STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY METRO, Employer.	
CHARLES LARE, Complainant, vs. AMALGAMATED TRANSIT UNION LOCAL 587, Respondent.	CASE 136067-U-22 DECISION 13711 - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Charles Lare, self-represented complainant.

Jon Howard Rosen, Attorney at Law, The Rosen Law Firm, for the Amalgamated Transit Union Local 587.

Charles Lare (complainant), a part-time transit operator with King County Metro, filed the instant complaint on November 28, 2022,[1] against the Amalgamated Transit Union Local 587 (union). The Unfair Labor Practice Administrator issued a Preliminary Ruling on December 21, 2022, determining that the complaint could move forward for further processing based on the allegation that the union breached its duty of fair representation in violation of RCW 41.56.150(1) when union president Ken Price arbitrarily withdrew a grievance filed on behalf of Lare that was recommended for arbitration by the union's executive board. The union filed an answer to the complaint on January 9, 2023.

[1] The Commission received the complaint on November 26, 2022, which was a Saturday. Documents received by the Commission outside of regular business hours are deemed filed the following business day. WAC 10-08-110, WAC 391-08-120.

On April 20, 2023, the union filed a timely motion for summary judgment under the purview of WAC 391-08-155. Lare filed a response to the union's motion on May 10, 2023, and the union filed a response to Lare's response on May 17, 2023.

ISSUES

1. Are there genuine issues of material fact in dispute that would prevent judgment in this case?

2. Was Lare's complaint timely filed?

3. Did the union interfere with Lare's collective bargaining rights by breaching its duty of fair representation when union president Ken Price arbitrarily withdrew a grievance filed on behalf of Lare that was recommended for arbitration by the union's executive board?

The union's motion is granted as there are no issues of material fact in dispute that would prevent judgment. The unfair labor practice complaint was not timely filed. Even if Lare had filed the complaint within the six-month statute of limitations, Union President Price's withdrawal of Lare's grievance did not breach the union's duty of fair representation owed to Lare.

BACKGROUND

Lare is employed as a part-time transit operator with King County Metro (Metro). The union represents several job classifications of Metro employees, including full and part-time transit operators. Metro and the union were parties to a collective bargaining agreement (CBA) effective November 1, 2019, through October 31, 2022, at the time of the issues raised in the instant complaint. The Examiner takes official notice that in early 2020, the Governor declared a State of Emergency for the State of Washington due to the COVID-19 pandemic.[2] As a result, Metro experienced reduced ridership and reduced the number of service hours being operated. Metro notified approximately 200 part-time transit operators that they were going to be laid off effective August 7, 2020. Metro and the union negotiated a memorandum of agreement

[2] Governor Jay Inslee's State of Emergency Proclamation, 20-05, issued February 29, 2020.

(MOA) titled, "Reassignment of PTO Work Assignments Due to Layoffs,"[3] which was fully executed on July 16, 2020. The MOA proscribed a reassignment process for part-time operators who were not impacted by the layoffs and indicated that such employees had their work assignments cancelled in their entirety due to the reduced transit schedule being operated by Metro. All such part-time operators were required to participate in the work reassignment for the six-week period of August 8 through September 18, 2020. The MOA also provided that per Article 16.4.I of the CBA, part-time operators who refused to accept an alternative assignment under the MOA would have their pay guarantee cancelled effective August 8, 2020. The next "shake-up" for operators to start picked route assignments based on seniority did not begin until September 19, 2020.

On July 15, 2020, Tamieko Cook e-mailed Steven Hopkins, Deputy Director, to inquire whether the agreed MOA language would implicate a loss in pay for an assignment that paid less than those operators' current rate of pay. Hopkins responded that a part-time operator could "theoretically" end up with less pay than the route they had prior to the six-week reassignment window in the MOA.

