

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SILVIA ZARATE, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 133299-U-21 DECISION 13328-A - PSRA DECISION OF COMMISSION
SILVIA ZARATE, Complainant, vs. WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, Respondent.	CASE 133314-U-21 DECISION 13329-A - PSRA DECISION OF COMMISSION

Ada K. Wong and Jordan T. Wada, Attorneys at Law, AKW Law, P.C., for Silvia Zarate.

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C, for the Washington Federation of State Employees.

Cheryl L. Wolfe, Senior Counsel, and Sara L. Wilmot, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Children, Youth, and Families.

BACKGROUND

On January 19, 2021, Silvia Zarate (complainant) filed an unfair labor practice complaint against the Washington Federation of State Employees (union). On January 27, 2021, Zarate filed an amended complaint against the union and included allegations against the Washington State

Department of Children, Youth, and Families (employer). Unfair Labor Practice Administrator Dario de la Rosa issued deficiency notices in both cases on February 25, 2021. On March 18, 2021, Zarate filed amended complaints against the union and the employer.

Zarate alleges the union and the employer interfered with her rights in violation of RCW 41.80.110. Zarate contends that by requiring her to answer questions about a pending criminal investigation without advising her of her constitutional right to remain silent, the employer and the union interfered with her *Weingarten* rights thereby violating RCW 41.80.110. Zarate alleges that the union breached its duty of fair representation when the union would not grieve her termination. Zarate asserts the employer terminated her employment in retaliation for communicating her intent to file a grievance.

On April 1, 2020, the Unfair Labor Practice Administrator dismissed Zarate's complaints against the union and the employer because the complaints did not state a cause of action. *Washington State Department of Children, Youth, and Families*, Decision 13328 (PSRA, 2021). The Unfair Labor Practice Administrator concluded the allegation that the union breached its good faith bargaining obligation did not state a cause of action because Zarate did not allege the union's refusal to process her grievance was for an invidious reason. *Id.* Further, the agency does not assert jurisdiction over allegations exclusively concerning the processing of a grievance in the absence of an illegal reason. *Id.* Zarate's allegation that the union did not advise her of her constitutional rights did not state a cause of action. *Id.*

With respect to the complaint against the employer, the Unfair Labor Practice Administrator concluded that the complaint alleged the employer violated the collective bargaining agreement. *Id.* at 7. The Unfair Labor Practice Administrator dismissed the complaint because violations of the collective bargaining agreement must be remedied by the grievance and arbitration provisions of the applicable collective bargaining agreement. *Id.* Zarate's allegation the employer violated various policies was not within the agency's jurisdiction. *Id.* Finally, the Unfair Labor Practice Administrator dismissed the complaint because Zarate had not alleged the employer terminated her for exercising a protected right. *Id.*

Zarate filed a timely notice of appeal and combined appeal brief. The union and employer filed response briefs.

ISSUE

The issue before the Commission is whether the facts, as alleged, are sufficient to state a cause of action. We affirm in part, reverse in part, and remand for processing consistent with this decision.

ANALYSIS

Applicable Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. All alleged facts are assumed true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

Discrimination

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. RCW 41.80.110(1)(c); *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 a discrimination case. WAC 391-45-270(1)(a). To prove discrimination, the complainant must first establish a prima facie case by showing that:

1. the employee participated in protected activity 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 protected activity and the employer's action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. 333, 348–349 (2014); *Educational Service District 114*, Decision 4361-A.

Application of Standard

We have reviewed the complaints, notice of appeal, and briefing. We agree with the Unfair Labor Practice Administrator that the complaints against the union do not state a cause of action. The complaints filed against the union are dismissed.

Turning to the case against the employer, Zarate alleged that on November 17 and 30, 2020, she provided the employer with “pre-grievance” letters and communicated to the employer her intent to file a grievance. Zarate alleged that after she communicated her intent to engage in protected activity, the employer terminated her employment. To determine whether the complaint states a cause of action, we assume these facts are true and provable. Based on these facts we conclude that the complaints stated a cause of action for employer discrimination in violation of RCW 41.80.110(1)(c). The other allegations against the employer do not state a cause of action and are dismissed.

ORDER

1. The complaints charging unfair labor practices filed in case 133299-U-21 are dismissed.
2. The Order of Dismissal issued in case 133314-U-21 is VACATED.
3. Assuming all the facts alleged to be true and provable, the discrimination allegation states a cause of action for:

Employer discrimination in violation of RCW 41.80.110(1)(c) when the employer terminated Zarate's employment after she communicated to the employer an intent to file a grievance.

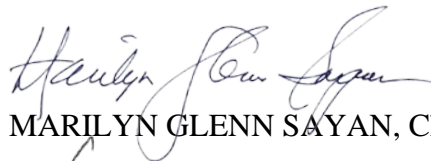
4. The employer shall file and serve its answer to the allegation listed in paragraph 3 of this Order within 21 days following the date of this Order. The answer shall:
 - a. Specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge 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.

5. The allegations of the complaint concerning employer interference are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 3rd day of December, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



RECORD OF SERVICE

ISSUED ON 12/03/2021

DECISION 13328-A - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 133299-U-21

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

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RECORD OF SERVICE

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BY: AMY RIGGS

CASE 133314-U-21

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

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