

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RIVERVIEW SCHOOL DISTRICT,

Employer.

WILLIAM SCHLEGEL,

Complainant,

vs.

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON,

Respondent.

CASE 132833-U-20

DECISION 13214 - PECB

ORDER OF DISMISSAL

On June 11, 2020, William Schlegel filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Public School Employees of Washington as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on June 18, 2020, indicating that it was not possible to conclude a cause of action existed at that time. Schlegel was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On June 18, 2020, Schlegel filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for timeliness and 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 41.56.150(1) outside six months of the date the complaint was filed, by breaching its duty of fair representation.

The amended complaint is untimely filed and lacks facts necessary to allege a duty of fair representation violation. Thus, the amended complaint is dismissed for timeliness and failure to state a cause of action.

BACKGROUND

William Schlegel worked in maintenance, grounds, and custodial at Riverview School District (employer) and was represented by Public School Employees of Washington (union). On July 30, 2017, Schlegel submitted a letter of interest for a newly opened 4-hour per day position of Program Assistant. A woman outside the bargaining unit was hired for the position. On September 22, 2017, the position was adjusted to an 8-hour per day position. On July 2, 2018, Schlegel filed a grievance regarding not receiving in-service training. On July 18, 2018, the employer responded to the grievance. In January 2019 a new Maintenance II position was posted. Schlegel interviewed for the position, but was denied the position due to lack of skills.

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).

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the amended complaint in relation to the filing date. The original complaint was filed on June 11, 2020. In order to be timely, the amended complaint would have needed to describe violations that took place on or after December 11, 2019. The amended complaint included events that occurred through early 2019. The amended complaint did not include any alleged violations that occurred within the six month statute of limitations. Because the amended complaint is untimely filed it must be dismissed.

Duty of Fair Representation

Applicable Legal Standard

The amended complaint states that the union acted on an invidious basis, but lacks facts necessary to allege a duty of fair representation violation. 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). An exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville & 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. 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 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union’s actions or inactions were discriminatory or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

There are three standards used 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. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983).

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). A union can rarely provide all things desired by all of the employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation.

An employee claiming a breach of duty of fair representation has the burden to file a sufficient complaint and the burden of proof. The complaint must describe specific events, statements, or incidents in support of their complaint. These must include dates and names of the people involved.

Application of Standard

The amended complaint does not include facts alleging how the union's actions or inactions were arbitrary, discriminatory, or in bad faith toward Schlegel. The amended complaint alleges that Schlegel is covered by the statute and is a member of the bargaining unit. The amended complaint alleges that the union processed grievances on Schlegel's behalf. The complaint also alleges that the union was discriminatory toward other employees but does not provide facts related to how the union's actions were discriminatory toward Schlegel. None of the facts alleged demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. Because the

amended complaint lacks facts necessary to allege a duty of fair representation violation, the amended complaint must be dismissed.

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for timeliness and failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of July, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Handwritten signature of Emily K. Whitney in black ink.

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.



RECORD OF SERVICE

ISSUED ON 07/14/2020

DECISION 13214 - 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 132833-U-20

EMPLOYER: RIVERVIEW SCHOOL DISTRICT

REP BY: ANTHONY L. SMITH
RIVERVIEW SCHOOL DISTRICT
15510 1ST AVE NE
PO BOX 519
DUVALL, WA 98019
smitha@rsd407.org

LESTER "BUZZ" PORTER JR.
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101-2341
buzz@pfrwa.com

TEVON F. EDWARDS JR.
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101-2341
tevon@pfrwa.com

PARTY 2: WILLIAM SCHLEGEL

REP BY: WILLIAM SCHLEGEL
426 W MAPLE ST
MONROE, WA 98272
williamschlegel@hotmail.com

PARTY 3: PUBLIC SCHOOL EMPLOYEES OF WASHINGTON

REP BY: ELYSE B. MAFFEO
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON
602 W MAIN ST PO BOX 798
AUBURN, WA 98071-0798
emaffeo@pseofwa.org