On September 16, 2020, Lare filed a grievance against Metro citing several CBA articles and two MOAs.[4] Lare's grievance sought the remedy of the difference in pay between his picked work assignment routes and the routes he was reassigned to, including all leave and retirement credits he would have earned, but for the reassignment. Seventeen other part-time transit operators filed similar grievances seeking the pay differential between picked assignments and their reassigned routes. One of the grievances, filed by Randy White (White), was chosen by the union as the "lead" grievance, while the seventeen others, including Lare's, were held in abeyance. Both Lare's complaint and the Union's answer reference seventeen grievants. A review of Metro's "Summary of First Step Grievance," dated January 7, 2021, references the

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[3] MOA between Metro and ATU587, Exhibit C-2 of Complainant's Response to the Motion for Summary Judgment.

[4] Lare's grievance attached to the complaint cites violations of two MOAs. One of those, MOA 410U2120, is the July 16, 2020 MOA, "Reassignment of PTO Work Assignments Due to Layoffs." The other is cited as MOA 410U920, and references, "shake-up to remain in effect until fall 2020." Exs. B and C of complaint, pgs. 15 and 16 of complaint.

grievance hearing took place on November 20, 2020, and that, "…roughly 30 employees filed a grievance primarily alleging that they should have maintained their spring shake up pay guarantee."[5]

Lare focuses the instant unfair labor practice complaint on one CBA provision cited in his 2020 grievance, Article 16.4.I. That CBA article reads in part: "If the start time and/or quit time of any assignment picked by a PTO is changed for the remainder of the shake-up or the assignment is cancelled for the remainder of the shake-up, the pay of the picked assignment will be guaranteed for the remainder of the shake-up."

White's grievance proceeded through Steps 1 through 3 of the parties' CBA grievance process in 2021 and was denied by Metro at each step. On September 24, 2021, union attorney Jillian Cutler (Cutler) provided union leadership with an opinion memo indicating that based on the negotiation history leading into the July 2020 MOA, it would be highly unlikely that an arbitrator would sustain White's grievance.[6] Cutler advised she did " . . . not recommend advancing his grievance (or the parallel grievances currently being held in abeyance) to arbitration."

The union distributes a monthly publication, the *News Review*, both online and to bargaining unit employee worksites. The March 2022 issue of the *News Review* reported in its "Arbitration Update" section that White's "PTO picked work guarantee issue" was approved to go to arbitration by the membership during the February meeting cycle and was pending the scheduling of the arbitration. Previously, on February 14, 2022, the Union advised Metro that it was scheduling arbitration for White's grievance.

By letter dated April 5, 2022, the union advised Metro that it was withdrawing the grievance of White and "all related grievances in abeyance regarding a picked work guarantee . . . ."[7] The union advised White of this decision sometime around April 4, 2022. There is insufficient evidence to determine if the union

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5 While this document references approximately 30 grievances related to this matter, both the union and the complainant state a total of 18 grievances. As such, the discrepancy in the number of total grievances related to this matter with Metro's Step 1 disposition is not dispositive to the ruling on the motion for summary judgment.

6 Ex. JC1, union's motion for summary judgment.

7 Ex. RA5, union's motion for summary judgment.

provided similar notice to the other seventeen grievants of the withdrawal of their grievances at that same time. The lack of such evidence, however, is not dispositive to the determination of the motion for summary judgment.

The union's May 2022 *News Review* issue, distributed in early May, advised that White's grievance was withdrawn. On May 25, 2022, Lare e-mailed Ron Anderson (Anderson), union vice president, to inquire about the status of his 2020 grievance. Lare's e-mail quoted the May 2022 News Review Arbitration Update section that indicates White's grievance was withdrawn.

On May 29, 2022, Anderson responded to Lare and explained that the union withdrew White's grievance as the lead grievant and all grievances that were in abeyance. Anderson's e-mail explained that the decision was made based on the union attorney's opinion letter and "overwhelming" evidence presented by Metro.

