

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NHAN CAO,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,

Respondent.

CASE 134393-U-21

DECISION 13427 - PSRA

ORDER OF DISMISSAL

Nhan Cao, complainant.

Janelle Peterson, Assistant Attorney General, Attorney General Robert W. Ferguson for the Washington State Department of Social and Health Services.

On August 16, 2021, Nhan Cao (complainant) filed an unfair labor practice complaint against the Washington State Department of Social and Health Services (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on September 9, 2021, notified Nhan Cao that a cause of action could not be found at that time. Nhan Cao 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 Nhan Cao. 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.

ISSUE

The complaint allege the following:

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)(a)] within six months of the date the complaint was filed, by providing redacted information to Nhan Cao's information request.

The complaint lacks facts alleging a failure to provide information violation within the Commission's jurisdiction. The complaint is dismissed.

BACKGROUND

Nhan Cao worked for DSHS Developmental Disabilities Administration at the Washington State Department of Social and Health Services (employer) and was represented by the Washington Federation of State Employees (union). On April 16, 2021, the employer terminated Nhan Cao. On an unidentified date, both Nhan Cao and the union requested information from the employer. The employer allegedly sent some, but not all of the requested information. The information provided included redacted clients' names. The employer refused to remove the redactions in the information.

ANALYSISProvide information*Applicable Legal Standard*

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 28B.52.073(1)(e).

The duty to bargain includes an obligation to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue*

v. International Association of Fire Fighters, Local 1604, 119 Wn.2d 373 (1992). The flow of information between the parties must continue during the parties' preparation for interest arbitration. *City of Clarkston*, Decision 3246 (PECB, 1989).

Application of Standard

The complaint alleges the employer did not provide information to the individual employee. Failure to provide information allegations are types of refusal to bargain allegations. 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. Nhan Cao was provided an opportunity to correct the deficiency. Nahn Cao did not file an amended complaint correcting the deficiency. Thus the complaint must be dismissed.

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 2nd day of November, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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 11/02/2021

DECISION 13427 - 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 134393-U-21

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