

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GRAYS HARBOR COUNTY,

Employer.

JESSICA TORRES,

Complainant,

vs.

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES,

Respondent.

CASE 128791-U-17

DECISION 12695 - PECB

ORDER OF DISMISSAL

On February 15, 2017, Jessica Torres (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Washington State Council of County and City Employees (union or WSCCCE) as respondent. The public employer, Grays Harbor County, is not a party to this complaint. The name of the employer is used to identify the case and establish jurisdiction.

The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on March 17, 2017, indicated that the allegations failed qualify for further case processing. The deficiency notice explained the allegations lacked dates and elements of breach of duty of fair representation cause of action under Chapter 41.56 RCW.

The complainant was given a period of 21 days in which to file and serve an amended complaint. The complainant filed an amended complaint document on April 4, 2017.

The complaint and amended complaint allege:

---

<sup>1</sup> 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.

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation by:

1. In December 2014, union officials informing Torres that there was nothing the union could do about Torres' complaints about a hostile work environment.
2. Since November 2014, union officials talking with employer officials, after Torres had asked the union not to discuss her situation with the employer when she is not present.
3. Union officials negotiating changes to the CBA in response to the filing of a grievance.
4. Since 2014, assisting the employer by sharing information about union members.
5. Since September 2016, union officials refusing to investigate complaints and file grievances.

The unfair labor practice manager reviewed the complaint and amended complaint. Most of the allegations against the union appear to have taken place well outside of the statute of limitations period. The alleged facts regarding the interactions the complainant had with her union since August 15, 2016, do not describe conduct that even if true and provable could constitute an unfair labor practice violation. The allegations of the complaint are being dismissed for untimeliness and failure to state a cause of action within the jurisdiction of the Commission.

### BACKGROUND

According to the facts alleged in the complaints, Torres is employed by Grays Harbor County as a Community Health Worker I. Torres' job position is in a bargaining unit that is represented by WSCCCE.

The complaint against the union describes a variety of disagreements and dissatisfaction that Torres had with her union staff representative, dating back to 2012-2013. Torres argues that her union representative, Franks, made inappropriate comments about another union member in 2012-2013. Torres goes on to explain she felt it was unfair that the union did not do more to help a bargaining unit employee while that individual was going through chemotherapy treatment.

Torres makes a variety of arguments about how she thinks the union could have done a better job of representing her. The complainant points out frustrations with the way the union has handled some of its communications with the employer and objects to the union talking with the employer about matters involving her job position when she is not present. In December 2014 Torres

describes complaining to Franks about a hostile work environment. Torres alleges that Franks said there was nothing that could be done by the union because the complainant was not of a protected class. Torres describes not feeling supported by her union representative.

Torres had been active in the union and previously served as a shop steward and chapter chair. Torres had also helped a co-worker file a grievance in October 2015.

## DISCUSSION

### Timeliness- Six Month Statute of Limitations Period

#### *Legal Standard*

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 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 the equitable tolling doctrine 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).

### *Analysis*

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaint was filed on February 15, 2017. In order to be timely, the complainant needs to describe triggering events that took place on or after August 15, 2016.

Most of the allegations against the union appear to have taken place well outside of the statute of limitations period. The allegations regarding the interactions the complainant had with her union representative prior to August 15, 2016, are dismissed because they are untimely filed.

### 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 such claims, 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 is more than merely negligent; the union's conduct must be arbitrary, discriminatory, or in bad faith or be based on considerations that are irrelevant, invidious, or unfair. *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. *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 of fair representation:

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.

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.

#### *Analysis*

The complaint describes dissatisfaction with the union representative's decisions and actions, but lacks concrete examples or explanations of how the union's actions toward the complainant since August 15, 2016, were arbitrary, discriminatory, or in bad faith. Similarly, the complaint does not explain how the union's actions were based on considerations that are irrelevant, invidious, or unfair.

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 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).

The union is the exclusive bargaining representative of the complainant and by law has the right to negotiate with the employer about the complainant's terms and conditions of employment. The union has no obligation to honor an individual employee's request to be present every time the employer and union discuss matters that relate to the employee's employment.

The union's September 2016 decision not to file a grievance over a change to a job classification, when the union explained it thought the grievance would be untimely filed, does not describe a cause of action. Similarly there is nothing unlawful about a union representative telling a grievant that a particular grievance may be an uphill battle because of other factors, including the grievant's reputation with the employer. The allegation that the union leadership decided that Torres' September 2016 complaints about Franks conduct did not warranted further investigation is a matter of internal union affairs, which is outside of the jurisdiction of the Commission. The allegations regarding the interactions the complainant had with her union since August 15, 2016, do not describe conduct that even if true and provable could constitute an unfair labor practice violation.

ORDER

The complaint and amended complaint charging unfair labor practices in the above captioned matter are DISMISSED for untimeliness and for failure to state a cause of action.

ISSUED at Olympia, Washington, this 17th day of May, 2017.

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  
MARK E. BRENNAN, COMMISSIONER  
MARK R. BUSTO, COMMISSIONER  
MIKESELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 05/17/2017

DECISION 12695 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128791-U-17

EMPLOYER: GRAYS HARBOR COUNTY  
ATTN: GRAYS HARBOR CO COMMISSIONERS  
100 BROADWAY AVE W STE 1  
MONTESANO, WA 98563-0511  
commish@co.grays-harbor.wa.us  
(360) 249-3731

PARTY 2: JESSICA TORRES  
ATTN: 717 SIMPSON AVE  
ABERDEEN, WA 98520  
jeston66@hotmail.com  
(360) 581-5237

PARTY 3: WSCCCE  
ATTN: CHRIS DUGOVICH  
PO BOX 750  
EVERETT, WA 98206-0750  
c2everett@council2.com  
(425) 303-8818

REP BY: AUDREY B. EIDE  
WSCCCE  
PO BOX 750  
EVERETT, WA 98206-0750  
audrey@council2.com  
(425) 303-8818