

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JODI HUNZEKER,

Complainant,

vs.

RIDGEFIELD SCHOOL DISTRICT,

Respondent.

CASE 138065-U-23

DECISION 13795 - PECB

ORDER OF DISMISSAL

Jodi Hunzeker, the complainant.

Parker A. Howell and Olivia Hagel, Attorneys at Law, Porter Foster Rorick LLP
for the Ridgefield School District.

On December 13, 2023, Jodi Hunzeker (employer) filed an unfair labor practice complaint against the Ridgefield School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on January 18, 2024, notified Hunzeker that a cause of action could not be found at that time. Hunzeker 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 Hunzeker.

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 complaint alleges the following:

Unidentified unfair labor practices.

The complaint is dismissed for failure to state a cause of action.

BACKGROUND

Jodi Hunzeker works as a Paraeducator at the Ridgefield School District. Her position is represented by the Ridgefield Classified Association (union).

On November 27, 2023, Hunzeker filed a complaint against the Ridgefield Classified Association (union). Case 138002-U-23. The employer was not named as a party in that complaint. On December 6, 2023, a deficiency notice was issued notifying Hunzeker that her complaint was deficient and Hunzeker was provided an opportunity to cure the defects in the complaint.

On December 13, 2023, Hunzeker filed an amended complaint in case 138002-U-23. Hunzeker indicated on the complaint form and in the first paragraph of the amended complaint that she was expanding the scope of the complaint to include allegations against the employer. Accordingly, a new case was opened against the employer (case 138065-U-23) and Hunzeker's December 13, 2023, filing was reviewed under WAC 391-45-110 to determine if it stated a cause of action.

Hunzeker's complaint against the employer concerns the negotiations between the employer and the union for their most recent collective bargaining agreement. Five years before the filing of the complaint Hunzeker applied for a Social-Emotional Learning Connection Center Mentor position. The employer ultimately selected her for the position. Hunzeker asserts that although she holds a Social-Emotional Learning Connection Center Mentor position, the position has greater responsibilities and job requirements than the general paraprofessional. Hunzeker also asserts that on numerous occasions she informed the district of the differences between her position and the general paraprofessional positions, including a fall 2022 meeting with the employer's

superintendent. Hunzeker claims that during these discussions the employer acknowledged that her position could qualify as a different classified position that would receive additional pay. Hunzeker allegedly took this information to her union.

Hunzeker claims that despite the differences in job duties the union and employer continue to consider her position to be a general paraprofessional position that follows the same pay scale as other paraprofessionals. When the employer and union finished negotiations, Hunzeker learned that her job class was placed on a low pay bracket than other employees in the same job class and her position description lacked the “in school suspension” duties that she historically performed.

Most of the facts in the complaint focus on the actions of the union’s conduct during negotiations with the employer that are subject to the cause of action in case 138002-U-23. Importantly, the complaint does not include any facts indicating that the employer’s conduct during negotiations was in retaliation for Hunzeker’s union activity.

ANALYSIS

Applicable Legal Standards

Hunzeker’s complaint intimated, but does not clearly indicate, that the employer either breached its good faith bargaining obligation by entering into an agreement with the union that paid her position significantly less than other similarly situated positions without properly understanding the impact of the proposals or that the employer discriminated against Hunzeker during negotiations in retaliation for Hunzeker’s union activity.

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*, 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 Standards

Most of the facts in Hunzeker's complaint focus on the actions of the union's conduct during negotiations with the employer that are subject to the cause of action in case 138002-U-23. Importantly, the complaint does not include any facts indicating that the employer's conduct during negotiations was in retaliation for Hunzeker's union activity. Because the complaint lacks facts demonstrating the employer discriminated against Hunzeker for protected activity, the complaint must be dismissed.

Finally, even if Hunzeker attempted to allege the employer breached its good faith bargaining obligation, this allegation failed to state a cause of action because Hunzeker lacks standing to raise such a claim. Under Washington's collective bargaining laws, the duty to bargain is an obligation

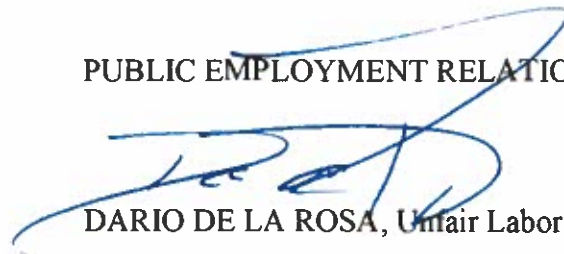
between the exclusive bargaining representative and the public employer and only the parties to the collective bargaining relationship can file a refusal to bargain unfair labor practice case. An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000) (citing *Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District (PSE of Washington)*, Decision 5979 (PECB, 1997)).

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 20th day of February, 2024.

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

ISSUED ON 02/20/2024

DECISION 13795 - 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 138065-U-23

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