

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RODNEY THORNLEY,

Complainant,

vs.

LAKE WASHINGTON SCHOOL DISTRICT,

Respondent.

CASE 133054-U-20

DECISION 13261 - EDUC

ORDER OF DISMISSAL

*Patricia S. Rose, Attorney at Law, Law Office of Patricia S. Rose, for Rodney Thornley.*

*Jonathan Holmen, Superintendent, for the Lake Washington School District.*

On September 30, 2020, Rodney Thornley (complainant) filed an unfair labor practice complaint alleging the Lake Washington School District (employer) committed an unfair labor practice by disciplining him in reprisal for union activity. The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on October 22, 2020, notifying Thornley that a cause of action could not be found at that time. Thornley 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 Thornley. The complaint is dismissed as untimely and for failing to state a cause of action.

---

<sup>1</sup> 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.

**BACKGROUND**

Thornley works as a certificated teacher at the Lake Washington School District. Prior to April 2020, he worked at Rose Hill Middle School and was represented by the Lake Washington Education Association (union). Between September 1978 and August 2019 Thornley served as the union's building representative.

Thornley also worked as a coach at the school. The complaint does not indicate if Thornley's coaching position is represented and, if so, which union represents the coaches.

According to the complaint, Thornley was involved in a coaching incident on November 8, 2018. On December 13, 2018, the employer issued Thornley a written warning regarding an interaction with a fellow teacher. The complaint does not clearly indicate if the December 13, 2018, written warning stemmed from Thornley's coaching duties or his teaching duties.

On January 8, 2019, the union filed a grievance on Thornley's behalf. On April 19, 2019, Thornley received final discipline from the employer. Thornley alleges that the union did not advise him that he could no longer challenge the discipline under the nonrepresented grievance procedure.

On April 30, 2019, Thornley claims that he was precluded from taking students to a previously scheduled outing to a water park. Thornley filed race discrimination claims against the district in June and July of 2019.

On November 1, 2019, the district placed Thornley on administrative leave, removed him from the classroom, and precluded him from attending any district events or being on district property. The district also suspended Thornley for 15 days, which was later reduced to 8 days.

On April 29, 2020, the employer informed Thornley that he was being transferred from Rose Hill Middle School to an undisclosed assignment. On April 29, 2020, and May 14, 2020, Thornley learned that the union did not file a grievance regarding his transfer. On May 14, 2020, Thornley

filed a grievance regarding his transfer. On May 19, 2020, the employer informed Thornley that it would not accept or process his grievance.

## 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); RCW 41.59.150(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). While a complaint may include facts beyond the six-month statute of limitations to provide context, this agency is only empowered to remedy violations of the statute occurring within six months of the date the complaint was filed.

### *Discrimination*

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 Standards*

Thornley filed his complaint on September 30, 2020. Accordingly, only those events occurred after February 20, 2020, are timely. Events that occurred prior to February 20, 2020, are not timely, can only be considered background information, and may not be redressed through the unfair labor practice statutes. This includes the allegation that the employer placed Thornley on administrative leave, removed him from the classroom, precluded him from attending any district events or being on district property, and suspended him.

With respect to the employer's decision to transfer Thornley from the Rose Hill Middle School, Thornley failed to allege facts demonstrating that the employer transferred him based upon his protected activity. Although Thornley alleges that the discipline he received was not proportional to discipline received by other employees for similar conduct that is not the standard applied in discrimination complaints filed before this agency.

As referenced above, a complainant alleging a discrimination violation must assert that the employees was engaged in protected activity, that the employer deprived the employee of some

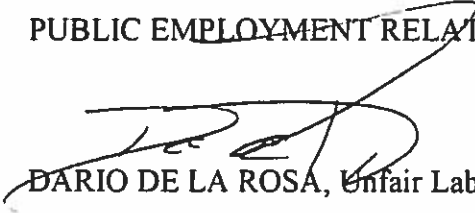
ascertainable right, benefit, or status, and a causal exists between the employee's exercise of a protected activity and the employer's action. While Thornley arguably alleged he engaged in protected activity and was deprived of a right, status, or benefit, he failed to allege that a causal connection existed between the transfer and his exercise of protected activity.<sup>2</sup>

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 24th day of November, 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.

---

<sup>2</sup> Thornley alleged that he is represented for purposes of collective bargaining as a certificated teacher but did not allege facts that his coaching position is represented. Additionally, it is not clear if his transfer was based upon his teaching duties or his coaching duties.



# RECORD OF SERVICE

---

ISSUED ON 11/24/2020

DECISION 13261 - EDUC 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 133054-U-20

EMPLOYER: LAKE WASHINGTON SCHOOL DISTRICT

REP BY: JONATHON HOLMEN  
LAKE WASHINGTON SCHOOL DISTRICT  
PO BOX 97039  
REDMOND, WA 98073  
joholmen@lwsd.org

PARTY 2: RODNEY THORNLEY

REP BY: RODNEY THORNLEY  
4744 9TH AVE NE  
SEATTLE, WA 98105  
star1398105@yahoo.com

PATRICIA S ROSE  
ATTORNEY AT LAW  
PO BOX 31892  
SEATTLE, WA 98103  
patty@pattyroselaw.com