STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PACIFIC NORTHWEST CHILD CARE ASSOCIATION, Complainant, vs. STATE – FAMILY CHILD CARE PROVIDERS, Respondent.	CASE 129597-U-17 DECISION 12781 - PECB ORDER OF DISMISSAL

On August 14, 2017, the Pacific Northwest Child Care Association (PNWCCA) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the State of Washington (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on August 25, 2017, indicated it was not possible to conclude a cause of action existed at that time. The PNWCCA was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On September 8, 2017, the PNWCCA filed an amended complaint. The amended complaint alleges the following:

> 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)] since August 9, 2017, by its refusal to provide relevant information requested by the PNWCCA concerning the PNWCCA's collection of employee information for a showing of interest for a representation petition.
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> Employer interference with employee rights in violation of RCW 41.56.140(1) since August 9, 2017, by threats of reprisal or force or promises of benefit made when the PNWCCA requested a list of employees to attempt to collect a 30 percent showing of interest during a change of representation petition process.

[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.

The acting unfair labor practice manager reviewed the complaint and amended complaint. The deficiency notice pointed out several defects in the complaint. The amended complaint does not describe employer refusal to bargain and derivative interference in violation of RCW 41.56.140(4) and (1) or any other actions that could constitute unfair labor practices under the jurisdiction of the Commission. The amended complaint is dismissed for failure to state a cause of action.

BACKGROUND

The bargaining unit at issue consists of individuals who provide regularly scheduled child care in their homes and receive child care subsidies (providers). The providers are currently represented by the Service Employees International Union, Local 925 (SEIU). On April 27, 2017, the PNWCCA filed a representation petition with the Public Employment Relations Commission seeking to change the providers' bargaining representative from the SEIU to the PNWCCA. The petition was dismissed on July 14, 2017, because it was not supported by at least 30 percent of the employees in the bargaining unit. Thus, the SEIU remained the exclusive bargaining representative of the providers.

According to the facts alleged in the amended complaint, on August 9, 2017, the PNWCCA submitted a public records request to the employer seeking the names, mailing addresses, telephone numbers, and e-mail addresses of all the providers as defined by RCW 41.56.030(7). The PNWCCA requested this information to communicate with the providers regarding a change of representation petition. On August 11, 2017, the employer denied the PNWCCA's request. The employer allegedly denied the request based on RCW 42.56.640, which provides that sensitive personal information of in-home caregivers for vulnerable populations—including family child care providers—is exempt from inspection and copying.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the

filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations period begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice" of the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Application of Standard

To determine timeliness, the Commission looks at the dates of the events in a complaint in relation to the filing date of the complaint. The Commission specifically looks at the events that occurred within the six months prior to the filing of the complaint. Here, the complaint was filed on August 14, 2017. To be timely, the complaint would have needed to describe events that took place on or after February 14, 2017. The August 9, 2017, public records request falls within the six-month statute of limitations period. The remaining events alleged in the complaint that occurred in July and December 2014, November 2016, and January 2017 are untimely filed and are thus dismissed.

Employer Refusal to Bargain – Failure to Provide Information

Applicable Legal Standard

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *University of Washington*, Decision 11414-A (PSRA, 2013).

The duty to bargain includes an obligation to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd, City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). In evaluating information requests, the Commission considers whether the requested information appears reasonably necessary for the

performance of the union's function as the exclusive bargaining representative. *City of Bellevue*, Decision 4324-A (PECB, 1994).

In *King County*, Decision 6772-A (PECB, 1999), the Commission embraced the "discovery-type" standard used by the National Labor Relations Board to determine the relevancy of requested information. Under this standard, as explained in *Maben Energy Corp.*, 295 NLRB 149, 152 (1989), "an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative."

An exclusive bargaining representative is "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." RCW 41.56.030(2). Failure to provide relevant information to the exclusive bargaining representative upon request constitutes refusal to bargain. *University of Washington*, Decision 11414-A.

Application of Standard

The Commission's jurisdiction on information request cases is limited to requests pertaining to collective bargaining information. Refusal to bargain allegations involving collective bargaining information requests can only be filed by parties to a collective bargaining relationship. The union that is certified as the exclusive bargaining representative of the bargaining unit at issue is the only party with standing to file and pursue refusal to bargain claims against an employer. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011); *City of Normandy Park*, Decision 12411 (PECB, 2015).

In this case, the amended complaint does not allege that the PNWCCA is the exclusive bargaining representative of the bargaining unit, nor does it provide evidence that the information requested was relevant to functions in collective bargaining or contract administration. The amended complaint does not state a cause of action for employer refusal to bargain.

Employer Interference

Applicable Legal Standard

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). The Commission clarified the standard for employer interference in *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). To prove interference, the complainant must prove, by a preponderance of the evidence, that the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000) (remedy affirmed). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary for the complainant to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *Id.*

Application of Standard

According to the amended complaint, during an attempt to change representation, the PNWCCA submitted to the employer a public records request under Chapter 42.56 RCW seeking the providers' names, mailing addresses, telephone numbers, and e-mail addresses.[2] The PNWCCA requested this information to attempt to gather a 30 percent showing of interest for a change of

[2] The Commission does not have jurisdiction over the enforcement of Chapter 42.56 RCW.

representation petition. The PNWCCA alleges that the employer denied the request based upon RCW 42.56.640, which provides that the names, addresses, telephone numbers, e-mail addresses, and other personally identifiable information of in-home caregivers for vulnerable populations are exempt from public disclosure. One exception to RCW 42.56.640 is that requested information can be provided to an exclusive bargaining representative. RCW 42.56.645. The amended complaint states that the PNWCCA was not the exclusive bargaining representative of the bargaining unit at the time the request was made. Because the employer is precluded from providing the information to the PNWCCA, the employer did not interfere with employee rights. The amended complaint fails to state a cause of action for employer interference.

ORDER

The amended complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of October, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, Acting Unfair Labor Practice Manager

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 10/05/2017

DECISION 12781 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 129597-U-17

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