STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| GILA BURTON-CURL,<br>Complainant,<br>vs.<br>SEATTLE COLLEGES,<br>Respondent. | CASE 139356-U-24<br>DECISION 13944 - CCOL<br>ORDER OF DISMISSAL |

*Gila Burton-Curl*, the complainant.

*Jennifer Dixon*, Vice Chancellor, Human Resources, for Seattle Colleges.

On July 12, 2024, Gila Burton-Curl (complainant) filed an unfair labor practice complaint against Seattle Colleges (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on July 18, 2024, notified Burton-Curl that a cause of action could not be found at that time. Burton-Curl was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

It does not appear that Burton-Curl filed a separate amended complaint to case 139356-U-24. On August 19, 2024, Burton-Curl filed documents that identified an amended complaint for the case against the union (139355-U-24 amended complaint), additional emails, and documents. There was no additional amended complaint identified as the amended complaint filed against the employer (139356-U-24). Because it was unclear if the 139355-U amended complaint was also alleging violations against the employer, the original complaint and 139355-U-24 amended

[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.

complaint were reviewed regarding allegations against the employer. The Unfair Labor Practice Administrator dismisses the complaint and amended complaint for timeliness and failure to state a cause of action.

## ISSUE

The complaint and amended complaint allege the following:

> Unfair treatment from the Unit Administrator.
>
> Employer declined to respond to an individual grievance.

The complaint and amended complaint are dismissed because it lacks dates of occurrence to determine timeliness and does not allege facts related to a violation that may be raised before PERC.

## BACKGROUND

Gila Burton-Curl works as a Priority Hire List (PHL) part-time faculty at Seattle Colleges (employer). Burton-Curl is represented by AFT Washington (union). The employer and union are parties to a collective bargaining agreement effective January 1, 2020 - 2023.

In 2017, 2018, and 2019, the employer allegedly did not give Burton-Curl a wage increase. Burton-Curl filed a Labor and Industrial Unequal Pay complaint.

In July 2022, Burton-Curl was allegedly placed on administrative leave for high-risk employees as an American with Disabilities Act (ADA) accommodation. The employer used sick leave for wages and declined to offer an alternative benefit option for wage payment during the process of determining the ADA accommodation.

In October 2023, the union allegedly became aware of widespread systemic issue affecting salary, additional compensation, reimbursement, and benefits of faculty that allegedly originated in failures of the CTC link system, understaffing of the payroll department, inconsistent applications of salary schedules, and misinterpretations of negotiated raises.

On February 25, 2024, and March 10, 2024, the employer withheld wages.

In May 2024, Burton-Curl requested a modified work schedule as an ADA accommodation. The employer allegedly denied the request. On an unidentified date, a grievance was filed related to the PHL status and alleged misdistribution of schedule and courses.

On an unidentified date in the 2024 spring quarter, Burton-Curl alleges the union did not provide representation regarding an unidentified event. After the alleged failure, Burton-Curl made an ADA accommodation request for a consolidated three-day consecutive work schedule beginning in the summer. On an unidentified date, Burton-Curl submitted the request to Human Resources. The request was denied. The unit administrator sent an email to instructors requesting the instructor's summer availability. Burton-Curl's requested consolidated work schedule was not included in the email. Two other instructors were given a schedule "they email back to request." Burton-Curl allegedly holds PHL seniority. The complaint alleges the unit administrator treated Burton-Curl unfairly.

On an unidentified date, the union filed a wage-theft grievance on Burton-Curl's behalf.

The employer alleged declined to respond to an "individual grievance" filed "in accordance with 15.3 AFT agreement."

## ANALYSIS

### *Complaint Requirements, PERC's Jurisdiction & Timeliness*

#### Applicable Legal Standard

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 clear and concise statements 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. *Seattle Colleges*, Decision 13762-A (CCOL, 2024).

The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice, it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.

Application of Standard

On July 12, 2024, Burton-Curl filed a complaint which included two statements of fact. It appears that both statements of fact relate to allegations against the employer. On August 19, 2024, Burton-Curl submitted additional documents, emails, and the 139355-U-24 amended complaint. The statements of fact in the complaints and 139355-U-24 amended complaint lack some dates of events, lack facts necessary to support finding a violation, and allege facts outside PERC's jurisdiction. On July 18, 2024, PERC issued a deficiency notice notifying Burton-Curl that the allegations were not violations that may be raised before PERC.

It is not possible to determine the timeliness of those facts in the complaint that do not include specific dates of occurrence and the 139355-U-24 amended complaint includes many facts that are untimely. There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). The facts in the complaint and 139355-U-24 amended complaint that do not include specific dates of occurrence. The 2017, 2018, 2019, 2022, and 2023, dates identified in the 139355-U-24 amended complaint are not timely filed. Those facts that relate to events that occurred on or after January 12, 2024, are timely filed.

The complaint alleges that Burton-Curl was treated unfairly but does not provide what specific events relate to the unfair treatment. The Commission does not have the authority to remedy allegations of employment discrimination based on race, national origin, or other protected characteristics. *Ben Franklin Transit*, Decision 13649-A (PECB, 2023) (citing *Local 2916, IAFF v. Public Employment Relations Commission*, 128 Wn.2d 375, 379 (1995)); RCW 41.58.020 (empowering the Commission to prevent, minimize, and settle labor disputes); RCW 41.56.010 (stating that the intent of the statute is to provide a basis for employees to select, join, and be represented by labor organizations in matters concerning their employment). To the extent that Burton-Curl's alleged unfair treatment is related to a protected characteristic, those allegations are not within the Commission's jurisdiction and do not state a cause of action under chapter 41.56 RCW.

The complaint also alleges the employer refused to respond to a grievance. It is not clear which grievance this relates to as there are additional facts within the allegation that are not included in the rest of the document. It also appears Burton-Curl is alleging the employer violated the parties' grievance process in the collective bargaining agreement. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a

collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)). An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

Finally, the amended complaint alleges the employer withheld Burton-Curl's wages on February 25, 2024, and March 10, 2024. There are no facts alleging the withholding of wages is a violation related to the resolution of collective bargaining disputes between the employer and Burton-Curl. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District*, Decision 5086-A. Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A. There are no facts alleging there is a violation related to the resolution of collective bargaining disputes between the employer and Burton-Curl.

## ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for timeliness and failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of August, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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 08/27/2024

DECISION 13944 - CCOL 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 139356-U-24

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| EMPLOYER: | SEATTLE COLLEGES |
| REP BY: | JENNIFER DIXON<br>SEATTLE COLLEGES<br>1500 HARVARD AVE<br>SEATTLE, WA 98122<br>jennifer.dixon@seattlecolleges.edu |
| PARTY 2: | GILA BURTON-CURL |
| REP BY: | GILA BURTON-CURL<br>24271 229TH AVE SE<br>MAPLE VALLEY, WA 98038<br>gkcurl99@gmail.com |