STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NEEVE WILLOWS, Complainant, vs. STATE – SOCIAL AND HEALTH SERVICES, Respondent.	CASE 127922-U-16 DECISION 12568 - PSRA PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On February 12, 2016, Neeve Willows (complainant) filed an unfair labor practice complaint against the Washington State Department of Social and Health Services (employer).[1] The complaint was reviewed under WAC 391-45-110,[2] and a deficiency notice issued on March 1, 2016, indicated that it was not possible to conclude 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. On March 21, 2016, the complainant filed an amended complaint.

The amended complaint states causes of action for further case processing concerning the allegations of employer discrimination in reprisal for union activity since October 2015. The employer must file and serve its answer to the discrimination allegations within 21 days following the date of this order. The remaining allegations against the employer appear to either be untimely filed or raise allegations that are not within the jurisdiction of the Commission and are therefore dismissed.

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1 The complainant also filed a case against the Washington Federation of State Employees (union), which was assigned case number 127923-U-16. Although these cases deal with similar time periods and were addressed in the same deficiency notice, they have not been consolidated.

2 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.

ISSUES

The allegations of the amended complaint concern:

> 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)] in reprisal for union activities protected by Chapter 41.80 RCW by:
>
> 1. On January 29, 2014, issuing a performance meeting record to Neeve Willows.
> 2. On September 19, 2014, reassigning Willows to the downtown King Street office.
> 3. On November 4, 2014, issuing a biased performance evaluation to Willows.
> 4. On October 14, 2015, issuing a letter of reprimand to Willows.
> 5. Since October 2015, placing erroneous, insinuating, and false allegations in Willows' personnel file.
> 6. On October 15, 2015, administratively assigning Willows to a floating CHET Screener position.
> 7. Since December 22, 2015, placing Willows on alternate assignment and investigating Willows' conduct.
>
> Employer domination or assistance of a union in violation of RCW 41.80.110(1)(b) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)].
>
> Employer interference with employee rights by violating Articles 2 and 47 of the collective bargaining agreement (CBA).

BACKGROUND

According to the facts alleged in the amended complaint, Willows is employed as a Social Services Specialist 3 in the Department of Social and Health Services Children's Administration. Willows also serves as a union shop steward. The amended complaint describes Willows' employment relationship and union activity dating back to October 2013.

In 2013 Willows filed a grievance seeking overtime compensation for additional hours she was required to work. The complainant alleges that the employer engaged in a pattern of retaliation against her since 2013. Because the Commission can only consider allegations of events that took

place in the six months preceding the filing date of the complaint, many of the alleged facts may serve as background information only.

DISCUSSION

Six-Month Statute of Limitations Period

There is a six-month statute of limitations for unfair labor practice complaints. "[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." RCW 41.80.120(1). The six-month statute of limitations period begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

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 original complaint was filed on February 12, 2016, and therefore is only timely with regard to events that took place on or after August 12, 2015.

Employer Domination

The complainant alleges employer domination or assistance of a union in violation of RCW 41.80.110(1)(b). Other than referencing "domination or assistance," neither the complaint nor the amended complaint explain or develop this allegation. None of the facts alleged in the complaint or amended complaint suggest that the employer involved itself in the internal affairs or finances of the union or that the employer attempted to create, fund, or control a "company union." A cause of action for this type of violation is provided for in all statutes administered by the Commission. In determining whether employer domination has occurred the Commission evaluates whether an employer has attempted to create, fund, or control a company union. *See Washington State Patrol*, Decision 2900 (PECB, 1988). Although the Commission has issued

few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term "domination" is thus directly tied to the term "assistance" and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, such actions are distinct from interference. It is appropriate for a complainant to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through acts such as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign. In this case the facts alleged do not describe employer domination of the union.

Alleged Violations of the Collective Bargaining Agreement

The complainant also alleges contract violations by the employer. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004), *citing Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

CONCLUSION

The amended complaint states causes of action for further case processing concerning the allegations of employer discrimination in reprisal for union activity since October 2015. The remaining discrimination allegations are dismissed because they were untimely filed. Additionally, the remaining allegations of the complaint and amended complaint, including employer domination and violations of the CBA, are dismissed because they do not state a cause of action within the jurisdiction of the Commission.

ORDER

1. Assuming all of the facts alleged against the employer to be true and provable, the amended complaint states causes of action, summarized as follows:

> 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)] in reprisal for union activities protected by Chapter 41.80 RCW by:
>
> 1. On October 14, 2015, issuing a letter of reprimand to Willows.
> 2. Since October 2015, placing erroneous, insinuating, and false allegations in Willows' personnel file.
> 3. On October 15, 2015, administratively assigning Willows to a floating CHET Screener position.
> 4. Since December 22, 2015, placing Willows on alternate assignment and investigating Willows' conduct.

2. The allegations against the employer described in paragraph 1 of this order will be the subject of further proceedings under Chapter 391-45 WAC

The employer 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. All remaining allegations of the complaint and amended complaint against the employer are DISMISSED for failure to state a cause of action or for untimeliness.

ISSUED at Olympia, Washington, this 21st day of April, 2016.

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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 04/21/2016

DECISION 12568 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127922-U-16

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