

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RODNEY THORNLEY,

Complainant,

vs.

LAKE WASHINGTON EDUCATION
ASSOCIATION,

Respondent.

CASE 133055-U-20

DECISION 13262 - EDUC

ORDER OF DISMISSAL

Patricia S. Rose, Attorney at Law, Law Office of Patricia S. Rose, for Rodney Thornley.

Aimee Iverson, General Counsel, for the Washington Education Association.

On September 30, 2020, Rodney Thornley (complainant) filed an unfair labor practice complaint alleging the Lake Washington Education Association (union) committed an unfair labor practice by breaching its duty of fair representation. The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on October 22, 2020, notifying Thornley that a cause of action could not be found at that time. Thornley 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 Thornley. The complaint is dismissed as untimely and for failing 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.

BACKGROUND

Thornley works as a certificated teacher at the Lake Washington School District. Prior to April 2020, he worked at Rose Hill Middle School and was represented by the Lake Washington Education Association (union). Between September 1978 and August 2019 Thornley served as the union's building representative.

Thornley also worked as a coach at the school. The complaint does not indicate if Thornley's coaching position is represented and, if so, which union represents the coaches.

According to the complaint, Thornley was involved in a coaching incident on November 8, 2018. On December 13, 2018, the employer issued Thornley a written warning regarding an interaction with a fellow teacher. The complaint does not clearly indicate if the December 13, 2018, written warning stemmed from Thornley's coaching duties or his teaching duties.

On January 8, 2019, the union filed a grievance on Thornley's behalf. On April 19, 2019, Thornley received final discipline from the employer. Thornley alleges that the union did not advise him that he could no longer challenge the discipline under the nonrepresented grievance procedure.

On April 30, 2019, Thornley claims that he was precluded from taking students to a previously scheduled outing to a water park. Thornley filed race discrimination claims against the district in June and July of 2019.

On November 1, 2019, the district placed Thornley on administrative leave, removed him from the classroom, and precluded him from attending any district events or being on district property. The district also suspended Thornley for 15 days, which was later reduced to 8 days.

On April 29, 2020, the employer informed Thornley that he was being transferred from Rose Hill Middle School to an undisclosed assignment. On April 29, 2020, and May 14, 2020, Thornley learned that the union did not file a grievance regarding his transfer. On May 14, 2020, Thornley

filed a grievance regarding his transfer. On May 19, 2020, the employer informed Thornley that it would not accept or process his grievance.

ANALYSIS

Statute of Limitations

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); RCW 41.59.150(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). While a complaint may include facts beyond the six-month statute of limitations to provide context, this agency is only empowered to remedy violations of the statute occurring within six months of the date the complaint was filed.

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); RCW 41.59.140(2)(a). 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 Standards

Thornley filed his complaint on September 30, 2020. Accordingly, only those events occurred after February 20, 2020, are timely. Events that occurred prior to February 20, 2020, are not timely, can only be considered background information, and may not be redressed through the unfair labor practice statutes. This includes the allegation that the union breached its duty of fair representation by failing to advise him in April 2019 that he could no longer challenge the discipline under the nonrepresented grievance procedure.

With respect to Thornley's allegation that the union failed to file a grievance on his behalf following his April 2020 transfer from Rose Hill Middle School, Thornley has failed to allege facts demonstrating that the union's failure to act on Thornley's behalf was were discriminatory or in bad faith. The complaint is dismissed for failure to state a cause of action.

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 24th day of November, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


DARIO DE LA ROSA, 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 11/24/2020

DECISION 13262 - EDUC 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 133055-U-20

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