

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIFFIANY DIGGINS,

Complainant,

vs.

SEATTLE HOUSING AUTHORITY,

Respondent.

CASE 135318-U-22

DECISION 13779 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Tiffany Diggins, the complainant.

Charles Lind, General Counsel, for Seattle Housing Authority.

On July 15, 2022, Tiffany Diggins (Diggins) filed an unfair labor practice complaint against her employer, Seattle Housing Authority (employer). After receiving a deficiency notice, Diggins filed an amended complaint on August 15, 2022. The amended complaint alleged that the employer discriminated against Diggins by interfering with her connectivity and access to its systems in retaliation for the July 15, 2022, unfair labor practice complaint. A virtual hearing was held on May 18, June 5, and September 18, 2023, before the undersigned Hearing Examiner.

ISSUE

The issue in this case, as framed by the September 12, 2022, cause of action statement,¹ is whether the employer violated RCW 41.56.140(3) by discriminating against Diggins through interfering

¹ This document was titled “preliminary ruling” in accordance with WAC 391-45-110. On January 1, 2023, the Commission amended WAC 391-45-110 and changed the title of this document type to “cause of action statement.”

with her connectivity and access to employer systems in retaliation for Diggins' filing of an unfair labor practice complaint against the employer.

Because Diggins did not meet her burden of proving unlawful discrimination, the complaint is dismissed.

BACKGROUND

Diggins was hired by Seattle Housing Authority in 2020. In August 2021, she began working on a Project Based Voucher team, which handled certifications of housing information. Diggins complained to her team supervisor about her inability to access and use certain computer systems necessary for her work. In December 2021, Diggins made a formal complaint to the employer about her interactions with her supervisor related to this issue. Following the complaint, Diggins continued to assert that she was having issues related to system access. The employer investigated Diggins' claims.

Diggins filed a complaint with PERC on July 15, 2022. That complaint did not allege facts regarding system access.

On July 27, 2022, the employer transferred Diggins to another team, the Special Purpose Voucher team. Diggins' transfer was in response to her complaints. Diggins testified that the transfer "was not retaliatory."

In response to a deficiency notice, Diggins amended her PERC complaint on August 15, 2022. The amended complaint alleged that the employer interfered with Diggins' "connectivity and access" to its systems and that this "increased" after her filing of the July 15, 2022, PERC complaint. Diggins' supervisors were unaware of the complaints to PERC.

Following the PERC complaints, Diggins continued to express concerns to the employer about her access to its systems.²

ANALYSIS

Legal Standard for Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.56.140(3); *Tacoma School District*, Decision 5466-D (EDUC, 1997). The complainant maintains the burden of proof in a discrimination case. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 349 (2014) (citing *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46 (1991)). To prove discrimination, the complainant must first establish a prima facie case by showing the following:

1. The employee participated in protected activity 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.

Id. If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *Id.*; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent bears the burden of production, not of persuasion. *Id.* If the respondent meets its burden of production, the

² Diggins later had attendance issues and was ultimately terminated by the employer in February 2023. Neither the termination nor the attendance issues were mentioned in Diggins' final amended complaint to PERC. Accordingly, I do not consider the attendance issues or termination here. *See Spokane County*, Decision 13510-B (PECB, 2022) (an amended complaint is required to consider post-complaint evidence).

complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Application of Standard

Diggins did not meet her burden to prove a prima facie case of discrimination. While Diggins engaged in protected activity by filing an unfair practice complaint, she did not prove that the employer deprived her of an ascertainable right, benefit, or status. Similarly, Diggins did not prove that there was a causal connection between the filing of the July 15, 2022, unfair labor practice complaint and the employer's alleged adverse actions.

Diggins engaged in protected activity.

Diggins' filing of the July 15, 2022, unfair labor practice complaint constitutes protected activity. Diggins met her burden on this prong of the prima facie test.

Diggins did not prove that the employer deprived her of an ascertainable right, benefit, or status.

