City of Spokane (International Association of Fire Fighters, Local 29), Decision 13001 (PECB, 2019)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SPOKANE, Employer.	
CHRISTOPHER PHILLIPS, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 29, Respondent.	CASE 131394-U-19 DECISION 13001 - PECB ORDER OF DISMISSAL

On March 25, 2019, Christopher Phillips filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming International Association of Fire Fighters, Local 29 (union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on March 29, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Phillips was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On April 15, 2019, Phillips filed an amended complaint and filed a second amended complaint on April 18, 2019. The Unfair Labor Practice Administrator dismisses the second amended complaint for failure to state a cause of action.

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[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.

ISSUES

The second amended complaint alleges:

> Violations of RCW 41.56.040 and RCW 41.56.080.
>
> Union interference with employee rights in violation of RCW 41.56.150(1), on unidentified dates, by breaching its duty of fair representation in representing each member of the bargaining unit, negotiating discriminatory changes to the collective bargaining agreement, or using coercion to force an arbitrary change to the collective bargaining agreement.

The second amended complaint lacks specific facts alleging a duty of fair representation violation. Additionally, violations of RCW 41.56.040 and 41.56.080 are not violations that can be brought before the Commission. The second amended complaint does not provide dates for when events occurred and does not provide facts related to whether Phillips was an employee represented by a union or whether the union took some action aligning itself against bargaining unit employees on an arbitrary, bad faith, or invidious basis. Thus the second amended complaint is dismissed for failure to state a cause of action.

BACKGROUND

Christopher Phillips is a battalion chief at the City of Spokane (employer) and allegedly is no longer represented by the International Association of Fire Fighters, Local 29 (union). In July 2018, Phillips allegedly invoked his rights and requested to stop paying union dues. The union allegedly complied with this request.

On an unspecified date, but prior to a September 29, 2018, meeting, David Heizer allegedly became vice president of the union. Heizer's new position was allegedly announced at the September 29, 2018, meeting. On an unidentified date, Heizer polled some of the bargaining unit members regarding a memorandum of understanding (MOU). Heizer was allegedly attempting to determine bargaining unit members' opinions of the MOU. The MOU was never officially voted on by all members of the bargaining unit. On an unidentified date, the MOU became effective.

ANALYSIS

Timeliness

The rules for the 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."

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint must not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 28B.52.065. The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011), *citing City of Bremerton,* Decision 7739-A (PECB, 2003). The start of the six-month statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025, *citing City of Chehalis*, Decision 5040 (PECB, 1995).

In this case, the second amended complaint does not contain dates related to what occurred for the allegations. It includes a date of September 29, 2018, when an alleged meeting occurred, but many of the other facts lack dates of occurrence.

The complaint was filed on March 25, 2019. To be timely filed, the facts alleged must have occurred on or after September 25, 2018. Other than the one date for an alleged meeting, the alleged facts lack dates of occurrence. Dates are required to determine if a complaint is timely filed.

Because the statement of facts lacks specific dates of when events occurred, the complaint must be dismissed.

Violations of RCW 41.56.040 and RCW 41.56.080

Individual employees can only allege certain types of violations against the employer and union. An individual employee can allege interference, discrimination, and domination violations against the employer. Violations against the union are enumerated in RCW 41.56.150.

The second amended complaint alleges violations of RCW 41.56.040 and RCW 41.56.080. These are not violations under the statute. RCW 41.56.040 describes employees' right to organize. RCW 41.56.080 states that the certified bargaining representatives are required to represent all public employees within the unit. These violations are not related to a violation under RCW 41.56.150 and must be dismissed for failure to state a claim.

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 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 is more than merely negligent; it 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 wide range of flexibility in the standard to allow for union discretion in settling disputes. *Allen*, 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 second amended complaint does not include facts alleging the union violated its duty of fair representation. First, the second amended complaint lacks dates of occurrence to determine whether the complaint was timely filed. Even if the second amended complaint provided dates, the second amended complaint must be dismissed. To allege a duty of fair representation violation, a complaint must allege three elements: (1) the applicable collective bargaining statute covers the employee involved, (2) the employee involved is in a bargaining unit represented by the union, and (3) the union took some action aligning itself against unit employees on an arbitrary, bad faith, or invidious basis.

In the second amended complaint, Phillips is allegedly covered by the applicable collective bargaining statute. Phillips alleges that he is no longer a member of the bargaining unit because he requested to no longer pay union dues in July 2018. Finally, the second amended complaint does not allege facts that the union took some action aligning itself against unit employees on an arbitrary, bad faith, or invidious basis. The second amended complaint merely states that there was no official vote taken on an MOU. Ratification by vote of an MOU may be required by a union's constitution or bylaws, but it is not a requirement imposed by state law. *See Seattle School District,* Decision 9737 (PECB, 2007). Because the second amended complaint lacks facts alleging a duty of fair representation violation against the union, the second amended complaint must be dismissed.

ORDER

The second 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 14th day of May, 2019.

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 05/14/2019

DECISION 131394-U-19 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131394-U-19

EMPLOYER:	CITY OF SPOKANE
REP BY:	DAVID CONDON CITY OF SPOKANE 808 W SPOKANE FALLS BLVD SPOKANE, WA 99201 mayor@spokanecity.org
PARTY 2:	CHRISTOPHER PHILLIPS
REP BY:	CHRISTOPHER PHILLIPS PO BOX 575 NINE MILE FALLS, WA 99026 meegaman@yahoo.com
PARTY 3:	IAFF LOCAL 29
REP BY:	TIM ARCHER IAFF LOCAL 29 911 E BALDWIN AVE SPOKANE, WA 99207 presidentiaffl29@gmail.com SANNI M-K LEMONIDIS ROBBLEE DETWILER PLLP 2101 4TH AVENUE STE 1000 SEATTLE, WA 98121 slemonidis@unionattorneysnw.com