STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GRANDVIEW EDUCATION ASSOCIATION, Complainant, vs. GRANDVIEW SCHOOL DISTRICT, Respondent.	CASE 26360-U-14-6729 DECISION 12047 - EDUC PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On March 21, 2014, the Grandview Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Grandview School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on March 28, 2014, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for allegations of the complaint as set forth in the preliminary ruling in Paragraph 1 (A) and (B) of the Order below. The employer must file and serve its answer to the complaint within 21 days following the date of this decision.

---

[1] At this stage of the proceedings, all of the facts alleged in the 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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit in connection with union activities, made in (a) an e-mail of January 10, 2014, to union president Jamie Downing (Downing), and (b) an e-mail of February 10, 2014, concerning Downing; employer domination or assistance of a union in violation of RCW 41.59.140(1)(b) [and derivative interference in violation of RCW 41.59.140(1)(a)], by interference with the administration of the union, in sending an e-mail to bargaining unit members on January 9, 2014, that did not include Downing; employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and derivative interference in violation of RCW 41.59.140(1)(a)], by circumventing the union through direct dealing with employees represented by the union, in sending an e-mail to all bargaining unit members on January 28, 2014, without notice to the union; and employer discrimination in violation of RCW 41.59.140(1)(c) [and derivative interference in violation of RCW 41.59.140(1)(a)], by reprimanding Downing in a letter of January 21, 2014, in reprisal for union activities protected by Chapter 41.59 RCW.

The partial deficiency notice pointed out the valid aspects and the defects to the complaint.

Interference and discrimination claims

The complaint alleges employer interference with or concerning Downing through employer e-mails and a letter. The e-mail of February 10, 2014, sent by employer official Kevin Chase (Chase), allegedly contains comments about Downing's actions to bargaining unit members, including other union officers, that could be construed as undermining, ridiculing, or disparaging Downing as the union president, and thus could be reasonably perceived by the other union members as a threat of reprisal or force or a promise of benefit made in association with union activities. *See City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). This interference claim states a cause of action.

In contrast, the e-mail of January 10, 2014, concerns an e-mail sent to Downing by employer official Matt Mallery (Mallery) that does not contain obvious threats or promises, but is more akin to "frank and candid statements between union officials and employer officials" that do not necessarily constitute interference. *City of Mountlake Terrace,* Decision 11831-A. Mallery admonished Downing over her alleged behavior during a meeting on January 9, 2014. Downing's office and experience as the union president create a higher standard for interference claims. *City of Renton,* Decision 7476-A (PECB, 2002) ("union officials can be expected to receive and interpret harsh words, criticism, and displeasure"). Thus, this interference claim does not state a cause of action.

Mallery's e-mail is also contrasted with the letter sent by Chase on January 21, 2014. Chase went beyond admonishing Downing and issued what could be construed as a written reprimand. This claim states a cause of action for discrimination (and derivative interference).

Domination or assistance of a union claim

The union also alleges employer domination or assistance of a union by interfering with the union's administration of its affairs. This is apparently based upon Mallery's e-mail of January 9, 2014, sent to bargaining unit members, but not to Downing. Downing objected to this exclusion, and the complaint indicates that a subsequent e-mail was sent to all bargaining unit members. It is an unfair labor practice for an employer to intentionally interfere with the internal affairs or finances of a union, or attempt to create, fund, or control a company union. The facts presented by the union do not rise to the level of an unfair labor practice in violation of RCW 41.59.140(1)(b). A single e-mail allegedly excluding the union president does not indicate that the employer is intentionally interfering with the union's administration of its internal affairs. This claim does not state a cause of action.

Circumvention claim

The complaint alleges that the employer sent an e-mail to all bargaining unit members on January 28, 2014, concerning medical insurance options. The complaint cites part of the e-mail. As the

Commission recently held, employers may communicate directly with represented employees, "provided that the communication does not amount to bargaining or other unlawful activity, including making statements that tend to undermine the union's status as the exclusive bargaining representative of its employees." *Grandview School District,* Decision 10639-A (EDUC, 2011). The information presented by the union indicates that the employer was providing information to bargaining unit members, not bargaining with them over medical insurance options, or making statements that undermined the union's status as the exclusive bargaining representative of its employees. This claim does not state a cause of action.

NOW, THEREFORE, it is

ORDERED

Preliminary Ruling

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

   [A] Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit in connection with union activities, made in an e-mail of February 10, 2014, concerning Downing; and

   [B] Employer discrimination in violation of RCW 41.59.140(1)(c) [and derivative interference in violation of RCW 41.59.140(1)(a)], by reprimanding Downing in a letter of January 21, 2014, in reprisal for union activities protected by Chapter 41.59 RCW.

Grandview School District shall:

File and serve its answer to the allegations listed in Paragraph 1 (A) and (B) of this Order within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the complaint, except if a 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 with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

Dismissal

2. The following allegations of the complaint in Case 26360-U-14-6729 are DISMISSED for failure to state causes of action:

[A] Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit in connection with union activities, made in an e-mail of January 10, 2014, to union president Downing;

[B] Employer domination or assistance of a union in violation of RCW 41.59.140(1)(b) [and derivative interference in violation of RCW 41.59.140(1)(a)], by interference with the administration of the union, in sending an e-mail to bargaining unit members on January 9, 2014, that did not include Downing; and

[C] Employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and derivative interference in violation of RCW 41.59.140(1)(a)], by circumventing the union through direct dealing with employees represented by the union, in sending an e-mail concerning medical insurance options to all bargaining unit members on January 28, 2014, without notice to the union.

The allegations summarized in Paragraph 2 (A), (B), and (C) are dismissed under this Order and will not be considered in further unfair labor practice proceedings in Case 26360-U-14-6729. Only the allegations summarized in the Paragraph 1 (A) and (B) (Preliminary Ruling) will be considered by the examiner.

ISSUED at Olympia, Washington, this 25th day of April, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 (A-C) (Dismissal) 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 04/25/2014

The attached document identified as: DECISION 12047 - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MAJEL C. BOUDIA

CASE NUMBER:	26360-U-14-06729	FILED:	03/21/2014	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	TEACHERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: GRANDVIEW SCHOOL DISTRICT
ATTN: KEVIN CHASE
913 W 2ND ST
GRANDVIEW, WA 98930
Ph1: 509-882-8500

REP BY: MICHAEL H RORICK
PORTER FOSTER RORICK
800 TWO UNION SQUARE
601 UNION STREET
SEATTLE, WA 98101
Ph1: 206-622-0203

PARTY 2: GRANDVIEW EDUCATION ASSN/WEA
ATTN: JAMIE DOWNING
2061 WILSON HWY
GRANDVIEW, WA 98930
Ph1: 509-840-0569 Ph2: 509-882-8754

REP BY: ERIC HANSEN
WASHINGTON EDUCATION ASSN/WEA
32032 WEYERHAUSER WAY S
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7024 Ph2: 800-622-3393