

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONNA TEGNELL,

Complainant,

vs.

WASHINGTON STATE FERRIES,

Respondent.

CASE 135178-U-22

DECISION 13542 - MRNE

ORDER OF DISMISSAL

DONNA TEGNELL,

Complainant,

vs.

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS,

Respondent.

CASE 135179-U-22

DECISION 13543 - MRNE

ORDER OF DISMISSAL

*Daniel Twohig*, Vice President, for the International Organization of Masters, Mates and Pilots.

*David Lawton*, Independent Representative, for Donna Tegnell.

*Elizabeth Delay Brown*, Assistant Attorney General, Robert W. Ferguson Attorney General for the Washington State Ferries.

On June 21, 2022, Donna Tegnell (complainant) filed an unfair labor practice complaint against the Washington State Ferries (employer) and the International Organization of Masters, Mates and Pilots (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> The complaints were

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<sup>1</sup> 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.

consolidated and a deficiency notice issued on June 30, 2022, notified Tegnell that a cause of action could not be found at that time. Tegnell was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the cases.

On July 5, 2022, Tegnell filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaints for timeliness and failure to state a cause of action.

### ISSUES

The amended complaints allege the following:

Employer not allowing a Loudermill predisciplinary hearing & involuntary terminating Donna Tegnell.

Union interference with employee rights in violation of RCW 47.64.130(2)(a)(i) outside six months of the date the complaint was filed, by breaching its duty of fair representation in processing Tegnell's grievance under the parties' collective bargaining agreement.

The amended complaints include dates that are untimely filed and lack facts alleging violations within the Commission's jurisdiction. Thus, the complaints must be dismissed.

### BACKGROUND

On June 21, 2022, Tegnell submitted two unfair labor practice complaint forms with 207 pages of exhibits. The complaints did not include a statement of facts. After the deficiency notice was issued Tegnell filed amended complaints which included a statement of facts.

Between August 9, 2021, and September 2021, Governor Jay Inslee issued proclamation 21.14, proclamation 21.14.1, and 21.14.2 declaring that unvaccinated state employees would be terminated on October 18, 2021. Prior to October 18, 2021, Tegnell worked at the employer and was represented by the union. The amended complaints allege that Tegnell was not provided a Loudermill predisciplinary meeting prior to Tegnell's termination date. Tegnell allegedly did not

receive explanation of the employer's evidence supporting the termination date. Tegnell also allegedly did not have the opportunity to provide a response to the termination action.

On September 7, 2021, the union and employer allegedly entered into a memorandum of understanding (MOU) related to the proclamation. The union bargained the MOU along with a coalition of other unions and the employer.

Tegnell was terminated on October 18, 2021. Tegnell did not receive an explanation of coalition evidence supporting the coalition's October 18, 2021, termination date. Allegedly, Tegnell did not have the opportunity to be heard in response to the proposed coalition termination action. Tegnell's grievance was initiated on or held on September 24, 2021.<sup>2</sup> The union allegedly filed the grievance on November 1, 2021. The union allegedly followed the grievance process in the collective bargaining agreement. The amended complaint alleges the union did not expedite the grievance process. The step one grievance meeting allegedly was scheduled for January 26, 2022.

## ANALYSIS

### *Timeliness*

#### Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. The alleged violations must occur within the six months prior to the complaint being filed. "[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 47.64.132(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

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<sup>2</sup> The facts in complaints 135178-U-22 and 135179-U-22 differ, so both allegations are included in the decision.

has “actual or constructive notice of” the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

#### Application of Standard

The complaints were filed on June 21, 2022. The violations must have occurred on or after December 21, 2021, to be considered timely filed. All of the alleged events occurred prior to December 21 except for one. The January 26 step one grievance meeting is the only event that is alleged within the six-month statute of limitations. All of the allegations against the employer occurred outside the six-month statute of limitations. Because the other allegations are untimely filed, they must be dismissed.

#### *Allegations Against the Employer Outside PERC's Jurisdiction*

#### Applicable Legal Standard

The allegations of the complaints against the employer are untimely and do not describe allegations against the employer that 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 amended complaints allege that the employer terminated Tegnell on October 18, 2021, because of the proclamations that were issued. Additionally, the amended complaints allege the union and employer engaged in negotiations which resulted in an MOU related to the proclamation. They allege that Tegnell did not have a Loudermill predisciplinary meeting prior to Tegnell's termination. Additionally, the employer allegedly did not have an opportunity to be heard prior to the termination date. The grievance the union filed allegedly followed the grievance process described in the parties' collective bargaining agreement. The allegations against the

employer are untimely filed as stated above. Even if the allegations were timely filed, there are no facts included that are necessary to allege a violation within the Commission's jurisdiction. Thus the complaints against the employer must be dismissed.

### *Union 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 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. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute and does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. *Bremerton School District*, Decision 5722-A (PECB, 1997). 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 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 (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. *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*, 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).

#### Application of Standard

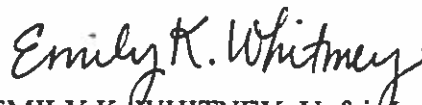
The amended complaint lacks facts alleging a duty of fair representation violation within the Commission's jurisdiction. There was only one allegation that occurred within the six-month statute of limitations, the January 26 step one grievance meeting. The amended complaints allege the union filed a grievance after Tegnell was terminated. They also allege that the grievance was not expedited, but that the union and employer used the grievance process outlined in the collective bargaining agreement. There are no facts alleging the union's action was discriminatory, arbitrary or in bad faith. The amended complaints allege the grievances were filed in conformance with the parties' collective bargaining agreement. Because the amended complaints lack facts necessary to allege a duty of fair representation violation within the Commission's jurisdiction, the amended complaint against the union must be dismissed.

ORDER

The amended complaints 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 28th day of July, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Handwritten signature of Emily K. Whitney in cursive script.

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

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ISSUED ON 07/28/2022

DECISION [Enter # & Statute](#) 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 135178-U-22

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# RECORD OF SERVICE

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ISSUED ON 07/28/2022

DECISION 13543 has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in blue ink, appearing to read "Debbie Bates", is written over a horizontal line.

BY: DEBBIE BATES

CASE 135179-U-22

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