

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KATHERINE CARTWRIGHT,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 132478-U-20

DECISION 13162-A - PECB

DECISION OF COMMISSION

Katherine Cartwright, the complainant.

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney Daniel T. Satterberg, for King County.

On January 17, 2020, Katherine Cartwright (complainant) filed an unfair labor practice (ULP) complaint against King County (employer). Cartwright alleged that the employer wrongfully discharged her for using sick leave, the employer violated the collective bargaining agreement, the employer denied her due process, the employer did not have just cause to terminate her employment, and the employer's actions were a retaliatory response to Cartwright seeking to have her supervisor changed and filing grievances. On January 30, 2020, Unfair Labor Practice Administrator Dario de la Rosa issued a deficiency notice explaining that the allegations of her complaint were outside the agency's jurisdiction and gave her 21 days to file an amended complaint.

On February 21, 2020, Cartwright filed a timely amended complaint. The allegations of the amended complaint included details about grievances she filed in 2016, 2018, and 2019. Cartwright alleged her discharge was in retaliation for protected activity, including filing grievances. On March 3, 2020, the ULP Administrator dismissed Cartwright's complaint because it does not allege facts within the jurisdiction of the Commission and the allegations are outside the six-month statute of limitations. Cartwright appealed.

On appeal Cartwright argued that the employer terminated her employment in retaliation for filing grievances. In her appeal brief, Cartwright alleged that the employer refused to provide information, unilaterally changed the contract, violated her due process rights, and did not have just cause under the collective bargaining agreement to terminate her employment. Cartwright alleged violations of the Washington State paid sick leave laws and the King County Code.

The employer filed an appeal brief. The employer argued that events Cartwright alleged in the complaint and amended complaint occurring before July 17, 2019, are untimely. The employer argued Cartwright's complaints do not state a claim over which the Commission has jurisdiction.

On May 27, 2020, Cartwright filed a reply brief. WAC 391-45-350 does not provide an opportunity to file reply briefs. Accordingly, we did not consider the reply in reaching our decision.

ISSUE

The issue before the Commission is whether the complaint states a cause of action, or in other words, whether the complainant has alleged sufficient facts to proceed to hearing. Assuming all facts are true and provable, we find that the complaint and amended complaint allege sufficient facts within the Commission's jurisdiction to find a cause of action. Many of the allegations contained in the complaints are outside the Commission's jurisdiction or are matters over which Cartwright lacks standing to pursue. We issue a narrow cause of action for the employer terminating Cartwright's employment in reprisal for filing grievances. Cartwright bears the burden of proof in the hearing.

BACKGROUND

Katherine Cartwright was a coach operator for King County Metro Transit. Cartwright filed grievances in 2016, 2018, and 2019.¹ In May 2019, some of her grievances were pending.² In May 2019, Base Chief Jeff Berg gave Cartwright a “See Me” slip. On June 8, 2019, the employer notified Cartwright of an investigatory meeting.³ The employer terminated Cartwright’s employment on July 22, 2019.⁴

ANALYSIS

Applicable Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. All facts are assumed to be true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee’s exercise of statutorily protected rights. RCW 41.56.140(1); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a

¹ Compl. 1 ¶ 2, 8 ¶ 11, 32; Am. Compl. 1–2, 24–25.

² Compl. 8.

³ Am. Compl. 10 ¶ 3.

⁴ Compl. 1 ¶ 1.

discrimination case. To prove discrimination, the complainant must first establish a prima facie case by showing that

1. The employee participated in protected activity 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 protected activity and the employer's action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. 333, 348–349 (2014); *Educational Service District 114*, Decision 4361-A. Ordinarily an employee may use circumstantial evidence to establish a prima facie case of discrimination because employers do not typically announce a discriminatory motive for their actions. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46, 69 (1991); *Clark County*, Decision 9127-A (PECB, 2007).

Application of Standards

Many of the Allegations Are Outside of the Commission's Jurisdiction

The preliminary ruling stage is an opportunity for the Unfair Labor Practice Administrator to determine whether the facts of a complaint state a cause of action that can be redressed by the statutes the Commission administers. *King County*, Decision 9075-A (PECB, 2007). The name “Public Employment Relations Commission” is sometimes interpreted to imply a broader scope of authority than the legislature conferred upon the agency. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Not all employment disputes fall within the agency's jurisdiction. *Id.* Indeed, we are limited to resolving disputes between public employers, public employees, and unions representing those employees arising under Washington's collective bargaining laws. *Id.*

The employer argued that Cartwright's complaint does not state a claim within the Commission's jurisdiction. Cartwright alleged violations of her right to use sick leave, violations of other Washington State laws, and violations of the King County Code. The Commission does not have jurisdiction over those statutes or the King County Code, or to decide whether the employer violated Cartwright's right to due process.

