

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HASSAN OSMAN,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 132950-U-20

DECISION 13234 - PECB

ORDER OF DISMISSAL

Hassan Osman, Pro Se.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, for King County.

On August 4, 2020, Hassan Osman (complainant) filed an unfair labor practice complaint against King County (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on August 18, 2020, notified Osman that a cause of action could not be found at that time. Osman 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 Osman. The Unfair Labor Practice Administrator dismisses the complaint for timeliness and failure to state a cause of action.

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.

ISSUE

The complaint alleges the following:

Employer discrimination in violation of RCW 41.56.14(1) [and if so derivative interference in violation of RCW 41.56.140(1)] on an unidentified date, by rejecting Hassan Osman's job application in reprisal for unidentified protected activity.

The complaint lacks dates to determine timeliness and does not describe facts that constitute a discrimination violation within the Commission's jurisdiction.

BACKGROUND

Hassan Osman (complainant) is a Coach Operator for King County's (employer) Metro department. Osman's position is represented by the Amalgamated Transit Union Local 587 (union). On an unidentified date Osman applied for an open position. On an unidentified date the employer rejected Osman's application and filled the position with an employee who had less seniority than Osman.

ANALYSISTimeliness

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).

To determine timeliness, the Commission looks at the dates of the events in the complaint in relation to the filing date. The complaint was filed on August 4, 2020. In order to be timely, the complainant needed to describe events that took place on or after February 4, 2020. The complaint alleging the employer committed a violation did not include any dates. Because the complaint did not include dates and the complainant did not correct the deficiencies, the complaint must be dismissed as untimely.

Discrimination

Applicable Legal Standard

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. 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

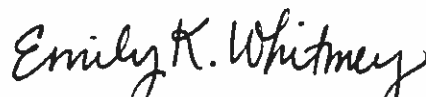
The complaint did not include dates of when events occurred. Additionally, it is lacked facts alleging a discrimination violation. The complaint did not allege any protected union activity or Osman's intent to participate in protected union activity. The complaint alleged that Osman's job application was rejected. The complaint also did not allege there was a causal connection between Osman's exercise of protected activity and the employer's action. The Commission only has jurisdiction over discrimination violations related to protected activity. Because the complaint lacked facts necessary to allege a discrimination violation, the complaint must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 15th day of September, 2020.

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 09/15/2020

DECISION 13234 - 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 132950-U-20

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