

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BETTY WILLIAMS, Complainant, vs. TACOMA SCHOOL DISTRICT, Respondent.	CASE 134759-U-22
BETTY WILLIAMS, Complainant, vs. TACOMA EDUCATION ASSOCIATION, Respondent.	CASE 134760-U-22 DECISION 13487 - EDUC ORDER OF DISMISSAL

Shannon Ergun, President, for the Tacoma Education Association.

Betty Williams, Complainant.

Jessie L. Harris and *Laura Brindley*, Attorneys at Law, Williams, Kastner & Gibbs PLLC for the Tacoma School District.

On January 13, 2022, Betty Williams (complainant) filed an unfair labor practice complaint alleging the Tacoma School District (employer) violated the collective bargaining agreement between the employer and Tacoma Education Association (union), interfered with protected employee rights in violation of RCW 41.59.140(1)(a), and discriminated against Williams based on upon race, sex, and age. On that same day Williams also filed an unfair labor practice complaint against the union alleging it breached its duty of fair representation owed to Williams by failing to

pursue a grievance on her behalf. The complaints were reviewed under WAC 391-45-110¹ and a deficiency notice issued on February 1, 2022, notifying Williams that causes of action could not be found at that time for either complaint. Williams was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the cases.

No further information has been filed by Williams. The unfair labor practice complaints are dismissed for failure to state causes of action.

BACKGROUND

Williams works as a certificated teacher for the employer and is represented by the union for purposes of collective bargaining. The union and employer are parties to a collective bargaining agreement that expires on August 31, 2022.

According to the complaint, on March 18, 2021, Williams received an email from Debra Baker concerning her work assignment. It appears from the complaint that for the 2020-2021 school year Williams was transferred from her initial assignment at the Truman Middle School to the Tacoma Online Program or alternate school location or building assignment. Baker's email informed Williams that in accordance with the parties collective bargaining agreement she was being returned to the Truman Middle School at the conclusion of the 2020-2021 school year.

Williams asserts that on May 15, 2021, she received a "courtesy" phone call from Steven Deaderick informing her that she would be placed at First Creek, Lincoln High School, or Wilson High School teaching social studies. Williams claims that she had never chosen any of those schools to teach and did not have any aspirations to work at those locations. Williams also asserts

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.

that Deaderick stated that if she did not accept the position by Monday, she “would be on her own.” William interpreted Deaderick’s statement as a threat and felt humiliated by the call.

On May 17, 2021, William’s received an email from Baker on behalf of Deadrick informing her that she would be assigned to teach grade 7 english/language arts & social studies at First Creek Middle School effective September 1, 2021. The email also stated Williams had until May 19, 2021, to rescind her 2021-2022 contract and that if she rescinded her contract her resignation would be effective August 31, 2021.

Williams claims that the employer selection process was discriminatory on the basis of race, sex and age and selected a less qualified than her for Williams’s desired teaching position.

On June 22, 2021, the union filed a grievance on Williams’s behalf but ultimately declined to take the grievance to arbitration. Williams claims that union president Shannon Urgun did not make a sincere attempt to resolve the grievance, did not advise the employer against committing arbitrary conduct, and that the union did not follow its own rules.

ANALYSIS

Allegations that the Collective Bargaining Agreement was Violated

This Commission has consistently refused to resolve “violation of contract” allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134-A (EDUC, 2011) (citing *Tacoma School District*, Decision 5722-E (EDUC, 1997)).

Williams asserts the employer committed an unfair labor practice because it breached the provisions of the collective bargaining agreement that related to her job assignment. This allegation is not actionable before this agency and must be resolved through the grievance

procedure contained within the collective bargaining agreement or through the superior courts. Accordingly, this allegation of the complaint against the employer is dismissed.

Employer Interference

Generally, the burden of proving unlawful interference with the exercise of rights protected by chapter 41.59 RCW rests with the complaining party or individual. An interference violation exists when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate the employer intended or was motivated to interfere with the employees' protected collective bargaining rights. *See City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

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 or in superior court." 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).

Williams claims that she interpreted Deadrick's statements during the May 15, 2021, phone call as a threat and that the conversation left her feeling humiliated. Williams has not asserted that Deadrick's statements were made in association with William's exercise of protected activity and therefore the facts as alleged do not state a cause of action. Furthermore, even if Williams had alleged that the statements were made in association with her protected activity this claim falls outside the six-month statute of limitations. Williams filed her complaint on January 13, 2022, and

therefore only events that occurred within six months of that date, or July 13, 2021, are timely and the events of May 15, 2021, are time barred.

Allegations outside this Agency's Jurisdiction

Williams claims that the employer selection process was discriminatory on the basis of race, sex, and age and selected a less qualified than her for Williams's desired teaching position. Williams has not alleged that the employer took its action in retaliation for Williams's exercise of protected union activity.

This claim is outside of this agency's jurisdiction. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A.

Breach 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 41.59.140(2)(a). The Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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, 2001) (citing *City of Seattle*, Decision 3199-B (PECB, 1991)).

A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *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 and must demonstrate that the union's

actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. *State – Labor and Industries*, Decision 8263 (PSRA, 2003). If the union determines the concerns have merit, the union has the right to file a grievance under the parties' collective bargaining agreement. If the union determines that the concerns lack merit, the union has no obligation to file a grievance.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983). The Commission will assert jurisdiction in duty of fair representation cases only where a union is accused of aligning itself in interest against employees it represents based on invidious discrimination. *Seattle School District (Seattle Education Association)*, Decision 4917-A (EDUC, 1995).

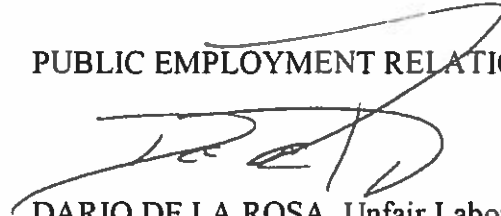
Williams's complaint against the union arises out of the union's failure to submit a grievance concerning job assignment. Williams has not alleged that the union failed to process her grievance based upon invidious discrimination. Rather, Williams submitted her grievance to the union, the union processed it, and the union followed up on the grievance by notifying Williams that the employer denied Williams's grievance and the union declined to take the matter to arbitration. Absent facts demonstrating the union declined to take Williams's grievance to arbitration due to invidious discrimination, this allegation must be dismissed.

ORDER

The complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of March, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Dario de la Rosa', is written over the printed name below.

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 03/08/2022

DECISION 13487 - 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

CASES 134759-U-22

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