

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 925,

Complainant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE 128201-U-16

DECISION 12606 - PSRA

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On May 20, 2016, the Service Employees International Union, Local 925 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the University of Washington (employer) as respondent. The complaint was docketed by the Commission as 128201-U-16. The allegations of the complaint concerned employer interference, discrimination, and skimming of bargaining unit work.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 9, 2016, indicated that it was not possible to conclude that a cause of action existed at that time for the skimming allegation. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the skimming allegations of complaint. The complainant filed an amended complaint on June 30, 2016.

The Unfair Labor Practice Manager reviewed the amended complaint. The skimming allegations of the amended complaint against the employer fail to state a cause of action and are dismissed. The amended complaint states a cause of action for further processing of the interference and discrimination allegations. The employer must file and serve its answer to the amended 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 amended complaint concern:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a) by:

1. Since December 23, 2015, Damen Fetters making statements about Uma Dutt's position and compensation, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employees' union activity.
2. Since December 23, 2015, Assistant Director Ashley Kangas making statements about Uma Dutt's position and compensation, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employees' union activity.

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] since January 8, 2016, by eliminating the Program Support Supervisor 2 position held by Uma Dutt in reprisal for union activities protected by Chapter 41.80 RCW.

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] by skimming of work previously performed by the Program Support Supervisor 2 position, without providing the union with an opportunity for bargaining.

The allegations of the amended complaint concerning employer interference and discrimination state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The allegation of employer refusal to bargain by skimming of bargaining unit work is dismissed for failure to state a cause of action.

Refusal to Bargain/Skimming

A complaint alleging a unilateral change, such as a skimming violation, must establish both: (1) the existence of a relevant status quo; and (2) a change of employee wages, hours, or working conditions. *Seattle School District*, Decision 11161-A (PECB, 2013), citing *City of Kalama*, Decision 6773-A (PECB, 2000). If there is no change in the status quo, then there has not been skimming. *Seattle School District*, Decision 11161-A, citing *City of Anacortes*, Decision 6863-B (PECB, 2001); *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Seattle*, Decision 2935 (PECB, 1988).

There must be an actual unilateral change for a cause of action for skimming to exist. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011). Thus, in a skimming case, the statute of limitations begins to run when bargaining unit work is assigned outside of the bargaining unit.

Skimming does not occur until work has actually been assigned to employees outside of the bargaining unit. Therefore, in a skimming case the statute of limitations does not begin to run until bargaining unit work is assigned to non-bargaining unit employees. *Lake Washington School District*, Decision 11913-A (PECB, 2014).

ANALYSIS

The amended complaint makes a general reference to the fact that the employer skimmed bargaining unit work, previously assigned to Uma Dutt. The amended complaint describes that some of the work previously performed by Dutt's Program Support Supervisor 2 position is now performed by a Program Support Supervisor 1 position. The deficiency notice put the complainant on notice of the need to specify which other bargaining unit or unrepresented position is now performing the work. Specifically, the amended complaint does not address the factual issue of whether the Program Support Supervisor 1 position is part of the same bargaining unit as the Program Support Supervisor 2. Without this information a cause of action for skimming cannot be found. There is no skimming of bargaining unit work when work is moved between job positions within the same bargaining unit. Skimming occurs when work

is removed from a bargaining unit job position to non-bargaining unit employees. As presented, the skimming allegation lacks supporting facts that are necessary to qualify for further processing.

CONCLUSION

The amended complaint does not describe the removal of bargaining unit work to job positions outside of the bargaining unit, a necessary element of a skimming allegation. The skimming of bargaining unit work allegation is dismissed for failure to state a cause of action.

ORDER

1. Assuming all of the facts alleged to be true and provable, the amended complaint states a causes of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a) by:

1. Since December 23, 2015, Damen Fetters making statements about Uma Dutt's position and compensation, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employees' union activity.
2. Since December 23, 2015, Assistant Director Ashley Kangas making statements about Uma Dutt's position and compensation, which could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the employees' union activity.

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] since January 8,

2016, by eliminating of the Program Support Supervisor 2 position held by Uma Dutt in reprisal for union activities protected by Chapter 41.80 RCW.

These allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

The employer shall:

File and serve their answers to the allegations listed in paragraph 1 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 amended complaint, as set forth in paragraph 1 of this Order, 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.

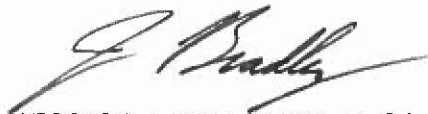
The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown,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

2. The allegations of the amended complaint concerning Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW

41.80.110.(1)(a)] by skimming of work previously performed by the Program Support Supervisor 2 position, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of August, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "J. Bradley", is written over a light gray horizontal band.

JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 2 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12606 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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