

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DEDRA STRICKLAND,

Complainant,

vs.

SEATTLE COLLEGES,

Respondent.

CASE 128706-U-17

DECISION 12674 - PSRA

ORDER OF DISMISSAL

On January 17, 2017, Dedra Strickland (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Seattle Colleges (employer) as respondent. The complainant filed an amended complaint on January 30, 2017. The amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 13, 2017, indicated that it was not possible to conclude that a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve an additional amended complaint, or face dismissal of the case.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the amended complaint concern:

Employer discrimination against Dedra Strickland since December 9, of an unspecified year, by failing to select Strickland for a promotional Career Services Center Supervisor 1 position.

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 amended complaint does not state a cause of action for further case processing. The amended complaint is missing required information and does not describe allegations that would fall under the jurisdiction of the Commission.

Discrimination for Union Activity

Legal Standard

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1) or RCW 41.80.110(1)(c). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a *prima facie* case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

ANALYSIS

The Commission does not have authority to address general allegations of discrimination or unequal treatment. The only type of discrimination that the Commission can address is

discrimination for engaging in (or refraining from) protected union activity, or for filing charges with the Commission. In this case, basic elements of a discrimination for union activity allegation are missing from the amended complaint. The amended complaint does not describe the complainant's involvement in any protected union activities. The alleged facts do not indicate that Strickland participated in any activity protected by the collective bargaining statute or communicated to the employer an intent to do so.

The amended complaint also failed to describe or explain a causal connection between the complainant's union activity and the employer's decision to select a different applicant for a promotional position. Based on the facts as stated, it does not appear that the Commission has jurisdiction over the alleged unfair promotional decision made by the employer. The complaint alleges possible racial discrimination by the employer. The Public Employment Relations Commission does not have jurisdiction over laws that protect employees from racial discrimination by employers.

Applicable Statute or Employee Type

It is not clear whether the complainant is a civil service classified community college employee under the jurisdiction of RCW 41.80 or an exempt employee under the jurisdiction of RCW 41.56. The complainant had the opportunity to correct this defect by amending the complaint to describe which bargaining unit (classified or exempt) contains her job position. In absence of this information, this case is being treated as a RCW 41.80 case for purposes of issuing this dismissal decision.

Complaint Lacks Full Dates for Each Allegation

The rules for contents of complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit a "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences."

The facts alleged in the amended complaint do not contain complete dates. Specifically paragraphs 1 through 3 contain days and months, but do not specify what year. The allegations

in paragraphs 4 through 7 do not contain any dates of occurrence. Full dates are necessary to determine whether the allegations are timely filed.

ORDER

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29th day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, 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
MARK E. BRENNAN, COMMISSIONER
MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

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DECISION 12674 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128706-U-17

EMPLOYER: SEATTLE COLLEGES
ATTN: SHOUAN PAN
1500 HARVARD AVE
SEATTLE, WA 98122
shouan.pan@seattlecolleges.edu
(206) 934-3850

PARTY 2: DEDRA STRICKLAND
ATTN: 12316 28TH AVE NE A307
SEATTLE, WA 98125
oprahfandee0924@aol.com
(206) 475-3833