

Federal Way School District International Union of Operating Engineers Local 302, Decision 13537 (PECB, 2022)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GLORIA BUTTS, Complainant, vs. FEDERAL WAY SCHOOL DISTRICT, Respondent.	CASE 135082-U-22 DECISION 13537 - PECB ORDER OF DISMISSAL
GLORIA BUTTS, Complainant, vs. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302, Respondent.	CASE 135083-U-22 DECISION 13538 - PECB ORDER OF DISMISSAL

Dani Pfeiffer, Superintendent, for the Federal Way School District.

Gloria Butts, the complainant.

Daren Konopaski, Business Manager, for the International Union of Operating Engineers Local 302.

On May 6, 2022, Gloria Butts (complainant) filed an unfair labor practice complaint against the Federal Way School District (employer) and the International Union of Operating Engineers Local 302 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued

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.

on June 9, 2022, notified the complainant that a cause of action could not be found at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of these cases.

On July 8, 2022, the complainant filed an amended complaint². The Unfair Labor Practice Administrator dismisses the amended complaint for timeliness and failure to state a cause of action.

ISSUES

The complaint and amended complaint allege the following:

Discrimination under Title VII

Contract violations

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 when the grievance filing was delayed.

The complaint and amended complaint are dismissed. The complaint and amended complaint allege facts outside the six-month statute of limitations and, for those facts that are timely filed, lack facts necessary to allege a violation within the Commission's jurisdiction.

BACKGROUND

Gloria Butts was a custodial employee at the Federal Way School District (employer) and was represented by the International Union of Operating Engineers Local 302 (union).

² The 21-day period ended on June 30, 2022. While the amended complaint was filed after the 21-day period, the amended complaint was filed in conformance with WAC 391-45-070.

On May 26, 2021, the employer emailed Ms. Butts and informed Ms. Butts that Jerry Green, black student advocate, would not be allowed at an upcoming meeting. The employer would allow a union representative or legal counsel. The employer asked Ms. Butts to clarify who Mr. Green was and if Mr. Green was her legal counsel.

On June 3, 2021, Ms. Butts was called to a meeting with the employer and provided *Weingarten* notice. A union representative, Roberta Burnett, was in attendance of the meeting. At some point during the meeting Ms. Butts asked Ms. Burnett to leave the room and did not want Burnett speaking on Ms. Butts' behalf. Ms. Butts asked if the employer was denying Mr. Green's attendance. The employer confirmed that Mr. Green was not allowed to attend the meeting. Ms. Butts asked to record the meeting. The employer denied the request to record the meeting. During the meeting Ms. Butts stated she had Mr. Green on speaker phone. While on speaker phone Mr. Green asked the employer to provide a document showing that he could not attend the meeting. When it was apparent Mr. Green was not leaving the meeting, the employer asked Ms. Butts if she was stating that she did not want to proceed with the meeting since Mr. Green would not be able to remain in the meeting. Ms. Butts stated she did not want the meeting to continue without Mr. Green. The meeting ended. Ms. Butts was deemed to have failed to cooperate with the investigative process and reasonable directives of her supervisor, when Mr. Butts insisted on Mr. Green's attendance and having Mr. Green on speaker phone.

On June 28 or 29, 2021, Ms. Butts was terminated.

On July 19, 2021, the union asked Ms. Butts if she wanted the union to file a grievance on her behalf for her termination and informed Ms. Butts the union needed confirmation by 3:00 p.m. the following day to be within the grievance filing timeline.

On July 21, 2021, the union provided Ms. Butts notice that it filed the grievance and request for information with the employer. The grievance moved through the parties' grievance process. On December 14, 2021, the union provided notice to the employer that the union was advancing the grievance to level IV, arbitration, of the grievance procedure and asked the employer who would be selecting the arbitrator on the employer's behalf. When the grievance was advanced to

arbitration on December 14, the filing was allegedly timely. The union and employer allegedly continued settlement conversations after the grievance was moved to arbitration.

