

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LYNDSEY WARNER,

Complainant,

vs.

OLYMPIC COLLEGE,

Respondent.

CASE 131386-U-19

DECISION 13006 - PSRA

ORDER OF DISMISSAL

On March 19, 2019, Lyndsey Warner (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Olympic College (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice was issued on March 29, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Warner 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 Warner. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

ISSUE

The complaint alleges:

Employer general discrimination allegations.

The complaint does not state a cause of action. The complaint does not describe facts that could constitute a discrimination violation within the Commission's jurisdiction.

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<sup>1</sup> 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.

## ANALYSIS

### Discrimination

#### *Applicable Legal Standard*

The complaint does not describe allegations that fit within the jurisdiction of the Commission. 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). Just because the complaints do not state a cause of action for an unfair labor practice does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Id.*

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.80.110(1)(c). 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. *Washington State University*, Decision 11749-A (PSRA, 2013), citing *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. *Id.*

#### *Application of Standard*


A cause of action for discrimination under RCW 41.80.110(1)(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 Warner was discriminated against during a hiring process. The complaint lacks facts as to what protected activity Warner was engaged in and does not describe a causal connection between the protected activity and the termination. The Commission does not have jurisdiction over general discrimination complaints. Thus the complaint must be dismissed.

#### 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 20th 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

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ISSUED ON 05/20/2019

DECISION 13006 - PSRA 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 131386-U-19

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