Nor is an unfair labor practice proceeding the appropriate forum to determine whether the employer had just cause to terminate Cartwright's employment. Cartwright alleged the collective bargaining agreement between the employer and union limited the employer's ability to terminate her for an illness. Alleged violations of the collective bargaining agreement must be remedied through the grievance procedure in the agreement. The Commission does not have jurisdiction to enforce purely contractual rights. *Pierce County*, Decision 1671-A (PECB, 1984).

Any alleged violations of statutes the Commission does not administer (including the King County Code, due process, and the collective bargaining agreement) are not before the Commission or the Examiner. Accordingly, such allegations would not be proper evidence should a hearing in this matter occur.

Cartwright Lacks Standing to Pursue Refusal to Bargain Allegations

Cartwright does not have standing to pursue allegations that the employer unilaterally changed the collective bargaining agreement or refused to provide information. Cartwright alleged the employer unilaterally changed the collective bargaining agreement and failed to provide information. The duty to bargain exists only between the employer and the organization having status as the exclusive bargaining representative of the employees, and the right to information under chapter 41.56 RCW stems from the collective bargaining relationship. RCW 41.56.030(4); *Renton School District (United Classified Workers Union, Local 1)*, Decision 6300-A (PECB, 1998). Individual employees do not have standing to file refusal to bargain unfair labor practice complaints. *Id.* Employees are "in the position of 'third party beneficiaries' in the bargaining relationship." *Grant County*, Decision 2703 (PECB, 1987). The enforcement of unilateral change rests with the union. The obligation and duty to provide information stems from the relationship between the union and employer under the collective bargaining statutes. Employees may request

information under the public records act; however, the Commission does not have jurisdiction to enforce the public records act. Therefore, Cartwright does not have standing with respect to the allegations that the employer unilaterally changed the collective bargaining agreement or withheld information. Accordingly, we dismiss those allegations.

The Complaints Allege Sufficient Facts to Find a Cause of Action for Employer Discrimination

The Commission does not consider new facts offered on appeal. *King County*, Decision 11221-A (PECB, 2012). To the extent that Cartwright included facts in her appeal brief that were not in her complaint or amended complaint, we have not relied on those to determine whether a cause of action exists for employer discrimination.

At the preliminary ruling stage, we assume all facts are true and provable. While there may be gaps in any case, agency staff must act based on the allegations in the complaint. We evaluate whether the alleged facts are sufficient to establish a prima facie case showing discrimination. We do not conduct a full analysis of the legal principles; that is the job of an Examiner based on the facts presented at hearing, including any evidence offered by or defenses pled by the employer. The job of the Commission or Unfair Labor Practice Administrator is to determine whether the complainant alleged sufficient facts to proceed to hearing.

The employer argues that the complaint is untimely. The employer asserts that the gravamen of the complaint arises from Berg directing Cartwright to meet with him on July 3, 2019, and a subsequent investigation. A cause of action will only be found for events occurring within six months before the filing of the complaint with the Commission. RCW 41.56.160(1). Events outside the statute of limitations may be relevant background information admissible to establish the background leading to the complained-of conduct. *State – Ecology*, Decision 12732-A (PSRA, 2017). The employer is correct that many of the alleged facts occurred outside of the statute of limitations. However, as alleged, the employer's termination of Cartwright's employment occurred within the six-month statute of limitations. That termination forms the basis for the cause of action. Other facts outside the six-month statute of limitations may be relevant to provide context and background for the alleged unlawful termination, such as facts related to Cartwright's

protected activity. Based on the facts alleged, the complaint is timely for events occurring on or after July 17, 2019.

Individual employees have standing to allege interference or discrimination violations. *South Whidbey School District*, Decision 11134-A (EDUC, 2011). Cartwright alleged the employer terminated her in retaliation for filing grievances.⁵ Cartwright alleged sufficient facts to find a cause of action for employer discrimination. It is on that limited grounds that we issue a preliminary ruling.

CONCLUSION

Assuming the facts pled are true and provable, the complaints state a cause of action for discrimination in retaliation for filing grievances. All other allegations are dismissed. Any hearing shall be limited to this issue. The complainant is responsible for establishing the facts alleged at the hearing.

ORDER

1. The Order of Dismissal issued by Unfair Labor Practice Administrator Dario de la Rosa is VACATED.
2. The amended complaint charging an unfair labor practice filed in this matter has been reviewed under WAC 391-45-110. The allegations concern:

Employer discrimination in violation of RCW 41.56.140(1) within six months of the date the complaint was filed by discriminating against Katherine Cartwright for filing grievances.

⁵ Compl. 1 ¶ 2; Am. Compl. 2.

3. The employer shall file and serve its answer to the allegations listed in paragraph 2 of this order within 21 days following the date of this order.

ISSUED at Olympia, Washington, this 11th day of June, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner



RECORD OF SERVICE

ISSUED ON 06/11/2020

DECISION 13162-A - 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 132478-U-20

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