

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 137967-U-23

DECISION 13766 - PECB

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

James Trefry, General Counsel, for the Washington State Council of County and City Employees.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, for King County.

On November 13, 2023, the Washington State Council of County and City Employees (union) filed an unfair labor practice complaint against King County (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on November 22, 2023, notified the union that a cause of action could not be found at that time for the circumvention allegation found in the complaint. 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 Washington State Council of County and City Employees.

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 interference 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 promise of benefit made through statements by employer officials Hind May, Francine Munoz, and Tina Gill to bargaining unit employees concerning their eligibility to apply for the therapeutic court manager position.

Employer domination 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 unidentified employer actions.

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

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

BACKGROUND

The union represents a bargaining unit of District Court Clerks, Probation Officers, and Probation Mental Health Specialists, at the King County District Court. The employer and union are parties to a collective bargaining agreement that is in effect through December 31, 2024.

According to the complaint, the employer regularly opens out-of-class assignments for represented staff to temporarily work in positions of which regular employees in those positions are not represented. On June 1, 2023, Senior HR Analyst Hind May, through Executive Administrative Assistant Francine Munoz on behalf of Deputy Chief Administrative Officer Tina Gill, published an out-of-class Therapeutic Court Manager position open to nonrepresented employees. The complaint asserts that bargaining unit employees received this position notice.

On June 2, 2023, Probation Mental Health Specialist Paul Stayback allegedly expressed interest in the Therapeutic Court Manager position to Hind May. On June 7, 2023, May informed Stayback

that court manager acting opportunities were only available to nonrepresented employees. The position listing allegedly was the posting for the same position in 2019, which lists qualifications but did not require candidates to not be unrepresented for purposes of collective bargaining. Also on June 7, 2023, Francine Munoz announced on behalf of Tina Gill that the deadline to apply for the position was extended and that interested nonrepresented should apply by June 14, 2023.

On June 7, 2023, Probation Officer and union shop steward Tara Chatman asked Tina Gill why represented employees were being excluded from the position. On June 12, 2023, Tina Gill allegedly responded by clarifying that represented individuals cannot apply because of human resources functions they must perform.

ANALYSIS

Applicable Legal Standard – Employer Domination

An employer violates RCW 41.56.140(2) when it controls, dominates, or interferes with a bargaining representative by involving itself in the internal affairs or finances of the union, or attempts to create, fund, or control a “company union.” *State – Washington State Patrol*, Decision 2900 (PECB, 1988); *City of Anacortes*, Decision 6863 (PECB, 1999). 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. *Northshore Utility District*, Decision 10534-A (PECB, 2010) (citing *King County*, Decision 2553-A (PECB, 1987)). A domination violation requires proof of employer intent. *King County*, Decision 2553-A; *Snohomish County*, Decision 9834 (PECB, 2007).

Application of Standard

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute, the complaint does not explain or develop this allegation. None of the facts alleged in the complaint suggest that the employer involved itself in the internal affairs or finances of the union or that the employer attempted to create, fund, or control a “company union.” Rather, the facts as alleged simply demonstrate that the employer precluded represented positions from applying for the therapeutic court manager position.

A cause of action for employer domination is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause, that is, whether an employer has attempted to create, fund, or control a company union. *See State – Washington State Patrol*, Decision 2900. Although the Commission has issued few decisions on employer domination, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during representation proceedings. The meaning of the term "domination" is thus directly tied to the term "assistance" and does not imply a cause of action for alleged negative acts directed toward the union or union members.

ORDER

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

Employer interference 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 promise of benefit made through statements by employer officials Hind May, Francine Munoz, and Tina Gill to bargaining unit employees concerning their eligibility to apply for the Therapeutic Court Manager position.

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

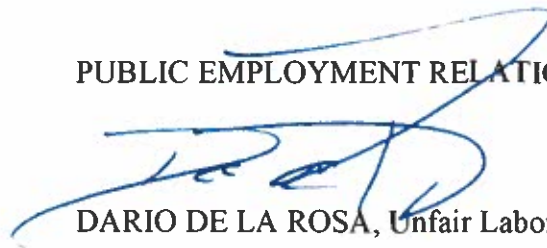
2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge 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 employer domination is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of December, 2023.

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.



RECORD OF SERVICE

ISSUED ON 12/28/2023

DECISION 13766 - 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 137967-U-23

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