

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLORETTA FRANKLIN,

Complainant,

vs.

SKAGIT VALLEY COLLEGE,

Respondent.

CASE 128961-U-17

DECISION 12751 - PSRA

ORDER OF DISMISSAL

On May 5, 2017, Cloretta Franklin (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Skagit Valley College (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on June 7, 2017, indicated 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 amended complaint or face dismissal of the case.

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

ANALYSIS

The allegations of the complaint concern the following employer actions:

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)] since January 11, 2017, by transferring Cloretta Franklin to a different work location, in retaliation for whistleblowing.

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<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.

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] since March 1, 2017, by failing to bargain in good faith and refusing a pay raise and rejecting the union's proposals concerning the change to Franklin's work location.

### Employer Discrimination

#### *Applicable Legal Standard*

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. 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 41.80 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. *Washington State University*, Decision 11749-A (PSRA, 2013), citing *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).

*Application of Standard*

The Public Employment Relations Commission does not have authority to address general allegations of discrimination or unequal treatment. The Commission can only address discrimination for engaging in (or refraining from) protected union activity. In this case, basic elements of a discrimination allegation that would fall under the Commission's jurisdiction are missing from the complaint.

The complaint does not indicate that Franklin participated in union activity protected by the collective bargaining statute or communicated to the employer an intent to do so. Rather, the complaint alleges that Franklin was retaliated against for whistleblowing. The Public Employment Relations Commission does not have authority over whistleblower protection laws. The Washington State Auditor's Office enforces the whistleblower aspects of Chapter 42.40 RCW. The Washington State Human Rights Commission also has jurisdiction over allegations of whistleblower workplace reprisal or retaliatory action.

The complaint also fails to explain a causal connection between union activity and the employer's decision to change Franklin's work location. Based on the facts as stated, the Commission does not have jurisdiction over the allegations concerning an unfair or discriminatory transfer of Franklin's work location.

Employer Refusal to Bargain*Applicable Legal Standard*

An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000), citing *Clark County*, Decision 3200 (PECB, 1989), and *Enumclaw School District (Public School Employees of Washington)*, Decision 5979 (PECB, 1997). Only the parties to the collective bargaining relationship (the union or the employer) can file an unfair labor practice complaint for refusal to bargain. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011).

*Application of Standard*

The complaint alleges that the employer failed to bargain in good faith by refusing a pay raise and continuing to reject the union's proposals after making unilateral changes to Franklin's working conditions. As an individual employee, Franklin cannot file a refusal to bargain complaint. If the union representing the bargaining unit that contains the complainant's job position believes the employer has refused to bargain, the union can file a complaint alleging that the employer refused to bargain in violation of RCW 41.80.110(1)(e).

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 20th day of July, 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

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### RECORD OF SERVICE - ISSUED 07/20/2017

DECISION 12751 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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