

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEAN THOMAS TAESCHNER,

Complainant,

vs.

KENT SCHOOL DISTRICT,

Respondent.

CASE 134853-U-22

DECISION 13498 - EDUC

ORDER OF DISMISSAL

Sean Thomas Taeschner, the complainant.

Israel Vela, Interim Superintendent, for the Kent School District.

On February 28, 2022, Sean Thomas Taeschner (complainant) filed an unfair labor practice complaint against the Kent School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 8, 2022, notified Taeschner that a cause of action could not be found at that time. Taeschner 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 Taeschner. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

BACKGROUND

Taeschner works for the Kent School District (employer) as a substitute teacher. According to the complaint, on June 3, 2021, the employer sent Taeschner an Ongoing Letter of Assurance

¹ 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.

promising him employment for the 2021–22 school year. Taeschner asserts that no conditions of employment were outlined in the letter, including whether Taeschner was required to receive a COVID-19 vaccination or undergo testing for COVID-19.

On August 18, 2021, the employer sent a text and email to Taeschner informing him that in order to remain a substitute teacher he would need to either receive a COVID-19 vaccination or face dismissal from employment on October 18, 2021. On September 4, 2021, Taeschner allegedly applied for a medical and religious exemption, which was granted by the employer. However, the employer required Taeschner to undergo weekly testing to determine if he had COVID-19. Taeschner allegedly refused to submit to testing.

On November 24, 2021, Taeschner received a voice message from the substitute services coordinator, Brandy Baker, asking him whether he would be returning to work on should she place him on the indefinite leave list. Taeschner returned Baker's call and informed her that he had already given the employer his answer, that he would not submit to COVID-19 testing, and that he would return to work once the mask mandates were lifted.

In December 2021, Taeschner contracted and was treated for COVID-19. Based upon this diagnosis, Taeschner wrote Baker and Interim Superintendent Israel Vela on January 13, 2022, asking for a date when Taeschner could return to work because he claimed that he now had natural immunity from the virus. The employer has allegedly not responded to this request.

Taeschner alleged the employer's action violated numerous provisions of chapter 49.60 RCW; RCW 2.48.180; RCW 9.91.010; RCW 43.01.100; RCWs 41.06.150, .220, and .490; and WAC 110-300-0210. Taeschner's complaint did not allege that the employer violated any of this state's collective bargaining laws.

ANALYSIS

Taeschner's complaint does not describe allegations that fit within the jurisdiction of this agency. The Public Employment Relations Commission's jurisdiction is limited to the resolution of

collective bargaining disputes between employers, employees, and unions. The collective bargaining rights for certificated employees such as Taeschner are governed by chapter 41.59 RCW. To prove employer discrimination in violation of chapter 41.59 RCW, 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*, Decision 1911-C (PECB, 1984).

None of the facts described in Taeschner's complaint constitutes a violation of the unfair labor practice provisions found at RCW 41.59.140(1). Taeschner has not alleged that he was engaged in protected activity and that a causal connection exists between his exercise of protected activity and the employer's negative or adverse act. Absent such facts, the complaint must be dismissed.

The Public Employment Relations Commission does not have authority to resolve other disputes that might arise in public employment, such as violation of chapter 49.60 RCW; RCW 2.48.180; RCW 9.91.010; RCW 43.01.100; RCWs 41.06.150, .220, and .490; and WAC 110-300-0210. *See Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not

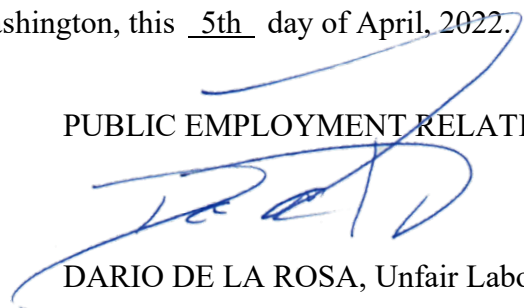
necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.²

ORDER

The 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 5th day of April, 2022.

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.

² For example, the Washington State Human Rights Commission has jurisdiction to resolve disputes arising under chapter 49.60 RCW. The Equal Employment Opportunity Commission is a federal agency that also has jurisdiction over general discrimination claims. Civil rights cases can be pursued in the superior courts.



RECORD OF SERVICE

ISSUED ON 04/05/2022

DECISION 13489 - EDUC 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 134853-U-22

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