ANALYSIS

Applicable Legal Standard(s)

Summary Judgment

Summary judgment is properly granted if there are no material issues of fact and the moving party is entitled to judgment as a matter of law. *Spokane County*, Decision 13510-B (PECB, 2022) (citing *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995)); WAC 10-08-135. A material fact is one upon which the outcome of the litigation depends. *Id.* (citing *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243 (1993)). The trier of fact must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Id.* The motion should be granted if, from all the evidence, a reasonable person could reach but one conclusion. *Id.*

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion . . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*,

Decision 13333 (PSRA, 2021), *Aff'd by Washington State Liquor and Cannabis Board (Washington Federation of State Employees),* Decision 13333-A (PSRA, 2021). When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *Id*. The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *Id.*

Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Id.*; *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003).

Statute of Limitations

"[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). A cause of action accrues, and the statute of limitations begins to run at the earliest point in time that a complaint concerning the alleged wrong could be filed. *Spokane County*, Decision 13510-B (PECB, 2022), citing *Municipality of Metropolitan Seattle (METRO)*, Decision 1356-A (PECB, 1982) (citing *Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn.2d 616 (1945)). 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. *Spokane County*, Decision 13510 (PECB, 2022), *Aff'd Spokane County*, Decision 13510-B, citing *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

An exception to the strict enforcement of the statute of limitations exists where the complainant had no actual or constructive notice of the acts or events that are the basis of the charges. *City of Bellevue,* Decision 9343-A (PECB, 2007).

Duty of Fair Representation

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 agreement. *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. *C-TRAN (Amalgamated Transit Union, Local 757),* Decision 7087-B.

In *Allen v. Seattle Police Officers' Guild,* 100 Wn.2d 361 (1983), the Washington 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.

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. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees),* Decision 13333 (PSRA, 2021), *aff'd,* Decision 13333-A (PSRA, 2021); *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 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(s)

Issue 1: There are No Genuine Issues of Material Fact

The December 21, 2022, Preliminary Ruling framed the issue before the Examiner as whether the union interfered with Lare's collective bargaining rights by breaching its duty of fair representation owed to Lare when Union President Ken Price arbitrarily withdrew a grievance filed on behalf of Lare that was recommended for arbitration by the union's executive board. The Commission has long held that an examiner may not rule on any evidence or argument beyond the scope of the preliminary ruling. *King County*, Decision 9075-A (PECB, 2007).

Any allegations concerning whether Lare or the other 17 grievances were meritorious, whether the union notified the impacted bargaining unit employees of the related MOA impacts, whether that MOA reflected the parties' "meeting of the minds" or communications at the bargaining table, how the union chose White as the lead grievant, or whether the union should have disregarded in-house counsel's legal opinion are not germane to the scope of the issue framed in the preliminary ruling.

Reviewing the record in its entirety, including over 600 documents submitted between the parties including undisputed exhibits[8], affidavits, motions, and pleadings, the Examiner finds factual consistency and sufficient undisputed facts to render a decision.

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[8] Neither party raised concerns of authenticity of any of the submitted exhibits. Many of the submitted exhibits are duplicative within both parties' submissions.

Issue 2: Summary Judgment is Appropriate on the Basis of Timeliness

The union argues Lare knew or should have known that the alleged unfair labor practice occurred more than six months prior to filing the complaint with the Commission. Lare argues that the date that should be used for determining the six-month statute of limitations is May 29, 2022, the day he received the email from Anderson responsive to his May 25, 2022, e-mail.

Lare filed his complaint on November 28, 2022.[9] The union argues that the publication of its May monthly *News Review*, including distribution to all the work sites on May 5, 2022, and online posting on May 6, 2022, should have provided Lare notice of the withdrawal of the grievance. That issue provided the following "Arbitration Update" on page 3: "Randy White: Grieved his PTO work guarantee issue. Membership approved the grievance in the February meeting cycle, The [sic] grievance was withdrawn."[10] Neither the May 5 distribution nor the May 6 online posting alone influence the Examiner's ruling on timeliness in this matter. The union made great emphasis of, and the Examiner took judicial notice of, the pandemic and its impacts. Expecting impacted grievants would have risked exposure to view an indoor work site union bulletin board is not persuasive. Similarly, whether or when Lare would have initially viewed the May *News Review*, either in print or online, is unknown.[11]

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9 *See FN1.*

10 Ex. TC2, union's motion for summary judgment.

11 Lare provided a declaration from Linda (AKA Riley) Anderson, a part-time operator co-worker, fellow grievant, and former union executive board officer. Anderson opined that the manner in which she and other grievants received notice of the withdrawal of their grievances, ". . . does not seem like the proper Grievance handling to me and may be unprecedented." She further asserts that she did not become aware of her grievance being withdrawn until Anderson's May 29, 2022, email response to Lare (Ms. Anderson was cc'd).

