

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FRANCISCO CHIPRES,
Complainant,

vs.

BEN FRANKLIN TRANSIT,
Respondent.

CASE 136200-U-23

DECISION 13649 - PECB

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

Francisco Chipres, Complainant.

Evan D. Chinn, Attorney at Law, Summit Law Group PLLC for Ben Franklin Transit.

On February 8, 2023, Francisco Chipres (complainant) filed an unfair labor practice complaint against Ben Franklin Transit (employer) alleging the employer discriminated against Chipres for unidentified activity, violated the collective bargaining agreement, and committed other allegations outside of this agency's jurisdiction. The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on February 21, 2023, notified Chipres that a cause of action could not be found at that time for any of the allegations in the complaint. Chipres was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

On February 27, 2023, Chipres filed an amended complaint and on March 16, 2023, Chipres filed an additional document concerning remedies. Chipres filed a second amended complaint on March 28, 2023, claiming the employer retaliated against him in violation of RCW 41.56.140(3)

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.

for filing an unfair labor practice complaint. This new allegation was also reviewed under WAC 391-45-110. The allegations in Chipres's original February 8, 2023, complaint, February 27, 2023, amended complaint, and March 16, 2023, document concerning additional remedies are dismissed for failing to state causes of action. The allegation in Chipres's March 28, 2023, second amended complaint states a cause of action for further proceedings before this agency.

BACKGROUND

Francisco Chipres works for Ben Franklin Transit. His position is represented by Teamsters Local 839 for purposes of collective bargaining.

The February 8, 2023, Original Complaint

According to the original February 8, 2023, complaint, Chipres applied for promotions and other positions in the employer's operation but has been denied those opportunities because of his limitations with the English language. Chipres asserted the employer violated the collective bargaining agreement's nondiscrimination and Job Opening and Shift Bidding provisions.

Chipres's original complaint claimed that on January 20, 2023, the employer started the bidding process to allow employees the opportunity to pick their shifts. Chipres claimed that his shift was not on the list. On January 23, 2023, Chipres allegedly discussed this matter with union representative Russell Shjerven and Shjerven informed Chipres that he would look into the matter. Shjerven also told Chipres not to sign anything at that time.

Sometime during that same week, Chipres alleged the employer handed out an insurance increment form for employees to sign. Chipres informed union steward Wayne Welle that he was not comfortable signing the document and Welle allegedly told Chipres that he did not have to sign the document. On January 26, 2023, Director Josh Rosas called Chipres to his office for a meeting. Welle also attended the meeting. During the meeting, Rosas asked Chipres why he was refusing to sign the document. Chipres informed Rosas that he was not comfortable signing the document and Rosas allegedly told Chipres that his employment depended on signing the document. Chipres did sign the document but noted that it was not voluntary. Rosas then told Chipres that he was

going to Chad Crouch and asked Chipres and Welle to wait outside the office. Rosas eventually sent Chipres home to wait for a call. As of the date of the original complaint the employer has not contacted Chipres.

February 27, 2023, Amended Complaint

Chipres's February 27, 2023, amended complaint continues to assert that the employer violated provisions of the parties collective bargaining agreement. The February 27, 2023, amended complaint does not include any additional facts that constitute an unfair labor practice before this agency.

March 16, 2023, Additional Document Concerning Remedies

Chipres filed an additional document on March 16, 2023, clarifying that the remedies he is seeking are the same remedies he sought in the original complaint.

March 27, 2023, Second Amended Complaint

On March 27, 2023, Chipres filed a second amended complaint asserting the employer retaliated against him for filing his original unfair labor practice complaint. The allegations in the second amended complaint were reviewed under WAC 391-45-110.

ANALYSIS

Applicable Legal Standards

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.

Here, Chipres's original and amended complaints allege that he was deprived of a right or benefit but does not specifically allege that the employer took action against him in retaliation for exercising activity protected by chapter 41.56 RCW, such as seeking the aid of a labor organization for employment issues or assisting a labor organization. Absent such facts the complaint must be dismissed for failing to state a cause of action that can be redressed by the statutes this agency administers.

Certain allegations and facts in Chipres's original and amended complaints are allegations that do not fit within the jurisdiction of the Commission. The Commission'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). For example, allegations that the employer has discriminated against Chipres on the basis of race or ethnicity are outside this agency's jurisdiction. The Washington State Human Rights Commission has jurisdiction over employment discrimination in the state of Washington. The Equal Employment Opportunity Commission (EEOC) is a federal agency that also has jurisdiction over discrimination. Civil rights cases can be pursued in the courts. Chipres's assertion that the employer violated the collective bargaining agreement also fails to state a cause of action.

Finally, the Commission has also consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement 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)). Any remedy for a contract violation must come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134 A (EDUC, 2011) (citing *Tacoma School District*, Decision 5722-E (EDUC, 1997)).

ORDER

1. Assuming all of the facts alleged to be true and provable, the discrimination allegation of Chipres's March 27, 2023, second amended complaint states a cause of action, summarized as follows:

Employer discrimination in violation of RCW 41.56.140(3) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, for disciplining Francisco Chipres in retaliation for his filing an unfair labor practice complaint.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 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 March 28 second amended 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 second amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the February 8, 2023, original complaint and February 27, 2023, amended complaint concerning employer discrimination, contract violations, and allegations outside of this agency's jurisdiction are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of April, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 04/06/2023

DECISION 13649 - 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 136200-U-23

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