

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Complainant,

vs.

STATE – TRANSPORTATION,

Respondent.

CASE 130018-U-18

DECISION 12851 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On January 29, 2018, Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the Washington State Department of Transportation (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 21, 2018, 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. Nothing further has been received from the union.

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 the contracting out and circumvention allegations of the complaint. The employer must file and serve its answer to the contracting out and circumvention allegations 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.

ISSUES

The complaint alleges:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a) within six months of the date the complaint was filed, by dealing directly with Gary Hunt.

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)] within six months of the date the complaint was filed, by:

- a. Contracting out work related to welding and installation of trailer hitches previously performed by maintenance bargaining unit employees, without providing the union an opportunity for bargaining.
- b. Employer officials circumventing the union through direct dealing with Gary Hunt, represented by the union, regarding the contracting out of work related to welding and installation of trailer hitches.

The allegations of the complaint concerning refusal to bargain state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaint does not state a cause of action for the independent interference allegation. The independent interference allegation is dismissed.

BACKGROUND

The Washington Federation of State Employees (union) represents maintenance employees employed by the Washington State Department of Transportation (employer). According to the complaint, bargaining unit employees have regularly performed the work of welding and installation of various types of trailer hitches and related accessories on the employer's vehicles, trailers, and equipment (welding and installation work). Welding and installation work allegedly includes the installation of a "pintle hitch" on an employer vehicle (pintle hitch work).

According to the complaint, the employer approached a bargaining unit member, Gary Hunt, about whether the bargaining unit historically performed the “pintle hitch” work or if the employer should contract out this work. The employer allegedly determined from the conversation with Hunt that the bargaining unit did not perform the “pintle hitch” work and it should contract out the work.

The employer allegedly contracted out the “pintle hitch” work on or about October 12, 2017. On or about November 3, 2017, the union allegedly discovered that a contractor had performed the “pintle hitch” work.

ANALYSIS

Employer Independent 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 41.80.110(1)(a). An employer may interfere with employee rights by making statements, through written communication, or by actions. *State – Ecology*, Decision 12732-A (PSRA, 2017); *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff’d*, 98 Wn. App. 809 (2000).

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. 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 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 employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary 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

The complaint lacks facts alleging the three elements of proof necessary to establish an independent interference violation for further case processing. First, the complaint is missing alleged facts related to whether one or more employees engaged in protected activity. Second, the complaint is missing alleged facts related to an employer's statements or actions taken. Finally, the complaint is missing alleged facts related to one or more employees' reasonable perception of the employer's statement or action as a threat of reprisal or force, or promise of benefit, associated with the protected activity. The complainant was provided 21 days to file and serve an amended complaint to include the missing allegations. The union did not file and serve an amended complaint. Because the complaint lacks facts alleging an independent interference violation, the independent interference violation is dismissed.

ORDER

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

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)] within six months of the date the complaint was filed, by:

- (a) Contracting out work related to welding and installation of trailer hitches previously performed by maintenance bargaining unit employees, without providing the union an opportunity for bargaining.

- (b) Employer officials circumventing the union through direct dealing with Gary Hunt, represented by the union, regarding the contracting out of work related to welding and installation of trailer hitches.

The refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington State Department of Transportation shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

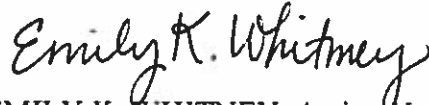
- a. Specifically admit, deny, or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

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.

3. The allegations of the complaint concerning employer independent interference in violation of RCW 41.56.140(1), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of April, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Acting Unfair Labor Practice Manager

Paragraph 3 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.



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RECORD OF SERVICE - ISSUED 04/05/2018

DECISION 12851 – PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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