

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMOTHY MCINTYRE,

Complainant,

vs.

SNOHOMISH COUNTY
FIRE DISTRICT 7,

Respondent.

CASE 134920-U-22

DECISION 13509 - PECB

ORDER OF DISMISSAL

Timothy McIntyre, the complainant.

Kevin O'Brien, Fire Chief, for Snohomish County Fire District 7.

On March 17, 2022, Timothy McIntyre (complainant) filed an unfair labor practice complaint against Snohomish County Fire District 7 (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 24, 2022, notified McIntyre that a cause of action could not be found at that time. McIntyre 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 McIntyre. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

BACKGROUND

Timothy McIntyre works as a Driver Operator for Snohomish County Fire District 7 (employer). His position is represented by the International Association of Firefighters Local 2781 (union).

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.

The employer and union are parties to a collective bargaining agreement (CBA) that expires on December 31, 2022.

According to the complaint, McIntyre submitted a religious exemption to the employer based upon Proclamation 21-14. The complaint does not clearly explain what Proclamation 21-14 requires employees to do, but it appears from the facts of the complaint that the proclamation requires employees to be vaccinated from COVID-19.

On September 27, 2021, McIntyre attended an “accommodation interactive process meeting” with HR Specialist Kendra Johnson to review McIntyre’s accommodation request. On October 9, 2021, Fire Chief Kevin O’Brien and union president Michael McConnell provided a video discussing the unforeseen impacts on the district for accommodating its members

The Board of Fire Commissioners conducted a meeting on October 14, 2021. During the meeting, Fire Commission Chair Roy Waugh allegedly stated that he “would actually ask, all those people who filed a religious exemption, search their soul, to know that there are those who truly, irrevocably have faith-based opposition to vaccines, and that there are people, sometimes there is a political reason for doing something.” Waugh also asked employees seeking an exemption “to look at your own situation and those of your fellow firefighters to say which one really needs accommodation, so that we may find as many accommodations as possible. But we still need to have a workforce out there.” Following these comments, Waugh forwarded a motion to approve a draft memorandum of understanding negotiated between the union and the employer for unvaccinated workers that would require unvaccinated workers to use their leave banks until exhausted and then be put on unpaid leave for one year. Waugh allegedly made additional comments during that meeting directed at employees requesting a religious-based exemption.

Following these comments, the board directed O’Brien to begin negotiations with the union concerning paid administrative leave for employees to get vaccinated and rescind their religious exemption. The directive to the O’Brien was allegedly done without the union having finalized the previously mentioned memorandum of understanding.

On October 18, 2021, Driver Operator David Petersen filed two grievances against the employer. The grievances concerned Waugh's comments at the October 14, 2021, board meeting, alleging the employer violated the antidiscrimination provision of the collective bargaining agreement. On November 2, 2021, Lieutenant Randy Mickels denied Petersen's grievances.

McIntyre claims that the employer's statements and actions discriminated against union members practicing their constitutional right of filing a religious exemption and interfered with union business by directing the Fire Chief to request negotiations that would offer incentives to bargaining unit employees prior to the union having a chance to vote on the memorandum of understanding. However, McIntyre's complaint does not describe any facts that he was actually deprived of an ascertainable right, benefit, or status.

ANALYSIS

Violations of the Collective Bargaining Agreement

The Public Employment Relations Commission (PERC) has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a CBA 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)). PERC interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *Washington State – Corrections (Teamsters Union Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)). An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

McIntyre alleges the employer violated the antidiscrimination provision of the collective bargaining agreement. This claim is not actionable before this agency. To pursue this claim, McIntyre must either file a grievance under the appropriate provisions of the collective bargaining agreement or seek redress through the superior courts.

Employer Discrimination

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by chapter 41.56 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.

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

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 that, 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).

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.

McIntyre's complaint fails to state a cause of action for discrimination in violation of chapter 41.56 RCW because McIntyre has not alleged that the employer denied him an ascertainable right, benefit, or status based upon his exercise of protected activity. The complaint also lacks facts alleging a causal connection between McIntyre's exercise of protected activity and the employer's deprivation of rights. Rather, the complaint only alleges that the employer's discriminatory acts were based upon McIntyre's religious beliefs.

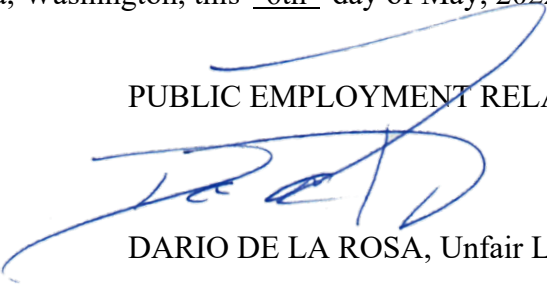
Finally, this agency does not have jurisdiction to enforce civil rights laws. PERC's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaint does 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 PERC. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A.

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 6th day of May, 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.



RECORD OF SERVICE

ISSUED ON 05/06/2022

DECISION 13509 - PECB 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 134920-U-22

EMPLOYER: SNOHOMISH COUNTY FIRE DISTRICT 7

REP BY: KEVIN O'BRIEN
SNOHOMISH COUNTY FIRE DISTRICT 7
163 VILLAGE CT
MONROE, WA 98272
kevin.obrien@sfrfr.org

PARTY 2: TIMOTHY MCINTYRE

REP BY: TIMOTHY MCINTYRE
11461 THRALL RD
ELLENSBURG, WA 98926
sageviewfarm@yahoo.com