Grandview School District, Decision 10639 (EDUC, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GRANDVIEW EDUCATION ASSOCIATION, Complainant, vs. GRANDVIEW SCHOOL DISTRICT, Respondent.	CASE 22141-U-08-5643 DECISION 10639 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

James A. Gasper, Attorney at Law, for the union.

Stevens, Clay & Manix, P.S., by *Gregory L. Stevens,* Attorney at Law, for the employer.

On December 5, 2008, the Washington Education Association (union) filed an unfair labor practice complaint against the Grandview School District (employer). A deficiency notice was issued on December 31, 2008. The union filed an amended complaint on January 14, 2009, and a preliminary ruling was issued on January 20, 2009. The complaint alleged the employer interfered with employee rights in violation of RCW 41.59.140(1)(a). The employer filed a timely answer on January 29, 2009. The Commission appointed Lisa A. Hartrich as the Examiner. A hearing was held on July 22, 2009. The parties submitted post-hearing briefs on September 16, 2009.[1]

ISSUES

1. Did the employer interfere with employee rights through communications made by Kevin Chase to Karen Miller concerning information related to a grievance arbitration hearing?

[1] The parties had the option of filing response briefs by September 28, 2009, but chose not to do so.

2. Did the employer interfere with employee rights through communications made by Kevin Chase to Jamie Downing concerning the union's use of the employer's e-mail system?

3. Did the employer interfere with employee rights through communications made to Ryan Downing concerning the denial of a request for tuition reimbursement and scheduling of a grievance hearing?

After full consideration of the parties' briefs, exhibits, and applicable law, the Examiner concludes that the union failed to prove the employer interfered with employee rights in any of the above instances.

APPLICABLE LEGAL STANDARD

"Independent" Interference

An employer interferes with an employee's right to engage in protected union activity under RCW 41.59.140(1)(a) if it threatens reprisal or force, or promises a benefit, related to that protected activity. In order to prove a violation, the union must establish that (1) one or more employees engaged in activity protected by the collective bargaining statute, or communicated an intent to engage in protected activity, (2) an employer official made some statement or took some action, and (3) one or more employees reasonably perceived the employer's statement or action as a threat of reprisal or force, or promise of a benefit, associated with the protected activity. *Kennewick School District*, Decision 5632-A (PECB, 1996); *Seattle School District*, Decision 9858-A (EDUC, 2009).

It is not necessary to show that the employer acted with intent or motivation to interfere, nor is it necessary to show that the employee involved actually felt threatened or coerced. The determination is based on whether a typical employee in the same circumstances could reasonably perceive the employer's actions as discouraging his or her union activities. *Grant County Public Hospital Dist. 1*, Decision 8378-A (PECB, 2004); *Seattle School District*, Decision 9858-A.

The burden of proving an allegation of unlawful interference rests with the complaining party, and must be established by a preponderance of the evidence. *City of Pasco*, Decision 3804-A (PECB, 1992).

ISSUE 1

Karen Miller has been employed as a teacher by the Grandview School District for 30 years. During that time, she served as the union president twice, and was also a lead negotiator on the union's bargaining team. The last time she served as a representative for the union was in 2005.

In the fall of 2008, Miller received an e-mail from Superintendent Kevin Chase, asking if she had access to her bargaining notes. Miller called Chase to clarify which notes he was looking for. Miller testified that she and Chase "talked in generalities about the notes from the bargaining session that we had completed in 2005." Miller told Chase that she would look to see what she had. Miller testified that she later located her bargaining notes and put them aside. However. Chase did not ask Miller for a copy of her bargaining notes, and Miller did not provide the notes to him.

Later, the union asked Miller to bring her bargaining notes to a meeting, and Miller provided testimony about those notes at a grievance arbitration hearing, when she was called as a witness by the union.

ANALYSIS

The union argues that the employer engaged in direct dealing by inquiring about bargaining notes from Miller instead of from a union representative. It is unlawful for an employer to engage in direct dealings with an employee on matters of wages, hours or working conditions. This is also known as a "circumvention" allegation, a sub-type of a "refusal to bargain" violation under RCW 41.59.140(1)(e).[2] However, the union did not make a refusal to bargain allegation in

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[2] *See Tacoma-Pierce County Health Dept.*, Decision 6929-A (PECB, 2001).

its original complaint, and the preliminary ruling limited the scope of these proceedings to an interference analysis under 41.59.140(1)(a).[3]

There is no evidence that the employer interfered with Miller's rights by inquiring about her bargaining notes.

