

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON,

Complainant,

vs.

EDMONDS SCHOOL DISTRICT,

Respondent.

CASE 133112-U-20

DECISION 13281 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

Elyse B. Maffeo, General Counsel, for the Public School Employees of Washington.

Sam Jackson, Attorney at Law, Perkins Coie LLP, for the Edmonds School District.

On October 26, 2020, Public School Employees of Washington (union) filed an unfair labor practice complaint against the Edmonds School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A partial deficiency notice issued on November 10, 2020, notified the union that a cause of action could not be found 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 deficient allegations.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the deficient allegation and issues a preliminary ruling for other allegations of the complaint.

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.

ISSUES

The complaint alleges the following:

Employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by demanding the union send a corrective communication to bargaining unit members in accordance with the districts dictates.

Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by:

- (a) Threats of reprisal or force or promises of benefit made to bargaining unit employees who refused to volunteer for extra work or demand pay for work.
- (b) Threats of reprisal or force or promises of benefit made to bargaining unit members related to surveillance of the internal union communication.

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)] within six months of the date the complaint was filed, by unilaterally changing bargaining unit members working conditions related to accepting extra work, without providing the union an opportunity for bargaining.

The domination and interference allegations of the complaint state a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The unilateral change allegation of the complaint does not state a cause of action and is dismissed.

BACKGROUND

The Public School Employees of Washington (union) represents classified employees in the Edmonds School District (employer). The union and employer are parties to an effective collective bargaining agreement (CBA). The parties CBA includes a provision which requires each employee to be designated a regular and definite shift. The CBA does not contain any provisions mandating employees accept extra work or voluntary work. The CBA only provides the assurance of overtime pay in the event the employee willingly accepts extra work which would result in overtime.

On or about October 14, 2020, the union sent an internal union communication to the personal email addresses of the employees in the bargaining unit. The internal union communication included a reminder regarding the requirement that employees are entitled to overtime for performing extra work. The communication advised employees they could not be compelled to perform volunteer work. The employer encouraged the disclosure of the union communication from one or more union members.

On or about October 21, 2020, the employer sent a direct response to the union. In the response, the employer asserted the union had violated the parties' CBA. The employer demanded the union send a corrective communication to the membership. The employer demanded certain information be included in the union communication. Finally, the employer threatened that it would take disciplinary action against any employee who apparently refused to perform extra work on a voluntary basis unless the union sent communication consistent with its dictates.

ANALYSIS

Unilateral Change

Applicable Legal Standard

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*,

Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Application of Standard

The complaint lacked facts alleging whether and when the employer implemented the change. The complaint alleged the collective bargaining agreement and the parties past practice did not require bargaining unit employees to accept extra and volunteer work. The complaint alleged the employer threatened discipline if the employees did not accept extra work upon demand of the employer. The complaint lacked facts identifying whether this threat was actually implemented. The union was provided an opportunity to file an amended complaint to correct the defects. The union did not file an amended complaint.

ORDER

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

Employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by demanding the union send a corrective communication to bargaining unit members in accordance with the districts dictates.

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- (a) Threats of reprisal or force or promises of benefit made to bargaining unit employees who refused to volunteer for extra work or demand pay for work.
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These allegations will be the subject of further proceedings under chapter 391-45 WAC.

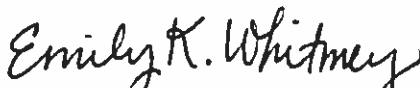
2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge 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 and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the complaint concerning a unilateral change is **DISMISSED** for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of December, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Handwritten signature of Emily K. Whitney in cursive script.

EMILY K. WHITNEY, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 12/22/2020

DECISION 13281 - 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

CASE 133112-U-20

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