STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ISSAQUAH POLICE SUPPORT SERVICES ASSOCIATION, Complainant, vs. CITY OF ISSAQUAH, Respondent.	CASE 134434-U-21 DECISION 13430 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

James M. Cline, Attorney at Law, Cline & Associates, for Issaquah Police Support Services Association.

Daniel A. Swedlow, Attorney at Law, Summit Law Group PLLC for the City of Issaquah.

On September 7, 2021, the Issaquah Police Support Services Association (union) filed an unfair labor practice complaint against the City of Issaquah (employer). The complaint alleged the employer refused to bargain in violation of RCW 41.56.140(4) by skimming and/or contracting out bargaining unit work, unilaterally changing employee hours, and failing or refusing to provide information. The complaint also alleged that the employer independently interfered with protected employee rights in violation RCW 41.56.140(1) and attempted to interfere with the bargaining representative in violation of RCW 41.56.140(2) through its refusal to bargain violations.

The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on September 28, 2021, notifying the union that a cause of action could be found for the refusal to bargain allegations but causes of action could not be found for the independent interference and

[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.

interference with the bargaining representative allegations. 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 refusal to bargain allegations will be forwarded for further proceedings and the independent interference and interference with the bargaining representative allegations are dismissed.

BACKGROUND

The union represents a bargaining unit of Dispatchers in the employer's workforce. The employer and union were parties to a collective bargaining agreement with a term of January 1, 2017, through December 31, 2020. The union and employer reached agreement of that bargaining agreement in August of 2019. The parties subsequently executed a memorandum of understanding to extend the 2017-2020 collective bargaining agreement until December 31, 2021.

According to the complaint, bargaining unit employees informed the union that they were seeking employment at other locations due to the length of negotiations. To help mitigate this situation, the employer reached out to the union in August 2019 to negotiate a retention incentive in an effort to keep employees in the employer's workforce. At the time the parties reached a memorandum of understanding (MOU) for the retention incentive, there were six full-time and two part-time employees in the bargaining unit. The MOU expired on March 31, 2020.

The complaint alleges that on February 26, 2020, the employer informed the union that the employer intended to "re-up" the MOU and extend it through May 2020. On April 8, 2020, the employer allegedly reneged on its agreement and informed the union that it would only offer the bonuses one month at a time, ending May 1, 2020.

On April 20, 2020, the parties met and discussed the retention policy as well as other financial concessions sought by the employer due to the COVID-19 pandemic. The parties created a package proposal that "included the retention incentive agreement offer withdrawal along with other asks that the [city] made relative to responding to the COVID-19 crisis."

On May 1, 2020, the employer allegedly ceased making retention incentive payments. Over the following year, staffing levels continued to fall and the employer was unable to recruit adequate staff.

The complaint alleges that between June and August of 2021, the employer engage in "secret" discussions with other communications agencies including the City of Redmond and NORCOM to permanently transfer bargaining unit work to an outside employer. The union was not aware these secret discussions were occurring. Rather, the union reached out to the employer on July 23, 2021, in an attempt to renegotiate the retention incentive agreement. The employer allegedly informed the union that it needed to have internal discussions on the issue before bargaining could commence.

On August 4, 2021, City Administrator Wally Bobkiewicz notified the City Council the dispatch operation needed to be moved to the City of Redmond on August 16, 2021. Bobkiewicz also stated that the employer was receiving quotes from the City of Redmond and NORCOM for managing the employer's 911 services moving forward.

On August 5, 2021, Police Chief Scott Behrbaum met with the union and announced that the dispatch services would be moved to the City of Redmond dispatch center starting September 1, 2021. The union alleges that it and its members were not aware of the employer's plans prior to August 5, 2021, and claims the employer's announcement was a threat to strong arm the union to make concessions. On August 6, 2021, the union requested information about the issue from the employer.

On August 12, 2021, the parties met to discuss the decision to transfer the dispatch employees to the Redmond Dispatch Center. During this meeting, the employer allegedly told the union that it was only obligated to bargain the impacts of its decision. The union also alleges the employer never clarified to the union that it was engaged in discussion with outside agencies as early as June 2021. The employer informed the union that employees from the City of Redmond would be filling in for bargaining unit employees during break periods starting September 1, 2021. The union claims that it learned through its information requests that City of Enumclaw employees would

also perform bargaining unit work even though the City of Enumclaw was not one of the agencies contacted by the employer prior to August 12, 2021.