ISSUE 2

Jamie Downing is a high school teacher with the Grandview School District. She has been with the district for 10 years. Downing is the union president. She has also served as grievance chair, president-elect and past-president. She is also a member of the bargaining team.

On November 4, 2008, Downing forwarded an e-mail via the district's e-mail server to all Grandview School District certificated staff[4] titled "FW: MidState Members Invited to Attend East Valley Meeting – 11/5." The e-mail was an invitation to a public forum on the "State of the East Valley School District Budget." East Valley School District is a neighboring district of Grandview, and the forum was sponsored by the East Valley Education Association (EVEA). Both teacher associations in Grandview and East Valley are members of the Washington Education Association (WEA) Mid-State UniServ Council, a regional organization of the union.

Later that same day, Superintendent Chase responded to Downing's e-mail, asking her to refrain from using the district e-mail for business other than local [Grandview] association business. Chase also invited Downing to "talk about it" if she wanted to.

Downing testified that, prior to receiving this e-mail from Chase, she sent similar communications, *i.e.* e-mails about ongoing activities within the regional Council, to the bargaining unit membership several times a year, and was never informed that she could not do

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3 *See King County*, Decision 6994-B (PECB, 2002), where the Commission reversed and remanded when an examiner decided issues different than those outlined in a preliminary ruling.

4 Chase testified that the e-mail also went to non-bargaining unit members, including principals and other administrators.

so.[5] Chase and Downing did not discuss the e-mail use policy after this incident. According to Chase, "The next communication was when the ULP was filed."

ANALYSIS

The union argues that the employer interfered with protected internal union communications. The union asserts that the parties' collective bargaining agreement, Article II, Section 1. Association Rights, states: "The Association may use the internal district mail service and employee mailboxes for communication to employees."

The employer does not dispute that the union has the right to use the district's e-mail system for local union business. However, Chase testified that he regarded the EVEA e-mail to be outside the union's business. Furthermore, the union made no attempt to discuss the issue with Chase, even though he extended the invitation. Nor did the union file a grievance in an attempt to enforce the contract.[6]

As described above, the determination for an interference violation is based upon whether a typical employee in the same circumstances could reasonably perceive the conduct of the employer as a threat of reprisal or force or a promise of benefit related to the pursuit of rights protected by the statute. Here, there is no evidence of a threat or promise of any kind.

The union also puts forward arguments related to content-based limitations, interference with an employee's use of company property, unilateral change, illegal prohibition against conversations about not-work related matters, illegal censoring of the content of union bulletin boards, and First Amendment protections. None of these analyses provide any assistance to the Examiner in determining whether the employer interfered with employee rights under 41.59.140(1)(a).

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5 Chase testified that he was starting his sixth year as superintendent in Grandview. He also testified that he was not aware that the union had ever sent out an e-mail regarding another school district's union business.

6 The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through unfair labor practice complaints.

ISSUE 3

In August 2008, Ryan Downing had just been hired to teach high school math by the Grandview School District. Prior to that, he was a teacher at another district for six years. Downing sought reimbursement for expenses incurred while completing his National Teacher Certification Board Exam. Article IV, Section 12 of the parties' 2007-2009 collective bargaining agreement states:

> TUITION REIMBURSEMENT.
> Teachers enrolled in the National Teacher Certification program shall receive five hundred dollars ($500.00) tuition reimbursement of documented expenses upon completion of the National Teacher Certification program. Reimbursement shall be made upon submission of documentation of completion of the National Teacher Certification Board exam and documentation of five hundred dollars ($500.00) of expenses incurred and within six (6) calendar months of completion of the exam.

On October 23, 2008, Downing's request for tuition reimbursement was denied by Brad Shreeve, assistant superintendent for business and operations. The request was denied because Downing's expenditure receipts were dated June 18, 2007, over one year prior to beginning employment with the district.

Later that afternoon, Superintendent Chase went to talk with Downing to explain why the district denied the request. Chase and Downing worked together previously at a neighboring school district and knew each other well.

On October 25, 2008, Jamie Downing, union president and Ryan Downing's spouse, sent an e-mail to Chase, taking issue with Chase's visit to discuss the issue with Ryan Downing directly, instead of contacting the union. She complained that this was "Yet another time that you [Chase] have broken our ULP settlement by going to a GEA member about Association business instead of coming to me, the GEA president."

