Washington State Liquor and Cannabis Board, Decision 13194 (PSRA, 2020)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK J. BAKER, Complainant, vs. WASHINGTON STATE LIQUOR AND CANNABIS BOARD, Respondent.	CASE 132638-U-20 DECISION 13194 - PSRA ORDER OF DISMISSAL

On March 12, 2020, Mark J. Baker (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under chapter 391-45 WAC, naming the Washington State Liquor and Cannabis Board (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on March 26, 2020, indicating that it was not possible to conclude that a cause of action existed at that time. Baker 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 Baker. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

ISSUE

The complaint alleged:

> Employer domination or assistance of a union in violation of RCW 41.80.110(1)(b) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] within six

[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.

> months of the date the complaint was filed, by denying the union's request for an extension to file a step three grievance.
>
> Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by its termination of Mark Baker for unidentified protected activity.
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> Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by breaching its good faith bargaining obligation when it refused to extend the grievance filing timeline.

The complaint did not describe facts necessary to allege a domination, discrimination, or refusal to bargain allegation within the Commission's jurisdiction. Thus the complaint will be dismissed.

BACKGROUND

Mark Baker began employment with the Washington State Liquor and Cannabis Board (employer) in January 2014. On September 13, 2019, Baker attended a meeting with Deputy Chief Steve Johnson where Baker was terminated. The Washington Federation of State Employees (union) filed a grievance on Baker's behalf. The employer denied the step two grievance on November 15, 2019.

On December 13, 2019, Baker was informed by the union, that the union missed the timeline to advance Baker's grievance to the third level. The union had requested that the employer allow for an extension to file the third level grievance. The employer denied the union's request.

ANALYSIS

Domination

Applicable Legal Standard

The complaint alleges employer domination or assistance of a union in violation of RCW 41.80.110(1)(b). A cause of action for employer domination is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth

in the test's second clause; that is, whether an employer has attempted to create, fund, or control a company union. *See State – Washington State Patrol*, Decision 2900 (PECB, 1988).

Commission decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term "domination" is thus directly tied to the term "assistance" and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference. It's appropriate to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.

Application of Standard

In this case, the facts alleged do not describe employer domination of the union. The complainant had an active grievance over his termination. The union missed the filing deadline for the third step of the grievance. The union asked the employer for an extension and the employer denied the union's request. The parties followed their grievance process. The employer denying an extension does not describe the employer's intentional control over the administration of a union. The union was able to administer the process the parties agreed to in the collective bargaining agreement. Because Baker did not allege necessary facts for a domination violation and did not correct the deficiency, the complaint must be dismissed.

Discrimination

Applicable Legal Standard

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. *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 Standard

The complaint did not allege the facts necessary for a discrimination violation. The complaint alleged the second step of the test, deprivation of some ascertainable right, when it alleges that

Baker was terminated. The complaint did not allege the first or third steps of the test that Baker was involved in any protected activity and that the termination was connected to or a result of the protected activity. This commission does not have jurisdiction over general age discrimination violations. Because Baker did not allege necessary facts for a discrimination violation and did not correct the deficiency, the complaint must be dismissed.

Refusal to Bargain

Applicable Legal Standard

Individual employees can only allege certain types of violations against the employer. An individual employee can allege interference, discrimination, and domination violations against the employer.

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). An exclusive bargaining representative is "any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." RCW 41.56.030(2). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *University of Washington*, Decision 11414-A (PSRA, 2013). Failure to bargain violations include: failure to meet, failure to bargain in good faith, failure to provide relevant information, circumvention, and unilateral change.

Application of Standard

The complaint alleged refusal to bargain violations against the employer related to the employer denying the union's request for an extension to file the third step grievance. The union that is certified as the exclusive bargaining representative of the bargaining unit at-issue is the only party with standing to file and pursue refusal to bargain claims against an employer. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011); *City of Normandy Park*, Decision 12411 (PECB, 2015). The complaint did not allege that Baker is the exclusive bargaining representative. Thus, the complaint did not state a cause of action for

employer refusal to bargain. Because the complaint did not state a cause of action and the deficiency was not corrected, 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 30th day of April, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 04/30/2020

DECISION 13194 - 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 132638-U-20

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