

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOSE A. PORRAS,  Complainant,  vs.  STATE – CORRECTIONS,  Respondent.	CASE 24647-U-12-6299  DECISION 11349 - PSRA  ORDER OF DISMISSAL
STATE – CORRECTIONS,  Employer.	
JOSE A. PORRAS,  Complainant,  vs.  WASHINGTON FEDERATION OF STATE EMPLOYEES,  Respondent.	CASE 24648-U-12-6300  DECISION 11350 - PSRA  ORDER OF DISMISSAL

On March 7, 2012, Jose A. Porrás (Porrás) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Corrections (employer) and the Washington Federation of State Employees (union) as respondents. The complaint was docketed as two cases: Case 24647-U-12-6299 (against the employer) and Case 24648-U-12-6300 (against the union). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on March 12, 2012, indicated that it was not possible to conclude that a cause of action existed at that time.

<sup>1</sup> 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.

Porras was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

On April 2, 2012, Porras filed separate amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failures to state causes of action.

### DISCUSSION

The allegations of the complaints concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), and union interference with employee rights in violation of RCW 41.80.110(2)(a), by actions taken toward Jose Porras.

The deficiency notice pointed out the defects to the complaints. The complaints are procedurally and substantially defective.

The complaints do not conform to the provisions of WAC 391-45-050 (rule). There are no statement of facts conforming to the rule and no remedy requests. Porras submitted only a charging document for the National Labor Relations Board, a letter from his attorney, and a transcribed telephonic statement.

In addition, information gleaned from the submitted documents indicates that Porras is claiming a violation of the collective bargaining agreement. Porras does not have standing to process a contract violation claim, and the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements.

Porras also claims a violation of his *Weingarten* rights: He would have standing to process this claim, but there is no information concerning times, dates, places, and participants in this occurrence.

Finally, the claims against the union appear to concern the union's failure to pursue all or part of a grievance on Porras's behalf. The Commission does not assert jurisdiction over claims exclusively arising out of the processing of grievances under a collective bargaining agreement.

Amended Complaints

Porras did not submit amended complaint forms, but apparently he is no longer claiming a breach of contract by either the union or employer. The amended complaints allege violations by the union and employer that are untimely, without merit, or outside the jurisdiction of the Commission.

In February 2011 Porras was a Community Corrections Specialist (CCS) for the employer and represented by the union. On February 11, 2011, Porras was the subject of a traffic stop by the Washington State Patrol (WSP). Following that incident, the employer conducted an investigation. The employer placed Porras on temporary assignment and then suspended him. Porras was eventually demoted to another position, with an attendant decrease in wages, and was later told that his CCS position had been eliminated. Porras remains employed by the employer and represented by the union. Porras believes a grievance has been filed, but is unsure of its status. On February 29, 2012, Porras learned that his former position (CCS) had been filled by another person earlier that month, but alleges that neither the employer nor union offered him the job.

Case 24648-U-12-6300 (union)

The amended complaint continues to allege a breach of the duty of fair representation in violation of RCW 41.80.110(2)(a). The amended complaint also alleges union interference in violation of RCW 41.80.110(2)(a), by threats of reprisal or force or promises of benefit in connection with union activities (independent interference).

Porras alleges that the union failed to provide fair representation during the employer's investigation. He also apparently filed a grievance over the discipline and employment actions. Although no filing date or other specific information is given about the grievance, the substance of Porras' claims against the union appear to concern the union's breach of its duty of fair representation over the employer's disciplinary and employment actions between February 11 and May 25, 2011. Porras filed his complaint on March 7, 2012; any events subject to remedy by the Commission must have occurred on or after September 7, 2011. RCW 41.80.120(1); *City of Mount Vernon*, Decision 10728-A (PECB, 2010). Porras refers to disciplinary and employment

actions occurring between February 11 and May 25, 2011. Any claims relating to those occurrences should have been filed on or before November 25, 2011.

The amended complaint also refers to a telephone call "In or around September of 2011" to Porras from a union representative. This information does not conform to WAC 391-45-050(2), which requires information on times, dates, places and participants in occurrences. It not possible to determine when in September this incident occurred. In any case, even if the information were timely, it would not state a cause of action for an unfair labor practice. Apparently, the union representative merely informed Porras about problems with the grievance process. Further, the Commission does not assert jurisdiction to remedy duty of fair representation disputes arising from claims under collective bargaining agreements. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). Porras must seek a remedy through internal union procedures or in court.

Porras' allegation that the union did not offer him the CCS position in February 2012 would be timely if it stated a valid claim. However, there is no information in the amended complaint indicating that the alleged failure by the union in this regard was remotely connected with Porras' union activities. Porras does not provide any evidence of union activities prior to February 2011, or for any union activities other than those related to his grievance after February 2011. He does not provide any evidence indicating that the union's actions relative to his grievance were in connection with his union activities, that he was treated differently than other grievants, or that the union's actions were arbitrary or invidious.

Porras claims that the union independently interfered with his collective bargaining rights in violation of RCW 41.80.110(2)(a). The amended complaint contains extensive information concerning the union's alleged actions, but provides no facts indicating that the union independently interfered with Porras' collective bargaining rights. To the extent that Porras alleges derivative interference, that claim would apply only if there were an originating cause of action against the union.

Case 26647-U-12-6299 (employer)

Porras' claims against the employer mirror those against the union. Porras alleges that the employer violated his collective bargaining rights between February 11 and May 25, 2011, but he should have filed an unfair labor practice complaint on or before November 25, 2011. Included in this time period was an investigatory meeting of March 18, 2011. Porras alleges that the employer denied him union representation at the meeting. It is an unfair labor practice in violation of RCW 41.80.110(1)(a) for an employer to deny an employee union representation (*Weingarten* right) in connection with an investigatory interview. However, Porras should have filed a complaint on this issue no later than September 18, 2011.

