STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MELANIE S. MCCRANEY, Complainant, vs. WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT, Respondent.	CASE 141517-U-24 DECISION 14041 - PSRA ORDER OF DISMISSAL

Melanie S. McCraney, the complainant.

Carmen Hargis-Villanueva, Assistant Attorney General, Attorney General Nick Brown, for Washington State Employment Security Department.

On November 27, 2024, Melanie McCraney (complainant) filed an unfair labor practice complaint against the Washington State Employment Security Department (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on December 19, 2024, notified McCraney that a cause of action could not be found at that time. McCraney 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 McCraney. 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 alleges the following:

Hostile Work Environment
General Discrimination Violations

The complaint is dismissed because it does not allege violations that can be filed with PERC.

BACKGROUND

McCraney is employed by the Washington State Employment Security Department and is a bargaining unit member of the Washington Federation of State Employees (union). McCraney is an Intake Supervisor and also a shop steward for the union.

On March 5, 2020, McCraney attended a supervisory academy. During the discussions at the academy McCraney's supervisor and other supervisors allegedly expressed hostility toward shop stewards. McCraney was the only shop steward in the discussion and felt marginalized and uncomfortable.

Since that time, McCraney's supervisor has allegedly treated McCraney as insignificant and has disempowered McCraney in her Intake Supervisor role. On unidentified dates, McCraney's supervisor has undermined McCraney's attempts to engage in collaborative activities with her peers and has questioned or halted McCraney's decisions for McCraney's team. McCraney's peers allegedly also created a hostile work environment on unidentified dates.

On July 17, 2023, McCraney informed her supervisor that she had spoken with the supervisor's manager about being treated differently. On October 19, 2023, McCraney filed a formal complaint against one of her peers based on a hostile work environment. On November 3, 2023, the October 19 complaint became an Equal Employment Opportunity Commission (EEOC) complaint.

On June 8, 2022, McCraney attempted to highlight to her supervisor that her peer was undermining her by directing McCraney's team to do the opposite of what McCraney had directed. The supervisor allegedly responded with, "The both of you could have done better." McCraney alleges the supervisor was protecting the peer over McCraney. McCraney's supervisor has also allegedly directed McCraney to communicate so that everyone feels heard and respected after McCraney's peer sent an email that sounded hostile. McCraney alleges the supervisor is protecting others because McCraney is a shop steward.

On January 8, 2024, McCraney raised a concern about pay inequity between two new staff members on McCraney's team. During the conversation McCraney's supervisor allegedly became offended when McCraney asked if one of the new staff members was white and expressed that she was hurt. McCraney allegedly expressed that she was trying to understand the reasoning behind the pay discrepancy. On June 8, 2024,[2] McCraney's supervisor allegedly sent an email to McCraney explaining that she had heard her and thanked her for the discussion. In an October 23, 2024, EEOC complaint investigation response, her supervisor allegedly had a different recollection of the events.

ANALYSIS

Timeliness & Statement of Facts Requirements

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1) governs the time for filing complaints.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. The six-month statute of limitations begins to run when the complainant

---

[2] The complaint states this date is the same date that the pay inequity issue was discussed. It is unclear if the date is January 8 or June 8.

knows, or should have known, of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)).

The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Renton*, Decision 12563-A (PECB, 2016) (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). Under the "discovery rule," the statute of limitations does not begin to run until the complainant, using reasonable diligence, would have discovered the cause of action. *U.S. Oil & Refining Co. v. State Department of Ecology*, 96 Wn.2d 85, 92 (1981). The doctrine of equitable tolling requires the exercise of reasonable diligence on the part of the complainant. *Adult Residential Care, Inc.*, 344 NLRB 826 (2005). The party asserting that equitable tolling should apply bears the burden of proof. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379 (2009). To prove that the statute should be tolled, the complainant would need to show deception or concealment of the facts forming the basis of the unfair labor practice complaint and the exercise of diligence by the complainant. *City of Renton*, Decision 12563-A *(*citing *Millay v. Cam*, 135 Wn.2d 193, 206 (1998)).

The Commission has also ruled that the statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025 (citing *City of Chehalis*, Decision 5040 (PECB, 1995)).

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(2); *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.

Complainants must number the paragraphs in the attached statement of facts. The requirements for filing a complaint charging unfair labor practices 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.

Application of Standard

Most of the dates in the complaint are outside the six-month statute of limitations and are untimely filed. There is one date, June 8, that may be within the six-month statute of limitations, but the same events were also alleged to have occurred on January 8, which would be outside the six-month statute of limitations. The complaint was filed on November 27, 2024. For the complaint to be timely filed, a violation would have had to occur between May 27, 2024, and November 27, 2024.

The complaint also alleges facts that do not include dates of occurrence or details of what occurred and who was involved. It just generally states that violations have occurred. These allegations should be detailed enough that the violations are explained. Agency staff cannot fill in the gaps.

Finally, the complaint is not written in numbered paragraph format. Numbered paragraphs are necessary so the respondent, the employer in this case, can respond to the allegations.

McCraney was provided an opportunity to correct the deficiencies and file an amended complaint. No amended complaint was filed, and the deficiencies were not corrected.

Allegations Outside PERC's Jurisdiction

Applicable Legal Standard

The complaint does not describe allegations that fit within the jurisdiction of the Commission. 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 (Tacoma Education Association)*, 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. *Id.*

The Commission only has jurisdiction over hostile work environment actions alleged to be in retaliation for protected union activity. It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions "as a threat of reprisal or force or a promise of benefit" associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

Application of Standard

The complaint contains hostile work environment allegations and general discrimination allegations. Discrimination allegations require the complainant to identify union activity that the complainant engaged in prior to the hostile work environment action, a deprivation of a right or status, and a causal connection between the union activity and the adverse action. The hostile work environment claims against the employer are not covered by PERC-administered statutes because they do not involve union activity or collective bargaining, and the alleged events occurred outside the six-month statute of limitations.

McCraney was provided an opportunity to correct the deficiencies and file an amended complaint. An amended complaint was not filed. Because the complaint alleges violations that cannot be filed with PERC, the complaint must be dismissed.

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). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by chapter 41.56 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. *Id.*

Application of Standard

The violations alleged are untimely filed. Even if they were timely, the complaint does not describe facts necessary to allege a discrimination violation before PERC. The complaint alleges McCraney was a shop steward but does not allege whether McCraney was engaged in protected activity. There are no facts alleging that McCraney was deprived of some ascertainable right, benefit, or status. Other than saying untimely events were related to McCraney being a shop steward, there is no allegation that an unidentified deprivation is related to union activity.

McCraney was provided an opportunity to correct the deficiencies and file an amended complaint. An amended complaint was not filed. Because the complaint does not include facts necessary to allege a discrimination violation within the Commission's jurisdiction, 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 10th day of February, 2025.

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.