

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FEDERAL WAY SCHOOL DISTRICT, Employer.	
GLORIA BUTTS, Complainant, vs. PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Respondent.	CASE 129883-U-17 DECISION 12827 - PECB ORDER OF DISMISSAL

On November 30, 2017, Gloria Butts (Ms. Butts) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the Public School Employees of Washington, Local 1948 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 7, 2017, indicated that it was not possible to conclude that a cause of action existed at that time. On December 29, 2017, Ms. Butts was granted an extension to file and serve an amended complaint or face dismissal of the case.

On January 2, 2018, Ms. Butts filed an amended complaint. The Unfair Labor Practice Manager dismisses the complaint for failure to state a timely cause of action.

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.

ISSUE

The complaint alleges:

Union interference with employee rights in violation of RCW 41.56.150(1), by breaching its duty of fair representation of Gloria Butts in disciplinary and termination matters.

The allegations in the amended complaint include triggering event dates outside the six-month statute of limitations and are untimely. Because the complaint is untimely filed, the complaint does not describe facts that could constitute a breach of the duty of fair representation within the Commission's jurisdiction.

BACKGROUND

The amended complaint alleges that the union represents employees working in nutrition services for the employer. Ms. Butts was apparently a bargaining unit employee in nutrition services.

Ms. Butts alleges that while she was a member of the bargaining unit, she was involved in various disciplinary matters between 2008 and 2016. During these disciplinary actions, Ms. Butts alleges Barbara Johnson, union field representative, failed to properly represent Ms. Butts because of race discrimination. The amended complaint identified twelve disciplinary actions occurring between 2008 and 2016 including: a 2008 disciplinary action resulting in economic loss over \$6,000 in a three month period; a 2013 letter of direction; a 2013 bonus pay denial; a 2013-2014 certification pay reduction to zero; a 2013 complaint against Mary Asplund and Marion Leach; an April 1, 2015, denial of additional time; a November 4, 2015, Loudermill letter; a February 5 and 13, 2015, letter of discipline; a June 2, 2015, through November 7, 2015, administrative leave placement; a November 4, 2015, demotion and freeze of pay; a December 2015 camera review leading to discipline, and a September 16, 2016, termination.

The amended complaint additionally alleges that the union has continued, since the November 4, 2015, discipline, to racially discriminate and not represent Ms. Butts during the last two school terms, September 2016 to June 2017 and September 2017 to present.

ANALYSIS

Timeliness

Applicable 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).

Multiple violations, each giving rise to its own statute of limitations, may occur as part of a larger event. In *Seattle School District*, Decision 9982-A (PECB, 2000), the employer conducted an investigation of a complaint by an employee against the union representing the employee. The union filed its complaint on March 13, 2007. The six-month statute of limitations was September 13, 2017. The employer conducted an investigation between May 2006 and July 19, 2006, and issued an investigation report on November 22, 2016. The investigation events occurring before September 13, 2006, were time barred. The union had knowledge that the employer was investigating the complaint. The investigation events occurring more than six months prior to the union filing its complaint were outside the statute of limitations. However, certain events, such as the issuance of the investigator’s report and resulting discipline, was found to be an independent triggering event and was timely filed.

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. The complaint was filed on November 30, 2017. In order to be timely, the complainant would have needed to describe triggering events that took place on or after May 30, 2017.

The complaint identified twelve disciplinary actions that took place between 2008 and 2016. All events occurred prior to May 30, 2017. The final triggering event occurred on September 16, 2016. This was more than six months prior to Ms. Butts filing the complaint, meaning the events were outside the statute of limitations, and these events are time barred.

The amended complaint makes a generalized allegation that the union has committed a continuing violation to not represent Ms. Butts based on racial discrimination from September 2016 to the present. The continuing violation allegation is vague and lacks details of specific dates, what events took place, and who was involved. The mere fact of a general continuation of alleged behavior does not form a basis for lengthening the statute of limitations period for filing complaints. *See King County, Decision 3558-A (PECB, 1990)*. Ms. Butts would have needed to allege specific and detailed triggering events that occurred on or after May 30, 2017.

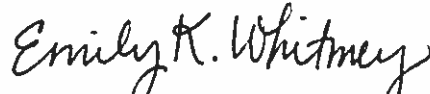
Based on the allegations in the complaint, the last identified triggering event was when Ms. Butts was terminated on September 16, 2016. Based on the alleged facts, for the complaint to have been timely, Ms. Butts would have needed to file a complaint with PERC no later than March 16, 2017.

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 30th day of January, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Handwritten signature of Emily K. Whitney in cursive script.

EMILY K. WHITNEY, Acting 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

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RECORD OF SERVICE - ISSUED 01/30/2018

DECISION 12827 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 129883-U-17

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