

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JASON PARKER,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS,

Respondent.

CASE 134323-U-21

DECISION 13404 - PSRA

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

*Jason Parker, Complainant.*

*Oliver T. Beatty, Assistant Attorney General, Attorney General Robert W. Ferguson for the Washington State Department of Corrections.*

On July 12, 2021, Jason Parker (complainant) filed an unfair labor practice complaint against the Washington State Department of Corrections (employer). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A partial deficiency notice issued on July 22, 2021, notified Parker that a cause of action could not be found for some of the allegations at that time. Parker was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

No further information has been filed by Parker. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the complaint.

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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.

**ISSUES**

The complaint alleges the following:

Employer interference in violation of RCW 41.80.110(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Jason Parker after Parker filed an unfair labor practice complaint against the employer.

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by an unidentified deprivation of Jason Parker for failing an unfair labor practice.

The interference allegations of the complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The discrimination allegation of the complaint does not state a cause of action and is dismissed.

**BACKGROUND**

Jason Parker is a Custody and Corrections Officer 2 at the Washington State Department of Corrections (employer). Parker's position is represented by Teamsters Local 117 (union). On June 16, 2021, Parker filed an unfair labor practice against the employer. On unidentified dates, Parker also engaged with his coworkers regarding alleged protected activity.

On July 9, 2021, Parker received a directive from his supervisor. The directive notified Parker to not send copies of grievance filings to nonrepresented staff. It also notified Parker to contact Parker's immediate supervisor to someone in Parker's chain of command with work related issues.

ANALYSISDiscrimination*Applicable Legal Standard*

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). 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 lacks facts alleging Parker was deprived of an ascertainable right, benefit, or status and the causal connection between the exercise of protected activity and the employer's action. The complaint alleges that Parker filed an unfair labor practice complaint. The complaint also alleges that Parker was given a directive which explained who Parker should contact with complaints or concerns. The complaint does not allege facts that Parker was deprived of an ascertainable right, benefit, or status. Parker was provided an opportunity to correct the deficiency or withdraw the deficient allegation, but did not file an amended complaint or withdraw the deficient allegation. Thus the discrimination allegation in the complaint must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegation of the complaint states a cause of action, summarized as follows:

Employer interference in violation of RCW 41.80.110(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Jason Parker after Parker filed an unfair labor practice complaint against the employer.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
  - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and
  - (b) assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the complaint concerning discrimination is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of September, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



# RECORD OF SERVICE

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ISSUED ON 09/09/2021

DECISION 13404 - 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 134323-U-21

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