STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ALEXANDER COZINE, Complainant, vs. TACOMA SCHOOL DISTRICT, Respondent.	CASE 141594-U-24 DECISION 14058 - PECB ORDER OF DISMISSAL

Alexander Cozine, the complainant.

Dave J. Luxenberg and *Luke Absher*, Attorneys at Law, McGavick Graves, P.S. for the Tacoma School District.

On December 19, 2024, Alexander Cozine (complainant) filed an unfair labor practice complaint against the Tacoma School District (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on January 21, 2025, notified Cozine that a cause of action could not be found at that time. Cozine was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. On February 10, 2025, Cozine filed an amended 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 amended 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
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> 1. precluding nondues paying Controls Electricians from being present at bargaining or allowing the nondues paying Controls Electricians to choose their own bargaining representative.
>
> 2. Failing to adopt language to provide pay equality between the Controls Electricians and HVAC Controls job classes.

The amended complaint is dismissed because none of the facts in the amended complaint support an employer interference allegation.

BACKGROUND

Cozine works as a Controls Electrician at the Tacoma School District (employer) and is represented by the union for purposes of collective bargaining. Cozine is a nondues paying member of the bargaining unit. The employer and union were parties to a collective bargaining agreement that expired on August 31, 2024.

According to the amended complaint, on December 14, 2022, Cozine received an email that he had applied for the HVAC Controls position. On January 11, 2023, Cozine received an email notifying him that he was not selected for the HVAC Controls position even though he had more seniority, experience, and qualifications than the other candidates.

On or about November 11, 2023, a meeting was held to determine the scope of the Controls Electrician and HVAC Controls positions. Tom Chalk and Steve Graves were present on behalf of the employer and Jack Knottingham and Bryant Mullins were present on behalf of the union. Also in attendance were Plumbing/HVAC representative Mark Wells, Cozine's team lead Dan Russel, Controls Electricians Cozine and Garrett Muttart, and HVAC Controls David Martin. During the meeting, Muttart claimed there was a wage discrepancy between the two positions of Controls

Electrician and HVAC Controls even though Controls Electrician had more responsibilities and requirements that the HVAC Controls position. Chalk allegedly responded by asking “What do you want me to do, dock [Davis’s] wages?” Muttart responded to this statement by asserting that he wanted the Controls Electrician positions to be brought up to the HVAC Controls wages. Chalk allegedly responded to this request by stating “Well, maybe you should have your Union bargain that into the CBA”.

On April 19, 2024, Cozine sent an email to the union to bring to its attention the pay discrepancy issue between the Control Technician and HVAC Controls positions that should be addressed at the upcoming negotiations. The union allegedly did not respond to this email.

On December 17, 2024, Cozine sent an email to employer supervisors Ian Ochoa and Steve Graves informing them of Cozine’s intent to start the grievance process to resolve wages issues at the lowest level of the grievance process. No response was given from the employer.

On December 20, 2024, Cozine wrote an email to the union requesting that his grievance be moved to the next level because the employer had not responded. On January 6, 2025, Cozine contacted the union to verify Mullins’s contact information because Mullins had not responded to Cozine’s email. The union verified his contact information was correct. On that same day, Mullins met with Cozine and Muttart about the grievance regarding unfair wage and training/overtime opportunities. Mullins informed Cozine that the union would not be pursuing or elevating the grievance unless Cozine and Muttart could point out to them where the issue was in the contract. Cozine sent the union an email stating the HVAC and HVAC Controls positions had been sent to a training while Controls Electrician were not provided the same training and were not granted the overtime associated with attending that training.

Finally, Cozine points that the collective bargaining agreement include a provision requiring the employer and union “to comply with all State and Federal guidelines and/or regulations” and employees will not be discriminated against on the basis of union activities or affiliation.

ANALYSIS

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). 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 employees' 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 Standards

Cozine's allegations against the employer must be dismissed because none of the facts in the complaint support an interference violation. The claim asserting the employer interfered with protected employee rights by precluding the Controls Technicians from attending bargaining sessions fundamentally misunderstands the employer's role at the bargaining table. While the choice of a bargaining representative is not absolute, the choice is an important right and is properly one for each party to decide. *See, e.g.*, *City of Tacoma*, Decision 11064 (PECB, 2011), *aff'd*, *City of Tacoma*, Decision 11064-A (PECB, 2012). "An employer, including a public employer, has just as much right to bargain through a designated representative as its employees

have." *Sultan School District*, Decision 1930-A (PECB, 1984). It was not the place of the employer to dictate to the union which bargaining unit employees attended bargaining sessions. In fact, doing so would be an unfair labor practice on the part of the employer.[2] Rather, if Cozine or any other employee desired to attend a bargaining session, it was incumbent on them to ask their exclusive bargaining representative to attend such sessions.[3]

Similarly, Cozine's claims that the employer interfered with protected employee rights by not allowing the Controls Electricians the right to select a bargaining representative of their choosing also fails to state a cause of action. Employees have the right to select a bargaining representative of their own choosing through the representation processes administered by this agency. Once an employer voluntarily recognizes a bargaining representative or this agency certifies a bargaining representative, the employer is obligated to negotiate terms and conditions of employment with that particular bargaining representative. To negotiate with another bargaining representative would be an unfair labor practice. Similarly, if an employer was to attempt to influence the employees selection of a bargaining representative, that would also be an unfair labor practice. *See Whatcom County*, Decision 8245-A (PECB, 2004).

Finally, Cozine asserts the employer interfered with employee rights by failing to add language to the collective bargaining agreement that addresses the pay inequity between the Controls Electricians and the HVAC Controls. An employees dissatisfaction with the outcome of bargaining

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[2] Similarly, if the employer attempted to directly negotiate wages with the Controls Electricians, it would potentially be committing a circumvention unfair labor practice. *See City of Renton*, Decision 12563-A (PECB, 2016) (explaining the standard for a circumvention violation).

[3] While RCW 41.56.080 requires a bargaining representative "to represent, all the public employees within the unit without regard to membership in said bargaining representative," this Commission has recognized that unions are private organizations which are allowed to set their own rules and standards to the selection of bargaining unit employees who may be present at negotiation sessions with the employer, including allowing only dues paying members to be present at the bargaining table. *See, e.g.*, Community College District 7 (Shoreline) (Washington Federation of State Employees), Decision 9094-A (PSRA, 2006) (recognizing the right of a bargaining representative to limit contract ratification votes only to dues-paying members).

does not form the basis for an unfair labor practice, *Cf. Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

ORDER

The amended 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 26th day of February, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, 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 02/26/2025

DECISION 14058 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 141594-U-24

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