

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NEEVE WILLOWS,

Complainant,

vs.

STATE – SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE 27053-U-15-6901

DECISION 12325 - PSRA

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On February 26, 2015, Neeve Willows (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Social and Health Services (employer) as the respondent. The complaint was reviewed under WAC 391-45-110,¹ and a partial deficiency notice issued on March 26, 2015, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. Nothing further has been received from the complainant.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint, concerning:

- (1) Employer discrimination against Willows based on age, religious status, and disability.
- (2) Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by denying Willows promotional opportunities in reprisal for union activities protected by Chapter 41.80 RCW.

These allegations failed 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.

The complaint states a cause of action for:

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by placing Neeve Willows on alternative assignment on September 19, 2014, in reprisal for union activities protected by Chapter 41.80 RCW.

The employer must file and serve its answer to the discrimination/alternative assignment allegation within 21 days following the date of this decision.

DISCUSSION

Lack of Jurisdiction

The complainant raises a variety of allegations concerning discrimination. The Commission does not have jurisdiction to address allegations of age, religious, or disability discrimination. The complainant can pursue these types of allegations through the Washington State Human Rights Commission or the courts.

Timeliness

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. RCW 41.80.120(1). The complaint was filed on February 26, 2015, and therefore is only timely with regard to events that took place on or after August 26, 2014.

The only allegation that appears to be timely filed is discrimination against Willows in reprisal for her activity as a union steward, specifically the employer's placement of Willows on alternative assignment on September 19, 2014. All of the other dates mentioned in the complaint involve events that took place before August 26, 2014, and are untimely filed.

Filing of Answer

WAC 391-45-110(2) requires the filing of an answer in response to a preliminary ruling which finds a cause of action to exist. Cases are reviewed after the answer is filed, to evaluate the

propriety of a settlement conference under WAC 391-45-260, priority processing, or other special handling.

PLEASE TAKE NOTICE that the organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to the complaint within 21 days following the date of this order.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the complaint that state a cause of action are summarized as:

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by placing Neeve Willows on alternative assignment on September 19, 2014, in reprisal for union activities protected by Chapter 41.80 RCW.

2. The allegations of the complaint concerning the placement of Neeve Willows on alternative assignment, described in paragraph 1 above, will be the subject of further proceedings under Chapter 391-45 WAC.

The respondent shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny, or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint concerning: (1) employer discrimination against Willows based on age, religious status, and disability, and (2) employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by denying Willows promotional opportunities in reprisal for union activities protected by Chapter 41.80 RCW, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of April, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY: /S/ VANESSA SMITH

CASE NUMBER: 27053-U-15-06901 FILED: 02/26/2015 FILED BY: PARTY 2
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COMMENTS:

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