

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JEREMY M. MATTHEWS,

Complainant,

vs.

EDMONDS COMMUNITY COLLEGE,

Respondent.

CASE 131333-U-19

DECISION 13000 - CCOL

ORDER OF DISMISSAL

On February 28, 2019, Jeremy M. Matthews filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Edmonds Community College as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on March 26, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Matthews was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On April 12, 2019, Matthews filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

ISSUE

Employer discrimination in violation of RCW 28B.52.073(1)(c) [and if so, derivative interference in violation of RCW 28B.52.073(1)(a)] on unspecified dates, by unidentified retaliation against Jeremy Matthews related to unspecified protected activity.

The amended complaint lacks specific facts alleging a discrimination violation. The amended complaint includes generalized facts and events that occurred between 2014 and March 2018 in a statement of facts section, but does not provide facts that occurred within the six months prior to

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.

filing the unfair labor practice complaint. The statement of facts has attached exhibits or evidence. The attachment is a chronology of events, but does not describe facts necessary to allege a discrimination violation. Thus the complaint is dismissed for failure to state a cause of action.

BACKGROUND

Jeremy Matthews is a faculty member and a member of the Edmonds Federation of Teachers (union) at Edmonds Community College (employer). In 2014 Matthews was placed on a tenure track. Matthews was denied tenure in the winter quarter of 2017. On an unidentified date the union filed a grievance related to the denial of tenure on Matthews' behalf.

In resolution to the grievance, Matthews was hired for the 2017-18 academic year into a tenure track position, in effect providing him a fourth probationary year in order to secure tenure. In March 2018 Matthews was awarded tenure.

At an unidentified time after tenure was awarded, the employer discriminated against Matthews from exercising rights guaranteed by law.

ANALYSIS

Timeliness and Detailed Statement of Facts

The rules for the contents of a complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences."

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint must not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 28B.52.065. The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011), citing *City of Bremerton*, Decision 7739-A (PECB,

2003). The start of the six-month statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025, citing *City of Chehalis*, Decision 5040 (PECB, 1995).

In this case, the complaint does not contain dates, participants, or specific details of what occurred for the discrimination allegation. The complaint was filed on February 28, 2019. To be timely filed, the facts alleged must have occurred on or after August 28, 2018. None of the alleged facts included in the statement of facts occurred on or after August 28, 2018. The alleged facts that occurred prior to August 28, 2018, are untimely.

Additionally, the amended complaint includes a generalized statement of violations, but does not include specific facts of what occurred or when the events occurred. The complainant relied on attachments to attempt to describe the events. The attachments also did not include specific facts alleging the elements necessary to allege a discrimination violation. As stated in the deficiency notice, a complaint must include a statement of facts which describes and explains any relevant facts. The complainant cannot rely on the content of attached documents or exhibits at the preliminary review stage of the proceedings. Because the statement of facts lacks specific facts and only provides untimely events, the complaint must be dismissed.

Discrimination

The statement of facts also lacks elements necessary to allege a discrimination violation. Chapter 28B.52 RCW governs the collective bargaining relationship between community college employers and their academic personnel. RCW 28B.52.073(1)(c) states that it is an unfair labor practice for an employer “[t]o encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment.”

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee’s exercise of rights protected by the Public Employees’ Collective Bargaining Act,

chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. To prove discrimination, the complainant must establish a prima facie case by showing that:

1. The employee participated in protected activity 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 protected activity and the employer's action.

King County, Decision 12582-D (PECB, 2018), citing *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 348-349 (2014); *Educational Service District 114*, Decision 4361-A.

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 (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *King County*, Decision 12582-D, citing *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. If the respondent meets its burden of production, then the complainant bears the burden of persuasion to show the employer's stated reason was either a pretext or substantially motivated by union animus. *Id.*

The Washington State statute governing faculty at state community colleges explicitly addresses employer discrimination against employees who have engaged in protected collective bargaining activity. RCW 28B.52.070. The enforcement of these rights is through RCW 28B.52.073. These rights are not absolute, however, and an employee is not immune from disciplinary actions just because he or she has engaged in union activity. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694 (2001); *Vancouver School District v. Service Employees International Union, Local 92*, 79 Wn. App. 905 (1995), review denied, 129 Wn.2d 1019 (1996).

Application of Standard


A cause of action for discrimination under RCW 28B.52.073(c) 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. In the present case, the complaint alleges Matthews filed a grievance, which occurred outside the statute of limitations. The complaint lacks any other specific facts related to other protected activity, any employer action, and any causal connection between the activity and employer action. Because the amended complaint lacks elements necessary to allege a discrimination violation, the complaint must be 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 9th day of May, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 05/09/2019

DECISION 13000 - CCOL has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

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