

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ZACH YANDRICH,

Complainant,

vs.

THE EVERGREEN STATE COLLEGE,

Respondent.

CASE 129040-U-17

DECISION 12766 - PSRA

ORDER OF DISMISSAL

On June 1, 2017, Industrial Workers of the World/Zach Yandrich (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming The Evergreen State College (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 29, 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.

ANALYSIS

The allegations of the complaint concern:

Employer interference with employee rights on May 26, of an unspecified year, by informing Resident Assistants that they if they went on strike they could resign or be disciplined.

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.

Failure to comply with wage and hour laws by assigning extra shifts to Resident Assistant work study students in excess of 19 hours per week during the winter of 2016/2017.

Violations of RCW 19.86.070
Violations of RCW 41.56
Violations of RCW 49.12
Violations of RCW 49.44
Violations of RCW 49.46
Violations of WAC 296-126

It is not possible to conclude that the complaint states a cause of action at this time. The allegations concern grievances of student workers that do not have collective bargaining rights. The complaint also cites statutes and raises allegations that are not within the Commission's statutory jurisdiction.

Background

This case was filed with two complaint forms, but was docketed with a single case number. The Industrial Workers of the World (IWW) is listed as the labor organization on the case filing forms. The Commission has no record of the IWW being certified to represent any employee groups at The Evergreen State College. It appears that the complainant Zach Yandrich filed this complaint on behalf of fellow workers and the IWW.

The complaint alleges that for a period of several months during the winter of 2016/2017, the entire Evergreen State College team of Residence Assistants (RAs) was made to work extra duty shifts due to several unfilled vacancies on the team. The complaint alleges the extra shifts caused RAs to exceed the legally mandated limit of 19 hours of work per week for someone in a work study.

The complaint also alleges that on May 26, of an unspecified year, three residence assistants were discussing the possibility of a large portion of the resident assistant team going on strike to protest discrimination and poor working conditions. The complaint alleges that the employer stated that if the residence assistants went on strike “. . . you can resign, or we can discipline, or” The residence assistants felt they were being threatened with punishment for organizing a strike.

Jurisdiction of the Commission

The Public Employment Relations Commission (Commission) only has jurisdiction over employee groups who have bargaining rights under Washington's collective bargaining statutes.

Student employees at The Evergreen State College do not have collective bargaining rights under the statutes administered by the Commission. RCW 41.80 is the collective bargaining statute that covers State civil service employees. RCW 41.06.070 addresses Exemptions-Right of reversion to civil service status. RCW 41.06.070(1) specifically excludes student employees from civil service protections, which include bargaining rights under RCW 41.80.

The legislature has specifically considered the issue of collective bargaining rights for student employees. In 2008 the legislature extended collective bargaining rights to certain classes of student employees at the University of Washington (RCW 41.56.203) and Washington State University (RCW 41.56.205). The statute clearly describes the rights of certain employees enrolled in an academic program with regards to collective bargaining. The legislature did not extend collective bargaining rights to resident assistants or to any student employees at The Evergreen State College.

Because resident assistants at The Evergreen State College are not considered employees for the purposes of collective bargaining the Commission does not have jurisdiction over the labor complaints of residence assistants. This means that the Commission lacks authority to apply public sector collective bargaining laws prohibiting unfair labor practices by employers and unions to labor disputes involving the residence assistants at The Evergreen State College.

No Authority over Title 19 RCW Business Regulations or Title 49 RCW Labor Regulations

The complaint asserts violations of a variety of Washington statutes that the Commission does not have jurisdiction to enforce. The Commission cannot address alleged violations of Chapter 19.86 (Unfair Business Practices), Chapter 49.12 RCW (Industrial Welfare), Chapter 49.44 RCW (Labor Violations- Prohibited Practices), or Chapter 49.46 RCW (Minimum wage requirements and labor standards). These alleged legal violations need to be addressed in a different forum. Complaints

over wage and hour claims can be filed with the Washington State Department of Labor and Industries. The Court system can also address violations of state labor regulations and unfair business practices.

Timeliness

Need Complete Dates of Events

The rules for contents of complaints 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.”

While not the primary reason for dismissal, it is important to note the complaint describes events on May 26, but did not specify the year. Complete dates of occurrences (day, month, year) for each allegation are necessary to determine whether 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 8th 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 08/22/2017

DECISION 12766 has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 129040-U-17

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