

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ESSIE BROWN,)	
)	
Complainant,)	CASE 22353-U-09-5698
)	
vs.)	DECISION 10396 - PSRA
)	
UNIVERSITY OF WASHINGTON,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On March 26, 2009, Essie Brown (Brown) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the University of Washington (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 2, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Brown was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. Brown requested and was granted a two-week extension to file an amended complaint; Brown filed the amendment on May 4, 2009. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), discrimination in violation of RCW 41.80.110(1)(c), discrimination

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.

for filing charges in violation of RCW 41.80.110(1)(d), and refusal to bargain in violation of RCW 41.80.110(1)(e), by its actions involving Brown.

The deficiency notice pointed out the defects to the complaint. The following statute of limitations applies to the complaint:

RCW 41.80.120 UNFAIR LABOR PRACTICE PROCEDURES--POWERS AND DUTIES OF COMMISSION. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The complaint was filed on March 27, 2009. The Commission has no jurisdiction to remedy allegations of violations occurring prior to September 27, 2008. Brown alleges that the employer violated her Weingarten rights in the summer of 2007 and terminated her on March 21, 2008. The complaint is untimely.

Although the untimely complaint renders moot the remaining allegations, it may be instructive to briefly comment on Brown's claims of domination of a union, discrimination, discrimination for filing charges, and refusal to bargain. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions.

Regarding the claim of domination or assistance of a union, none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a company union.

Regarding the claim of discrimination, the Commission has jurisdiction only for claims involving discrimination in reprisal for union activities protected by Chapter 41.80 RCW. The Commission has no jurisdiction for claims involving racial discrimination. Such claims must be pursued through human rights agencies or the courts.

Regarding the claim of discrimination for filing charges, the complaint alleges no facts indicating that the employer's actions were in reprisal for Brown filing an unfair labor practice complaint with the Commission or giving testimony before the Commission.

Regarding the claim of refusal to bargain, the duty to bargain under Chapter 41.80 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees (union). Individual employees such as Brown do not have standing to process refusal to bargain allegations.

Amended Complaint

The amended complaint consists of argument, does not add additional facts, and does not cure the defects to the complaint. The amended complaint addresses allegations concerning the timeliness of the complaint, discrimination for filing charges, and discrimination. The amended complaint does not address the issues of employer domination or assistance of a union or refusal to bargain. Those allegations are considered withdrawn.

The untimeliness of the complaint is not mitigated by Brown's allegation that she relied to her detriment on the union's promise to pursue grievance arbitration. The Commission cannot waive the statute of limitations. In addition, the filing of a grievance and pursuit of grievance arbitration is a matter of contract between a union member and the union. The Commission does not assert jurisdiction in matters involving grievances or grievance arbitration. The Commission only has jurisdiction over discrimination

cases involving the filing of unfair labor practice complaints. Brown must seek remedies through the union or the courts.

Regarding discrimination and other constitutional issues, Brown's claim against the employer remains centered on allegations of wrongful termination and wrongful treatment in employment. Just as the Commission does not have general jurisdiction over claims of racial discrimination, it does not have general jurisdiction over claims involving disparate treatment and other forms of discrimination, or violations concerning due process and equal protection. The amended complaint contains no new evidence indicating that the employer acted in reprisal for Brown's union activities protected under Chapter 41.80 RCW. Brown must seek a remedy through the courts.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 22353-U-09-5698 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of May, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.