

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NYLA MOORE-MCCREARY,

Complainant,

vs.

FRANKLIN PIERCE SCHOOL DISTRICT,

Respondent.

CASE 142099-U-25

DECISION 14118 - EDUC

ORDER OF DISMISSAL

*Alton McDonald*, President, New Century Justice Network, for Nyla Moore-McCreary.

*Lance Andree* and *F. Chase Bonwell*, Attorneys at Law, Porter Foster Rorick LLP for the Franklin Pierce School District.

On March 4, 2025, Nyla Moore-McCreary (complainant) filed an unfair labor practice complaint against the Franklin Pierce School District (employer). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on March 27, 2025, notified Moore-McCreary that a cause of action could not be found at that time. Moore-McCreary 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 Moore-McCreary. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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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 alleges the following:

Discrimination and hostile work environment claims

The complaint is dismissed because it lacks facts related to the types of violations that can be filed with PERC.

BACKGROUND

Nyla Moore-McCreary is an employee of the Franklin Pierce School District (employer) and is represented by the Franklin Pierce Education Association (union). On September 27, 2024, Moore-McCreary attended a meeting with the school principal, vice principal, and union president. During the meeting the parties discussed the resource room schedule and staff concerns. Moore-McCreary was notified that other staff members had filed 11 complaints against Moore-McCreary. The complaints alleged Moore-McCreary's demeanor was agitated and there was a lack of effective communication with other staff members. The parties also discussed the challenges with implementing the initial schedule.

On September 30, 2024, Moore-McCreary met with the union president, human resources director, and special education director. During the meeting Moore-McCreary presented a prepared statement outlining the incidents of discrimination and harassment Moore-McCreary had experienced. Moore-McCreary was also notified that the principal had reached out to human resources expressing concerns regarding the September 27 meeting.

On October 10, 2024, Moore-McCreary received the updated schedule and began implementing it on October 14, 2024.

On October 21, 2024, Moore-McCreary received an email from the principal outlining several concerns regarding Moore-McCreary's performance.

On November 21, 2024, human resources personnel placed Moore-McCreary on administrative leave. An investigation is pending.

## ANALYSIS

### Hostile Work Environment

#### *Applicable Legal Standard*

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 complaint does 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 (Tacoma Education Association)*, Decision 5086-A.

The Commission only has jurisdiction over hostile work environment allegations 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 alleges the employer created a hostile work environment. The complaint does not allege any protected union activity that Moore-McCreary was engaged in that would be related to hostile work environment claims PERC can hear. In order to have a discrimination or interference allegation the facts would have to show union activity, or communication to the employer an intent to do so, prior to the hostile work environment. Additionally, it would need to include a causal connection between the union activity and the adverse action. The hostile work environment claim against the employer described in the complaint is not covered by statutes administered by PERC because it does not involve union activity or collective bargaining.

Moore-McCreary was given an opportunity to correct the deficiency and no amended complaint was filed. 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 41.56.140(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. *Port of Tacoma*, Decision 4626-A.

*Application of Standard*

The complaint alleges Moore-McCreary has been discriminated against. PERC can only hear certain types of discrimination complaints that involve protected union activity. There are no allegations that Moore-McCreary participated in protected union activity or communicated to the employer an intent to do so. The complaint does allege that Moore-McCreary was placed on administrative leave. The complaint also does not allege that the administrative leave was related to the engagement of protected union activity.

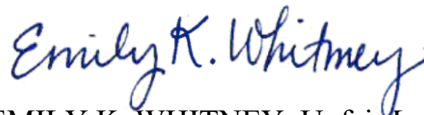
Moore-McCreary was provided an opportunity to correct the deficiency. No amended complaint was filed. Thus the complaint must be dismissed.

ORDER

The amended 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 22nd day of May, 2025.

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 5/22/2025

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DECISION 14118- EDUC has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: DEBBIE BATES

CASE 142099-U-25

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