

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL LEMOINE,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 143190-U-25

DECISION 14172 - PECB

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

Michael LeMoine, the complainant.

Heather Delaney, Employee and Labor Relations Manager, for the City of Seattle.

On June 2, 2025, Michael LeMoine (complainant) filed an unfair labor practice complaint against the City of Seattle (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on June 17, 2025, notified LeMoine that a cause of action could not be found at that time. LeMoine was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

LeMoine filed an amended complaint on June 23, 2025, a “Supplemental Statement” on June 25, 2025, and an amended complaint on July 7, 2025. The deficient allegations are dismissed, and a cause of action statement is issued for the other allegation of the 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 complaints allege the following:

Interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by processing payroll deductions for the health reimbursement VEBA plan set forth in the collective bargaining agreement without the complainant's authorization as required by RCW 41.56.110(5).

Interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by processing payroll deductions for the health reimbursement VEBA set forth in the collective bargaining agreement when the complainant, as a non-dues paying bargaining unit member, did not get the opportunity to vote on the VEBA.

Control, domination, or interference with a bargaining representative in violation of RCW 41.56.140(2) by processing payroll deductions for the health reimbursement VEBA set forth in the collective bargaining agreement when the complainant, as a non-dues paying bargaining unit member, did not authorize or get the opportunity to vote on the VEBA.

The allegation in the amended complaint that the employer interfered with employee rights in violation of RCW 41.56.140(1) by processing without the complainant's authorization payroll deductions for the VEBA set forth in the collective bargaining agreement in violation of RCW 41.56.110(5) states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The remaining allegations of the amended complaints do not state a cause of action and are dismissed.

BACKGROUND

Michael LeMoine is employed by the City of Seattle at the Seattle Public Utilities and is in a bargaining unit represented by the union. LeMoine is not a union member and does not pay dues to the union.

On the paycheck dated April 18, 2025, LeMoine noticed an unfamiliar deduction for VEBA in the amount of \$25.00. Similar deductions have occurred in subsequent paychecks.

LeMoine inquired about the deduction to both the union and the employer, requesting that it be stopped and that any prior deductions be refunded. The employer responded that the VEBA deductions were for contributions to a health savings VEBA account that were taken pursuant to Article 9.16.2 of the collective bargaining agreement covering the bargaining unit.

That article states:

Contributions from Employee Wages (all regular employees who are part of the bargaining unit)

Each bargaining unit will conduct a vote for all regular employees, as defined in the City's employer personnel manual, to determine whether to participate in a Health Reimbursement Account (HRA) Voluntary Employee Benefits Association (VEBA) for active employees to participate in an Active VEBA. Once they begin participating in the VEBA, employees may file claims for eligible expenses as provided under the terms of the VEBA.

If the bargaining unit votes to require VEBA contributions from employee wages, then all members of the bargaining unit shall, as elected by the bargaining unit as to all of its members, make a mandatory employee contribution of one of the amounts listed below into the VEBA while employed by the City:

1. \$25 per month, or
2. \$50 per month

LeMoine asserts that he did not authorize the deduction or get the opportunity to vote on the VEBA plan.

ANALYSIS

Applicable Legal Standards

Employer Interference

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.

Employer Domination

It is an unfair labor practice for a public employer to "control, dominate, or interfere with a bargaining representative." RCW 41.56.140(2). For example, a public employer may not provide financial assistance to an exclusive bargaining representative. *See, e.g., State – Washington State Patrol*, Decision 2900 (PECB, 1988). Additionally, a public employer may not show preference for one exclusive bargaining representative over another during the representation process. *See, e.g., Renton School District (United Classified Workers Union)*, Decision 1501-A (PECB, 1982). The complainant 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. *King County*, Decision 2553-A (PECB, 1987).

Constitutional Claims

The Commission's jurisdiction is limited by the authority granted to it by the legislature. *Local 2916, International Association of Fire Fighters v. Public Employment Relations Commission*, 128 Wn.2d 375 (1995). PERC does not have jurisdiction to resolve alleged constitutional violations.

Id.; *King County*, Decision 13874-A (PECB, 2025); *City of Orting*, Decision 7959-A (PECB, 2003).

