy regarding Muzzy's communications as a shop steward during meetings.

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

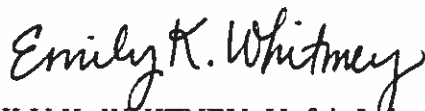
2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge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

ISSUED at Olympia, Washington, this 13th day of January, 2022.

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 01/13/2022

DECISION 13463 - 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 134657-U-21

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