

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SUZETTE MCLEARY,)	
)	
Complainant,)	CASE 16828-U-02-4394
)	
vs.)	DECISION 8212 - PECB
)	
CITY OF MILTON,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	

On October 23, 2002, Suzette McLeary (McLeary) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Milton (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 27, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. McLeary 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 McLeary. The Unfair Labor Practice Manager 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 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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and other unspecified unfair labor practices, by its suspension of McLeary for three days.

The deficiency notice indicated that the complaint had several defects. One, while 15 documents were included with the statement of facts, the complaint failed to explain how the employer's actions violated the provisions of Chapter 41.56 RCW. Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for presentation of evidence supporting its complaint. See WAC 391-45-270.

Two, in reference to the allegations of discrimination under RCW 41.56.140(1), the complaint failed to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW.

Three, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The statement of facts attached to the complaint did not contain any such factual allegations.

Four, the complaint referred to the filing of a charge of racial discrimination with the federal Equal Employment Opportunity Commission. The Commission does not have jurisdiction over allegations of racial discrimination.

Five, in relation to the allegations of other unfair labor practices, the complaint failed to explain and specify what "other" statute had been violated by the employer's actions.

NOW, THEREFORE, it is

ORDERED

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 26th day of September, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.