

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARIE SANTIL,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 138811-U-24

DECISION 13862 - PECB

ORDER OF DISMISSAL

MARIE SANTIL,

Complainant,

vs.

AMALGAMATED TRANSIT UNION  
LOCAL 589,

Respondent.

CASE 138812-U-24

DECISION 13862 - PECB

ORDER OF DISMISSAL

*Munia Jabbar*, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 587.

*Marie Santil*, the complainant.

*Kelsey Schirman*, Deputy Prosecuting Attorney, for King County.

On March 27, 2024, Marie Santil (complainant) filed unfair labor practice complaints against King County (employer) and the Amalgamated Transit Union Local 587 (union). The complaints were reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on April 19, 2024, notified Santil

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<sup>1</sup> 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.

that a cause of action could not be found at that time for either complaint. Santil was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the cases. On May 10, 2024, Santil filed amended complaints for both cases.

### ISSUE

The original and amended complaints allege the following:

Violations of the collective bargaining agreement.

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 issuing a letter of counseling to Marie Santil in retaliation for her exercise of unidentified protected activity.

The original and amended complaints are dismissed for failure to state a cause of action within this agency's jurisdiction. The allegation claiming the employer discriminated against Santil fails to state a cause of action because Santil has not alleged the employer deprived her of a right or benefit in retaliation of her exercise of protected activity. The allegation that the employer and union breached the safety and training provisions of the parties' collective bargaining agreement also fails to state a cause of action within this agency's jurisdiction. This agency refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions.

### BACKGROUND

Santil works for King County Department of Metro Transit (employer) as a Transit Operator. Santil's position is represented by the Amalgamated Transit Union Local 587 (union) for purposes of collective bargaining. The employer and union are parties to a collective bargaining agreement that includes provisions concerning the proper training and safety for all employees.

According to the original complaint, a judge reinstated Taiyed Igeh's employment following an October 25, 2023, hearing. Igeh was alleged to have committed a sexual assault. The complaint

asserts that a Pierce County judge granted Santil a restraining order that precluded Igeh from being within 500 feet of the complainant's employment. The complaint asserts the employer refused to adhere to the restraining order and allow Igeh to remain fully employed.

Santil's original complaint also asserts that in March 2024 she was given a counseling letter after alerting the public to the unfair conditions that operators face while operating a transit vehicle under the conditions of fentanyl exposure. Although it is not entirely clear from the complaint, it appears that Santil appeared on a October 30, 2023, news broadcast where she expressed concerns about being exposed to illicit substances while operating county vehicles. Santil alleges she requested to submit a rebuttal letter to the counseling letter because she claimed the letter wrongly states that she had "lost consciousness." Santil claims that she stated during the news airing that she had "passed out" from exposure to drugs. The original complaint alleges that on March 17, and 24, 2024, she was attacked by an individual with a knife while on a layover.

Santil's amended complaint includes copies of the news article referenced in the original complaint but contains no new additional facts demonstrating either the employer or union committed an unfair labor practice.

Finally, the original complaint asked that the employer and union be ordered to implement numerous trainings, including safety and sexual assaults trainings, allow drivers to carry self-defense tools such as pepper spray, provide counseling to operators who have experienced traumatic situations, and allow operators to print out security incident reports and the ability to use those reports in the future. The amended complaint reasserted these requests.

## ANALYSIS

### *Employer Discrimination*

Santil alleged the employer issued her a letter of counseling following her appearance on a news broadcast to discuss being exposed to illegal substances on employer owned vehicles.

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 – Employer Discrimination*

Santil's original and amended complaints lacked the necessary facts to allege a discrimination violation within the Commission's jurisdiction. The complaints alleged that the employer issued Santil a letter of counseling. The complaints lacked facts alleging that Santil was engaged in union activity protected by the statute or providing notice of an intent to do so. Protected activity includes the "right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter." RCW 41.56.040. The complaints also failed to allege a causal connection between the protected activity and the deprivation of rights.

*Contract Violations*

Santil's original and amended complaints appeared to allege the employer and union failed to properly enforce training and safety provisions of the parties collective bargaining agreement. Both the original and amended complaints asked that PERC direct the parties to engage in such training.

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)).

*Application of Standard – Contract Violations*

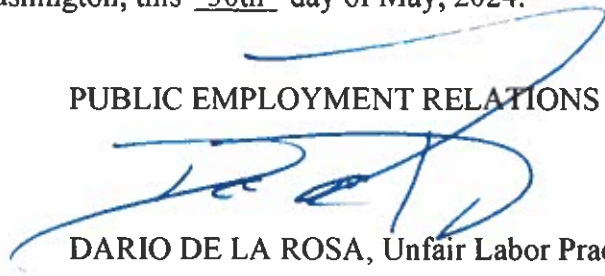
Here, Santil's complaints assert the employer and union failed to enforce the training and safety provisions of the collective bargaining agreement. As noted above, this agency has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. The proper forum for Santil to have sought redress for these allegations was either through the grievance procedure contained within the collective bargaining agreement or through the superior courts.

ORDER

The original and amended complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 30th day of May, 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 05/30/2024

DECISION 13862 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 138812-U-24

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