Porras claims independent interference by the employer in violation of RCW 41.80.110(1)(a). The only facts in the amended complaint relating to that statute concern the meeting of March 18, 2011. The amended complaint provides no information indicating that the employer made other threats of reprisal or force or promises of benefit to Porras in connection with his union activities.

The amended complaint alleges discrimination and retaliation by the employer against Porras and alleges that Porras is a member of a protected class. It is an unfair labor practice in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.140(1)(a)], for an employer to discriminate against an employee in reprisal for union activities protected by Chapter 41.80 RCW. Discrimination is the actual deprivation of ascertainable rights, benefits, or status. Claims of discrimination under Chapter 41.80 RCW must indicate that protected union activity was a substantial motivating factor for employer actions. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The Commission has jurisdiction only over claims concerning violations of employee rights protected under Chapter 41.80 RCW. The Commission has no jurisdiction over claims against employers involving such factors as race, gender, national origin and the like. Porras must seek a remedy with human rights agencies or through the courts for those claims.

The amended complaint contains no information indicating that the employer's actions were substantially motivated by Porras' union activities. Porras claims that the employer's elimination of his job was pretextual, but that allegation alone does not state a cause of action unless it can be connected to Porras' union activities. Porras sought union support as a result of the employer's

disciplinary and employment actions, but as previously noted, there is no evidence of any prior union activity or union activity outside Porras' grievance. Porras provides no information indicating that the employer would not have taken action against him but for his requesting help from the union. In any case, the allegations regarding occurrences between February 11 and May 25, 2011, are untimely.

While the issue of the employer not offering Porras his former job back in February 2012 would be timely, there is no showing that this was remotely connected to Porras' union activities, much less substantially motivated by them. Rather, information supplied by Porras in an extensive and detailed statement of facts, shows that his dispute with the employer—and resulting dispute with union—began with the WSP traffic stop. It is not necessary at this time to set forth the specific details of this police action, other than to state that the amended complaint indicates that Porras' union activities were not the substantial motivation for the employer's actions. Based upon the information provided by Porras, it is reasonable to infer that the WSP traffic stop was the substantial motivation for the employer's actions, but not reasonable to conclude that an unfair labor practice could be found.

NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in Cases 24647-U-12-6299 and 24648-U-12-6300 are DISMISSED for failures to state causes of action.

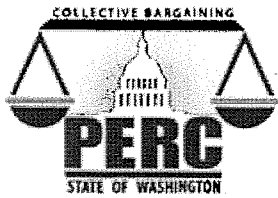
ISSUED at Olympia, Washington, this 19<sup>th</sup> day of April, 2012.

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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 04/19/2012

The attached document identified as: **DECISION 11349 - PSRA** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
B/S/ ROBBIE DUFFIELD

CASE NUMBER: 24647-U-12-06299 FILED: 03/07/2012 FILED BY: PARTY 2  
DISPUTE: ER INTERFERENCE  
BAR UNIT: ALL EMPLOYEES  
DETAILS: -  
COMMENTS:

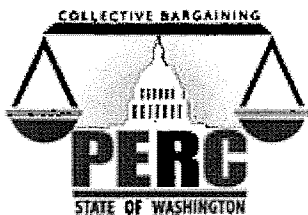
EMPLOYER: STATE - CORRECTIONS  
ATTN: DIANE LEIGH  
210 11TH AVE SW STE 331  
PO BOX 43113  
OLYMPIA, WA 98504-3113  
Ph1: 360-725-5154 Ph2: 360-725-5152

REP BY: VALERIE PETRIE  
OFFICE OF THE ATTORNEY GENERAL  
7141 CLEANWATER DR SW  
PO BOX 40145  
OLYMPIA, WA 98504-0145  
Ph1: 360-664-4167

PARTY 2: JOSE PORRAS  
ATTN: C/O JOHN BONIN  
BONIN & COOK PS  
PO BOX 783  
SHELTON, WA 98584  
Ph1: 360-427-7474

REP BY: JOHN BONIN  
BONIN & COOK PS  
PO BOX 783  
SHELTON, WA 98584  
Ph1: 360-427-7474

PARTY 3: WA FED OF STATE EMPLOYEES  
ATTN: GLADYS BURBANK  
1212 JEFFERSON ST SE STE 300  
OLYMPIA, WA 98501-2332  
Ph1: 800-562-6002 Ph2: 360-352-7603



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 04/19/2012

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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

  
BY: S/ ROBB DUFFIELD

CASE NUMBER: 24648-U-12-06300 FILED: 03/07/2012 FILED BY: PARTY 2  
DISPUTE: UN INTERFERENCE  
BAR UNIT: ALL EMPLOYEES  
DETAILS: -  
COMMENTS:

EMPLOYER: STATE - CORRECTIONS  
ATTN: DIANE LEIGH  
210 11TH AVE SW STE 331  
PO BOX 43113  
OLYMPIA, WA 98504-3113  
Ph1: 360-725-5154 Ph2: 360-725-5152

PARTY 2: JOSE PORRAS  
ATTN: C/O JOHN BONIN  
BONIN & COOK PS  
PO BOX 783  
SHELTON, WA 98584  
Ph1: 360-427-7474

REP BY: JOHN BONIN  
BONIN & COOK PS  
PO BOX 783  
SHELTON, WA 98584  
Ph1: 360-427-7474

PARTY 3: WA FED OF STATE EMPLOYEES  
ATTN: GLADYS BURBANK  
1212 JEFFERSON ST SE STE 300  
OLYMPIA, WA 98501-2332  
Ph1: 800-562-6002 Ph2: 360-352-7603