Lare also included with his response an unsigned declaration from one of the other alleged grievants in this matter, Michael Donaldson. As an unsigned declaration, I have not considered any portion of Donaldson's declaration in reaching the decision herein. *See* WAC 208-08-085.

What *is* known by the parties' filings, is that Lare had read the May 2022 *News Review* at the very least no later than May 25, 2022.[12] On that date, Lare sent the following email to Anderson:

> Greetings Ron:
>
> What is the status of my attached, "Chuck Lare's grievance for not paid original work downloaded PDF.pdf"?
>
> The last communication of its status was in your email, January 28, 2021, stating, "All grievance were place in abeyance with the lead grievant to be heard at the 2nd step."
>
> The May 2022 News Review under Arbitration states, "5. Randy White ["lead grievant"]: Grieved his PTO picked work guarantee issue. Membership approved the grievance in the February meeting cycle [overwhelmingly 42 "Yes to 3 "No"], The Grievance was withdrawn."
>
> Speaking with Mr. White today, he stated in his meeting with you and President Price, for the record, he is opposed to the grievance being withdrawn."
>
> Stay well, thanks.
> Chuck Lare [….]

Anderson replied to Lare's May 25 email on May 29 as follows:

> Chuck,
>
> The union withdrew the lead grievance [filed by] Randy White and all grievances that were in abeyance. This was a decision made based on the union's Legal/Labor Attorney opinion letter, and the overwhelming eviden[ce] that Metro has presented. Once the union take a [member's] grievance to third step[,] [t]he member has a right to request arbitration. This does not mean the union support[s] that decision. I disagree with how the PTO's reassignment [was] handled. At this time I have no other option but to withdraw the grievance. If you would like to discuss this further, please [feel] free to contact me.
>
> Thank you,
>
> Ron Anderson
>
> Vice President [….]

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[12] The Examiner notes that while Lare included the union's March and April of 2022 *News Review* with his November 28, 2022, complaint, he did not include a copy of the May 2022 publication.

Lare's May 10, 2023 Response to the Motion for Summary Judgment includes the following pleadings:

> […]
>
> 37. Aggrieved Operator Randy White's grievance was selected by the union for the representative grievance hearings. The 17 other aggrieved operators', Lare being one of the 17, grievances were placed in abeyance.
>
> 38. Metro denied Operator White's grievance at all three grievance steps and thereby all 18 aggrieved operators, including Lare's, grievances were denied.

Lare included an exhibit with both his original unfair labor practice complaint and his Response to the Union's Motion for Summary Judgment an e-mail dated February 24, 2022, addressed to Union Vice President Anderson. The e-mail was also addressed with courtesy copies to approximately sixteen other recipients, including one addressee who appears to have the same e-mail address as that used by Mr. Rosen to communicate with White (see *infra*). This e-mail reads:

> Greetings Ron:
>
> My understanding is the membership voted overwhelmingly to support *our* grievance for Not paid original Picked Work grievance at this month's union meetings.
>
> I request you select an attorney for arbitration other than Julian. Julian was a party to the King County negotiations in question, is of the opinion *we* would lose in arbitration – *our* interests would best be served by a different attorney."
>
> Stay well, thanks.
>
> Chuck Lare […]

Exhibit G, Lare Unfair Labor Practice Complaint and Exhibit G, Response to Motion for Summary Judgment, *Emphasis added.*

Lare's use of the plural possessive in this February 2022 email, "our grievance" and "our interests," as well as the phrase, "we would lose in arbitration," imply an understanding that the 18 grievances were being processed together and moving as a group or class toward arbitration. If Lare was aware that all the grievances were bundled together in consideration at the time of this February 2022 email, his alleged

lack of constructive knowledge and chosen reliance on the May 29, 2022, Anderson email as the statutory "triggering" date appears misplaced.

