

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JEFF L. SANDAINE,

Complainant,

vs.

WASHINGTON STATE INDIVIDUAL
PROVIDERS,

Respondent.

CASE 132842-U-20

DECISION 13226 - PECB

ORDER OF DISMISSAL

Jeff L. Sandaine, Pro Se.

Kate Schiewetz, Assistant Attorney General, Robert W. Ferguson Attorney General, for the Washington State Individual Providers.

On June 18, 2020, Jeff Sandaine (complainant) filed an unfair labor practice complaint against the Washington State Individual Providers (employer). On June 19 2020, Sandaine filed his first amended complaint and on July 6, 2020, he filed a second amended complaint. The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice issued on July 23, 2020, notified Sandaine that a cause of action could not be found at that time. Sandaine was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. On August 6, 2020, Sandaine filed his third amended complaint.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

ISSUES

All of Sandaine's complaints allege the following:

- Employer contract violations.
- Other statutory violations.

The complaints are deficient because they do not describe facts that are violations of the collective bargaining statutes this agency administers.

BACKGROUND

Sandaine is an individual provider who provided home-care services for a relative. As an individual provider, Sandaine is represented by the Service Employees International Union Local 775 (Local 775) for purposes of collective bargaining. Local 775 and the state of Washington are parties to a collective bargaining agreement that expires on June 30, 2021. Chapter 41.56 RCW governs the collective bargaining relationship between Sandaine, Local 775, and the state of Washington.

Sandaine's complaints allege he conducted an audit of the amount of compensation owed to him under the wage scale included in the collective bargaining agreement and that the state of Washington, as the statutory employer, has failed to pay him the proper amount of compensation. Sandaine's complaints also allege that the employer has violated the Fair Labor Standards Act (FLSA) by withholding wages owed and failing to pay him the proper amount of compensation for individual provider services. Sandaine's complaints included information detailing how he arrived at the amount of monies owed.

Sandaine's complaints also alleged that the employer "ghosted" or ceased communication with him in 2016 when he brought to their attention that he was owed additional compensation. Sandaine's complaints do not allege facts asserting that the employer's alleged adverse actions were in retaliation for Sandaine's exercise of protected activity under chapter 41.56 RCW.

ANALYSIS

Sadaine's complaints do 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). For example, this agency has no authority to resolve alleged violations of the Fair Labor Standards Act. *City of Tacoma (Tacoma Police Management Association)*, Decision 12848 (PECB, 2018). 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. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A. Sandaine's allegations that the employer has violated the FLSA by failing pay him for monies earned are claims outside this agencies jurisdiction and are therefore dismissed.

In addition to asserting that the employer has violated the FLSA, Sandaine alleged that the employer violated the collective bargaining agreement between the employer and Local 775. This agency has consistently refused 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)). This agency also does not exercise jurisdiction over allegation an employer or union has violated a provision or provisions of a collective bargaining agreement. *Id.* The Commission has also consistently held that any remedy for a contract violation will have to 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-E (EDUC, 1997)). Sadaine's allegations that the employer violated the collective bargaining agreement fall squarely within these standards and must be dismissed.

Finally, Sandaine's complaint alleges that the employer "ghosted" or stopped recognizing him as an individual provider by failing to pay him or remove him from the employment rolls in retaliation for raising wage issues, This allegation also fails to state a cause of action as plead.

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.

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).

Here, Sandaine's complaints allege that the employer "ghosted" him between March and September of 2016. This allegation in the complaint is outside the six-month statute of limitations and nowhere in Sandaine's complaint does he allege that the employer took adverse action against him in retaliation for protected activity. Accordingly, this allegation fails to state a cause of action.

ORDER

The amended complaints charging unfair labor practices in the above-captioned matter are DISMISSED for timeliness and failure to state a cause of action.

ISSUED at Olympia, Washington, this 25th day of August, 2020.

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 08/25/2020

DECISION 13226 - 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 132842-U-20

EMPLOYER: WASHINGTON STATE INDIVIDUAL PROVIDERS

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

KATE SCHIEWETZ
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
kate.schiewetz@atg.wa.gov

PARTY 2: JEFF L. SANDAINE

REP BY: JEFF L. SANDAINE
PO BOX 202
FAIRFIELD, WA 99012
pitane1@hotmail.com