

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
HASSAN OSMAN, Complainant,	CASE 132951-U-20
vs.	DECISION 13235 - PECB
AMALGAMATED TRANSIT UNION LOCAL 587, Respondent.	ORDER OF DISMISSAL

Hassan Osman, Pro Se.

Ken Price, President, for the Amalgamated Transit Union Local 587.

On August 4, 2020, Hassan Osman (complainant) filed an unfair labor practice complaint against Amalgamated Transit Union Local 587 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on August 18, 2020, notified Osman that a cause of action could not be found at that time. Osman was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by Osman. The Unfair Labor Practice Administrator dismisses the 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 or amended 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 the following:

Union interference with employee rights in violation of RCW 41.56.150(1) outside the six month statute of limitations, by breaching its duty of fair representation related to unidentified union action.

The complaint is untimely and does not describe facts that could constitute a duty of fair representation violation within the Commission's jurisdiction

BACKGROUND

Hassan Osman (complainant) is a Coach Operator for King County's (employer) Metro department. Osman's position is represented by the Amalgamated Transit Union Local 587 (union). On July 16, 2018, Osman applied for an open position. On August 10, 2018, the employer rejected Osman's application. The employer allegedly filled the position with an employee who had less seniority than Osman. On May 20, 2019, the union filed grievances on Osman's behalf, but the grievances were not forwarded to arbitration. On December 25, 2019, Osman requested that the grievances be forwarded to arbitration. On an unidentified date, the union allegedly denied that request.

ANALYSIS

Timeliness

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).

To determine timeliness, the Commission looks at the dates of the events in the complaint in relation to the filing date. The complaint was filed on August 4, 2020. In order to be timely, the complainant needed to describe events that took place on or after February 4, 2020. The complaint alleged violations occurred between July 16, 2018, and December 25, 2019, and are untimely filed. Because the complaint was untimely filed it must be dismissed.

Duty of Fair Representation

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 complaint lacks facts alleging a duty of fair representation violation. The complaint alleged that Osman was represented by the union and that the union filed a grievance related to Osman's application being rejected. The complaint also alleged the union notified Osman on an unidentified date that it would not forward the grievance to arbitration. There are no facts related to the union taking any action aligning itself against unit employees on an invidious, arbitrary, or bad faith

basis. Because the complaint lacks facts necessary to state a cause of action for union duty of fair representation, the 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 15th day of September, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 09/15/2020

DECISION 13235 - 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 132951-U-20

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