STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON SCHOOL DISTRICT, Employer.	
MIKE HARRIS, Complainant, vs. AMERICAL FEDERATION OF TEACHERS WASHINGTON, Respondent.	CASE 134836-U-22 DECISION 13503 - PECB ORDER OF DISMISSAL

David A. Hannah, Attorney at Law, for Mike Harris.

Karen Strickland, President, for the American Federation of Teachers Washington.

On February 16, 2022, Mike Harris filed a complaint against the American Federation of Teachers Washington (union). On February 17, 2022, Harris filed an amended complaint. The amended complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on March 17, 2022, notified Harris that a cause of action could not be found at that time. Harris was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 30, 2022, Harris filed a second amended complaint. The second amended complaint is dismissed because it fails to state a cause of action under the statutes this Commission administers.

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[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

Harris is employed as an electrician at the Renton School District. He is represented by the union for purposes of collective bargaining, and the electricians are included in a larger mixed class bargaining unit. The employer and union are parties to a collective bargaining agreement that came into effect on September 1, 2018, and expired on August 31, 2021. According to the second amended complaint, the parties are currently in negotiations for a successor agreement and Harris served on the union's negotiating team during these negotiations.

Harris alleges that he contacted a different labor organization about possibly representing the skilled craft employees. This would require severing the skilled craft employees from the existing bargaining unit. They would then be placed in their own separate bargaining unit and be represented by the competing labor organization. Under RCW 41.56.060(2), bargaining units of classified school districts may not be divided into more than one unit without the agreement of the public employer and certified bargaining representative of the unit. Harris alleges that that the union refused to cooperate with his request to divide the bargaining unit and that he experienced hostility from the union after exploring different representation, including being removed from the union's negotiating committee and being accused of "sabotaging the unit."

Finally, Harris's amended complaint appears to question how the union came to represent the bargaining unit. Harris asserts that the original bargaining unit certification demonstrates that the United Classified Workers Union of Washington was certified as the exclusive bargaining representative of a bargaining unit that included transportation, garage mechanics, building maintenance, audio visual maintenance, food service, truck drivers and warehousepersons, swimming pool maintenance, and print shop personnel.

Harris's second amended complaint asks that the union cease its hostile conduct toward him and honor its duty of fair representation by allowing the electricians to separate from the existing bargaining unit.

ANALYSIS

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). 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. 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 (Washington State Council of County and City Employees),* 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 v. Seattle Police Officers' Guild*, 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 PERC. *Dayton School District (Dayton Education Association),* Decision 8042-A (EDUC, 2004).

Furthermore, while a union owes a duty of fair representation to bargaining unit employees, the Commission asserts jurisdiction in duty of fair representation cases only when an employee alleges his or her union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild),* Decision 11291-A (PECB, 2012). In such cases, the employee bears the burden of establishing that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A.

Here, Harris alleges that he experienced hostility from the union after exploring different representation, including being removed from the union's negotiating committee. In *Seattle School District (International Union of Operating Engineers, Local 609)*, Decision 9135-B (PECB, 2007), the Commission held that it lacks jurisdiction over complaints where the union has disciplined one of its members in certain circumstances. The Commission ruled that unions may enforce a properly adopted rule that reflects a legitimate union interest provided the rule impairs no policy that our state legislature has imbedded in the labor laws and is reasonably enforced against union members who are free to leave the union and escape the rule. The Commission went on to explain that its ability to find an unfair labor practice based on reasonableness of an imposed

fine is also limited, provided there is no showing that the discipline is based upon invidious motive. The Commission concluded that it is not empowered to adjudicate other contractual conflicts between union members and a union or unions. *Id.* (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). Harris's claim that he was removed from the bargaining team and faced hostility from the union for seeking to have a different labor organization represent him does not state a cause of action before this agency because Harris did not allege the union's actions were made for invidious reasons.

Other Unidentified Unfair Labor Practices

Harris's second amended complaint points out that this agency originally certified the United Classified Workers Union of Washington as the exclusive bargaining representative of the bargaining unit, and it is not clear how the current union became the exclusive bargaining representative. One of the primary objects of chapter 41.56 RCW is to protect employees against unlawfully created bargaining relationships. An employee who feels that he or she has been improperly included in or excluded from a bargaining unit by agreement of an employer and union has a right to seek relief by filing unfair labor practice charges against those parties. If the agency finds nothing awry, these kinds of complaints must be dismissed, and the union and employer will be permitted to continue their relationship in its traditional scope. On the other hand, if the agency finds that the union and employer have maintained an improper bargaining relationship, they must be found guilty of unfair labor practices and must be ordered to rectify the situation for [that complainant] and future employees. *Castle Rock School District (Castle Rock Education Association)*, Decision 4722-B (EDUC, 1995).

It is not clear from the alleged facts that this allegation would be timely. Harris's second amended complaint does not include facts describing when the union and employer began any unlawful relationship. However, the collective bargaining agreement submitted with the complaint demonstrates the parties have maintained a contractual relationship since at least 2018 and Harris has benefitted from that relationship. There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.56.160. The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *State – Corrections*, Decision 11025

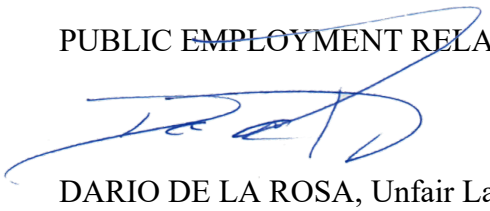
(PSRA, 2011) (*citing City of Bremerton*, Decision 7739-A (PECB, 2003)). Absent timely facts demonstrating that the employer and union maintained an improper bargaining relationship, this allegation must be dismissed.

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 28th day of April, 2022.

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 04/28/2022

DECISION 13503 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 134836-U-22

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