The union's representative in responding to this unfair labor practice allegation, Jon Rosen, submitted his own declaration with attachments to accompany the response brief. Those documents detail attempts to have the lead grievant, White, sign an affidavit. Ultimately, White refused to sign the affidavit and explained as much in an email to Rosen on April 5, 2023: "Jon, Don't want to sign this. Sorry for the delay. Randy White." Upon a further press by Rosen on April 11, White responds, "Could not agree to specific dates because I do not remember."

In a previous email to Rosen, however, dated January 7, 2023, White affirmed that he advised Lare within a week or two of Anderson informing him of the union's decision to withdraw the grievance from arbitration. Rosen's January 7, 2023, email to White states: "Thanks for letting me know. I believe that you told me yesterday that you let Chuck and your other coworkers know about the decision within a week or two of your conversation with Ron Anderson. Is that what you did?" White responded via email a couple of hours later with simply, "Yes."

Lare's Response to the Motion for Summary Judgment included a signed affidavit from White, dated May 7, 2023, indicating his understanding of the grievance processing. He wrote, in part:

> [….]
>
> 7. My understanding was after my grievance went through the grievance steps that the other grievances would then be taken out of abeyance and follow through the grievance steps.
>
> [….]
>
> 12. After the membership had voted to take my grievance to arbitration, the ATU 587 President informed me, after the fact, that he had decided to withdraw my grievance with no mention of how he would treat the other aggrieved grievances.

White's declaration does not contradict his prior January 7, 2023, email to Rosen indicating that he had told Lare within a week or two of being so advised by Anderson. As noted, Anderson advised White around April 4, 2022, of the union's decision to withdraw the grievance. Based on the record as a whole

and White's communications with Rosen and through his declaration, I find that a reasonable person could discern that White advised Lare of the grievance withdrawal sometime in mid to late April 2022.

White admitted to Rosen that he told Lare "within a week or two" of the union's advised decision to withdraw his grievance. Lare would have had knowledge then around mid-April 2022 that at least White's grievance had been withdrawn. Coupled with Lare's late February 2022 email to Anderson, wherein he used the plural possessive, essentially referring to a collective group of grievances marching toward arbitration, I find a lack of credibility that Lare was not aware that his grievance would not go to arbitration until May 29, 2022.

Further, Metro's Step 1 denial of White's grievance, issued on January 7, 2021, includes the following: "As a result of the MOU, roughly 30 employees filed a grievance primarily alleging that they should have maintained their spring shake up pay guarantee." This Step 1 disposition repeatedly refers to the part-time operators as a *group*, e.g. "Therefore, the PTOs are asking for the loss of wages and related accruals for the pay difference between what they had picked for the spring shake up and their reassignment." The Step 1 Metro denial is two pages in length and includes a "Decision" section at the end of the document. It was signed by William McCoy, the Superintendent of South Base Operations.

Metro's Step 2 denial of White's grievance, issued on April 9, 2021, includes the following: "There are a number of additional operators who have grieved the PT operator reassignment. Those grievances are currently being held in abeyance." Metro's Step 3 grievance denial, issued December 29, 2021, incorporated by reference its Step 1 and Step 2 grievance responses. Metro's Step 2 and 3 grievance responses were multiple pages in length and also included a "Decision" section toward the end of each document.

Conversely, Lare twice submitted what appears to be Metro's Step 1 response to his grievance, dated November 12, 2020. The provided Metro response is only one page and appears to reflect a caption of the parties, grievance filing and hearing dates. The response provides the alleged violations of the CBA and MOAs, as well as the remedy sought. Lare's submitted Metro Step 1 response does *not* include Metro's disposition or decision regarding the grievance or any explanation.

