STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Complainant, vs. CITY OF ARLINGTON, Respondent.	CASE 134678-U-21 DECISION 13472 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

Ed Stemler, General Counsel, for the Washington State Council of County and City Employees.

Daniel A. Swedlow, Attorney at Law, Summit Law Group PLLC for the City of Arlington.

On December 7, 2021, the Washington State Council of County and City Employees (union) filed an unfair labor practice complaint against the City of Arlington (employer). The complaint was reviewed under WAC 391-45-110.[1] A partial deficiency notice issued on December 16, 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.

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[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.

On January 5, 2022, the union filed an amended complaint. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the amended complaint.

ISSUES

The amended 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 Scott Black and the union during a meeting where bargaining unit work was discussed.
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> 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)] within six months of the date the complaint was filed, by alleging Scott Black was withholding information from the bargaining unit during a meeting.
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> Employer discrimination in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by skimming bargaining unit work from the union after the union filed an unfair labor practice charge.
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> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by
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> (a) Skimming snow plowing and equipment use work previously performed by bargaining unit members, without providing the union an opportunity for bargaining.

(b) Jay Downing circumventing the union through direct dealing with employees represented by the union during the morning meeting.

The interference, domination, discrimination, and skimming allegations of the amended complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

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

BACKGROUND

The Washington State Council of County and City Employees (union) represents a wall-to-wall bargaining unit at the City of Arlington (employer). On November 23, 2021, Jay Downing, Maintenance and Operations Manager, sent an email to Timm Sprague, union President, giving Sprague a heads up that it would have a supervisor, nonbargaining unit member, become proficient in operating a snowplow that the supervisor would be able to teach others and supervise operations.

The union did not agree with the employer's proposal. On November 24, 2021, Sprague sent an email back to Downing stating that the leads and maintenance worker 2s in the bargaining unit were qualified in the operation of all snowplows and qualified to train others. This information was also included in the leads and maintenance worker 2's job descriptions.

On December 2, 2021, Downing and the supervisor convened the daily morning meeting of the maintenance and operations crew. Downing allegedly stated that the union would not allow the supervisor to plow or train people since he was not a member of the union, it was union work, and there were leads that could train the staff. Downing allegedly stated that Sprague had more information than he normally had, so he must have been talking to someone, meaning the Shop Steward, Scott Black. Black attended the meeting. Downing allegedly stated that the group needed to communicate better, while looking at Black and then said Downing and the supervisor would leave so the crew could discuss the matter. Black had not yet brought the issue with the supervisor

completing bargaining unit work to the rest of the bargaining unit. Downing's statements allegedly insinuated Black was withholding information from the bargaining unit members. The meeting became contentious, and damage was allegedly caused in the relationship between the crew and the local officers. Downing's comments created hard feelings within the union membership.

On December 3, 2021, Black announced he was resigning as shop steward due to the events and issues created in the December 2 meeting.

On December 7, 2021, the union filed an unfair labor practice complaint (ULP) with the Public Employment Relations Commission. On December 26, 2021, Downing allowed the Maintenance and Operations Supervisor and Arlington Airport Operations Manager, nonbargaining unit employees, to operate bargaining unit equipment and plow snow. The action allegedly appeared to be implemented in retaliation for the filed ULP.

ANALYSIS

Circumvention

Applicable Legal Standard

It is an unfair labor practice for an employer to circumvent its employees' exclusive bargaining representative and negotiate directly with bargaining unit employees concerning mandatory subjects of bargaining. *University of Washington*, Decision 11600-A (PSRA, 2013); *Royal School District*, Decision 1419-A (PECB, 1982). In order for a circumvention violation to be found, the complainant must establish that it is the exclusive bargaining representative of the employees and that the employer engaged in direct negotiations with one or more employees concerning a mandatory subject of bargaining. *City of Seattle*, Decision 3566-A (PECB, 1991).

Sharing information or listening to employee concerns does not rise to the level of circumvention. *See Kitsap Transit*, Decision 11098-A (PECB, 2012), aff'd on other grounds, Decision 11098-B (PECB, 2013) (employer memorandum to employees announcing a unilateral change was not circumvention); *Vancouver School District*, Decision 10561 (EDUC, 2009), aff'd, Decision 10561-A (EDUC, 2011) (employer communication of the employer's bargaining proposal to

bargaining unit employees was not circumvention or direct dealing); *University of Washington*, Decision 10490-C (PSRA, 2011) (employer did not circumvent the union when it met with bargaining unit employees and listened to their concerns).

Application of Standard

The amended complaint lacks facts alleging the employer circumvented the exclusive bargaining representative. The complaint alleges that the employer held a meeting and shared information with the employees related to the snowplow work. The amended complaint alleges that there was circumvention but does not allege any facts that the employer engaged in direct negotiations with one or more bargaining unit employees. It merely alleges that the employer shared information with the employees and then left the meeting. Sharing information or listening to employee concerns does not rise to the level of circumvention. *See Kitsap Transit*, Decision 11098-A, *aff'd on other grounds*, Decision 11098-B (employer memorandum to employees announcing a unilateral change was not circumvention); *Vancouver School District*, Decision 10561, *aff'd*, Decision 10561-A (employer communication of the employer's bargaining proposal to bargaining unit employees was not circumvention or direct dealing); *University of Washington*, Decision 10490-C (employer did not circumvent the union when it met with bargaining unit employees and listened to their concerns). Additionally, a shop steward, Black, was present at the meeting. Because the amended complaint lacks facts alleging a negotiation between the employer and bargaining unit employees, the allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference, domination, discrimination, and skimming allegations of the amended 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 Scott Black and the union during a meeting where bargaining unit work was discussed.

> 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)] within six months of the date the complaint was filed, by alleging Scott Black was withholding information from the bargaining unit during a meeting.
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> Employer discrimination in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by skimming bargaining unit work from the union after the union filed an unfair labor practice charge.
>
> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by skimming snow plowing and equipment use work previously performed by bargaining unit members, without providing the union an opportunity for bargaining.

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 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 circumvention are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of February, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 02/01/2022

DECISION 13472 - 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 134678-U-21

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