STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHORELINE COMMUNITY COLLEGE, Employer.	
KRISTIN MARRA, Complainant, vs. SHORELINE COMMUNITY COLLEGE FEDERATION OF TEACHERS, Respondent.	CASE 128115-U-16 DECISION 12609 - CCOL ORDER OF DISMISSAL

On April 13, 2016, Kristin Marra (complainant) filed an unfair labor practice complaint with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Shoreline Community College Federation of Teachers (union) as the respondent. The employer, Shoreline Community College, is not a party to the issues before the Commission in this case. However, the Commission uses the name of the employer to establish jurisdiction and identify each case. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on May 13, 2016, indicated that it was not possible to conclude a cause of action existed at that time.

The complainant was given an initial period of 21 days in which to file and serve an amended complaint or face dismissal of the case. The complainant motioned for an extension of the deadline to file an amended complaint. The request was granted and the complainant was given an extended filing deadline of July 5, 2016.

[1] At this stage of the proceedings, all of the facts alleged in the 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.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

ISSUES

The allegations of the complaint concern:

> Union interference with employee rights in violation of RCW 28B.52.073(2)(a) by breaching its duty of fair representation on undisclosed dates by:
>
> 1. Union president DuValle Daniel making false, derogatory, and defamatory statements to college administrators and faculty about bargaining unit employee Kristin Marra, in reprisal for Marra in her position on the Appointment Review Committee (ARC) not supporting the granting of tenure to probationer Nancy Felke.
>
> 2. Engaging in a pattern of unspecified egregious, arbitrary, and capricious conduct toward Marra and other unidentified members of the ARC.
>
> Union refusal to bargain in violation of RCW 28B.52.073(2)(d) [and if so derivative interference in violation of RCW 28B.52.073(2)(a)] since an unspecified date by unilaterally changing its position on tenure review demanding that the ARC change its tenure review process and make an improvement plan for Felke.

The complaint does not state a cause of action for further case processing under RCW 28B.52.073. The complaint is missing necessary information and has several defects.

DISCUSSION

Complaint is Missing Dates and Specific Descriptions of Occurrences

The complaint alleges that incidents took place but does not contain dates or specific descriptions of each alleged violation. WAC 391-45-050(2) requires the complainant to include "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." Complaints must contain the dates of occurrences and identify participants so that the respondent can look into the allegations and respond.

Timeliness

Unlike the other collective bargaining statutes administered by the Commission, Chapter 28B.52 RCW does not contain a provision limiting the processing of complaints to unfair labor practice allegations occurring more than six months before the filing of the complaint. *Bates Technical College*, Decision 5575-B (CCOL, 1996). Initially, none of the statutes administered by the Commission contained statutes of limitations. The six-month statutes of limitations for Chapter 41.76 RCW and Chapter 41.80 RCW were adopted in 2002; those for Chapter 41.56 RCW and Chapter 41.59 RCW were adopted in 1983.

Prior to 1983, in the absence of a statute of limitations, the Commission applied a two-year statute of limitations under RCW 4.16.130. *Municipality of Metropolitan Seattle*, Decision 1356-A (PECB, 1982); *see also, Shoreline Community College (Shoreline Community College Federation of Teachers)*, Decision 10675 (CCOL, 2010). The Legislature amended all statutes the Commission administers except Chapter 28B.52 RCW to provide six-month statutes of limitations. When asked on appeal to apply a six-month statute of limitations period to community college faculty, the Commission stated that it would not depart from established Commission precedent and alter the applicable statute of limitations when the Legislature has expressly declined to do so. *Green River College*, Decision 12528-A (CCOL, 2016).

In this case the complaint was filed on April 13, 2016, and would therefore be timely with regard to events that took place on or after April 13, 2014. The complaint makes vague allegations and lacks specific dates. Specific dates are necessary to preliminarily determine if the complaint appears to be timely filed.

Duty of Fair Representation

Legal Standard

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.

Each of these requirements represents a distinct and separate obligation.

Analysis

An employee claiming a breach of duty of fair representation has the burden to file a sufficient complaint and the burden of proof. The complainant must describe specific events, statements, or incidents in support of his or her complaint. These must include dates and the names of the people involved.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d at 375. There is no statutory requirement that a union must accomplish the goals of each bargaining unit member, and complete satisfaction of all represented employees is not expected. A union can rarely provide all things desired by all of the employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation.

A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member can prove the union violated rights guaranteed in statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). For example, the complaint alleges that the union violated its duty of fair representation by attempting to negotiate an improvement plan for a probationary employee, which it has not done in the past. This allegation describes employee dissatisfaction with the style of representation provided but does not state a cause of action for a violation of duty of fair representation. Similarly, the complaint alleges the union violated its duty of fair representation by publicly disagreeing with the recommendations of the ARC. The union is not obligated to agree or support all of the recommendations made by employees in the bargaining unit or the committees on which they serve.

The complaint makes a number of vague generalizations about false and defamatory statements by the union but does not describe any such statements in detail. The complaint also vaguely references the union not representing the complainant and other unnamed members of the ARC, but it does not describe any specific examples of such conduct. Specific descriptions of the alleged conduct and related facts are required to process unfair labor practice allegations. The Commission does not process complaints that contain only vague or anonymous allegations.

Unilateral Change – Refusal to Bargain

The complaint alleges the union unilaterally changed past practice by advocating for an improvement plan for a probationer and attempting to insert itself into the ARC process. This argument is not properly filed. An employee cannot file a unilateral change refusal to bargain complaint as an individual. *King County*, Decision 7139 (PECB, 2000), *citing Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District*, Decision 5979 (PECB, 1997). Only the parties to the collective bargaining relationship (the union or the employer) can file a refusal to bargain unfair labor practice case. The complainant, as an individual employee, is not qualified to file a case alleging union refusal to bargain in violation of RCW 28B.52.073(2)(d). In this case the employer is the only party with standing to file and pursue a complaint alleging union refusal to bargain.

CONCLUSION

The complaint does not describe specific instances of arbitrary, discriminatory, or bad faith conduct by the union within the statute of limitations period. The case is dismissed because none of the allegations of the complaint qualify for further case processing before the Commission.

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 4th day of August, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, Unfair Labor Practice Manager

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 08/4/2016

DECISION 12609 - CCOL has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 128115-U-16

EMPLOYER:	SHORELINE COMMUNITY COLLEGE
ATTN:	CHERYL ROBERTS 16101 GREENWOOD AVE N SEATTLE, WA 98133-5696 clroberts@shoreline.edu (206) 546-4552
PARTY 2:	KRISTIN MARRA
ATTN:	16101 GREENWOOD AVE N SEATTLE, WA 98133 kmarra@shoreline.edu (206) 546-4560
PARTY 3:	SHORELINE COMMUNITY COLLEGE FEDERATION OF TEACHERS
ATTN:	DUVALLE DANIEL 16101 GREENWOOD AVE N SEATTLE, WA 98133 dudaniel@comcast.net (206) 546-4679