

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DOUGLAS JUSTUS,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 131523-U-19

DECISION 13048 - PECB

ORDER OF DISMISSAL

On May 22, 2019, Douglas Justus filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming King County as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on July 2, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Justus was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On July 19, 2019, Justus filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

ISSUE

Employer discrimination with employee rights in violation of RCW 41.56.140(1), [and if so, derivative interference in violation of RCW 41.56.140(1)] outside the six months statute of limitations, by terminating Douglas Justus, in reprisal for unspecified use of a guild credit card.

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.

The amended complaint is untimely filed. It also lacks facts describing the elements necessary for a discrimination violation. Thus the amended complaint is dismissed for timeliness and failure to state a cause of action.

BACKGROUND

Douglas Justus (complainant) was a corrections jail captain for the department of adult and juvenile detention for King County (employer) and was represented by the Uniform Command Association (union). Justus was promoted to his captain's position in July 2013. While in the bargaining unit, at times he held elective office and sat on the negotiating committee.

Prior to being a captain Justus was a corrections officer and a member of the King County Corrections Guild (guild). Justus held terms of office as guild vice president and president between 2000 to 2013. In those roles he participated in several contract negotiations, arbitrations, and other union activities. On an unidentified date, Justus allegedly used a guild credit card for purchases associated with guild activities. When Justus used the credit card he was allegedly on leave for guild business.

In January 2016 the guild allegedly discovered irregularities within the financial documents maintained by the guild treasurer. The guild then allegedly filed charges against the treasurer. In July 2016 a newly elected guild executive board decided to change a settlement agreement with the treasurer and instead authorized the filing of a criminal complaint against anyone who had access to guild funds. A criminal case allegedly resulted against the complainant and other former board members. After the filing of the criminal complaint, the new guild president contacted the director of the department of adult and juvenile detention. On an unidentified date, the director ordered the complainant and the other former guild board members to be relieved of duty effective immediately.

On an unidentified date, the complainant was allegedly called in for an interview. On July 6, 2018, the employer allegedly concluded the internal investigation. On September 14, 2018, the complainant received a Loudermill notice where the disciplinary proposal was termination from

employment. On October 30, 2018, a Loudermill hearing was conducted. On October 31, 2018, Justus was notified that the termination was upheld and effective November 6, 2018. Justus attended a step 2 grievance on January 24, 2019. On February 1, 2019, the grievance was denied and the termination was upheld.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. “[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.” RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice of” the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). Continuing violation arguments do not create an exception for enforcement of the six-month statute of limitations. See *King County*, Decision 3558-A (PECB, 1990).

The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events that are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994). In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Emergency Dispatch Center*, Decision 3255-B.

Application of Standard

In the deficiency notice, the complainant was informed of the six-month statute of limitations. The complaint was deficient because it either lacked date information or included dates outside the six-month statute of limitations. The complainant was given an opportunity to correct the

defect. While an amended complaint was filed, the amended complaint continues to lack dates on some facts, and other facts are untimely filed.

The complaint was filed on May 22, 2019. In order to be timely, the complainant would have needed to describe events that took place on or after November 22, 2018. According to the amended complaint, Justus was provided notice of his termination on October 31, 2018, with an effective date of November 6, 2018.² Justus had actual unambiguous knowledge of his termination on October 31, 2018. While Justus filed a subsequent grievance against his termination, he had actual notice of the termination on October 31, 2018. The complaint would have needed to be filed no later than May 1, 2019, to have been timely filed.

The amended complaint alleges that the second step grievance and upholding of the termination on February 1, 2019, created a second statute of limitations. Continuing violation arguments do not create an exception for enforcement of the six-month statute of limitations. *See King County, Decision 3558-A*. Similar to the facts in *King County*, Justus was provided clear notice of his termination on October 31, 2018. While the outcome of another dispute may have caused the complainant to hope for a positive determination in his case, such anticipation does not excuse the late filing. Because the complaint and amended complaint were untimely filed, they must be dismissed.

Discrimination

Applicable Legal Standard

Even if the complaint and amended complaint were timely filed, they lack facts alleging a discrimination violation. 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,*

2 When determining whether a complaint states a cause of action at the preliminary ruling stage, the agency staff must act on the basis of what is contained in the statement of facts and is not at liberty to fill in gaps or make leaps of logic. *King County (Teamsters Local 117), Decision 12000-A (PECB, 2014)*. While the Unfair Labor Practice Administrator is limited to what is contained in the statement of facts, the complainant also included an attached declaration. While outside of the statement of facts, the attached declaration stated Justus was electronically notified on October 31, 2018, that his termination was effective November 5, 2018.

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 that 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 Standard

In the deficiency notice, the complainant was notified that the alleged facts related to the discrimination violation were deficient because the complaint lacked facts necessary to allege a discrimination violation and lacked dates necessary to determine if the complaint was timely filed. While the complainant did file an amended complaint, the alleged facts related to the

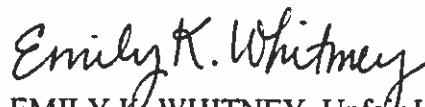
discrimination violation remained unchanged from the original complaint. The amended complaint continues to allege that Justus was engaged in protected activity when he used a union credit card for purchases on an unidentified date. The amended complaint continues to allege that Justus was notified that he was terminated on October 31, 2018, outside the six-month statute of limitations. The amended complaint continues to lack facts showing a causal connection between the alleged protected activity and the termination. Even if the complaint and amended complaint had been timely filed, the amended complaint does not amend the defects identified in the deficiency notice. Because the amended complaint continues to lack facts necessary to find a cause of action for discrimination, the amended complaint must be dismissed.

ORDER

The amended complaint charging unfair labor practices in the above above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 2nd day of August, 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 08/02/2019

DECISION 13048 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 131523-U-19

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