

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GILA BURTON-CURL,

Complainant,

vs.

SEATTLE COLLEGES,

Respondent.

CASE 137826-U-23

DECISION 13762-A - CCOL

DECISION OF COMMISSION

Gila Burton-Curl, the complainant.

H. Bruce Marvin, Assistant Attorney General, Attorney General Robert W. Ferguson, for Seattle Colleges.

SUMMARY OF DECISION

The issue is whether the unfair labor practice (ULP) complaint filed by Gila Burton-Curl against Seattle Colleges states a cause of action. We conclude it does not. WAC 391-45-050 requires a party filing a complaint to complete the unfair labor practice filing form and include a clear and concise statement of the facts constituting the alleged unfair labor practices. Burton-Curl submitted a Google Drive link to documents but did not direct the agency to a written statement of facts. A party does not satisfy the requirement to provide a clear and concise written statement of allegations by submitting a link to documents or filing exhibits or evidence with the agency. We dismiss the complaint.

PROCEDURAL BACKGROUND

On March 23, 2023, Burton-Curl filed unfair labor practice complaints against Seattle Colleges (case 136329-U-23) and the American Federation of Teachers Washington (case 136330-U-23). An Unfair Labor Practice Administrator dismissed the complaints for failure to state a cause of action. *Seattle Colleges*, Decision 13681 (CCOL, 2023); *Seattle Colleges*, Decision 13682 (CCOL, 2023). Burton-Curl did not appeal the dismissal of the complaints. The agency closed the cases on August 2, 2023.

On October 30, 2023¹, Burton-Curl filed 34 pages of documents, including an unfair labor practice complaint form and a Google Sites page. None of the documents submitted were identified as a complaint or included numbered paragraphs with a clear and concise statement of the facts alleged to constitute an unfair labor practice.

On November 1, 2023², the agency received an email from Burton-Curl containing a Google Drive folder link. The link was titled “PERC – Seattle Colleges Complaint 136329-U-23 Exhibits.” Agency staff downloaded all the files in the Google Drive folder and added them to the case file. The files totaled 1,881 pages and included two audio files and one video file.

On November 3, 2023, Burton-Curl filed an email with the subject “137826-U-23 Seattle Colleges/Gila Burton-Curl -- 2011 - Website Deactivate on False Allegations’.” The email included three links. Agency staff responded to Burton-Curl that they were unable to access one of the links and requested Burton-Curl attach a pdf. Burton-Curl responded with email correspondence from August 1, 4, and 9, 2011. The attachments did not include a written complaint.

On November 14, 2023, the Unfair Labor Practice Administrator issued a deficiency notice. In the deficiency notice, the ULP Administrator explained that a statement of facts was required and that the complaint, as submitted, did not meet this requirement. Finally, the ULP Administrator provided 21 days for the complainant to file an amended complaint and explained that, absent the complainant filing an amended complaint, the case would be dismissed in a published decision.

The ULP Administrator dismissed the complaint on December 19, 2023, because Burton-Curl had not cured the deficiencies. *Seattle Colleges*, Decision 13762 (CCOL, 2023). The complainant did not submit a detailed statement of facts explaining the allegations against the

¹ Burton-Curl sent the email on Sunday, October 29, 2023, at 8:14 p.m. Under WAC 391-08-120(5), documents received by the agency after 5:00 p.m. are considered filed on the following business day.

² Burton-Curl sent the email on October 31, 2023, at 11:44 p.m.

employer. *Id.* at 2. While Burton-Curl filed documents, in the absence of a statement of facts explaining how the documents demonstrated an unfair labor practice, the complaint did not state a cause of action. *Id.* at 3.

On January 8, 2024, Burton-Curl appealed. The appeal included five numbered paragraphs identifying the employer, the union, the complainant, the effective dates of the collective bargaining agreement, and new factual allegations. On January 22, 2024, Burton-Curl filed an appeal brief. The brief contained a section entitled “Statement of Facts” and identified a legal standard. On February 5, 2024, Seattle Colleges filed a response brief urging dismissal.

On February 23, 2024, Burton-Curl filed a request for oral argument. On March 11, 2024, the Commissioners denied the request for oral argument.

