

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HUBERT GILMORE,

Complainant,

vs.

BENTON COUNTY,

Respondent.

CASE 136056-U-22

DECISION 13710-A - PECB

DECISION OF COMMISSION ON
MOTION FOR TEMPORARY RELIEF

Hubert Gilmore, the complainant.

Jeffrey J. Aultman, Assistant Chief Deputy Prosecuting Attorney, and *Stephen Hallstrom*, Senior Deputy Prosecuting Attorney, Benton County Prosecuting Attorney Eric Eisinger, for Benton County.

BACKGROUND

On November 22, 2022, Hubert Gilmore filed an unfair labor practice complaint against Benton County. On December 19, 2022, an Unfair Labor Practice Administrator issued a preliminary ruling finding a cause of action for employer discrimination by placing Gilmore on light duty in reprisal for union activities.

The agency assigned Sean Leonard as the Examiner. The Examiner conducted a hearing on May 25, 2023. Post-hearing briefs were due July 14, 2023. On July 12, 2023, Benton County moved for an extension of the due date to July 28, 2023. Gilmore opposed Benton County's motion. The Examiner granted the extension. Both parties filed post-hearing briefs on July 28, 2023. At the time Gilmore filed the motion for temporary relief, the unfair labor practice complaint was pending before the Examiner for a decision. The Examiner issued a decision on September 5, 2023. *Benton County*, Decision 13710 (PECB, 2023).

On July 21, 2023, Gilmore filed a motion for temporary relief. On July 28, 2023, Benton County filed a response to the motion for temporary relief. In compliance with WAC 391-45-430, the motion for temporary relief was forwarded to the Commission to decide.

ISSUE

The issue before the Commission is whether the motion for temporary relief should be granted. We deny the motion for temporary relief.

ANALYSIS

Applicable Legal Standards

The Commission is empowered to prevent unfair labor practices and may petition the superior court for appropriate temporary relief. RCW 41.56.160. If the Commission determines that temporary relief should be sought, the Executive Director, with the assistance of the Attorney General, shall seek an injunction for temporary relief. WAC 391-45-430(5)(a).

WAC 391-45-430 governs motions for temporary relief. Under the rule, a complainant seeking temporary relief must file with the complaint, “or as soon thereafter as facts giving rise to the request for temporary relief become known, . . . written notice of [the complainant’s] intent to make a motion for temporary relief” WAC 391-45-430(1). After the agency issues a cause of action statement, “the complainant may file and serve . . . a motion for temporary relief together with affidavits” about the risk of irreparable harm and the adequacy of the remedies. WAC 391-45-430(3). Failure to follow the procedures outlined in the rule are fatal to motions for temporary relief. *Pierce County*, Decision 13171 (PECB, 2020) (dismissing a motion for temporary relief when the motion was filed before a preliminary ruling issued).

The Commission does not grant temporary relief “unless it appears that one or more of the allegations in the complaint is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and would suffer irreparable harm if the status quo is not returned pending the completion of administrative proceedings.” WAC 391-45-430(5); *City of Spokane*, Decision

11673 (PECB, 2013), at 2; *Steilacoom School District*, Decision 2527 (EDUC, 1986) (granting a motion for temporary relief where the union had substantial likelihood of success on the merits and the use of strike replacements would cause irreparable harm with no adequate legal remedy); *City of Tacoma*, Decision 5686 (PECB, 1996) (granting temporary relief where the implementation of a pending change to a civil service rule would cause irreparable harm and an adequate legal remedy would not exist in the absence of maintaining the status quo); *City of Spokane*, Decision 11673 (denying temporary relief); *Kiona Benton School District*, Decision 10865 (EDUC, 2010) (denying temporary relief when the union did not establish irreparable harm or lack of an adequate remedy).

Application of Legal Standards

On March 9, 2022, Gilmore began working in a light duty assignment.¹ In June 2022, Gilmore's physician released him from light duty with modifications. Gilmore alleged he worked in the modified positions from June until November 15, 2022. On November 15, 2022, Benton County returned Gilmore to light duty. In the motion for temporary relief, without providing any evidence, Gilmore alleged his healing has been hampered by working in the light duty position and requested that he be allowed to work the modified assignments approved by his physician. In response, Benton County asserted that Gilmore did not establish he would suffer irreparable harm or lacked an adequate remedy.

