

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHERLYN MERZ,

Complainant,

vs.

PUYALLUP SCHOOL DISTRICT,

Respondent.

CASE 138364-U-24

DECISION 13834 - PECB

ORDER OF DISMISSAL

Cherlyn Merz, the complainant.

Lorraine Wilson and Sharan Singh, Attorneys at Law, Porter Foster Rorick LLP for the Puyallup School District.

On February 16, 2024, Cherlyn Merz (complainant) filed an unfair labor practice complaint against the Puyallup School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 27, 2024, notified Merz that a cause of action could not be found at that time. Merz 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 Merz. 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 withholding substitute custodian pay until the custodian is permanent.

The complaint is dismissed. It does not allege facts related to the types of violations that can be raised before PERC.

BACKGROUND

Cherlyn Merz is a Custodian at Puyallup School District (employer) and is represented by the International Union of Operating Engineers Local 302 (union). The union and employer are parties to a collective bargaining agreement effective September 1, 2022, through August 31, 2025.

The complaint alleges the employer withholds sub custodian pay until they become permanent. On January 8, 2024, a grievance was filed related to the withholding of pay until a substitute custodian becomes permanent. On January 12, 2024, the Assistant Superintendent of Human Resources and Employer Relations, Amie Brandmire, allegedly replied to the grievance asserting it was not a valid grievance. The union allegedly received the January 12 communication.

On January 19, 2024, an unidentified person responded to Brandmire stating it was a violation of Article 12 of the collective bargaining agreement and a violation of Federal Laws RCW 49.48. There has allegedly not been a response from the employer since the January 19 response. The union also allegedly has said nothing after the January 12 response from the employer.

ANALYSIS

Violations of the Grievance Procedure and CBA

Applicable Legal Standard

The role of PERC is to resolve labor relations disputes between unions, employers, and on occasion individual employees. When a complaint is filed with the agency, PERC does not investigate the

filing party's claim. Rather, agency staff will review the complaint and statement of facts to determine if it states a cause of action. If it states a cause of action, the case will be forwarded to a PERC hearing examiner who serves as an administrative law judge. When an individual employee files a complaint with PERC, the individual takes on the responsibility for presenting their case before the agency (although the individual may hire an attorney to represent them).

A complaint must comply with the agency's filing rule, WAC 391-45-050. The complaint must contain a statement of facts with numbered paragraphs. The statement of facts should include:

- Specific allegations that constitute a violation of state law and required elements. For a list of types of violations that may be raised before PERC and the required elements please visit: <https://perc.wa.gov/ulp-employee-filing/>;
- Times, dates, and places of occurrences and the names of the participants in a chronological order that explains the alleged unfair labor practices;
- Whether a related grievance has been filed and its status. If you do not know if a grievance has been filed, please indicate so;
- A description of the remedies requested.

These requirements are necessary to put the respondent on notice of the alleged unfair labor practice and to allow the respondent to reference specific allegations within the complaint when filing an answer.

PERC's jurisdiction is limited to labor relations disputes. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A

(PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)).

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

Just because the complaint does not state a cause of action for an unfair labor practice, it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of PERC. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995).

Application of Standard

The statement of facts alleges the employer withholds pay until a substitute custodian becomes permanent. The statement of facts appears to allege the employer is withholding wages from substitute custodians. Violations alleging the withholding of wages can be filed with the Washington State Department of Labor & Industries. Additionally, the complaint appears to allege the employer responded to the January 8 filed grievance asserting the grievance is not valid. There are no facts alleging elements necessary related to the types of violations that may be raised before PERC. PERC does not have jurisdiction to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement.

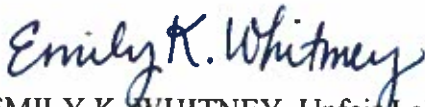
Merz was provided an opportunity to correct the deficiency and did not file an amended complaint. The original complaint continues to fail to allege facts related to the types of violations that may be raised before PERC.

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 10th day of May, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "Emily K. Whitney". The signature is written in a cursive style with a large initial "E".

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 05/10/2024

DECISION 13834 - 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 138364-U-24

EMPLOYER: PUYALLUP SCHOOL DISTRICT

REP BY: AMIE BRANDMIRE
PUYALLUP SCHOOL DISTRICT
302 2ND ST SE
PO BOX 370
PUYALLUP, WA 98371
brandmah@puyallupsd.org

LORRAINE WILSON
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101
lorraine@pfrwa.com

SHARAN SINGH
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101
sharan@pfrwa.com

PARTY 2: CHERLYN MERZ

REP BY: CHERLYN MERZ
PO BOX 786
GRAHAM, WA 98338-0786
cherylmerz123@gmail.com

JEFF FRAZIER
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302
18 E ST SW
AUBURN, WA 98001
jfrazier@iuoe302.org