STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNIVERSITY OF WASHINGTON, Employer.	
SUSANA ASBERRY, Complainant, vs. AMERICAN FEDERATION OF TEACHERS WASHINGTON, Respondent.	CASE 130711-U-18 DECISION 12908 - FCBA ORDER OF DISMISSAL

On June 25, 2018, Susana Asberry filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the American Federation of Teachers Washington (union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on July 9, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. Asberry was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On July 24, 2018, Asberry filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a 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 amended complaint alleges:

> Union interference with employee rights in violation of RCW 41.76.050(2)(a) by breaching its duty of fair representation in not moving Susana Asberry's grievance forward to mediation and/or arbitration.

The amended complaint does not describe facts that could constitute violations within the Commission's jurisdiction.

BACKGROUND

The American Federation of Teachers Washington (union) represents English Language Faculty at the University of Washington (employer). Susana Asberry is an English Language Faculty employee of the employer and a bargaining unit member in the union.

Asberry was allegedly placed under investigation by the employer in November 2017. On December 14, 2017, the employer, union, and Asberry participated in an investigatory meeting. As a result of the investigation, on December 29, 2017, the employer allegedly disciplined Asberry in a final warning letter. On December 30, 2017, Asberry allegedly asked the union to file a grievance on her behalf regarding the discipline. Following the collective bargaining agreement (CBA) grievance procedure, on January 5, 2018, the union allegedly informed Asberry it would initiate the first step of the grievance process by engaging in informal negotiations with the employer.

On January 7, 2018, the union allegedly informed Asberry that the union grievance committee would determine whether or not the union would move forward with the grievance process. On January 17, 2018, the union, employer, and Asberry met to informally discuss Asberry's discipline. After the meeting, Asberry requested that the union file a formal grievance. On January 24, 2018, the union allegedly requested another meeting with the employer to discuss Asberry's discipline. On an unidentified date, Asberry filed a separate discrimination complaint with the University Complaint and Investigation and Resolution Office (UCIRO). The parties agreed to the

discussions regarding Asberry's discipline would be suspended until the UCIRO investigation was complete.

After the UCIRO investigation was complete, the union and employer met without Asberry on April 6, 2018, and discussed the investigation process and Asberry's discipline. As a result, the employer lessened Asberry's level of discipline. On April 7, 2018, the union informed Asberry of the employer's new discipline proposal. Asberry allegedly refused the offer and requested that the union file a formal grievance. On April 11, 2018, the union filed a grievance on Asberry's behalf.

On June 19, 2018, the union allegedly met with Asberry to discuss the outcome of the grievance, which included Asberry being placed under revised disciplinary action. Asberry allegedly requested that the grievance be forwarded to mediation and/or arbitration as described in the CBA.

On June 29, 2018, the union provided Asberry with written notice that the union executive board had voted and decided to settle the grievance with employer. The notice included the executive board's reasoning for its decision and possible next steps.

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 41.76.055. 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).

Application of Standard

To determine timeliness, the Commission looks at the dates of the events in a complaint in relation to the filing date of the complaint. The Commission specifically looks at the events that occurred within the six months prior to the filing of the complaint. Here, the complaint was filed on June 25, 2018. To be timely, the complaint would have needed to describe events that took place on or after December 25, 2017. The alleged events occurring on or after December 29, 2017, fall within the six-month statute of limitations period. The events alleged in the complaint that occurred in November 2017 and on December 14, 2017, are untimely filed and are thus 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 41.76.050(2)(a). The duty of fair representation requires an exclusive bargaining representative 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 (Redmond Employees Association)*, 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 (Washington State Council of County and City Employees)*, 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 requirement represents a distinct and separate obligation.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a wide 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 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).

Application of Standard

The amended complaint lacks facts alleging that the union breached its duty of fair representation. The amended complaint alleges Asberry is an employee under Chapter 41.76 RCW and is an

employee represented by the union. The amended complaint alleges that Asberry requested the grievance process be initiated. According to the amended complaint, the union followed the grievance process as described in the collective bargaining agreement, including meeting with the employer to attempt to reach resolution at the lowest level. The union determined it had reached a settlement with the employer. Asberry wanted to reject the settlement agreement and proceed forward to mediation and/or arbitration. The union executive board allegedly voted and determined it would not proceed forward to mediation or arbitration and informed Asberry of its decision, explanation, and next steps on June 29, 2018.

The amended complaint lacks facts alleging the union's conduct was arbitrary, discriminatory, or in bad faith. Asberry's dissatisfaction with the level of representation does not form the basis for a cause of action. *Id.* The amended complaint did not allege the union violated Asberry's rights guaranteed in the statutes administered by the Commission. Because the amended complaint lacks facts alleging the union failed its duty of fair representation, the complaint 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 23rd day of August, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, Unfair Labor Practice Administrator

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 08/23/2018

DECISION 12908 - FCBA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: AMY RIGGS

CASE NUMBER: 130711-U-18

EMPLOYER:	UNIVERSITY OF WASHINGTON
REP BY:	PETER DENIS UNIVERSITY OF WASHINGTON 4300 ROOSEVELT WAY NE PO BOX 354960 SEATTLE, WA 98195-4960 laborrel@uw.edu (206) 616-3564
PARTY 2:	SUSANA ASBERRY
REP BY:	SUSANA ASBERRY 8110 211TH AVE SW SNOHOMISH, WA 98290 susana.asberry@gmail.com (425) 330-0200
PARTY 3:	AFT WASHINGTON
REP BY:	KAREN STRICKLAND AFT WASHINGTON 625 ANDOVER PARK W STE 111 TUKWILA, WA 98188-3332 kstrickland@aftwa.org (206) 432-8080