On March 16, 2022, Ms. Butts emailed the union asking why the grievance had not been moved to arbitration. Later that day, the union sent an email to Ms. Butts stating that, while the grievance was submitted to arbitration, the union was continuing to determine the merits of the grievance. After advancing the grievance to arbitration, the union and employer continued settlement discussions. In the March 16 email the union reiterated that the employer had provided a settlement offer verbally and Ms. Butts had verbally rejected it. The union provided the employer's offer in writing to Ms. Butts for review. The union considered the offer a "take it or leave it" offer and would not be continuing through arbitration if Ms. Butts rejected the offer. The union requested Ms. Butt's response to the employer's written offer, so it could notify the employer.

Additionally, the complaint includes images of unclean work locations, and the amended complaint alleges that white employees worked at these work locations. There are no dates provided for when these images were taken. The complaint also alleges there were other white male bargaining unit employees who had complaints filed against them who received improvement plans for discipline and not termination.

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).

The rules for contents of a complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. The complaint was filed on May 6, 2022. In order to be timely, the complainant would have needed to describe triggering events that took place on or after November 6, 2021. The complaint identifies various events that occurred between May 26, 2021, and March 19, 2022. All of the events that occurred prior to November 6, 2021, are untimely filed.

Allegations Outside PERC’s Jurisdiction

Applicable Legal Standard

The complaint alleges discrimination violation of Title VII and collective bargaining agreement violations. These allegations do not fit within the jurisdiction of the Commission. 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.

Application of Standard

The complaint makes references to a Title VII discrimination violation and allegations that white employees were treated differently than Ms. Butts. The complaint included undated pictures of work locations and alleged discipline for other employees. The Commission does not have jurisdiction over general discrimination allegations.

The Commission also 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)). The allegations of violations of the grievance procedure are related to a violation of contract and outside the Commission’s jurisdiction. The discrimination and contract violation allegations must be dismissed.

Union Interference – Duty of Fair Representation

Applicable Legal Standard

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 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, 2002) (citing *City of Seattle*, 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, 177 (1967); *City of Seattle (Seattle Police Officers’ Guild)*, Decision 11291-A. In rare circumstances, the Commission asserts jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers’ Guild)*, Decision 11291-A. The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges its

union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*. 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)*.

Application of Standard

The complaint and amended complaint allege the union did not timely process a grievance and provided misleading information. The facts alleged do not describe union interference by breaching its duty of fair representation under RCW 41.56.150(1). The complaint alleges that Ms. Butts had union representation at the June 3 meeting until Ms. Butts requested the union representative to leave. Additionally, after Ms. Butts was terminated the union sent an email to Ms. Butts asking for confirmation on whether Ms. Butts wanted a grievance to be filed on her behalf.

The complaint generally alleges that the union untimely filed the grievance. The amended complaint alleges that on July 21, 2021, the union provided Ms. Butts notice that it had timely filed the grievance and request for information with the employer. The grievance moved through the parties' grievance process. On December 14, 2021, the union provided notice to the employer that the union was advancing the grievance to level IV, arbitration, of the grievance procedure. When the grievance was advanced to arbitration on December 14, according to the amended complaint the advancement to arbitration was allegedly timely. The complaint alleges the union did not timely file the grievance, but the information included in the amended complaint states that the filings were all completed within the grievance procedure timeline set out in the parties' collective bargaining agreement. The union and employer allegedly continued settlement conversations after the grievance was moved to arbitration.

On March 16, 2022, Ms. Butts emailed the union asking why the grievance had not been moved to arbitration. Later that day, the union sent an email to Ms. Butts stating that, while the grievance was timely submitted to arbitration, the union was continuing to determine the merits of the grievance. After advancing the grievance to arbitration, the union and employer continued

settlement discussions. In the March 16 email the union reiterated that the employer had provided a settlement offer verbally, and Ms. Butts had verbally rejected it. The union provided the employer's offer in writing to Ms. Butts for review. The union considered the offer a "take it or leave it" offer and would not be continuing through arbitration if Ms. Butts rejected the offer. The union requested Ms. Butt's response to the employer's written offer, so it could notify the employer. While the amended complaint alleges the grievance was untimely filed and the union provided misleading information about the grievance, the facts included in the amended complaint do not support this allegation. The facts allege that the grievance was timely filed and on multiple occasions the union informed Ms. Butts about how the grievance was moving through the process. Because the facts do not allege the elements necessary for a duty of fair representation violation, the complaint must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 25th day of July, 2022.

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 07/25/2022

DECISION 13537 - PECB and 13538 - 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 135083-U-22

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