STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARREN DEGRAW, Complainant, vs. KING COUNTY, Respondent.	CASE 130495-U-18 DECISION 12875 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
DARREN DEGRAW, Complainant, vs. KING COUNTY CORRECTIONS GUILD, Respondent.	CASE 130496-U-18 DECISION 12876 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On March 20, 2018, Darren DeGraw (complainant) filed two complaints charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming King County (employer) and King County Corrections Guild (union) as respondents. The cases were docketed as 130495-U-18 (employer) and 130496-U-18 (union). Because the complaints contain the same parties and events, the complaints are consolidated. The complaints were reviewed under WAC 391-45-110,[1] and deficiency notices issued on April 18, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. DeGraw was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

[1] At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

On May 7, 2018, DeGraw filed amended complaints withdrawing some of the original allegations. The Unfair Labor Practice Manager dismisses defective allegations of the amended complaints against the employer for failure to state a cause of action, and finds a cause of action for an employer interference allegation and a union breach of its duty of fair representation. The employer and union must file and serve their answers to the amended complaints within 21 days following the date of this Decision.

ISSUES

The amended complaints allege three violations against the employer:

1. Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made, when Darren DeGraw requested information from the employer regarding a change in medical benefits.

2. General employer discrimination violations.

3. Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by unilaterally changing domestic partner medical benefits, without providing the union an opportunity for bargaining.

The amended complaints allege two violations against the union:

1. Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation when it failed to respond to Darren DeGraw's request for information regarding a grievance.

2. General union discrimination violations.

The allegations of the amended complaints concerning employer interference and union duty of fair representation state a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The amended complaints do not state a cause of action for employer discrimination, employer refusal to bargain, or union discrimination violations. These three allegations are dismissed.

BACKGROUND

The King County Corrections Guild (union) represents employees in King County (employer). Darren DeGraw is a member of the union and filed a complaint against the employer and union in his capacity as an individual employee.

According to the complaints, the union and employer were parties to a collective bargaining agreement (CBA) that had expired on December 31, 2016. The parties were bargaining for a successor CBA. The expired CBA allegedly provided a domestic partner medical benefit to eligible employees. DeGraw was allegedly in a domestic partnership and had received this benefit under the expired CBA. Allegedly, on September 25, 2017, the employer provided notice to employees that it would stop providing the domestic partner medical benefit on January 1, 2018.

After the announcement, DeGraw began sending e-mails and requesting information from the employer regarding the change to the domestic partner medical benefit. DeGraw felt stifled from continuing to contact the employer because of a concern that the employer would file an unfair labor practice.

On January 3, 2018, DeGraw filed a grievance regarding the change in domestic partner medical benefits. After the grievance was filed, DeGraw made multiple requests to the union for documents that were filed with the grievance and other information. For over two months, DeGraw was never provided a response to his request. On February 13, 2018, the employer allegedly denied the grievance at step three.

ANALYSIS

Discrimination

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. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Although a complaint may 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. *Id.* Enforcement of the state law against discrimination lies with the Washington State Human Rights Commission. *City of Seattle*, Decision 205 (PECB, 1977). The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity. *Id.*

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); *Olympic Educational Service District 114*, Decision 4361-A (PECB, 1994). A bargaining representative unlawfully discriminates when it discriminates against a public employee who has filed an unfair labor practice charge. RCW 41.56.150(3).

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

DeGraw claims the employer's change to the domestic partner medical benefit was discriminatory in nature. The amended complaints allege that on September 27, 2017, the employer notified employees of the change in benefits effective January 1, 2018. After the employer's notification, DeGraw asked for information from the employer regarding the change to domestic partner medical benefits, allegedly protected activity. The amended complaints lack facts as to what DeGraw was deprived of after making such requests and do not show a causal connection between the protected activity and the deprivation.

DeGraw also claims the union made discriminatory statements to him. The Commission only has jurisdiction over union discrimination allegations where the union discriminates against an employee who has filed an unfair labor practice charge. DeGraw filed the current unfair labor practices. The amended complaints lack facts as to whether the union's actions or statements were causally connected to the filing of the present unfair labor practices.

The Commission only has jurisdiction over discrimination for engaging in protected activity. The amended complaints lack facts alleging employer discrimination and union discrimination, thus these violations are dismissed.

Refusal to Bargain

Applicable Legal Standard

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4).

A duty to bargain under Chapter 41.56 RCW exists only between a covered employer and the organization holding status as the incumbent exclusive bargaining representative of the employees. *Renton School District (United Classified Workers Union, Local 1)*, Decision 6300-A (PECB, 1998). The exclusive bargaining representative is "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." RCW 41.56.030(2). Individual employees within a bargaining unit are third-party beneficiaries to, but not parties to, such a bargaining relationship. Thus, only the employer and union that are parties to a particular bargaining relationship have legal standing to file or pursue "refusal to bargain" claims. *See Mukilteo School District*, Decision 3964-A (PECB, 1992); *Tacoma School District (Tacoma Education Association)*, Decision 5465-E (EDUC, 1997).

Application of Standard

DeGraw alleges that the employer refused to bargain in good faith by unilaterally changing the domestic partner medical benefits without providing the union with an opportunity for bargaining. The only party who has standing to bring a refusal to bargain claim is the exclusive bargaining representative. As an individual employee, DeGraw does not have standing to file a refusal to bargain claim; and the amended complaints do not provide any alleged facts to show that the exclusive bargaining representative is bringing this refusal to bargain allegation against the employer. Because DeGraw does not have standing to bring a refusal to bargain claim, the refusal to bargain violation is dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the employer interference allegation of the amended complaints in Case 130495-U-18 states a cause of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made, when Darren DeGraw requested information from the employer regarding a change in medical benefits.

The employer interference allegation of the amended complaints will be the subject of further proceedings under Chapter 391-45 WAC.

2. Assuming all of the facts alleged to be true and provable, the union duty of fair representation allegation in Case 130496-U-18 states a cause of action, summarized as follows:

> Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date a complaint was filed, by breaching its duty of fair representation when it failed to respond to Darren DeGraw's request for information regarding a grievance.

The interference allegations of the amended complaints will be the subject of further proceedings under Chapter 391-45 WAC.

3. The employer shall:

> File and serve their answers to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny, or explain each fact alleged in the amended complaint, as set forth in paragraph 1 of this Order, except if a respondent states it is without knowledge of the fact that statement will operate as a denial; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaints. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaints, will be deemed to be an admission that the fact is true as alleged in the amended complaints, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

4. The union shall:

File and serve their answers to the allegations listed in paragraph 2 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny, or explain each fact alleged in the amended complaints, as set forth in paragraph 2 of this Order, except if a respondent states it is without knowledge of the fact that statement will operate as a denial; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaints. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaints, will be deemed to be an admission that the fact is true as alleged in the amended complaints, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

5. The allegations of the amended complaints in cases 130495-U-18 and 130496-U-18 concerning employer discrimination, employer refusal to bargain in violation of RCW 41.56.140(4) and union discrimination are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of June, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, Unfair Labor Practice Administrator

Paragraph 5 of this order will be
the final order of the agency on
any defective allegations, unless
a notice of appeal is filed with
the Commission under WAC 391-45-350.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 06/06/2018

DECISION 12875 – PECB and 12876 – PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBERS: 130495-U-18 AND 130496-U-18

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