On August 19, 2021, the parties met again and the union asserts that it would not agree to any potential transfer of work locations unless the parties agreed to end the practice by a specific date. The employer declined to enter into such an agreement and on September 1, 2021, the employer transferred bargaining unit employees to the Redmond location.

ANALYSIS

Applicable Legal Standard – Independent 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). 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. *City of Tacoma*, Decision 6793-A.

The Commission processes two kinds of interference claims: derivative and independent. A derivative claim depends upon the underlying claim; all refusal to bargain causes of action automatically include a derivative interference claim. Derivative interference claims do not survive

dismissal of the underlying claim. *Royal School District*, Decision 1419-A (PECB, 1982); *Northshore Utility District*, Decision 10534-A (PECB, 2010).

Independent interference claims stand-alone but also require facts separate and apart from other claims such as a refusal to bargain allegation. In *Columbia Basin Community College*, Decision 11542 (PSRA, 2012), the complainant alleged that the employer breached its good faith bargaining obligation during negotiations. That allegation received a refusal to bargain cause of action that also had a derivative interference cause of action attached. The complainant later amended its complaint to allege that the employer's actions during negotiations also constituted independent interference because the respondents' statements and actions undermined the union. The complainant's independent interference allegation was dismissed because the facts supporting it were the same facts as the complainant's refusal to bargain allegation and those allegations already included a derivative interference violation.

Applicable Legal Standard – Domination

It is an unfair labor practice for a public employer to "control, dominate, or interfere with a bargaining representative." RCW 41.56.140(2). For example, a public employer may not provide financial assistance to an exclusive bargaining representative. *See, e.g., State – Washington State Patrol*, Decision 2900 (PECB, 1988). Additionally, a public employer may not show preference for one exclusive bargaining representative over another during the representation process. *See, e.g., Renton School District (United Classified Workers Union)*, Decision 1501-A (PECB, 1982). The union bears the burden of proof and must establish that the employer intended to control or interfere with the administration of the union and/or intended to dominate the internal affairs of the union. *King County*, Decision 2553-A (PECB, 1987). The element of intent in the case of control, domination, or interference in RCW 41.56.140(2) contrasts with the standard for interference previously discussed regarding RCW 41.56.140(1), where the showing of intent is not required. *See Lower Columbia College*, Decision 8117-B (PSRA, 2005), rev'd on other grounds *City of Bellingham (Washington State Council of County and City Employees)*, Decision 13299-A (PECB, 2021).

Application of Standards

Here, the union's complaint alleges the employer refused to bargain in violation of RCW 41.56.140(4) by skimming and contracting out bargaining unit work, by unilaterally changing mandatory subjects of bargaining, and by failing to respond to information requests. Each one of these allegations not only received a refusal to bargain cause of action, but also received a derivative interference cause of action. The union also claims that the employer's conduct also constitutes an independent interference violation as well as a domination violation.

The independent interference allegation must be dismissed because the union has not alleged facts different from the refusal to bargain allegations demonstrating the employer made a statement or took action that an employee could have reasonably perceived as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. To allow otherwise would lead to a situation where an employer has complied with its good faith bargaining but nevertheless interfered with protected right because its lawful actions or statement were reasonably were reasonably perceived as a threat of reprisal or force, or a promise of benefit, associated with protected activity.

Finally, to prove a violation of RCW 41.56.140(2), there must be an intent on the part of an employer to dominate or interfere with the internal affairs of a bargaining representative, such as the selection of officers, policy decision, or the ratification of a collective bargaining agreement. The complaint contains no facts demonstrating the employer intended to dominate, interfere with, or control the administration of the union and absent such facts this allegation must also be 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 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by

1. Unilaterally skimming and/or contracting out bargaining unit work without providing the union an opportunity for bargaining.

2. Unilaterally changing employee hours of work and commuting requirements without providing the union an opportunity for bargaining.

3. Failing or refusing to provide relevant information requested by the union in preparation for collective bargaining negotiations.

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 allegations of the complaint concerning independent interference and interference with the bargaining representative are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 4th day of November, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, 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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 11/04/2021

DECISION 13430 - 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 134434-U-21

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