The "ULP settlement" Downing referred to was an agreement signed by the district and the union in July 2008 as part of a settlement to an unfair labor practice filed by the union.[7] As part

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[7] Case 21460-U-08-5469.

of that agreement, the parties agreed on a framework to communicate more effectively. The agreement states, in part:

> The parties hereby agree that the GEA President is the designated spokesperson for the GEA and all bargaining unit employees on matters of contract administration and/or bargaining of mandatory subjects.
>
> The parties also agree that there are circumstances where it is appropriate for [the] School District administration to communicate directly with bargaining unit employees on matters affecting school business and/or affecting the employee's terms and conditions of employment.
>
> If contract administration issues or labor contract provisions are understood to be in dispute, the School District administration will address such issues with the GEA President in the first instance.

On October 28, 2008, Ryan Downing filed a grievance contesting the denial of the tuition reimbursement. On November 13, Chase e-mailed Ryan Downing to supply possible dates for a Step II grievance hearing. Chase did not e-mail or copy the union. On November 14, Jamie Downing e-mailed Chase to confirm a Step II meeting for November 18, and added, "Please remember that our ULP settlement states that you are to go to me, the GEA President, with all Association communication."

ANALYSIS

The union argues that the district engaged in unlawful direct dealing when Chase approached Ryan Downing to explain the district's rationale for denying Downing's request for tuition reimbursement, and by Chase's continued contact with Downing after Downing filed a grievance challenging that denial. The union points to the language and purpose of the July 2008 settlement agreement, and argues that despite that agreement, Chase's actions showed a continued pattern of direct dealing with individuals on matters arising under the collective bargaining agreement, instead of with the union. The union also argues that the contract language gives the union the primary responsibility for advancing a grievance.

Once again, the union advances a misplaced "direct dealing" analysis, not an interference analysis. If the union seeks to enforce the collective bargaining agreement or the settlement

agreement, filing an interference unfair labor practice complaint is not the proper course of action. The interactions between Chase and Ryan Downing do not rise to the level of employer interference with employee rights because the union failed to show that Downing reasonably perceived Chase's statements or actions as a threat of reprisal or force, or promise of a benefit, associated with Downing's protected activity.

CONCLUSION

The union has not carried its burden of proof to show that the employer unlawfully interfered with employee rights.

FINDINGS OF FACT

1. The Grandview School District (employer) is a public employer within the meaning of RCW 41.59.020(5).

2. The Grandview Education Association (union) is a bargaining representative within the meaning of RCW 41.59.020(6).

3. The employer and union are parties to a collective bargaining agreement dated September 1, 2007, through August 31, 2009.

4. In the fall of 2008, Superintendent Kevin Chase asked union member Karen Miller if she had access to her bargaining notes from the 2005 bargaining sessions between the union and employer.

5. Miller eventually located her notes, but Chase did not ask for a copy, and Miller did not give Chase a copy of the notes.

6. Miller testified about her bargaining notes at a grievance arbitration hearing when she was called as a witness by the union.

7. On November 4, 2008, union president Jamie Downing sent an e-mail using the district's e-mail server to all Grandview School District certificated staff. The e-mail was an invitation to a public forum involving a neighboring school district.

8. On November 4, 2008, Superintendent Chase e-mailed Downing and asked her to refrain from using the district e-mail for business other than Grandview Education Association business.

9. Upon being hired by the employer in August 2008, union member Ryan Downing sought tuition reimbursement for expenses incurred while completing his National Teacher Certification Board Exam, as provided for in the 2007-2009 collective bargaining agreement.

10. On October 23, 2008, the employer denied Ryan Downing's request for tuition reimbursement. That same day, Superintendent Chase talked to Downing in person to explain why the district denied the request.

11. On October 25, 2008, union president Jamie Downing e-mailed Chase to object to Chase's visit with Ryan Downing concerning the denial of the tuition reimbursement.

12. On October 28, 2008, Ryan Downing filed a grievance to contest the denial of the tuition reimbursement.

13. On November 13, Chase e-mailed Ryan Downing to supply possible dates for a Step II grievance hearing. Chase did not e-mail or copy the union.

14. On November 14, union president Jamie Downing e-mailed Chase to confirm a Step II meeting for November 18, and reminded Chase to communicate with her, as the union president, on union-related matters.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-45 WAC.

2. The employer did not commit an unfair labor practice within the meaning of RCW 41.59.140(1)(a) when it communicated with Karen Miller concerning information related to a grievance arbitration hearing.

3. The employer did not commit an unfair labor practice within the meaning of RCW 41.59.140(1)(a) when it asked the union to limit its use of the employer's e-mail system.

4. The employer did not commit an unfair labor practice within the meaning of RCW 41.59.140(1)(a) when it communicated with Ryan Downing concerning the denial of a request for tuition reimbursement and scheduling of a grievance hearing.

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 31st day of December, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

LISA A. HARTRICH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.