STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GILA BURTON-CURL, Complainant, vs. SEATTLE COLLEGES, Respondent.	CASE 136329-U-23 DECISION 13681 - CCOL ORDER OF DISMISSAL

Gila Burton-Curl, Complainant.

Jennifer Dixon, Vice Chancellor, Human Resources, for the Seattle Colleges.

On March 23, 2023, Gila Burton-Curl (complainant) filed an unfair labor practice complaint against Seattle Colleges (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on May 10, 2023, notified the complainant that a cause of action could not be found at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On May 31, 2023, the complainant filed an amended complaint and many documents. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

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[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.

ISSUE

The amended complaint alleges the following:

> Employer discrimination in violation of RCW 28B.52.073(1)(c) [and if so, derivative interference in violation of RCW 28B.52.073(1)(a) within six months of the date the complaint was filed, by directing Gila Burton-Curl to exit the building, failing to provide priority hire class selection/scheduling, withholding wages, and termination of benefits in reprisal for unidentified union activities protected by chapter 28B.52 RCW.

The amended complaint is dismissed. The amended complaint lacks facts alleging the complainant was engaged in protected activity. Because no protected activity is alleged, the complaint does not state a cause of action and must be dismissed.

BACKGROUND

Gila Burton-Curl is a part-time faculty employee at Seattle Colleges (employer). Burton-Curl is represented by AFT Washington (union). On September 27, 2019, the employer became aware of Burton-Curl's ADA accommodations. Prior to September and October 2022 Burton-Curl had requested an ADA accommodation to work remotely due to COVID-19. The employer granted the request, and all instructors were teaching remotely. Once the county reopened, on an unidentified date, Burton-Curl wanted to continue teaching remotely. The employer allegedly did not want to continue the accommodation. Prior to the employer deciding in September and October 2022, Burton-Curl was out on Health Emergency Labor Standards Act leave. Burton-Curl used the employer's regular sick leave balance. Burton-Curl had additional sick leave hours that had been awarded through the grievance process. On an unidentified date, the union had filed a grievance on behalf of Burton-Curl. The union and employer reached agreement and Burton-Curl was provided 65.5 additional hours of sick leave. The hours were not added to the payroll system, but the union and employer allegedly kept track of the hours "off the books."

During an unidentified time period, the employer allegedly stopped paying Burton-Curl. On an unidentified date, Burton-Curl asked the union to have a sick leave audit as a result of not being paid hours.

In September 2022, Burton-Curl filed a Labor and Industries lost wages claim for September. In December 2022, Labor and Industries issued a check to Burton-Curl. In October 2022, Burton-Curl filed a second Labor and Industries lost wages claim for October and a check was issued in January 2023. In February and March 2023, Burton-Curl allegedly filed wage claims against the employer. Because Labor and Industries allegedly was not provided confirmation of Burton-Curl's grievance sick leave balance, it was unable to render a decision and the complaint was forwarded to the retaliation division. Because Labor and Industries allegedly could not confirm Burton-Curl's sick leave balance, it found in favor of the employer.

On an unidentified date, Burton-Curl allegedly attempted to enforce priority hire requirements based on language in the collective bargaining agreement. Priority hire status provides for protections for senior staff to hours and teaching assignments.

In the later part of February 2023, the employer allegedly did not pay Burton-Curl. Burton-Curl was unable to work in February 2023, due to an event that occurred on October 5, 2022. The employer established Burton-Curl's return to work date to be October 5, 2023.[2] On October 5, Burton-Curl attempted to return to work and was told to exit the building immediately by a co-worker.

On an unidentified date, Burton-Curl was accepted into the 2021-2022 cohort of the Workforce Dean's Academy (WDA). The WDA helps faculty to improve their skills and to seek future dean of college positions. After Burton-Curl was accepted into the program, the employer did not provide the $1,000 funding. The employer allegedly did not complete a recommendation in time and did not provide financial support for professional training. Later, Burton-Curl's acceptance was withdrawn. The employer was not able to provide the financial support. On August 30, 2022,

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[2] Based on the facts in the complaint the year may be incorrect. The date might have been October 5, 2022.

Burton-Curl sent an email to Dean Bowers for a supervisor's recommendation for the 2022-2023 cohort. Burton-Curl also received a denial letter for the 2022-2023 cohort on October 5, 2022.[3] Dean Bowers allegedly did not sign the recommendation and the employer would not submit the financial requirement of $1,000.

In October 2022, Burton-Curl submitted a medical certificate for Paid Medical Family Leave. The employer allegedly did not release the worked hours to Labor and Industries for Labor and Industries to make a determination. On an unidentified date, the employer allegedly withheld PML information from Burton-Curl and rejected PML medical certificate forms.

On June 14, 2019, the Attorney General allegedly emailed the employer asking why Burton-Curl did not get a yearly raise like other female employees. The employer allegedly withheld wage increases for three unidentified consecutive years from Burton-Curl. The unidentified complaint was dismissed.

ANALYSIS

Applicable Legal Standard

Discrimination

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). 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 the Commission. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A.

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[3] The amended complaint alleges this even occurred on either October 5, 2023, or October 5, 2022. Because October 5, 2023, has not occurred, it is assumed that October 5, 2022, is the correct date.

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 28B.52.073(1)(c). 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.

Application of Standard

The deficiency notice notified Burton-Curl that the original complaint lacked facts alleging Burton-Curl was engaged in protected activity. The amended complaint included some additional information and removed some information. The amended complaint alleges that Burton-Curl was engaged in protected activity, but the facts included are not protected activity.

When determining whether an activity is protected, the Commission will first look at whether the activity was taken on behalf of the union. *See* RCW 28B.52.025; *City of Seattle*, Decision 10803-B (PECB, 2012) (a letter written by the union president to the employer was protected because the union was working on behalf of one of its members); *Renton Technical College*, Decision 7441-A (CCOL, 2002) (contacting a state legislator to inquire about use of particular funding for employee salaries was protected activity); *Atlantic Steel Co.*, 245 NLRB 814 (1979) (complaint made on plant floor, rather than in company office or across table at formally convened and structured grievance meeting was protected activity). Should it be determined that the activity was taken on behalf of the union, the next step is to evaluate the reasonableness of that activity.

The amended complaint alleges that Burton-Curl provided notice to the employer that Burton-Curl required ADA accommodation. The amended complaint alleges the protected activity included notifying the employer of required ADA accommodations, requesting to participate in WDA, submitting a request for Paid Family Medical Leave, and the priority hire process. These facts do not articulate that they were on behalf of the union.

The complaint does allege that on an unidentified date the union filed a grievance on Burton-Curl's behalf. But there is no alleged causal connection alleged between the filing of the grievance and the alleged deprivation. Additionally, any allegations of violations of ADA accommodations or wage and hour laws do not fit within the Commission's jurisdiction. Because the complaint lacks facts alleging Burton-Curl was engaged in protected activity and provides no causal connection between protected activity and the alleged deprivation, the amended complaint must be dismissed.

ORDER

The amended 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 29th day of June, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, 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 06/29/2023

DECISION 13681 - CCOL 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 136329-U-23

EMPLOYER:	SEATTLE COLLEGES
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