

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MCKENZIE DAVIDSON,

Complainant,

vs.

CLOVER PARK TECHNICAL COLLEGE,

Respondent.

CASE 137679-U-23

DECISION 13742 - PECB

ORDER OF DISMISSAL

McKenzie Davidson, the Complainant.

Joyce Loveday, President, for the Clover Park Technical College.

On September 29, 2023, McKenzie Davidson (complainant) filed an unfair labor practice complaint against Clover Park Technical College (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on October 27, 2023, notified Davidson that a cause of action could not be found at that time. Davidson 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 Davidson. 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 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to McKenzie Davidson associated with unidentified protected activity.

The complaint is dismissed because it lacks facts alleging a violation within the Commission's jurisdiction.

BACKGROUND

McKenzie Davidson (complainant) is an employee in the Human Resources & Payroll Office at Clover Park Technical College (employer). AFT Professional Staff Local 6431 (union) is the exclusive bargaining representative of Davidson.

On July 7, 2023, the employer hired Christina Roberts as the Interim Chief of Human Resources. The employer allegedly told the employees Roberts was being hired to help develop a job description for the new Chief of Human Resources Office and to help with recruitment.

After Roberts started employment at the college, on an unidentified date, Roberts met with the union president. During the meeting Roberts allegedly interviewed the president about the Human Resources and Payroll team, which included Davidson. Roberts also allegedly reviewed Davidson's application to evaluate if Davidson was qualified for the position she held. Davidson found this review threatening and was fearful of discipline or job loss.

On August 24, 2023, Davidson and other bargaining unit members requested a meeting with the college president to express their concerns. The president ensured Davidson and the bargaining unit members there was no investigation, and Roberts was solely working to help with the Chief

of Human Resources Office recruitment. The president also stated Davidson and the bargaining unit members were secure in their positions.

On September 5, 2023, the president scheduled a meeting with Davidson and the bargaining unit members. Davidson and the members again brought up concerns about the investigation. The president adamantly denied there was an investigation. The president shared some of the president's draft response based on Roberts' findings. Davidson and the other bargaining unit members provided input on the wording of the president's drafted response. The president planned to adjust the wording based on Davidson and the other bargaining unit members' input. The president also offered to share with the bargaining unit member Roberts' report, findings, and the job description being developed. On September 28, 2023, the president sent the findings from Roberts' report. Davidson and the bargaining unit members allegedly found the report to be damaging and threatening. On an unidentified date, the president sent the report to all staff and faculty. Davidson and the other bargaining unit members' input was allegedly not included in a final action plan sent to employees at the college.

On an unidentified date, the president decided to outsource the Chief of Human Resources Office recruitment work to an external recruiting firm. Davidson alleges this was "scraping" (skimming) bargaining unit work.

ANALYSIS

Number Paragraphs

Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant only numbered the first paragraph in the statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

Individual Employees Cannot File Allegations – Refusal to Provide Information & Skimming

The complaint alleges refusal to provide information and skimming of bargaining unit work. The duty to provide information and skimming are types of refusal to bargain allegations. An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000) (citing *Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District*, Decision 5979 (PECB, 1997)). Only the parties to the collective bargaining relationship (the union or the employer) can file a refusal to bargain unfair labor practice case.

The union is the only party withstanding to file and pursue refusal to bargain claims against an employer. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011). The union representing the bargaining unit that contains the complainant's job position would have to be the party filing a complaint alleging that the employer refused to provide information or skimmed bargaining unit work.

*Independent Interference*Applicable Legal Standard

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). The Commission recently clarified the standard for employer interference in *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). 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 employee's 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.

Application of Standard

The complaint does not allege an interference violation within the Commission's jurisdiction. The complaint alleges Davidson felt the employer's action of hiring Roberts and the subsequent reports were threatening. The complaint does not include facts that the employer's actions or statements were associated with the union activity of Davidson or of other employees. The deficiency notice explained the deficiency and provided an opportunity to correct the deficiency. No amended complaint was filed, and the complaint continues to be deficient. Thus, 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 5th day of December, 2023.

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 12/05/2023

DECISION 13742 - 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 137679-U-23

EMPLOYER: CLOVER PARK TECHNICAL COLLEGE

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