STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GREGORY PARKER, Complainant, vs. SPOKANE TRANSIT AUTHORITY, Respondent.	CASE 127902-U-16 DECISION 12566 - PECB ORDER OF PARTIAL DISMISSAL
GREGORY PARKER, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	CASE 127903-U-16 DECISION 12567 - PECB ORDER OF DISMISSAL

On February 5, 2016, Gregory Parker (complainant) filed two identical unfair labor practice complaints—one against the Spokane Transit Authority (employer), which was assigned case number 127902-U-16, and one against the Washington State Council of County and City Employees (union), which was assigned case number 127903-U-16. The complaints were reviewed under WAC 391-45-110,[1] and a deficiency notice issued on February 29, 2016, indicated that it was not possible to conclude a cause of action existed at that time for some of the allegations of the complaints. The complainant was given a period of 21 days in which to file and serve amended complaints or face dismissal of the defective allegations. Nothing further has been received from the complainant.

[1] At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The complaint against the employer states causes of action for further case processing concerning the allegations of employer discrimination in reprisal for union activity since August 20, 2015. The employer must file and serve its answer to the discrimination allegations within 21 days following the date of this order. The remaining allegations against the employer appear to either be untimely filed or raise allegations that are not within the jurisdiction of the Commission and are dismissed. The complaint against the union is dismissed in its entirety.

ISSUES

The allegations of the complaints concern:

1. Employer interference with employee rights in violation of RCW 41.56.140(1) by denying Gregory Parker's right to union representation (*Weingarten* right) in connection with an investigatory interview on April 2, 2015.

2. Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] by:
    a. Issuing a written warning to Parker on April 10, 2015, in reprisal for union activities protected by Chapter 41.56 RCW.
    b. Issuing a letter of findings against Parker on August 20, 2015, in reprisal for union activities protected by Chapter 41.56 RCW.
    c. Issuing a performance evaluation stating that Parker is not meeting expectations on November 9, 2015, in reprisal for union activities protected by Chapter 41.56 RCW.
    d. Terminating Parker's employment on February 2, 2016, in reprisal for union activities protected by Chapter 41.56 RCW.

3. Union interference with employee rights in violation of RCW 41.56.150(1) by breach of its duty of fair representation in representing Parker.

4. Hostile workplace and harassment by coworkers and supervisors.

5. Retaliation for whistleblowing to the Washington State Department of Labor & Industries and violations of the Whistleblower Act.

6. Alleged violations of disciplinary timelines in the collective bargaining agreement (CBA).

BACKGROUND

Based on the facts alleged in the complaints, the complainant worked for the employer as a paratransit reservationist. On March 23, 2015, a coworker filed a complaint against the complainant. On April 2, 2015, the employer asked the complainant to sign and respond to the complaint. The complainant alleges that he expressed several times that he felt uncomfortable and wanted to know if he needed a union representative as this could lead to discipline. The employer told him that he did not need a union representative and that signing and responding to the complaint would not lead to discipline.

On April 10, 2015, the employer issued the complainant a written warning. When the complainant raised the fact that he had asked for a union representative at the April 2, 2015, meeting, his supervisor denied that a request had been made.

In a meeting on May 21, 2015, the complainant expressed to a group of colleagues that he intended to file a complaint against his supervisor for harassment, retaliation, and discrimination. On June 16, 2015, a confidential complaint was filed with the Washington State Department of Labor & Industries about a possibly hazardous worksite, verbally abusive customers, and supervisors that are alleged to bully and intimidate. During a July 16, 2015, meeting the complainant was publicly named as the person who filed the complaint.

On August 20, 2015, the employer issued a letter of findings against the complainant. The letter addressed a variety of allegations and accused the complainant of lying about asking for union representation. On September 17, 2015, the employer issued an action plan and list of expectations and solutions to the complainant.

On November 9, 2015, the complainant was given a 2015 performance evaluation stating he did not consistently meet expectations. The complainant was told that his employment would be in jeopardy if his performance did not improve.

On December 7, 2015, the employer was notified that the complainant had filed an unfair treatment and retaliation charge with the Washington State Human Rights Commission.

On December 24, 2015, the complainant received at least one official written complaint, and on January 18, 2016, he received a written reprimand for customer complaints and errors made between April and September 2015. The complainant alleges that the current CBA language states that any disciplinary action shall take place within 60 days of the occurrence or knowledge of the occurrence. The union filed a grievance over the written reprimand.

The complainant was advised by his union representative not to respond to the employer on his own, and the complainant and his union representative met with the supervisor of the complainant's immediate supervisor. On January 21, 2016, the complainant was put on administrative leave.

On February 1, 2016, the union made a request on behalf of the complainant for a severance package and health benefits if he were to voluntarily resign. On February 2, 2016, the complainant was informed that his employment was being terminated.

DISCUSSION

Six-Month Statute of Limitations Period

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 period 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).

Weingarten Allegation and April 10, 2015, Discrimination Allegation Are Untimely Filed

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaints were filed on February 5, 2016. In order to be timely, the complainant would have needed to describe events that took place on or after August 5, 2015.

