

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-A - PECB

DECISION OF COMMISSION

Deborah A. Thurber for the Pacific Northwest Child Care Association.

Gina L. Comeau, Assistant Attorney General, Attorney General Robert W. Ferguson, for the State of Washington.

On August 14, 2017, the Pacific Northwest Child Care Association (PNWCCA) filed an unfair labor practice complaint against the State of Washington (employer). The PNWCCA alleged that Deborah Thurber submitted a public records request under Chapter 42.56 RCW seeking a list of employees from the Washington State Department of Early Learning. Thurber requested the information on behalf of the PNWCCA to communicate with other child care providers about their rights under Chapter 41.56 RCW. The employer refused to provide the information. The PNWCCA alleged that the employer's refusal to provide information interfered with employee rights in violation of RCW 41.56.140(1).

The Acting Unfair Labor Practice Manager issued a deficiency notice on August 25, 2017. The PNWCCA filed an amended complaint on September 8, 2017. The Acting Unfair Labor Practice Manager dismissed the amended complaint for failure to state a cause of action. *State – Family Child Care Providers*, Decision 12781 (PECB, 2017). The PNWCCA appealed.

The issue before the Commission is whether the complaint and amended complaint allege sufficient facts to proceed to hearing. We conclude the complaints do not state a cause of action.

Applicable Legal Standards

Standard of Review

In an unfair labor practice proceeding, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011), citing *City of Seattle*, Decision 8313-B (PECB, 2004). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. All the facts are assumed to be true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

Interference

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). 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 (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). 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).

To prove an interference violation, 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. To meet its burden of proving interference, a complainant need not establish that an employee was engaged in protected activity. *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014); *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with an employee's protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary

to show that the employee was actually coerced by the employer or that the employer had union animus. *Id.*

Application of Standards

We begin by assuming the facts alleged in the complaint and amended complaint are true and provable. We focus our analysis on the events that occurred within the six months before the original complaint was filed. RCW 41.56.160.

On August 9, 2017, Thurber filed a public records request under Chapter 42.56 RCW with the Washington State Department of Early Learning. Thurber requested the names, mailing addresses, telephone numbers, and email addresses of all family child care providers as defined by RCW 41.56.030(7). Thurber explained that she requested the information on behalf of the PNWCCA to communicate with other child care providers about their right to decertify the current exclusive bargaining representative.

On August 11, 2017, the employer denied Thurber's request. The employer asserted that an exemption to the Public Records Act, RCW 42.56.640, prohibited the employer from disclosing the requested information.

The PNWCCA filed an unfair labor practice complaint alleging that the employer interfered with employee rights when the Department of Early Learning refused to release the information.¹ The PNWCCA asserted that without the requested information it would be unable to communicate with bargaining unit members. The information was necessary for the PNWCCA to organize employees and to obtain the 30 percent showing of interest required by WAC 391-25-110(1).

The PNWCCA asserted that it was entitled to the information under an exemption in RCW 42.56.645. RCW 42.56.645(1)(c) allows information to be released as part of a judicial or quasi-judicial proceeding "and subject to a court's order protecting the confidentiality of the

¹ The Acting Unfair Labor Practice Manager initially analyzed the complaint and amended complaint as alleging that the employer refused to bargain by failing to provide information. However, the PNWCCA did not allege that the employer refused to bargain by failing to provide information. *State – Family Child Care Providers*, Decision 12871.

information and allowing it to be used solely in that proceeding.” We agree with the employer that RCW 42.56.645(1)(c) is inapplicable in this case because the PNWCCA did not seek the information as part of a quasi-judicial proceeding. No action was pending before this agency when the PNWCCA requested the information from the employer.


The PNWCCA asks the Commission to issue a cause of action for employer interference when the employer complied with RCW 42.56.640, which exempts certain sensitive information, including the names and contact information of in-home caregivers, from disclosure. A cause of action cannot be found for employer interference because the employer was complying with another law.²


ORDER

The Order of Dismissal issued by Acting Unfair Labor Practice Manager Emily K. Whitney is affirmed and adopted as the order of the Commission.

ISSUED at Olympia, Washington, this 22nd day of December, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


MARK E. BRENNAN, Commissioner


MARK BUSTO, Commissioner

² The validity of RCW 42.56.640 is not a question before this Commission.



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RECORD OF SERVICE - ISSUED 12/22/2017

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

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