

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE – INDIVIDUAL PROVIDERS,  Employer.	
MICHAEL HARRIS,  Complainant,  vs.	CASE 130445-U-18 DECISION 12864 - PECB
SERVICE EMPLOYEES INTERNATIONAL UNION 775,  Respondent.	ORDER OF DISMISSAL

On February 16, 2018, Michael Harris (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the Service Employees International Union 775 (union) as respondent. The complaint appeared to be missing pages. On March 2, 2018, Harris filed an amended complaint, which included the missing pages. The amended complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on March 14, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. Harris was given a period of 21 days in which to file and serve a second amended complaint, or face dismissal of the case.

No further information has been filed by Harris. The unfair labor practice manager dismisses the amended complaint for failure to state a cause of action.

<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.

## ISSUES

The amended complaint alleges:

Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty of fair representation in refusing to file a grievance on behalf of Michael Harris.

The facts alleged in the amended complaint do not describe actions that could constitute an unfair labor practice under the Commission's jurisdiction. The amended complaint is dismissed.

## BACKGROUND

According to the amended complaint, Harris became a member of the union on August 22, 2017. Harris was allegedly scheduled to receive wages electronically on the first and fifteenth of every month, provided the date did not fall on a weekend day. On September 1, 2017, Harris allegedly electronically filed his timesheet, which resulted in a "received" status. On September 8, 2017, Harris was allegedly informed his timesheet had been rejected and needed to be resent. When Harris contacted the employer to inquire why the timesheet had been rejected, he was allegedly informed there had been a system failure and his wages would be held until the following pay cycle. On an unspecified date, Harris allegedly contacted an unspecified person from the union for further assistance.

On October 1, 2017, Harris filed his second timesheet, which resulted in a "saved" status. When he contacted the employer, Harris was allegedly unable to determine why he received this status change. On an unspecified date, Harris allegedly contacted an unspecified person from the union for assistance and was allegedly informed of the grievance process. On an unidentified date Harris allegedly contacted a second union representative for advice on the matter who determined a grievance was the best option. Harris allegedly never received formal paperwork describing the legal process of the grievance.

On December 4, 2017, Harris was allegedly terminated by the employer. On an unspecified date Harris allegedly contacted an unspecified person from the union and requested to have a grievance filed regarding his termination. Two days later, Harris allegedly contacted another unidentified person from the union to check on the progress of the grievance and was informed there were no notes related to the grievance request, and this person would add a note to the file.

About one week later, Harris allegedly received a call from an unidentified person from the union regarding the grievance and was informed there were no options to appeal the employer's decision. When Harris inquired about the grievance that was in process he was informed that a check should be in the mail.

## ANALYSIS

### Dates and Names of Participants

The rules for contents of a complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

In this case, the amended complaint lacks some dates and does not identify the participants related to the duty of fair representation allegations. The facts and events described relating to communication with the union make vague allegations and do not include meeting dates or names of participants. Because the amended complaint lacks dates and names of participants, it is not possible to determine if the case is timely filed. Thus the complaint is dismissed.

### Union Interference – Duty of Fair Representation

#### *Applicable 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 Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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*, Decision 3199-B (PECB, 1991). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. 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 is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *City of Seattle (Seattle Police Officers’ Guild)*, Decision 11291-A. In rare circumstances, the Commission asserts jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers’ Guild)*, Decision 11291-A. The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges its union aligned itself in interest against employees it represents based on invidious discrimination. *Id.* In such cases, the employee bears the burden of establishing that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. *Id.*

#### *Application of Standard*

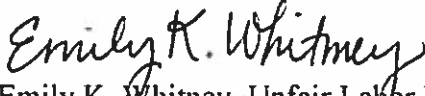
The amended complaint does not describe allegations that fit within the jurisdiction of the Commission. The amended complaint alleges that Harris was a member of the union. Additionally, the amended complaint alleges that Harris requested the union to file a grievance on his behalf based on his termination and alleges the union did not follow through with this request. The complaint lacks facts as to whether the union took some action aligning itself against Harris on an improper or invidious basis. Thus the union interference failure of the duty of fair representation allegation is 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 2nd day of May, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
Emily K. Whitney, 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  
MIKE SELLARS, EXECUTIVE DIRECTOR

**RECORD OF SERVICE - ISSUED 05/02/2018**

DECISION 12864 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



BY: **DEBBIE BATES**

CASE NUMBER: 130445-U-18

EMPLOYER: STATE - INDIVIDUAL PROVIDERS

REP BY: FRANKLIN PLAISTOWE  
OFFICE OF FINANCIAL MANAGEMENT  
LABOR RELATIONS SECTION  
PO BOX 47500  
OLYMPIA, WA 98504-7500  
labor.relations@ofm.wa.gov  
(360) 407-4140

PARTY 2: MICHAEL HARRIS

REP BY: MICHAEL HARRIS  
12809 47TH AVE SW APT 4  
LAKEWOOD, WA 98499  
armyboi2591@gmail.com  
(253) 314-7798

PARTY 3: SEIU 775

REP BY: DAVID ROLF  
SEIU 775  
215 COLUMBIA STREET  
SEATTLE, WA 98104-1511  
david.rolf@seiu775.org  
(206) 538-5702