According to the complaints, the complainant's investigatory interview with the employer occurred on April 2, 2015. The allegation that the employer interfered with employee rights in violation of RCW 41.56.140(1) by denying Parker's right to union representation (*Weingarten* right) in connection with the investigatory interview is dismissed because it was not timely filed. Similarly, the allegation that the employer issued a written warning to Parker on April 10, 2015, in reprisal for union activities was not timely filed. This information can be considered as background information about the complainant's involvement in protected union activities, but these allegations will not be evaluated as independent causes of action.

Duty of Fair Representation

Legal Standard

It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.56.150(1). The duty of fair representation originated with decisions of the Supreme Court of the United States holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944). The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the exclusive bargaining representative under a collective bargaining statute. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002), *citing City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3199-B (PECB, 1991).

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute and does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the

processing of contractual grievances. *Bremerton School District*, Decision 5722-A (PECB, 1997). While the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances, the Commission does process other types of "breach of duty of fair representation" complaints against unions. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *City of Redmond*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton*, Decision 1825 (PECB, 1984).

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington State Supreme Court adopted three standards to measure whether a union has breached its duty:

1. The union must treat all factions and segments of its membership without hostility or discrimination.

2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.

3. The union must avoid arbitrary conduct.

Analysis

The complainant does not state any specific reason for his belief that the union committed an unfair labor practice. There are no allegations of discriminatory or arbitrary conduct by the union. Based on the facts alleged in the complaints, it appears that the union filed a grievance over the January 18, 2016, written reprimand. The complaints also indicate that the union attempted to negotiate a settlement offer with the employer over Parker's termination. Based on the facts alleged in the complaints, it is not possible to conclude that any cause of action for further case processing against the union exists.

No Jurisdiction Over Whistleblower Protection

The complaints also allege violations of retaliation for filing a workplace safety complaint with the Washington State Department of Labor & Industries over a possibly hazardous worksite, verbally abusive customers, and supervisors that are alleged to bully and intimidate. The Public Employment Relations Commission does not have the authority to address alleged violations of the State Employee Whistleblower Protection laws. The Washington State Human Rights Commission has jurisdiction over whistleblower allegations of workplace reprisal or retaliatory action.

No Jurisdiction Over Civil Rights Violations

The complaints also make references to violations of the complainant's civil rights. The Commission does not have jurisdiction to enforce civil rights laws. The Washington State Human Rights Commission has jurisdiction over allegations of employment discrimination in the state of Washington. The Equal Employment Opportunity Commission is a federal agency that also has jurisdiction over discrimination. Lastly, civil rights cases can be pursued in the courts.

No Jurisdiction Over Alleged Violations of Collective Bargaining Agreements

The complaints allege violations of disciplinary timelines contained in the CBA. 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.

CONCLUSION

The complaint against the employer states causes of action for further case processing concerning the allegations of employer discrimination in reprisal for union activity since August 20, 2015. The remaining allegations in the complaints are dismissed because they either were untimely filed or raise allegations that are not within the jurisdiction of the Commission.

ORDER

1. Assuming all of the facts alleged against the employer in Case 127902-U-16 to be true and provable, the complaint states a cause of action, summarized as follows:

> Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] by:
>
> a. Issuing a letter of findings against Parker on August 20, 2015, in reprisal for union activities protected by Chapter 41.56 RCW.
> b. Issuing a performance evaluation stating that Parker is not meeting expectations on November 9, 2015, in reprisal for union activities protected by Chapter 41.56 RCW.
> c. Terminating Parker's employment on February 2, 2016, in reprisal for union activities protected by Chapter 41.56 RCW.

2. The allegations against the employer described in paragraph 1 of this order will be the subject of further proceedings under Chapter 391-45 WAC.

The employer shall:

> File and serve its answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order.[2]

An answer shall:

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[2] The complainant was directed to file an amended complaint with numbered paragraphs but failed to do so. Commission staff will give the employer latitude in the way it structures its answer in light of the lack of numbered paragraphs in the statement of facts.

a. Specifically admit, deny, or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The remaining allegations of the complaint against the employer in Case 127902-U-16 are DISMISSED for failure to state a cause of action.

4. The complaint charging unfair labor practices against the union in Case 127903-U-16 is DISMISSED in its entirety for failure to state a cause of action.

ISSUED at Olympia, Washington, this 20th day of April, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, and paragraph 4 of 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

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RECORD OF SERVICE - ISSUED 04/20/2016

DECISION 12566 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127902-U-16

EMPLOYER: ATTN:	SPOKANE TRANSIT AUTHORITY E SUSAN MEYER 1230 W BOONE AVE SPOKANE, WA 99201-2686 smeyer@spokanetransit.com (509) 325-6000
REP BY:	SHANNON E. PHILLIPS SUMMIT LAW GROUP PLLC 315 5TH AVE S STE 1000 SEATTLE, WA 98104-2682 shannonp@summitlaw.com (206) 676-7092
PARTY 2: ATTN:	GREGORY PARKER 1728 E COURTLAND AVE SPOKANE, WA 99207 parker298011@gmail.com (509) 434-8490

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RECORD OF SERVICE - ISSUED 04/20/2016

DECISION 12567 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127903-U-16

EMPLOYER: SPOKANE TRANSIT AUTHORITY
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