

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARIBEL RIVERA,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 134206-U-21

DECISION 13379 - PSRA

ORDER OF DISMISSAL

Maribel Rivera, the complainant.

Cheryl L. Wolfe, Senior Counsel, Attorney General Robert W. Ferguson for the Washington State Department of Children, Youth, and Families.

On May 20, 2021, Maribel Rivera (complainant) filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on June 17, 2021, 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 alleged the following:

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by terminating Maribel Rivera for unidentified activities protected by chapter 41.56 RCW.

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so derivative interference in violation of RCW 41.80.110(1)(e)] on an unidentified date, by breaching its good faith bargaining obligations in unidentified actions.

The complaint does not describe facts that could constitute a discrimination or refusal to bargain violation within the Commission's jurisdiction.

BACKGROUND

Maribel Rivera was a CPS investigator for the Washington State Department of Children, Youth, and Families (employer) and was represented by the Washington Federation of State Employees (union). On November 20, 2020, Rivera was terminated. On an unidentified date, Rivera contacted the Yakima Prosecutor's Office to learn about its legal practices. The employer had initiated an investigation after it learned that Rivera had reached out to a governmental agency for clearance about the agencies' judicial and legal process. Prior to contacting the Yakima Prosecutor's Office, Rivera alleges there were no concerns of employee misconduct related to Rivera.

ANALYSIS

Discrimination

Applicable Legal Standard

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 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 lacked facts necessary to allege a discrimination violation. The complaint did not include facts describing how Rivera participated in activity protected by chapter 41.80 RCW or communicated an intent to do so. The complaint does allege that Rivera was terminated, and thus

deprived of an ascertainable right. The complaint lacks facts on how the termination was causally connected to protected activity. Rivera did not file an amended complaint. Because the complaint lacks facts necessary to allege a discrimination violation, the complaint must be dismissed.

Refusal to Bargain

The complaint also alleges refusal to bargain violation. An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000) (citing *Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District*, Decision 5979 (PECB, 1997)). Only the parties to the collective bargaining relationship (the union or the employer) can file a refusal to bargain unfair labor practice case.

The union is the only party with standing to file and pursue refusal to bargain claims against an employer. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011). Bargaining in bad faith is a type of refusal to bargain a case that falls under RCW 41.80.110(1)(e). The exclusive bargaining representative of the complainant would need to be the party filing a complaint alleging that the employer refused to bargain. Because Rivera is not the exclusive bargaining representative, Rivera cannot file a complaint for a refusal to bargain violation. Thus the complaint must be dismissed.

Numbered Paragraphs

In addition to describing facts that could constitute a discrimination or refusal to bargain violation, the complaint did not contain numbered paragraphs. Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant did not number each of the paragraphs in the statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

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 20th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Handwritten signature of Emily K. Whitney in cursive script.

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 07/20/2021

DECISION 13379 - PSRA 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 134206-U-21

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

CHERYL L. WOLFE
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE STE 100
SPOKANE, WA 99201-1106
cheryl.wolfe@atg.wa.gov

PARTY 2: MARIBEL RIVERA

REP BY: MARIBEL RIVERA
1611 WILLOW ST
YAKIMA, WA 98902
papa.2000@yahoo.com