STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HIM YEUNG, Complainant, vs. KING COUNTY, Respondent.	CASE 132932-U-20 DECISION 13242 - PECB ORDER OF DISMISSAL

Him Yeung, the complainant.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney and *Kelsey Schirman*, Deputy Prosecuting Attorney for King County.

On July 24, 2020, Him Yeung (complainant) filed an unfair labor practice complaint against King County (employer). On July 29, 2020, Yeung filed an amended complaint. The amended complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on August 13, 2020, notified Yeung that a cause of action could not be found at that time. Yeung was given a period of 21 days in which to file and serve a second amended complaint or face dismissal of the case.

On September 3, 2020, Yeung filed a second amended complaint. The Unfair Labor Practice Administrator dismisses the second amended complaint for failure to state a cause of action.

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[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

The second amended complaint alleges the following:

> Employer interference with employee rights in violation of RCW 41.56.140 (1) outside and inside six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Him Yeung related to unidentified protected activity.
>
> Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] outside six months of the date the complaint was filed, by its termination of Him Yeung in reprisal for unidentified activity protected by chapter 41.56 RCW.

The second amended complaint lacks facts necessary to allege an interference or discrimination claim. Thus the second amended complaint is dismissed.

BACKGROUND

Yeung was a Customer Information Specialist at King County and was represented by the Amalgamated Transit Union Local 587 (union). It is unclear whether Yeung's position was a temporary employee position. On January 17, 2020, Yeung was terminated. On January 28, 2020, Yeung requested a termination review under the collective bargaining agreement. Allegedly under the contract, temporary employees were considered at-will and only had the option of a termination review. Termination reviews were conducted for temporary employees. On February 13, 2020, the employer, union, and Yeung met for Yeung's termination review. The employer stated that Yeung had been terminated for issues related to performance and misconduct. Yeung requested the employer to provide these reasons in writing. The employer allegedly never provided the reasons in writing.

On March 9, 2020, Yeung filed a grievance related to discrimination regarding his termination. On March 24, 2020, the union and employer entered into an MOU suspending the processing of

grievances until May 1, 2020, due to the coronavirus pandemic and the parties later extended the suspension through June 1, 2020.

On March 30, 2020, Yeung spoke with the union requesting an update on when his grievance would be processed. At that time the union allegedly stated the grievance would be scheduled around May 1, 2020. On May 4, 2020, Yeung spoke with the union again regarding the scheduling of his grievance and was informed the grievance hearing would be delayed. The grievance hearing was held on June 18, 2020.

Yeung believed the outcome of his grievance hearing may have been predetermined. On June 19, 2020, Yeung drafted an email regarding his concerns of his June 18 grievance hearing and requested the union forward it to the employer. The union allegedly did not forward it to the employer. On June 25, 2020, Yeung received the employer's decision, presumably affirming the termination.

ANALYSIS

Interference

Applicable Legal Standard

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Tacoma,* Decision 6793-A.

Application of Standard

The second amended complaint does not include timely facts alleging an interference violation. The second amended complaint alleges that Yeung was terminated on January 17, 2020. To be timely filed, the complaint would have needed to be filed by July 17, 2020. In additional to being untimely, the second amended complaint lacks facts explaining any employer action within the six month statute of limitations that was interfering with any protected employee rights or related to union activity. There was no identification of union activity in the complaint that was related to a timely filed employer action.

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 second amended complaint alleges some untimely facts and lacks other facts necessary for a discrimination violation. The second amended complaint does not allege any protected union activity or Yeung's intent to participate in protected union activity. The second amended complaint alleges that the employer terminated Yeung, but that fact is untimely filed. It also does not allege there is a causal connection between Yeung's exercise of protected activity and the employer's action. The second amended complaint alleges the grievance that Yeung filed related to discrimination, but the statement of facts does not include facts related to discrimination under the Commission's jurisdiction. Thus the second amended complaint must be dismissed.

ORDER

The second amended 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 24th day of September, 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 09/24/2020

DECISION 13242 - 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 132932-U-20

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