

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AUDRA L. WILSON,)	
)	
Complainant,)	CASE 22562-U-09-5767
)	
vs.)	DECISION 10500 - PECB
)	
KING COUNTY,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On June 29, 2009, Audra L. Wilson (Wilson) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 6, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Wilson was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On July 23, 2009, Wilson filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended 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), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing charges in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by its actions involving Audra L. Wilson (Wilson).

The deficiency notice pointed out the defects to the complaint. One, Wilson alleges that her termination and related actions by the employer were based upon racial and gender discrimination. 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. The agency does not have jurisdiction over allegations concerning racial and gender discrimination in employment. Causes of action for employer interference with employee rights and discrimination in violation of RCW 41.56.140(1) will be given only when the statement of facts indicates that the employer's actions were substantially motivated by the complainant's union activities. Wilson repeatedly alleges that the employer's actions were based upon racial and gender discrimination. While she states that she voiced protests over the employer's actions and sought union representation, this was apparently done in response to the alleged racial and gender discrimination. Based upon Wilson's allegations, an examiner could not reasonably conclude that the employer's actions were substantially motivated by her union activities. Wilson must pursue remedies through human rights agencies or the courts.

Two, Wilson alleges employer domination or assistance of a union in violation of RCW 41.56.140(2); however, 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.

Three, Wilson alleges employer discrimination for filing charges in violation of RCW 41.56.140(3). The claim is based upon grievances raised by Wilson. A cause of action for discrimination for filing charges does not apply to grievances. A complaint alleging discrimination for filing charges will be processed only when the facts allege that an employee filed a previous unfair labor practice complaint with the Commission or gave testimony before the Commission.

Four, the statement of facts makes reference to an alleged violation of the parties' collective bargaining agreement by the employer's breach of the non-discrimination provisions of the contract. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements.

Five, Wilson alleges employer's refusal to bargain in violation of RCW 41.56.140(4). The duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by a union. Individual employees such as Wilson do not have standing to process refusal to bargain allegations.

Six, WAC 391-45-050(3) requires a complaint to contain a statement of the remedy sought by the complainant. The complaint does not include a separate sheet setting forth the remedies requested for the claimed unfair labor practices.

Amended Complaint

The amended complaint includes a remedy and so cures defect number six. Defect four is jurisdictional and is defective as a matter of law. Regarding defects two, three, and five, the amended complaint re-alleges violations of RCW 41.56.140(2), (3), and (4). However, there are no accompanying facts indicating: 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; that Wilson had previously filed an unfair labor practice complaint or testified before the Commission; or that Wilson had standing to bargain with the employer. Thus, the amended complaint does not cure the respective defects.

Regarding the first defect, in the amended complaint Wilson states that her union activities consisted of union orientation, union sponsored programs, association with union officers, and her grievances. At a hearing, Wilson would need to prove that union animus was a substantial motivating factor in the employer's decision to take adverse action against her. *Educational Service District 114*, Decision 4361-A (PECB, 1994). Wilson has not provided any facts in the amended complaint that cure the defect. Other than the grievances, Wilson has not shown any union activities beyond those related to membership. This is insufficient to indicate that a cause of action could be found for non-grievance union activity. Regarding grievances, the allegations of the original complaint clearly focused on Wilson's allegations that the employer's actions were primarily motivated by gender and race

bias, not in retaliation for her grievances. In response to the deficiency notice, the amended complaint attempts to shift the emphasis to the grievances. This is not persuasive. The amended complaint does not state a cause of action in reversing course from the original complaint by minimizing gender and race issues and claiming that the employer's actions were substantially based on the grievances. The Commission cannot provide Wilson a remedy.

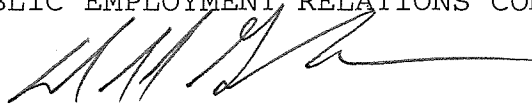
NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 22562-U-09-5767 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 4th day of August, 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.