

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERIKA D. MOORE,

Complainant,

vs.

KENT SCHOOL DISTRICT,

Respondent.

CASE 129401-U-17

DECISION 12771 - EDUC

ORDER OF DISMISSAL

On June 16, 2017, Erika D. Moore (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Kent School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on July 27, 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 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.

DISCUSSION

The allegations of the complaint concern:

1. On unspecified dates, employer creation of a hostile work environment in reprisal for union activities.
2. On unspecified dates, employer refusal to sign off on Erika D. Moore's "effective ed" in reprisal for union activities.

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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.

3. On unspecified dates, coaching staff, students, and parents to write reports against Moore in reprisal for union activities.
4. On unspecified dates, discouraging Moore from enforcing the collective bargaining agreement.

The deficiency notice explained the complaint lacks necessary dates and information concerning allegations of discrimination and interference with union activity. The complaint also alleges hostile work environment, a type of claim that is not within the statutory jurisdiction of the Commission. The complaint is being dismissed because it does not state a timely cause of action.

#### Complaint does not Specify Dates of Events

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.”

In this case, the complaint did not contain dates or participants for any of the discrimination allegations. The facts and events described in the complaint make vague allegations of discrimination for union activity, but did not include dates or names of many of the participants. The date of occurrence and names of some of the participants are necessary to determine whether these allegations appear to be timely filed.

#### Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. “The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That 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 41.59.150 (1).

The six-month statute of limitations 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).

In this case, the complaint lacks dates of events. Without dates of occurrence, it is not possible to determine whether the complaint states a cause of action within the six month statute of limitations period. The complaint appears to be untimely filed.

#### Hostile Work Environment

The Commission only has jurisdiction over hostile work environment allegations alleged to be in retaliation for protected union activity. It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). An employer interferes with employee rights when an employee could reasonably perceive the employer’s actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

In this case, the complaint does not include facts describing specific union activity or a connection between the alleged hostile work environment and protected union activity. The hostile work environment allegation lacks necessary elements to qualify for further case processing.

#### Need to Number Paragraphs

While not the primary reason for dismissal of this complaint, it should be noted that complainants must number the paragraphs in the attached statement of facts. In this case, the complainant did not number each of the paragraphs in the statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

ORDER

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

ISSUED at Olympia, Washington, this 30th day of August, 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 08/30/2017**

DECISION 12771 - EDUC has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 129401-U-17

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