

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NIGEL L. KEIFFER, Complainant, vs. KING COUNTY, Respondent.	CASE 132923-U-20 DECISION 13229 - PECB ORDER OF DISMISSAL
NIGEL L. KEIFFER, Complainant, vs. PROTEC17, Respondent.	CASE 132924-U-20 DECISION 13230 - PECB ORDER OF DISMISSAL

Nigel L. Keiffer, Pro Se.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, for King County.

Paul Marvy, Projects Administrator, for PROTEC17.

On July 22, 2020, Nigel Keiffer (complainant) filed unfair labor practice complaints against King County (employer) given case number 132923-U-20 and PROTEC17 (union) given case number 132924-U-20. The complaint was reviewed under WAC 391-45-110.¹ Deficiency notices issued on August 4, 2020, (132923-U-20) and August 6, 2020 (132924-U-20) notified Keiffer that a cause

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

of action could not be found at that time. Keiffer was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the cases.

On August 14, 2020, Keiffer filed amended complaints. The Unfair Labor Practice Administrator consolidates cases 132923-U-20 and 132924-U-20 and dismisses the amended complaints for failure to state a cause of action.

ISSUES

The amended complaints allege the following:

General employer coercion to participate in an HRA VEBA health reimbursement plan.

General union coercion to participate in an HRA VEBA health reimbursement plan.

The amended complaints lack facts related to violations that the Commission has jurisdiction over and are dismissed.

BACKGROUND

Nigel Keiffer works for King County (employer) as an Engineer. Keiffer's position is represented by PROTEC17 (union). Keiffer is allegedly a non-dues paying bargaining unit member. On or about May 10, 2006, the employer entered into an agreement for a Health Reimbursement Arrangement, Voluntary Employees Beneficiary Association (HRA VEBA). On or about October 21, 2016, the employer and the King County Coalition of Unions entered into a memorandum of agreement regarding the HRA VEBA. In July 2018, the union conducted an election to determine if the bargaining unit wanted to extend the HRA VEBA plan for 2019-2021. The bargaining unit members adopted the plan. Keiffer retired on August 1, 2020. On May 15, 2020, Keiffer asked the employer to be exempted from the HRA VEBA plan. He sent a copy of the request to the union. The employer denied his request because the collective bargaining agreement covered the terms and conditions of Keiffer's employment. The union did not respond.

ANALYSIS

Interference

Applicable Legal Standard

The complaint does not describe allegations that fit within the jurisdiction of the Commission. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaint does not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A.

The Commission has jurisdiction over employer interference violations if the facts allege a violation related to protected activity. Employees covered by chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. Generally, the burden of proving unlawful interference with the exercise of rights protected by chapter 41.56 RCW rests with the complaining party or individual.

An employer interference violation exists when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *See 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 a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

A union interference violation exists when an employee could reasonably perceive actions as a threat of reprisal or force, or promise of benefit, associated with union activity of the employee or

other employees. *King County (Amalgamated Transit Union Local 587)*, Decision 8630-A (PECB, 2005).

Application of Standard

The amended complaint does not allege that any of the employer or union's actions were associated with union activity. The amended complaint alleges the employer entered into an agreement for a HRA VEBA. The employer and union entered into a memorandum of agreement regarding the HRA VEBA. The union conducted an election in July 2018 and the union membership voted to adopt the plan. On May 15, 2020, Keiffer asked to be exempted from the HRA VEBA plan. The employer denied his request because the collective bargaining agreement covered the terms and conditions of Keiffer's employment and the union did not respond. The amended complaint alleges that Keiffer was denied exemption from the plan because his position was represented by the union and the employer was complying with the collective bargaining agreement. The amended complaint does not allege that the denial was related to any protected activity that Keiffer or any other bargaining unit employees were involved in. Because there are no facts alleging that the employer and union's actions were associated with union activity, the amended complaints are dismissed.

ORDER

The amended complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of September, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, 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 09/01/2020

DECISIONS 13229 – PECB and 13230 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASES 132923-U-20 and 132924-U-20

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PARTY 3: PROTEC17

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