Application of Legal Standards

In his original complaint, LeMoine asserted that the VEBA deduction was for a union-administered program that violated the First Amendment to Constitution as articulated in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) and *Bennett v. AFSCME, Council 31*, 991 F.3d 724 (7th Cir, 2021). A deficiency notice was issued on the grounds that PERC does not have jurisdiction to address constitutional claims.

LeMoine filed an amended complaint on June 23, 2025, a “Supplemental Statement” on June 25, 2025, and an amended complaint on July 7, 2025. LeMoine states that he is not asserting a violation of his First Amendment rights as delineated *Janus* and *Bennett*. Rather, LeMoine contends that the *Janus* and *Bennett* decisions provide context. While this agency does not have jurisdiction to address constitutional claims, it can enforce chapter 41.56 RCW when statutory rights arise in conjunction with constitutional rights. *King County*, Decision 13874-A.

LeMoine asserts that the employer’s act in implementing the VEBA plan and the deduction for the VEBA plan without his authorization or without giving him an opportunity to vote violates chapter 41.56 RCW and, specifically, RCW 41.56.140(1) and (2).

LeMoine alleges that he was deprived of the right to vote on the VEBA plan due to his status as a non-dues paying bargaining unit member. He asserts that, as a non-dues paying member, he cannot be compelled to make this deduction without having the opportunity to vote on the VEBA plan. LeMoine asserts that deduction is a violation of chapter 41.56 RCW because it is a contribution to a union-administered program and, relying on the *Janus* and *Bennett* decisions, that such a contribution cannot be implemented without a “clear, voluntary, or affirmative vote.”

There are no provisions that specifically address or establish the rights articulated in *Janus*. The only statute administered by PERC that addresses union dues or other deductions is RCW 41.56.110. RCW 41.56.110 addresses how employees may authorize payroll deductions for

union dues and other items set forth in a collective bargaining agreement. That statute does not address whether dues paying or non-dues paying bargaining members have the right to vote on contract provisions.

LeMoine does not allege any facts or show any legal basis in chapter 41.56 RCW that he was entitled to vote on the VEBA plan. Contract ratification votes are generally regarded as a matter of internal union affairs and outside the Commission's jurisdiction. *Western Washington University (Washington Public Employees Association, Local 365)*, Decision 8849-B (PSRA, 2006); *King County*, Decision 4253 (PECB, 1992); *Lewis County*, Decision 464-A (PECB, 1978). When, however, the terms of the negotiated collective bargaining agreement or the union's internal constitution or bylaws require ratification votes of all bargaining unit members, the union creates a right subject to the Commission's jurisdiction. *Western Washington University*, Decision 8849-B.

No similar obligation inures to the employer, however. LeMoine's allegation that he did not have the opportunity to vote on the VEBA plan contained in the collective bargaining agreement does not state a cause of action against the employer that is within PERC's jurisdiction.

While RCW 41.56.110 does not address an employee's right to vote on contract provisions, it does address the employee's authorization of payroll deductions for other payments. RCW 41.56.110(5) provides:

If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that includes requirements for deductions of other payments, the employer must make such deductions upon authorization of the employee.

LeMoine alleges that he did not authorize the VEBA deduction. The standard at this stage of the proceedings is that all the facts are assumed to be true and provable. WAC 391-45-110. Under that standard, the amended complaint filed July 7, 2025, states a cause of action that the employer interfered with LeMoine's rights under RCW 41.56.110(5) when it took the VEBA payroll deduction without LeMoine's authorization.

LeMoine also alleges that the employer's actions violated RCW 41.56.140(2), which prohibits an employer from controlling, dominating, or interfering with a bargaining representative. The amended complaint does not allege facts describing this type of violation, so this claim must be dismissed.

ORDER

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

Interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by processing payroll deductions for the health reimbursement VEBA plan set forth in the collective bargaining agreement without the complainant's authorization as required by RCW 41.56.110(5).

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 July 7, 2025, amended 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 amended 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 amended complaint concerning control, domination, or interference with a bargaining representative and employer interference regarding LeMoine not being given the opportunity to vote on the VEBA plan are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 25th day of July, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

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 7/25/2025

DECISION 14172 - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: DEBBIE BATES

CASE 143190-U-25

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