

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LORRI KURTH,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 131965-U-19

DECISION 13078 - PECB

ORDER OF DISMISSAL

On August 5, 2019, Lorri Kurth filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on August 29, 2019, indicated that it was not possible to conclude that a cause of action existed at that time.² Kurth was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case against her employer.

No further information has been filed by Kurth. The complaint is dismissed for failure to state a cause of action.

BACKGROUND

Lorri Kurth works for the employer and is represented by the Amalgamated Transit Union, Local 587 for purposes of collective bargaining. According to the complaint, Kurth returned to the employer's supervisor-in-training program in May 2018 following the resolution of a grievance.

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.

² Kurth originally filed complaints against both the employer and her bargaining representative, the Amalgamated Transit Union, Local 587 (Case 131966-U-19). That complaint against her union is now being processed separate and apart from this case.

In June 2018, the employer informed Kurth that she had failed the supervisor-in-training test. The complaint alleges that Kurth was terminated from the supervisor-in-training program.

Kurth claims that the employer's testing practices and procedures violate the existing collective bargaining agreement and also violate her due process rights. Kurth also claim that the employer shows a preference for people of color when enforcing practices and procedures surrounding the supervisor-in-training program.

ANALYSIS

Statute of Limitations

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).

Kurth filed her complaint on August 5, 2019. Accordingly, only events occurring after February 5, 2019, are timely. The allegations against the employer described in the complaint occurred before February 5, 2019 and therefore are not timely.

Allegations Outside the Agency's Jurisdiction

In addition to being untimely, the complaint does not describe allegations that fit within the jurisdiction of the agency. The agency'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 complaint does 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. *Tacoma School District*, Decision 5086-A.

The complaint alleges that the employer violated the existing collective agreement when it terminated her from the supervisor-in-training program. The Commission has consistently refused to resolve “violation of contract” allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). Any remedy for a contract violation must come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134 A (EDUC, 2011), *citing Tacoma School District*, Decision 5722-A (EDUC, 1997).

Finally, the complaint alleges that the employer unlawfully demonstrated a preference for people of color when enforcing practices and procedures surrounding the supervisor-in-training program. The Commission does not have jurisdiction to enforce civil rights laws. Washington State Human Rights Commission has jurisdiction over employment discrimination in the state of Washington. The Equal Employment Opportunity Commission (EEOC) is a federal agency that also has jurisdiction over discrimination. Lastly, civil rights cases can be pursued in the courts.

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 3rd day of October, 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 10/03/2019

DECISION 13078 - 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 131965-U-19

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