ANALYSIS

A Party Filing an Unfair Labor Practice Complaint Must File a Written Statement of Facts That Complies with the Commission’s Rules

In unfair labor practice proceedings before the Commission, 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)). To meet their obligation, the complainant merely must provide “a simple, concise statement of the claim and the relief sought.” *Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 352 (2006) (citing CR 8(a)); *see also* WAC 391-45-050(2) (the Commission’s requirement of “notice pleading”). Thus, to meet the burden of pleading, the Commission requires a complainant to file an unfair labor practice complaint form and, “in separate numbered paragraphs,” provide a clear and concise statement of the facts constituting the alleged unfair labor practice. WAC 391-45-050; *Apostolis v. City of Seattle*, 101 Wn. App. 300, 306-307 (2000). *City of Seattle*, Decision 4057-A (PECB, 1993).

Complainants must allege facts addressing the basic elements of a cause of action. *Kitsap County*, Decision 12022-A (PECB, 2014). A complainant must describe the facts with sufficient clarity for agency staff to determine whether a cause of action exists “and then sufficient to put the respondent on notice of the charges that it will be expected to” defend against. *Thurston Fire*

District 3, Decision 3830 (PECB, 1991). Thus, for example, those facts must include the time, place, date, and participants in all occurrences. WAC 391-45-050(2)(a). The agency staff reviewing the complaint are not empowered “to fill in gaps in a complaint.” *City of Tacoma*, Decision 4053-B (PECB, 1992); *South Whidbey School District*, Decision 10880-A (EDUC, 2011) (citing *Jefferson Transit Authority*, Decision 5928 (PECB, 1997)). In other words, a complainant must connect the dots by alleging sufficient facts that would support finding a violation and identifying the violation alleged.

In the October 30, 2023, submission, Burton-Curl filed the required unfair labor practice complaint form but did not include a written statement of the facts. When the ULP Administrator notified Burton-Curl of this deficiency, Burton-Curl did not respond to the deficiency notice. The evidence Burton-Curl filed was not a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time, place, date, and participants in all occurrences. WAC 391-45-050(2)(a). Therefore, we conclude that Burton-Curl did not meet the burden of pleading, and the filings did not meet the requirements of WAC 391-45-050(2).

The Complaint Does Not State a Cause of Action

In the notice of appeal and appeal brief, Burton-Curl alleged new facts that were not alleged to the ULP Administrator. The Commission does not allow parties to bring forth new facts or claims on appeal. *King County*, Decision 11221-A (PECB, 2012); *King County (Amalgamated Transit Union Local 587)*, Decision 8630-A (PECB, 2005) (citing *Tacoma School District (Tacoma Education Association)*, Decision 5465-E (EDUC, 1997)). The Commission relies only on those facts alleged in the complaint and amended complaint. *King County*, Decision 11221-A. The Commission has not considered the new factual allegations Burton-Curl made in the notice of appeal and appeal brief in concluding that a cause of action does not exist.

When the ULP Administrator issued the deficiency notice, Burton-Curl did not respond. Burton-Curl did not point the ULP Administrator to any specific document in the extensive documents filed with the agency that purported to be a written complaint. Similarly, on appeal, Burton-Curl did not point the Commission to a document purportedly filed as a written complaint complying with WAC 391-45-050(2).

Nonetheless, within the 1,881 pages of documents, agency staff located a document entitled “South Seattle College PERC Complaint.”³ Upon examination, this document contained 10 numbered paragraphs. The document alleged incidents occurring from October 5, 2022, through March 10, 2023. None of the alleged facts occurred within the six-month statute of limitations from the date the complaint was filed on October 30, 2023. The allegations are not within the Commission’s jurisdiction. Burton-Curl did not satisfy the burden to respond to the deficiency notice and did not clearly identify and file the written complaint. The complaint does not state a cause of action for violations within the Commission’s jurisdiction.

ORDER

The order of dismissal issued by Unfair Labor Practice Administrator Dario de la Rosa is AFFIRMED.

ISSUED at Olympia, Washington, this 2nd day of May, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK BUSTO, Commissioner



ELIZABETH FORD, 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.

³ The document was on page 1,864 of the 1,881 pages that agency staff downloaded from the Google Drive folder.