

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WAYNE JUDGE,

Complainant,

vs.

STATE – DEPARTMENT OF  
CORRECTIONS,

Respondent.

CASE 27241-U-15

DECISION 12371 - PSRA

ORDER OF DISMISSAL

On June 1, 2015, Wayne Judge (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming State – Department of Corrections (employer or DOC) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on June 3, 2015, indicated that it was not possible to conclude that a cause of action existed 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 Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern:

1. Wrongful Termination – Termination of Judge for actions many other employees have done frequently, without disciplinary action of any kind taken against them, yet were well known about.
2. Prejudice – Singled out and disciplined Judge for actions that are laughed about when other employees do them.

<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the 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.

3. Unfair Labor Practices – Holding Judge accountable to a higher and impossible standard than other nurses at Stafford Creek Correctional Center and scrutinizing Judge for commonplace things.
4. Unfair and Biased Hiring Practices – Passed Judge over in hiring decisions in favor of candidates with less DOC experience, qualifications, and experience than Judge.
5. Hostile Work Environment – Statements made by an employer official to another hiring panel member (Kirsten Lockett, RN2) about having no intention of considering Judge for a full-time position.

The complaint does not describe any protected union activity or collective bargaining allegations within the jurisdiction of the Public Employment Relations Commission. It is not possible to conclude that a cause of action exists for further case processing by the Commission.

#### Legal Standards for Discrimination Allegations

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.80.110(1)(c). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.80 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 a 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. *Id.*

#### Discrimination Must be Related to Union Activity for Commission to Have Authority

The Commission doesn't have authority to address general allegations of discrimination, unequal treatment, and hostile work environment. The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity. The complaint does not allege that any of the adverse actions taken by the employer (termination of employment, being singled out for discipline, hiring discrimination, and hostile work environment) had a causal connection to protected union activities.

The facts in the complaint do not state a cause of action under Chapter 41.80 RCW. The complainant can seek to remedy non-union related discrimination and hostile work environment claims through the courts, the Equal Employment Opportunity Commission, and the Washington State Human Rights Commission.

#### Timeliness and Six-Month Statute of Limitations

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if an unfair labor practice complaint is filed within six months of the occurrence. RCW 41.80.120(1). The complaint was filed on June 1, 2015, and therefore is only timely with regard to triggering events that took place on or after December 1, 2014.

Complaint is Missing Dates of Occurrences

Several sections of the complaint are vague and don't include dates. WAC 391-45-050(2) requires the complainant to include "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." A complaint must contain the dates of occurrences so that the allegation may be reviewed for timeliness. In this case most of the allegations appear to be untimely because they do not contain dates.

CONCLUSION

The Public Employment Relations Commission only has jurisdiction over certain employer-employee relationships. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The Commission 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 allegations do not rise to the level of 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. *Id.*

NOW, THEREFORE, it is

ORDERED

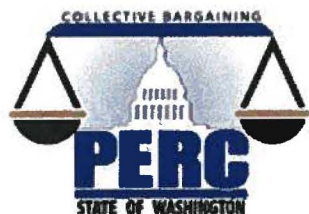
The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of July, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JESSICA J. BRADLEY, Unfair Labor Practice Manager

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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12371 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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