

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GLORIA BUTTS,

Complainant,

vs.

FEDERAL WAY SCHOOL DISTRICT,

Respondent.

CASE 138140-U-24

DECISION 13809 - PECB

ORDER OF DISMISSAL

Gloria Butts, Complainant.

Dani Pfeiffer, Superintendent, for the Federal Way School District.

On January 8, 2024, Gloria Butts (complainant) filed an unfair labor practice complaint against the Federal Way School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on February 6, 2024, 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.

No further information has been filed by the complainant. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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.

ISSUES

The complaint alleges the following:

General contract violations

General discrimination violations

Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by denying Gloria Butts a position and training in reprisal for unidentified activities protected by chapter 41.56 RCW.

The complaint is dismissed because it lacks facts alleging violations within the Commission's jurisdiction.

BACKGROUND

Gloria Butts is employed at the Federal Way School District (employer) in Nutrition Services and is represented by the Public School Employees of Washington (union). The union and employer have an effective collective bargaining agreement. In September 2023, two other employees were provided training and appointed to job positions. The two other employees were allegedly white females or males with less experience and seniority than Butts. At an unidentified time, Butts was not interviewed for three jobs. Butts alleges unidentified adverse treatment and retaliation. On unidentified dates, Butts was denied extra work and given less seniority than people of other races. On an unidentified date, Butts was denied training on the changes of the new computer system for Health Meal Pro and forklift training.

ANALYSIS

Allegations Outside PERC Jurisdiction – Contract Violations and General Discrimination

The complaint alleges contract violations and general discrimination violations. 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 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.

The Commission has 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)). The Commission has consistently held that any remedy for a contract violation will have to 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)).

The Commission does not have jurisdiction to enforce civil rights laws. 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. Lastly, civil rights cases can be pursued in the courts.

The allegations in the complaint related to contract violations and general discrimination do not allege violations within the Commission’s jurisdiction. The allegations regarding contract violations and general discrimination must be dismissed.

Discrimination

Applicable Legal Standard

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.

Application of Standard

The complaint lacks facts necessary to allege a discrimination violation within the Commission's jurisdiction. The complaint alleges that Butts was deprived of a right by being denied job positions and training. The complaint lacks facts alleging that Butts was engaged in union activity protected by the statute or providing notice of an intent to do so. It also does not allege a causal connection between the protected activity and the deprivation. The complainant was provided notice of the deficiency but did not file an amended complaint. Because the complaint lacks facts necessary to allege a discrimination violation within the Commission's jurisdiction, the complaint must be dismissed.

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 3rd day of April, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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 04/03/2024

DECISION 13809 - 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 138140-U-24

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