

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SOUTH KITSAP EDUCATION
ASSOCIATION,

Complainant,

vs.

SOUTH KITSAP SCHOOL DISTRICT,

Respondent.

CASE 134454-U-21

DECISION 13438 - EDUC

ORDER OF DISMISSAL

Joseph W. Evans, Attorney at Law, Law Offices of Joseph W. Evans, for the South Kitsap Education Association.

Lester "Buzz" Porter Jr. and Christina Weidner, Attorneys at Law, Porter Foster Rorick LLP for the South Kitsap School District.

On September 15, 2021, the South Kitsap Education Association (union) filed an unfair labor practice complaint against the South Kitsap School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on October 7, 2021, 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 case.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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.

ISSUE

The complaint alleges the following:

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force of promises of benefit made by filing a HIB against the union president, associated with unidentified protected activity.

The complaint does not describe facts that could constitute an interference violation with the Commission's jurisdiction.

BACKGROUND

Rebecca Sorter is an employee of the South Kitsap School District (employer) and represented by the South Kitsap Education Association (union). On May 24, 2021, Sorter had a meeting with Rachelle Byrd, principal at South Kitsap School District (employer) and another principal in the district. Union representatives James Conlon and John Richardson, union president, represented Sorter at the meeting. Byrd had requested the meeting with Sorter and had recommended that union representation attend the meeting because the meeting could lead to discipline. During the meeting the union representatives informed the employer the union would be filing a grievance.

After the May 24 meeting, on an unidentified date, discipline was issued. The union determined that "this situation"² was a case of intimidation and/or bullying by Byrd. In the afternoon of May 24, 2021, Richardson spoke with Human Resources about how to file a Harassment, Intimidation, and Bullying complaint (HIB complaint) with the district. On May 25, 2021, Byrd allegedly filed a retaliatory HIB complaint against Richardson.

² It is unclear from the complaint what "this situation" relates to. It is assumed it relates to the meeting and the resulting discipline.

An outside investigator was hired by the employer to investigate the HIB complaint filed by Sorter. On June 16, 2021, an outside investigator contacted Sorter to set up a time to interview Sorter. Sorter told the investigator that Richardson would be joining the interview to represent Sorter. The investigator informed Sorter that Richardson could not be the representative in the interview because Richardson was the subject of the HIB complaint filed by Byrd, which involved the same factual predicate. Sorter had another union representative attend the interview.

ANALYSIS

Interference

Applicable Legal Standard

Generally, the burden of proving unlawful interference with the exercise of rights protected by chapter 41.59 RCW rests with the complaining party or individual. An 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.

Application of Standard

The complaint lacks facts alleging that one or more employees reasonably perceived the employer's action as a threat of reprisal or force, or promise of benefit, associated with activity protected by applicable collective bargaining laws. The elements necessary to allege an interference violation include: An employer official made a statement or took action which one or more employees reasonably perceived to be a threat of reprisal or force, or promise of benefit associated with activity protected by an applicable collective bargaining law (protected activity). The complaint lacks facts alleging some of the elements necessary to allege an interference violation. The complaint alleges the employer filed a HIB complaint against Richardson. The

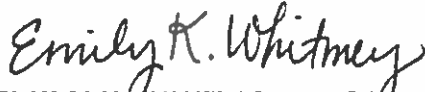
complaint also makes a generalized allegation that the union thought "this situation" may be a case of intimidation and/or bullying by the principal. It is unclear which action the complaint is identifying as the employer action related to the violation. The complaint also does not link the action to activity protected by the statute. The union was provided an opportunity to correct the deficiency and file an amended complaint. The union did not file an amended complaint. Because the complaint lacks facts necessary to allege an interference violation, the complaint must be dismissed.

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 23rd day of November, 2021.

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 11/23/2021

DECISION 13438 - EDUC 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 134454-U-21

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