

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORMAN A. PETERSON II,

Complainant,

vs.

SNOHOMISH COUNTY FIRE DISTRICT 7,

Respondent.

CASE 135032-U-22

DECISION 13518 - PECB

ORDER OF DISMISSAL

*Norman A. Peterson II*, the complainant.

*Richard A. Davis III, Matt T. Paxton, and Aaron T. Haynes*, Attorneys at Law,  
Chmelik Sitkin & Davis P.S. for the Snohomish County Fire District 7.

On April 14, 2022, Norman A. Peterson II (complainant) filed an unfair labor practice complaint against the Snohomish County Fire District 7 (employer). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on April 27, 2022, notified Peterson that a cause of action could not be found at that time. Peterson 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 Peterson. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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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.

BACKGROUND

Norman A. Peterson II works as a Firefighter/EMT for the Snohomish County Fire District 7 (employer). His position is represented by the International Association of Fire Fighters Local 2781 (union). The employer and union are parties to a collective bargaining agreement that expires on December 31, 2022.

According to the complaint, Peterson submitted a religious exemption to the employer based upon Proclamation 21-14. The complaint does not clearly explain what Proclamation 21-14 requires of 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 30, 2021, Peterson attended “accommodation interactive process meeting” with HR Specialist Pamela Holtgeerts to review Peterson’s accommodation request. On October 9, 2021, Fire Chief Kevin O’Brien and union president Michael McConnell provided 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 that meeting, 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 to 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 of Commissioners Chief 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 Chief 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 first concerned Waugh's comments at the October 14, 2021, Board of Commissioners meeting and the second alleging the employer violated the anti-discrimination provision of the collective bargaining agreement. On November 2, 2021, Lieutenant Randy Mickels denied David Petersen's grievances.

Peterson 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, Peterson'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 Commission 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)). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters 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.

Peterson alleges that the employer violated the anti-discrimination provision of the collective bargaining agreement. This claim is not actionable before this agency. To pursue this claim, Peterson 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.

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.

Peterson's complaint fails to state a cause of action for discrimination in violation of chapter 41.56 RCW because Peterson 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 Peterson's exercise of protected activity and an employer's deprivation or rights. Rather, the complaint only alleges that the employer's discriminatory acts were based upon Peterson's religious beliefs.

Finally, this agency does not have jurisdiction to enforce civil rights laws. The Commission's 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 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 (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 16th day of June, 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

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ISSUED ON 06/16/2022

DECISION 13518 - PECB 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 135032-U-22

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