In order to constitute discrimination under RCW 41.56, an employer's actions must deprive an employee of statutory rights or adversely impact the employee's terms and conditions of employment. *See, e.g., Okanogan Public Hospital District 4*, Decision 5809-A (PECB, 1997) (instruction not to call PERC was a deprivation of statutory rights); *King County*, Decision 12582-D (PECB, 2018) (negative performance evaluation was a deprivation where it contained reference to union activity). Where there has been insufficient proof that the employer deprived an employee of a right, benefit, or status, the Commission has affirmed dismissals of complaints. *See Washington State Department of Children, Youth, and Families*, Decision 13647-A (PSRA, 2023) (lack of evidence of loss of pay following an investigation was sufficient to affirm Examiner's conclusion of no denial of right, status, or benefit).

In the present case, the only employer acts at issue are its alleged interferences with access to certain electronic systems necessary for Diggins to perform her work. Diggins did not provide evidence that these alleged actions deprived her of a specific right, benefit, or status. She presented

no evidence of lost pay or benefits or that she suffered any other adverse action by the employer.³ In the absence of such evidence, her complaint must be dismissed. *See Lower Columbia College*, Decision 9171-A (PSRA, 2007) (work assignments with short deadlines, being blamed for mistakes, and micro-management of work were not deprivations of rights).

Diggins did not prove a causal connection between her PERC complaint and the employer's actions.

Diggins did not provide sufficient evidence to conclude that the employer's actions were causally connected to her filing of the July 15, 2022, unfair labor practice complaint. Diggins' supervisors testified that they were unaware of Diggins' filing of the PERC complaints or of any interference with Diggins' ability to access the employer's systems.

Because Diggins engaged in protected activity on July 15, 2022, any deprivation based on that activity would have occurred after that date but before the filing of the amended complaint on August 15, 2022. Diggins was having issues with access to the employer's systems many months before she filed her July 15, 2022, PERC complaint. While she presented evidence that the problems continued, Diggins did not present sufficient evidence to prove her allegation that these problems worsened after the filing of the complaint on July 15. Thus, even if the access issues constituted a deprivation of a right, the lack of a causal connection between the filing of Diggins' PERC complaint and the employer's actions requires dismissal of the complaint. Mere belief in a connection between a protected activity and the employer's actions is not sufficient; further evidence is required to prove discrimination. *King County*, Decision 11221-A (PECB, 2011). Diggins did not supply such evidence in this case; her complaint must be dismissed.

³ Diggins' transfer on July 27, 2022, was related to her complaints, but Diggins stated that the transfer "was not retaliatory." The cause of action statement, which limits the issues in the case, did not reference the transfer as a basis for the alleged violation.

CONCLUSION

Because Diggins did not meet her burden of proving a prima facie case, it is unnecessary to evaluate whether the employer had a legitimate, non-discriminatory reason for its alleged actions. Diggins' complaint is dismissed.

FINDINGS OF FACT

1. Seattle Housing Authority is a public employer within the meaning of RCW 41.56.030(13).
2. Tiffany Diggins was a public employee within the meaning of RCW 41.56.030(12).
3. Diggins began working for Seattle Housing Authority in 2020.
4. In August 2021, Diggins began working on a Project Based Voucher team, which handled certifications of housing information. Diggins complained to her supervisor on that team about her inability to access and use certain computer systems necessary for her work.
5. In December 2021, Diggins made a formal complaint to the employer about her interactions with her supervisor related to system access. Following this complaint, Diggins continued to assert she was having issues related to system access. The employer investigated Diggins' claims.
6. Diggins filed a complaint with PERC on July 15, 2022. That complaint did not allege facts regarding systems access.
7. On July 27, 2022, the employer transferred Diggins to another team, the Special Purpose Voucher team. Diggins' transfer was in response to her complaints. Diggins testified that the transfer "was not retaliatory."
8. In response to a deficiency notice, Diggins amended her PERC complaint on August 15, 2022. The amended complaint alleged that the employer interfered with Diggins'

“connectivity and access” to its systems and that this “increased” after her filing of the July 15, 2022, PERC complaint.

9. Diggins’ supervisors were unaware of her complaints to PERC.
10. Following the PERC complaints, Diggins continued to express concerns to the employer about her access to its systems.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56 and WAC 391-45.
2. As described in findings of fact 3 through 10, the employer did not discriminate against Diggins in violation of RCW 41.56.140(3) by interfering with her connectivity and access to its systems.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 25th day of January, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



LOYD J. WILLAFORD, Examiner

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.