

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GEORGE RAPP,

Complainant,

vs.

FRANKLIN COUNTY,

Respondent.

CASE 131334-U-19

DECISION 13003 - PECB

ORDER OF DISMISSAL

On February 28, 2019, George Rapp filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Franklin County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on March 25, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Rapp was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On April 15, 2019, Rapp filed an amended complaint. The allegations of the amended complaint concern:

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 complaint, by failing to reinstate George Rapp consistent with an arbitration award in retaliation for his exercise of protected activity.

Rapp's complaint and amended complaint are dismissed for failure to state a cause of action that can be redressed by the statutes this agency administers.

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.

BACKGROUND

Rapp worked as a commissioned road officer with the Franklin County Sheriff's Department. On May 9, 2016, the employer terminated Rapp from his employment. Rapp subsequently challenged the termination through the grievance procedure of the collective bargaining agreement that covered his employment. The parties ultimately arbitrated the matter.

On September 5, 2017, an arbitrator issued an award reinstating Rapp with pay and benefits retroactive to May 9, 2016. The employer challenged the arbitrator's award in superior court. According to the complaint and amended complaint, the superior court ultimately ruled that the arbitrator retained jurisdiction over the proceedings for purposes of further rulings and for compliance.

On January 3, 2019, the employer directed Rapp to report to work on January 7, 2019. Although Rapp had previously worked as a road deputy with the employer, the employer assigned Rapp to the corrections unit. According to the complaint, numerous terms and conditions of his employment have changed, including: he was no longer a commissioned deputy; his title has changed from road deputy to corrections deputy; he was no longer eligible to be included in the LEOFF retirement plan; he no longer had access to a take home car; he had not been issued the required uniforms; he has limited access to the facilities; his work schedule has changed; he is unable to attend union meetings in the secured areas of the workplace without escort; and he was not offered any prospect of returning to work as a road deputy.

Rapp also alleged that he was subject to various forms of retaliation after his reinstatement, including:

- On January 15, 2019, Rapp was informed that the sheriff was closing the gym on the second floor of the facility. Rapp had a bench machine there and was directed to remove it from the workplace. The gym subsequently has remained open.

- On January 18, 2019, Rapp spoke with supervisor, Commander Sultemeier, about testing for a jail lieutenant position. Sultemeier allegedly told Rapp that Rapp was not eligible to test for that position and that the only reason that Rapp was working in the jail was because of an agreement between Rapp, his attorney, and the employer's attorney.
- On January 18, 2010, Rapp asked the human resources office to see his personnel file. Rapp was informed that the his file had been "torn apart" and the employer was in the process of putting it back together with information that should or should not be included in the file. Rapp asked the employer to provide him certain information by e-mail but the employer declined.
- On January 29, 2019, Rapp and Sultemeier held a meeting to discuss an evaluation. Rapp wrote in the evaluation that he did not feel comfortable working in the jail setting without proper training and did not feel comfortable signing policies that did not apply to him. Sultemeier allegedly told Rapp that the training academy would not teach him anything that would benefit his position and also informed him that his working title was no longer corrections deputy but had been changed to "Franklin County Sheriff Office Employee."
- On February 12, 2019, Rapp's supervisor called Rapp into a meeting to discuss a January 25, 2019, incident involving a prisoner transfer. Rapp asked for and was allowed to have a union representative present at the meeting. Although Rapp was questioned about the incident, Sultemeier learned that Rapp was not stationed at the control room during the alleged incident. The meeting ended when the Sheriff interrupted the meeting.
- On February 14, 2019, Rapp was made aware of the employer's policy for answering an intercom. Rapp declined to deviate from the policy without written authorization. On February 15, 2019, Rapp was chastised by his supervisor for strictly following the policy.
- On February 27, 2019, Rapp reported to the employer's human resources office to provide dentists notes excusing his absence. The human resources office told Rapp that he needed notes releasing him to full duty. Rapp was allegedly required take leave to get the extra

documentation and informed his supervisor that he intended to file a grievance over the matter.

- On March 14, 2019, the employer informed employees that they were selling old service pistols. Rapp indicated that he was interested in buying a pistol. Rapp was informed that the employer could not sell him a pistol because he did not have a commission.
- On March 15, 2019, a Pasco police officer bought Rapp a soda and left it in the booking office. The booking office called Rapp to pick-up the soda. Sultemeier saw Rapp in booking and asked why he was there. Rapp was informed that he was not allowed to go past the break room.

ANALYSIS

The Commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. RCW 41.56.160. The agency does not assert jurisdiction to enforce the grievance and arbitration machinery of collective bargaining agreements through the unfair labor practice provisions of chapter 41.56 RCW. *Lake Washington School District*, Decision 6312 (EDUC, 1998); *City of Walla Walla*, Decision 104 (PECB, 1976). “If there has been a refusal to comply with the arbitration award, that would need to be remedied by a court.” *City of Kelso*, Decision 5041 (PECB, 1995). Based upon these standards, the review of Rapp’s complaint must be limited to determining whether the employer conduct constitutes an unfair labor practice.

Discrimination

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 (AFGE Local 1170)*, 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. *Port of Tacoma*, Decision 4626-A.

Application of Standards

Rapp's amended complaint alleges that he was engaged in protected activity and therefore meets the first part of the discrimination test. The amended complaint also alleges that Rapp was denied a right or benefit and outlines the various ways in which the employer's actions could be perceived as retaliatory.

However, the amended complaint lacks specific facts and how these actions are causally connected to Rapp's exercise of a protected activity. Because Rapp failed to cure the defects within the complaint, the discrimination allegation 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 17th day of May, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, 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 05/17/2019

DECISION 13003 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131334-U-19

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