

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEE
ASSOCIATION,

Complainant,

vs.

CLARK COLLEGE,

Respondent.

CASE 137766-U-23

DECISION 13761 - PSRA

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

Amanda Hacker, Contract Administration Director, for the Washington Public Employees Association.

Darcey J. Elliott, Assistant Attorney General, Attorney General Robert W. Ferguson for Clark College.

On October 5, 2023, the Washington Public Employees Association (union) filed an unfair labor practice complaint against Clark College (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on November 7, 2023, 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 union also did not withdraw the deficient allegation. The Unfair Labor Practice Administrator dismisses the deficient allegations 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 refusal to bargain in violation of RCW 41.56.110(1)(e) [and if so, derivative interference in violation of RCW 41.56.110(1)(a)] within six months of the date the complaint was filed by,

- (a) Employer officials circumventing the union through direct dealing with employees represented by the union, regarding the relocation of bargaining unit employees in the cashier's office, before the union was notified.
- (b) Unilaterally changing cashier's office bargaining unit employees work location, without providing the union an opportunity for bargaining.

The unilateral change allegation of the complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

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

BACKGROUND

The Washington Public Employees Association (union) represents nonsupervisory employees in the cashier's office at Clark College (employer). The union and employer are parties to a collective bargaining agreement effective July 1, 2023, through June 30, 2025. The union represents nonsupervisory classified employees at Clark College, including employees working in the cashier's office.

On September 6, 2023, the union learned that the employer planned to move the cashier's office to another location. On September 11, 2023, after researching the employer's website, the union

learned that the cashier's office had been relocated on September 8, 2023. That same date the union contacted the employer and asked if the move had already occurred. The employer responded on September 11 stating "May I include it with the batch I am preparing to send you later this week, please? That will bring the total to six (unless you've determined there are any that you would not feel necessitate one). From our understanding, employees were happy about moving out of an area that was out of the way to a much nicer and more visible location."

Later on September 11 the union emailed the employer again asking for confirmation that the change occurred and asking if the union had received notice of the change prior to the move. The union also asked how the employer became aware that the employees were happy about the move. The employer did not respond.

On September 13 the union sent an additional email reiterating the questions from the September 11 email. Later the same day, the employer sent an email to the entire campus notifying all employees of the cashier's office location change.

On September 14 the union sent another email to the employer reiterating the September 11 and September 13 emails. The union specifically asked for a response to the question, "please help me understand what you mean by 'we heard positive employee feedback?' What exactly was the feedback and how did you 'hear' it?" The union followed up the September 14 email with a call the same day asking for a written response from the employer. Later that same day, the employer informed the union it heard feedback from the supervisor and did not have further information.

September 15 the employer sent a mandatory subjects notice to the union for the cashier's office move that was finalized the week prior.

ANALYSIS

Circumvention

Applicable Legal Standard

It is an unfair labor practice for an employer to circumvent its employees' exclusive bargaining representative and negotiate directly with bargaining unit employees concerning mandatory subjects of bargaining. *Royal School District*, Decision 1419-A (PECB, 1982). In order for a circumvention violation to be found, the complainant must establish that it is the exclusive bargaining representative of the employees and that the employer engaged in direct negotiations with one or more employees concerning a mandatory subject of bargaining. *City of Seattle*, Decision 3566-A (PECB, 1991).

Sharing information or listening to employee concerns does not rise to the level of circumvention. *See Kitsap Transit*, Decision 11098-A (PECB, 2012), *aff'd on other grounds*, Decision 11098-B (PECB, 2013) (employer memorandum to employees announcing a unilateral change was not circumvention); *Vancouver School District*, Decision 10561 (EDUC, 2009), *aff'd*, Decision 10561-A (EDUC, 2011) (employer communication of the employer's bargaining proposal to bargaining unit employees was not circumvention or direct dealing); *University of Washington*, Decision 10490-C (PSRA, 2011) (employer did not circumvent the union when it met with bargaining unit employees and listened to their concerns).

Application of Standard

The complaint lacks facts alleging the employer circumvented the union. The complaint alleges the union is the exclusive bargaining representative for the nonsupervisory employees. The complaint alleges the employer had heard that employees in the cashier's office were happy with the move. The complaint lacks facts alleging the employer engaged in direct back-and-forth negotiations with one or more employees. The union was provided an opportunity to correct the deficiency by filing and serving an amended complaint or withdrawing the deficient allegation. The union did not file an amended complaint or withdraw the deficient allegation, so the circumvention allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the unilateral change allegation of the complaint states a cause of action, summarized as follows:

Employer refusal to bargain in violation of RCW 41.56.110(1)(e) [and if so, derivative interference in violation of RCW 41.56.110(1)(a)] within six months of the date the complaint was filed by, unilaterally changing cashier's office bargaining unit employees work location, without providing the union an opportunity for bargaining.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegation 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 circumvention is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 19th day of December.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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 12/19/2023

DECISION 13761 - PSRA 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 137766-U-23

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