

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORMA RODRIGUEZ,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 134221-U-21

DECISION 13391-A - PSRA

DECISION OF COMMISSION

Norma Rodriguez, the complainant.

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.

On May 26, 2021, Norma Rodriguez (complainant) filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (employer). The complainant alleges the employer violated RCW 41.80.110(2) by breaching its duty of fair representation and violated RCW 41.56.140(4) by refusing to bargain. The complainant did not file an unfair labor practice complaint against the union.

Unfair Labor Practice Administrator Dario de la Rosa (Administrator) reviewed the complaint under WAC 391-45-110. The Administrator issued a deficiency notice explaining the complaint had procedural and substantive defects. The complainant had 21 days to file an amended complaint.

On July 14, 2021, the complainant filed an amended complaint. The Administrator concluded that the amended complaint did not cure the procedural and substantive defects and dismissed it. *Washington State Department of Children, Youth, and Families*, Decision 13391 (PSRA, 2021). The decision explained:

- An employer does not have a duty of fair representation to employees. *Id.* at 6.
- None of the facts alleged stated a cause of action for the employer interfering with, restraining, or coercing Rodriguez for exercising rights protected by chapter 41.80 RCW. *Id.*
- While the complaint alleged the employer terminated Rodriguez's employment, the complaint did not allege the discharge was in retaliation for Rodriguez engaging in activity protected by chapter 41.80 RCW. *Id.* at 7.
- Rodriguez did not have standing to file a refusal to bargain allegation. *Id.*
- Many of the claims were outside of the agency's jurisdiction. *Id.* at 8.

On August 30, 2021, Rodriguez filed a notice of appeal. The notice of appeal was a restatement of the facts alleged in the complaint and amended complaint. Rodriguez did not file an appeal brief.

The employer filed a response brief explaining the reasons for terminating Rodriguez's employment. The employer argues that it does not owe Rodriguez a duty of fair representation and Rodriguez lacks standing to file a refusal to bargain unfair labor practice complaint. The employer argues that Rodriguez did not allege she communicated to the employer an intent to engage in protected activity. The employer contends that the agency does not have jurisdiction over the allegations in the complaint.

The issue before the Commission is whether the facts, as alleged, are sufficient to state a cause of action.

An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action under chapter 41.80 RCW. All alleged facts are assumed true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).


We reviewed the complaints. We agree with the Administrator that the complaints do not state a cause of action under the statutes administered by the agency.

ORDER

The Order of Dismissal issued by the Unfair Labor Practice Administrator is AFFIRMED.

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 13391-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 134221-U-21

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

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