

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| JOHN E. PETRUZZELLI, |) | |
| |) | |
| Complainant, |) | CASE 22550-U-09-5765 |
| |) | |
| vs. |) | DECISION 10491 - PSRA |
| |) | |
| WASHINGTON STATE - LABOR AND |) | |
| INDUSTRIES, |) | |
| |) | ORDER OF DISMISSAL |
| Respondent. |) | |
| _____ |) | |

On June 12, 2009, John E. Petruzzelli (Petruzzelli) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Labor and Industries (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 22, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Petruzzelli was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

Petruzzelli has not filed any further information. 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 in violation of RCW 41.80.110(1)(a), discrimination in violation of RCW 41.80.110(1)(c), and refusal to bargain in violation of RCW 41.80.110(1)(e), by its termination of John Petruzzelli (Petruzzelli).

The deficiency notice pointed out the defects to the complaint. One, the complaint alleges that the employer denied Petruzzelli union representation in an interview in October 2008. RCW 41.80.120(1) provides 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 interview apparently occurred in October 2008. Petruzzelli should have filed a complaint on this issue before the end of April 2009. Any other allegations of the complaint occurring prior to December 17, 2008, are also untimely.

Two, the complaint does not provide facts indicating that the employer terminated Petruzzelli in reprisal for his union activities. 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. Petruzzelli alleges that the employer violated his rights under the American with Disabilities Act and the Family Medical Leave Act. However, the Commission has no jurisdiction over those matters. Petruzzelli must seek relief through the courts.

Petruzzelli alleges bad faith bargaining by the employer concerning the resolution of a grievance. The duty to bargain under Chapter 41.80 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.80.110(1)(e) can only be enforced by a union. Individual employees such as Petruzzelli do not have standing to process refusal to bargain allegations.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 22550-U-09-5765 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 31st day of July, 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.