In the absence of irreparable harm, the Commission will not grant a motion for temporary relief. WAC 391-45-430(5); *City of Spokane*, Decision 11673; *Kiona Benton School District*, Decision 10865; *Pierce County*, Decision 13171. Gilmore did not provide evidence of the irreparable harm he suffered by continuing to work in the light duty position while the unfair labor practice complaint was pending before the Examiner. Without such evidence to support his

¹ As an initial matter, our analysis is limited to the facts alleged in the complaint, the motion for temporary relief, and the response to the motion for temporary relief. When ruling on a motion for temporary relief, we do not consider the evidence presented to the Examiner at hearing.

assertion that his healing has been hampered, Gilmore has not established that he has suffered irreparable harm.

The moving party must also establish it has neither a fair nor adequate legal remedy. *Washington State Language Access Providers*, Decision 13355 (PECB, 2021) (denying a motion for temporary relief where the complaint alleged the employer had unilaterally imposed a new scheduling system during the pendency of a representation petition); *Green River College*, Decision 12571 (CCOL, 2016) (dismissing a motion for temporary relief where the complaint alleged the employer had refused to bargain a program used to identify which programs to reduce). In this case, Gilmore made no argument about the adequacy of the Commission's remedy. Thus, Gilmore has not established that he lacks a fair or adequate legal remedy.

In response to the motion for temporary relief, Benton County averred that Gilmore's motion for temporary relief did not comply with the rule and was not timely. The rule requires the complainant to file notice of an intent to file a motion for temporary relief when the complaint is filed "or as soon thereafter as facts giving rise to the request for temporary relief become known" WAC 391-45-430(1). Gilmore filed the unfair labor practice complaint on November 22, 2022, but at no point has Gilmore filed notice of intent to move for temporary relief.

Gilmore waited until *after* the Examiner conducted the hearing and granted the 14-day extension of the briefing due date to file the motion for temporary relief. As Gilmore stated in his motion, he requested temporary relief "[i]n light of this extension in timeline, understanding that PERC will need to take additional time even after final briefs are filed." The motion for temporary relief appears to have been prompted by the extension of the briefing deadline and the time it takes to process an unfair labor practice complaint. In this case, the time to process the unfair labor practice complaint is insufficient to establish irreparable harm or a lack of adequate legal remedy.

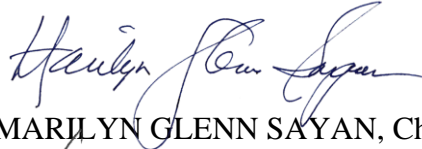
Gilmore has not met his burden for the Commission to grant the motion for temporary relief.

ORDER

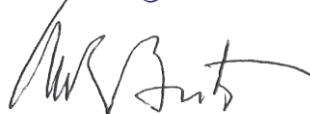
The motion for temporary relief is DENIED.

ISSUED at Olympia, Washington, this 18th day of September, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARLYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



ELIZABETH FORD, Commissioner



RECORD OF SERVICE

ISSUED ON 09/18/2023

DECISION 13710-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: VANESSA SMITH

CASE 136056-U-22

EMPLOYER: BENTON COUNTY

REP BY: ROBERT GUERRERO
BENTON COUNTY
7122 W OKANOGAN PL BLDG #B110
KENNEWICK, WA 99336
robert.guerrero@co.benton.wa.us

STEPHEN J. HALLSTROM
BENTON COUNTY
PROSECUTING ATTORNEY'S OFFICE 7122 W OKANOGAN PLACE STE A230
KENNEWICK, WA 99336
stephen.hallstrom@co.benton.wa.us

JEFFREY J. AULTMAN
BENTON COUNTY
BENTON COUNTY PROSECUTOR'S OFFICE 7122 W. OKANOGAN PLACE, SUITE A230
KENNEWICK, WA 99336
jeffrey.aultman@co.benton.wa.us

PARTY 2: HUBERT GILMORE

REP BY: HUBERT GILMORE

7672 MILL CREEK RD
WALLA WALLA, WA 99362
hgilmore8859@msn.com