

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEITH ALAN TURNER,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES,

Respondent.

CASE 134240-U-21

DECISION 13390 - PSRA

ORDER OF DISMISSAL

*Vernon Ovington Hosannah*, Attorney at Law, Hosannah Law Group PLLC, for  
Keith Alan Turner.

*Janelle Peterson*, Assistant Attorney General, Attorney General Robert W.  
Ferguson for the Washington State Department of Social and Health Services.

On June 4, 2021, Keith Alan Turner (complainant) filed an unfair labor practice complaint alleging the Washington State Department of Social and Health Services (employer) violated of RCW 41.80.110(1)(a) by retaliating against him for activity that was not protected by chapter 41.80 RCW and by breaching the collective bargaining agreement that covered the terms and conditions of his employment. The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on June 24, 2021, notified Turner that a cause of action could not be found at that time. Turner was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. The amended complaint is dismissed for failure to state a cause of action.

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<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.

On July 8, 2021, Turner filed an amended complaint. The amended complaint is dismissed for failure to state a cause of action.

### BACKGROUND

Turner's original and amended complaints allege that he was employed as an Attendant Counselor 2 by the Washington State Department of Social and Health Services in the State Operated Living Alternatives program. Turner's position was represented by the Washington Federation of State Employees for purposes of collective bargaining.

According to the original complaint, on July 13, 2019, Turner alleged push an elderly client that was in his care. On July 17, 2019, it was discovered that the client had two broken ribs. On July 19, 2019, Turner was called to a meeting with his supervisor where he was informed that he pushed and injured a client and was being reassigned. Turner denied the misconduct but punched a file cabinet in frustration. Turner was escorted out of the building and left the property.

As a result of his reassignment, Turner was required to travel between Pierce and Kitsap Counties even though closer work assignments were available. On January 12, 2021, Tuner requested a more reasonable, cost-effective work assignment. He repeated the request on January 21, 2021.

On January 21, 2021, the employer notified Turner of its intent to discipline him for the July 13, and 19, 2019, incidents. On February 19, 2021, the employer terminated Turner's employment. Turner requested reinstatement and was denied.

### ANALYSIS

#### *Applicable Legal Standard*

The Public Employment Relations Commission only has jurisdiction over certain employer-employee relationships. The Commission'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).

Turner alleges his discharge was unlawful because the July 13, 2019, incident has not been properly investigated or adjudicated. Turner also alleged that his actions were reasonable and appropriate and that he cooperated with law enforcement during its investigation and asserts that the employer improperly disciplined him for the July 19, 2019, incident because that event occurred while Turner was off-duty. None of the allegations stated a cause of action before this agency because Turner did not allege that the employer retaliated against him for his exercise of activity protected by chapter 41.80 RCW.

Turner appears to be alleging that his termination was discriminatory in nature because the employer retaliated against him through its conduct. It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.80.110(1)(a). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by chapter 41.80 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). RCW 41.80.050 grants employees the right "to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities."

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.

Turner has not alleged that the employer terminated his employment in retaliation for activities protected by chapter 41.80 RCW. Importantly, Turner did not allege that the employer terminated him for pleading for a more reasonable and cost effective assignment. Rather, Turner has only alleged that the employer terminated his employment for reasons other than activity protected by chapter 41.80 RCW. This agency lacks jurisdiction over those kinds of allegation.

Finally, Turner's complaint suggests that the employer may have violated the collective bargaining agreement when it terminated his employment. The Commission has consistently refused to resolve "violation of contract" allegations or 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)). The Commission has 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)).

ORDER

The 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 10th day of August, 2021.

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

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ISSUED ON 08/10/2021

DECISION 13390 - 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 134240-U-21

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