

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIFFIANY DIGGINS,

Complainant,

vs.

SEATTLE HOUSING AUTHORITY,

Respondent.

CASE 135318-U-22

DECISION 13779-A - PECB

DECISION OF COMMISSION

Tiffany Diggins, the complainant.

Charles Lind, General Counsel, for Seattle Housing Authority.

SUMMARY OF DECISION

The issue before the Commission is whether Tiffany Diggins met her burden to prove that her employer, Seattle Housing Authority, violated RCW 41.56.140(3) by discriminating against her because she filed an unfair labor practice complaint. After a hearing, the Examiner concluded that Diggins did not establish a prima facie case of discrimination. We agree and affirm the Examiner's decision dismissing the unfair labor practice complaint.

PROCEDURAL BACKGROUND

On July 15, 2022, Tiffany Diggins filed an unfair labor practice (ULP) complaint against Seattle Housing Authority. The ULP Administrator issued a deficiency notice in response to the skeletal complaint.

On August 15, 2022, Diggins filed an amended complaint. In the amended complaint Diggins alleged that the employer had been interfering with her connectivity and access to the employer's computer systems since December 17, 2021. Diggins alleged that the interference

increased after she filed the unfair labor practice complaint. The ULP Administrator reviewed the amended complaint and issued a cause of action for,

Employer discrimination in violation of RCW 41.56.140(3) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by interfering with Tiffany Diggins' connectivity and access to employer systems in retaliation for Diggins' filing of an unfair labor practice complaint against the employer.

Examiner Loyd Willaford conducted a hearing on May 18, June 5, and September 18, 2023. On January 25, 2024, the Examiner issued a decision dismissing Diggins' complaint. *Seattle Housing Authority*, Decision 13779 (PECB, 2024). Diggins engaged in protected activity when she filed the July 15, 2022, unfair labor practice complaint. *Id.* at 4. The Examiner concluded that Diggins did not provide evidence that not having access to electronic systems necessary to perform her work was a deprivation of a specific right, benefit, or status. *Id.* Diggins failed to establish a prima facie case of discrimination. The Examiner dismissed the complaint.

FACTUAL BACKGROUND

During her tenure there, Diggins registered two complaints with Seattle Housing Authority. On December 17, 2021, Diggins complained to her supervisor, Matthew Middleton, about technology issues. On May 11, 2022, Diggins filed a complaint about her supervisor with the employer. In response to Diggins' complaints about her supervisor, the employer hired an outside investigator, and, on July 27, 2022, the employer transferred Diggins to a different job assignment with a different supervisor.

Diggins experienced difficulty with Seattle Housing Authority's computer systems. After making the complaint to Middleton on December 17, 2021, she filed over 110 service desk tickets. During the hearing, Diggins stated that after the July 27, 2022, transfer she "continued to have interference with [her] work and with the technology and the systems that were used."¹ Diggins

¹ Tr. 127:7-9.

presented IT service desk ticket logs from before and after she filed her unfair labor practice complaint.²

ANALYSIS

Standard of Review

On appeal, the Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

The Commission reviews findings of fact for substantial evidence in light of the entire record. *Wapato School District*, Decision 12894-A (PECB, 2019). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. Unchallenged findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A (PECB, 2001).

A party assigning error has the burden of showing a challenged finding is in error and not supported by substantial evidence; otherwise, findings are presumed correct. *Renton Technical College*, Decision 7441-A (CCOL, 2002) (citing *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364 (1990); *Brinnon School District*, Decision 7210-A (PECB, 2001)). The Commission attaches considerable weight to the factual findings and inferences, including

² Complainant Exhibit 6, 7, and 7.6.

credibility determinations, made by its Examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

The Complainant Did Not Establish a Prima Facie Case of Discrimination

It is an unfair labor practice “[t]o discriminate against a public employee who has filed an unfair labor practice charge.” RCW 41.56.140(3). To prove discrimination, the complainant must first set forth a prima facie case by establishing the following:

1. The employee engaged in protected activity, such as filing an unfair labor practice complaint;
2. The union deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the protected activity and the respondent’s action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. at 348-349; *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994).

If the complainant establishes a prima facie case, the burden shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may meet its burden of production by articulating a legitimate, nondiscriminatory reason for the adverse action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. If the respondent meets its burden of production, then the complainant bears the burden of persuasion to show that the employer’s stated reason was either a pretext or substantially motivated by union animus. *Id.*

The Examiner concluded that Diggins did not establish a prima facie case of discrimination. *Seattle Housing Authority*, Decision 13779 at 4-5. While Diggins established that she had engaged in protected activity when she filed the unfair labor practice complaint, she did not produce sufficient evidence to prove that her electronic access issues worsened after filing the July 15, 2022, unfair labor practice complaint. *Id.* at 5.

On appeal, Diggins asserted that the Examiner's findings of fact omitted or misrepresented the evidence. In response, Seattle Housing Authority argued that Diggins did not assert in her appeal that she established a prima facie case of discrimination. Seattle Housing Authority argued that the errors Diggins assigned to the findings of fact do not change the outcome of the case and that there is substantial evidence to support the findings of fact.

The name "Public Employment Relations Commission" is sometimes interpreted to imply a broader scope of authority than the legislature conferred upon the agency. *King County*, Decision 13162-A (PECB, 2020) at 4 (citing *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995)). However, the agency's jurisdiction is limited to employment disputes arising between public employers, public employees, and unions representing those employees under Washington's collective bargaining laws. *Id.* The Commission cannot remedy all disputes arising within public employment. *Ben Franklin Transit*, Decision 13649-A (PECB, 2023) at 4.

For Diggins, the significant date is December 17, 2021, when she complained to her then-supervisor. However, the Commission's authority does not extend to Diggins' complaints to her supervisor or to Seattle Housing Authority about her supervisor. The Commission's authority in this case is limited to determining whether the employer discriminated against Diggins because she filed the July 15, 2022, unfair labor practice complaint.

The relevant period for determining whether Seattle Housing Authority discriminated against Diggins is July 15 through August 14, 2022. We agree with the Examiner that Diggins has not demonstrated her electronic access issues worsened after she filed the July 15, 2022, unfair labor practice complaint. Diggins consistently experienced technical difficulties. Nor does the record contain evidence that those difficulties were related to Diggins filing the unfair labor practice complaint. Therefore, the Examiner correctly concluded that Diggins did not establish a prima facie case of discrimination.

ORDER

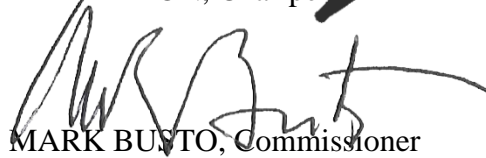
The findings of fact, conclusions of law, and order issued by Examiner Loyd J. Willaford are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 26th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK LYON, Chairperson



MARK BUSTO, Commissioner

Commissioner Elizabeth Ford did not participate in the consideration or decision of this case.

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.