

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL HARRIS,

Complainant,

vs.

STATE – INDIVIDUAL PROVIDERS,

Respondent.

CASE 130444-U-18

DECISION 12863 - PECB

ORDER OF DISMISSAL

On February 16, 2018, Michael Harris (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the state of Washington (employer) as respondent. The complaint appeared to be missing pages. On March 2, 2018, Harris filed an amended complaint. The amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on March 14, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. Harris was given a period of 21 days in which to file and serve a second amended complaint, or face dismissal of the case.

No further information has been filed by Harris. The unfair labor practice manager dismisses the amended complaint for failure to state a cause of action.

ISSUES

The amended complaint alleges:

Employer violation of RCW 49.48.010(1)(2)(3), 49.60.210(2)(3), RCW 49.60.220, and Chapter 42.40 RCW.

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.

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by its termination and refusal to pay wages to Michael Harris.

The facts alleged in the amended complaint do not describe actions that could constitute an unfair labor practice under the Commission's jurisdiction. The amended complaint is dismissed.

BACKGROUND

According to the amended complaint, Harris was employed by the employer on August 22, 2017, when a client service contract was created by Harris and the employer. Harris was allegedly scheduled to complete a 70-hour basic training course before December 30, 2017, in accordance with the employer's guidelines to be an individual provider.

Harris allegedly completed 67 of the 70 hours by December 2017. On December 1, 2017, Harris allegedly attempted to file an electronic timesheet for hours he had previously worked. According to the amended complaint, when Harris logged into the payroll site to file the electronic timesheet, he noticed that his hours had been edited, and the timesheet was grayed out.

When Harris called the employer to inquire about the edited and grayed out timesheet, an agency payer allegedly told Harris that the employer had made a determination to cancel the client service contract. Harris then contacted the social worker assigned to his case. The social worker informed him that she had no recollection of a client service contract ever being signed, and as a result, the social worker terminated Harris' employment status.

According to the amended complaint, the employer has compensated Harris for half of the actual hours he was trained and a total of one month's wages.

ANALYSIS

Applicable Legal Standard

The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all

disputes that might arise in public employment. *King County (Teamsters Local 117)*, Decision 12000-A (PECB, 2014); *Tacoma School District*, Decision 5086-A (EDUC, 1995). Just because the amended complaint does not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). 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).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB,

1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual or that union animus was a substantial motivating factor behind the employer's actions. *Id.*

Application of Standard

The amended complaint does not describe allegations that fit within the jurisdiction of the Commission. The amended complaint alleges violations of RCW 49.48.010(1)(2)(3), 49.60.210(2)(3), RCW 49.60.220, Chapter 42.40 RCW, and general discrimination. The Commission does not assert jurisdiction over wages, payment, and collection law violations; whistleblower protection violations; or general discrimination violations. Thus the portions of the amended complaint alleging these types of violations do not state causes of action with PERC.

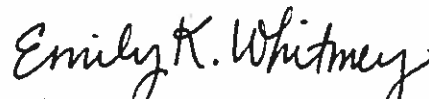
A cause of action for discrimination under RCW 41.56.140(1) will be given if the statement of facts indicates that an employer has deprived an employee of ascertainable rights, benefits, or status, in reprisal for the employee's protected union activities, and a causal connection exists between the exercise of a protected activity and the employer's action. The amended complaint lacks facts alleging whether Harris participated in protected activity and whether a causal connection existed between that protected activity and the employer's action. Thus the employer discrimination allegation is dismissed.

ORDER

The amended 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 2nd day of May, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Emily K. Whitney, 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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DECISION 12863 – PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 130444-U-18

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