

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117,

Complainant,

vs.

STATE – CORRECTIONS,

Respondent.

CASE 131091-U-18

DECISION 12959 - PSRA

ORDER OF DIMISSAL

On October 31, 2018, the Teamsters, Local 117 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Corrections (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 3, 2018, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. No further information has been filed by the union.

The allegations of the complaint concern:

Employer interference in violation of RCW 41.80.110(1)(a) within six months of the date the complaint was filed, by permitting the Freedom Foundation to use state resources to send political communications directly to union members in order to encourage members to opt out of membership with the union.

The complaint failed to demonstrate how the employer's lack of action constituted a threat of reprisal or force or a promise of benefit that could arise to an interference violation within the Commission's jurisdiction. The complaint is dismissed.

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.

BACKGROUND

The union represents a bargaining unit of corrections officers at the Washington State Department of Corrections. The union and employer are parties to a collective bargaining agreement that expires on June 30, 2019.

On July 25, 2018, bargaining unit member Melvin Coplin allegedly received a message on his employer provided e-mail from "OptOutToday.com" which is a project of the Freedom Foundation.² The message provided instructions as to how Coplin could opt out of paying union dues or fees. The e-mail also provided instructions as to how an employee could remove themselves from receiving future emails. The union alleged that a similar e-mail was sent to all bargaining unit members.

On July 27, 2018, Coplin forwarded the e-mail to Secretary of Corrections Steve Sinclair and asked why the Freedom Foundation was being allowed access to union members' e-mail addresses. Coplin also claimed the e-mail was an inappropriate use of state resources and asked why the employer was not blocking such messages.

On July 30, 2018, Coplin received a message from Labor Relations Manager Julie Moultime explaining that it was not possible for the employer to block all messages from the Freedom Foundation due to the fact that the organization conducts other business with the employer, such as public records requests. Moultime reminded Coplin that he had the option to opt out from receiving future e-mails from the Freedom Foundation.

That same day Coplin responded to Moultime asking if the Teamsters had the same right as the Freedom Foundation to communicate with bargaining unit employees through the employer's e-mail system. Coplin again questioned why the employer was allowing the Freedom Foundation to send unsolicited e-mails to employee work stations.

² The Freedom Foundation describes itself on its website as a non-profit think and action tank with the mission of advancing "individual liberty, free enterprise, and limited, accountable government." It further describes that it is "working to reverse the stranglehold public-sector unions have on our government." <https://www.freedomfoundation.com/about/>. Last visited 12/31/2018 9:05 a.m.

On October 16, 2018, Human Resources Director Melia Olsen sent an e-mail to all employees of the employer explaining to them that the employer is aware that employees would from time-to-time receive e-mails from outside sources that contain links to non-work related external websites. The message reminded employees that state resources, including time, e-mail, and internet access, are intended to be used for business purposes and Olsen reminded employees of their responsibility to comply with these policies. Olsen concluded her message explaining that it would be impractical for the employer to block messages from particular senders and reminded employees that they are permitted to use the state system to opt out of receiving similar future messages if that option is available to employees.

ANALYSIS

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 41.80.110(1)(a). To prove interference, the complainant must prove, by a preponderance of the evidence, 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), *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).

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 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.*

The union asserted that by failing to affirmatively block the Freedom Foundation's e-mails the employer interfered with protected employee rights. However, the union's complaint lacks facts demonstrating that an employee could reasonably perceive the employer's actions (or in this case lack of action) as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. The complaint lacked facts demonstrating that the employer actually encouraged the Freedom Foundation to send such e-mails, precluding the union from sending similar e-mails from outside sources, or that the employer was allowing employees to access the information contained in the e-mails from state resources.

ORDER

The 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 31st day of December, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 12/31/2018

DECISION 12959 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131091-U-18

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