STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,<br><br>Complainant,<br><br>vs.<br><br>BETHEL SCHOOL DISTRICT,<br><br>Respondent. | CASE 138045-U-23<br><br>DECISION 13787 - PECB<br><br>CAUSE OF ACTION STATEMENT AND ORDER OF PARTIAL DISMISSAL |

*Elyse B. Maffeo*, General Counsel, for the Public School Employees of Washington.

*Craig Hanson*, Attorney at Law, Hanson Law Offices for the Bethel School District.

On December 6, 2023, Public School Employees of Washington (union) filed an unfair labor practice complaint against the Bethel School District (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on December 19, 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 Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the complaint.

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[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 domination or assistance of a union 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 telling union bargaining representatives that the October 30, 2023, meeting was not going to occur, and the employer held the meeting with bargaining unit employees without the representatives.
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> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] 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 during an October 30, 2023, meeting.
>
> (b) Unilaterally changing the drivers' route assignments, without providing the union an opportunity for bargaining.

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

The circumvention and unilateral change allegations of the complaint does not state a cause of action and is dismissed.

## BACKGROUND

The Public School Employees of Washington (union) represents classified employees, including Bus Drivers, at Bethel School District (employer). The parties allegedly have a long-standing practice and collective bargaining agreement that describes the assignment of routes. The drivers bid on their routes in order of seniority at an annual bidding fair. The employer has had difficulty employing enough drivers and a driver shortage has resulted. Allegedly there are often insufficient substitute drivers to cover for regular driver absences.

On October 30, 2023, the employer held a meeting with transportation employees. Typically, union representatives attend these meetings. Prior to the October 30 meeting, the district told the union representatives that there would not be a meeting on October 30 and thus the union representative did not attend. During the meeting the employer met with bargaining unit employees. The employer advised the employees of a new proposed plan to address the critical shortage of bus drivers. When a driver was absent the proposed plan would allow the employer to decide which routes to fill and cancel, a driver assigned to a cancelled route would be required to drive another route at the employer's discretion, and if a driver was assigned to a different route but could not drive that route, the driver was required to use leave. The employer allegedly did not provide notice to the union about the proposed plan.

## 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 a circumvention allegation. The complaint alleges the union is the exclusive bargaining representative of the employees involved. It also alleges the proposed plan regarding the route assignments was a mandatory subject of bargaining.

The complaint lacks facts alleging the employer engaged in direct negotiations with the employees. The complaint merely alleges that the employer shared a proposed plan with the bargaining unit employees. Sharing information or listening to employee concerns does not rise to the level of circumvention. *See Kitsap Transit*, Decision 11098-A (employer memorandum to employees announcing a unilateral change was not circumvention).

The union was provided the opportunity to correct the deficiency or withdraw the deficient allegation. The union did not file an amended complaint or withdraw the deficient allegation. The circumvention allegation must be dismissed.

*Unilateral Change*

Applicable Legal Standard

As a general rule an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a

material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Application of Standard

The complaint lacks facts necessary to allege the employer made a change to working conditions. To allege a unilateral change violation, the complaint must allege that (1) the union is the exclusive bargaining representative, (2) the employer had an established practice concerning a mandatory subject of bargaining, and (3) the employer decided upon and actually implemented a change of that mandatory subject of bargaining without notice to the union, with insufficient notice, without engaging in bargaining as requested by the union, or without bargaining in good faith to agreement or impasse.

The complaint alleges the union is the exclusive bargaining representative and the employer had a collective bargaining agreement language and a practice of assigning bus routes. The complaint also alleges the employer did not notify the union about the plan. The complaint lacks facts that the employer actually implemented a change. The complaint alleges the employer notified bargaining unit employees of a "new proposed plan" to assign bus routes. The complaint does not allege the employer implemented the plan.

The union was provided the opportunity to correct the deficiency or withdraw the deficient allegation. The union did not file an amended complaint or withdraw the deficient allegation. The unilateral change allegation must be dismissed.

## ORDER

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

> Employer domination or assistance of a union 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 telling union bargaining representatives the October 30, 2023, meeting was not going to occur, and the employer held the meeting with bargaining unit employees without the representatives.

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 allegations of the complaint concerning circumvention and unilateral change are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of February, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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 02/09/2024

DECISION 13787 - 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 138045-U-23

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