

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARQUES JOHNSON,

Complainant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE 132545-U-21

DECISION 13352-A - PSRA

DECISION OF COMMISSION

*Marques Johnson*, the complainant.

*Christina L. Thacker*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On February 14, 2020, Marques Johnson (complainant) filed an unfair labor practice complaint alleging the employer interfered with employee rights and discriminated against him. The complainant alleged the employer interfered with employee rights by reposting a position the employer told the union representative it would not fill approximately one month after the union settled Johnson's grievance. The complainant further alleged that the employer discriminated against Johnson when it did not select him to fill the vacant Campus Security Sergeant position.

After reviewing the complaint, the Unfair Labor Practice Administrator issued a preliminary ruling for employer interference in violation of RCW 41.80.110(1)(a) and employer discrimination in violation of RCW 41.80.110(1)(c).

Examiner Michael Snyder conducted a hearing. The Examiner concluded that the employer neither interfered with employee rights nor discriminated against Johnson. *University of Washington*, Decision 13352 (PSRA, 2021). At hearing, the complainant presented evidence that the employer told the union the employer would not repost the Campus Security Sergeant position. *Id.* at 6. The complainant argued this misrepresentation interfered with employee rights in violation of

RCW 41.80.110(1)(a). The Examiner concluded that, while not conducive to a productive relationship, the employer did not interfere with employee rights when the employer did not tell the union it planned to repost the Campus Security Sergeant position. *Id.* at 12–13. Further, the union’s reliance on the employer’s inaccurate statements to Johnson’s detriment and settling of Johnson’s grievance was not an interference violation. *Id.* With respect to the discrimination allegation, the Examiner concluded that the complainant did not establish a causal connection between the complainant’s protected activity and the employer’s decision to hire a different applicant in 2019. *Id.* at 14–15. Assuming, for argument, that the complainant established a prima facie case of discrimination, the Examiner concluded that the employer’s articulated legitimate, nondiscriminatory reason for not hiring the complainant was neither pretextual nor substantially motivated by union animus. *Id.* at 17.

The complainant appealed. The parties filed briefs.

### ISSUE

The issue before the Commission is whether substantial evidence supports the Examiner’s conclusions that the employer did not interfere with employee rights when the employer told the union it would not repost the Campus Security Sergeant position and that the employer did not discriminate against Johnson when it did not select him for the Campus Security Sergeant position. We affirm the Examiner. Substantial evidence supports the Examiner’s findings of fact, which in turn support the conclusions of law that the employer did not interfere with employee rights in violation of RCW 41.80.110(1)(a) and did not discriminate against Johnson in violation of RCW 41.80.110(1)(c).

### ANALYSIS

#### Applicable Legal Standards

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 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).

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. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

### CONCLUSION

The allegations of this complaint arise from the employer's conduct during the grievance process. While the parties were actively attempting to settle the grievance, the employer's negotiator told the union representative that the employer would not fill the Campus Security Sergeant position. The evidence presented at hearing confirms that the employer in fact intended to fill the vacant position. Such misrepresentations are not conducive to fostering a collective bargaining relationship that leads to long-lasting trust and effective dispute resolution. That said, the employer misrepresenting whether it would fill the Campus Security Sergeant position did not interfere with employee rights in violation of RCW 41.80.110(1)(a). The complainant's recourse was through the parties' grievance procedure and not the remedial provisions of chapter 41.80 RCW. The Examiner was correct in concluding that, absent a direct impact on employees' statutory collective bargaining rights, it is not the role of the Commission to police the truth or veracity of statements made by parties during grievance settlement discussions through the interference provisions of Washington State's Personnel System Reform Act (PSRA).

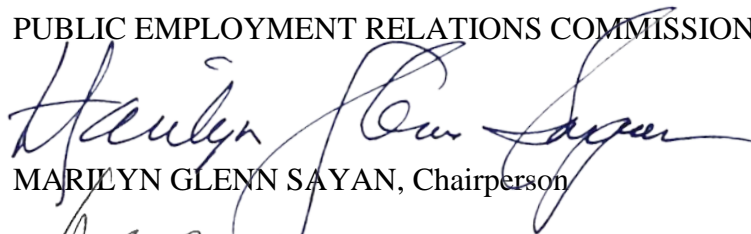
We have reviewed the record. Substantial evidence supports the Examiner's findings of fact. The findings of fact support the Examiner's conclusions of law. We affirm the Examiner.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Michael Snyder are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 27th day of January, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner

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.



# RECORD OF SERVICE

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ISSUED ON 01/27/2022

DECISION 13352-A - PSRA 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 132545-U-20

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