As of the processing of this complaint, Lare serves as a union shop steward, per his signature on the pleadings, and has run for an elected position within union leadership on at least one occasion. Lare has also been a self-represented litigant before this agency and the U.S. Department of Labor, Office of Labor-Management Standards. *See King County (Amalgamated Transit Union Local 587),* Decision 13453-A (PECB, 2022) and Exhibit C-9, both submitted with Lare's response to the motion. Lare appears to have substantial knowledge of both internal union processes, as well as maneuvering through administrative agencies with jurisdiction over his union.

Weighing the totality of the record and the excerpts included herein, the Examiner finds that Lare had at the very least constructive knowledge that the union withdrew his grievance prior to, if not by May 25, 2022. Lare's unfair labor practice complaint, filed November 28, 2022, was therefore beyond the six-month statute of limitations and untimely.

Issues 3: Summary Judgment is Also Appropriate on the Merits of the Case

Even if Lare's complaint was found to have been filed within the six-month statute of limitations, it also fails to meet the burden of proof to establish that the Union violated its duty of fair representation owed to the complainant. Even considering the facts in a light most favorable to the non-moving party, Lare still fails to establish sufficient evidence creating a reasonable inference that the Union's actions were discriminatory, arbitrary, or in bad faith. The complaint also fails to establish that the Union's withdrawal of Lare's grievance was based on considerations that were irrelevant, invidious, or unfair. As such, Lare's allegation does not survive summary judgment.

Dissatisfaction with the Union's withdrawal of the 17 other grievances held in abeyance, including Lare's, the Union's methods of notifying its members, disagreement with the appointment or opinion of the Union's counsel and resulting opinion memo, and unproven speculations are insufficient to sustain the burden of proof that the Union violated its duty of fair representation owed to Lare.

The standard for whether a union acted in an arbitrary manner is found in *Air Line Pilots Association v. O'Neill,* 499 U.S. 65 (1991). Here, the Court held that a "union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953), as to be irrational."

Id. at 67. In the instant case, the Union sought the advice of its legal counsel, Cutler, in making its determination to withdraw Price's grievance and the 17 other grievances held in abeyance. Cutler provided the union leadership with the legal opinion on September 24, 2021, that an arbitrator would most likely deny Mr. White's grievance based on extrinsic evidence, bargaining history, and the context of the MOA negotiations. Cutler had also participated in the negotiation and drafting of the Union and Metro MOA at issue in this case.

Based on Cutler's legal advice and the parties' related MOA, Union President Price decided that White's grievance as well as those grievances held in abeyance should be withdrawn.

As noted, the Preliminary Ruling provides the scope of the unfair labor practice allegation in this case. The scope based on that ruling is whether the Union breached its duty of fair representation owed to Lare when Price arbitrarily withdrew a grievance filed on behalf of Lare that was recommended for arbitration by the union's executive board. The Commission recognizes that unions have substantial discretion in their decision making, even if the ultimate decision proves to be wrong. *Columbia Basin College (Washington Public Employees Association)*, Decision 9210-A (PSRA, 2006). The Commission's established duty of fair representation standards also recognize that bargaining unit employees' individual goals may not always be achieved through collective bargaining. *Id.*

In this case, the Union used its discretion to reach what it believed to be a rational conclusion to withdraw the grievance based on legal counsel's advice, the Union and Metro's related MOA, and the COVID-era climate at that time. The merits of the Union's decision-making process to reach that conclusion are outside the scope of the jurisdiction exercised by this agency and are not considered herein.

In light of the factual and legal landscape at the time, the Union's withdrawal of the grievances was not outside of the "wide range of reasonableness." While the Union's conduct does reflect a lack of communication through the process, it does not rise to the level of being arbitrary, discriminatory, or in bad faith. Both parties submitted the Union's "News Review" which reflects that the union conducted monthly membership meetings and sought membership input around the time of this allegation. Lare's dissatisfaction with the ultimate decision, however, along with other evidence purporting the Union breached its duty of fair representation, does not rise to the level of being arbitrary, discriminatory, or in

bad faith. In reaching the decision to grant the motion for summary judgment, I have considered all the submitted facts and made reasonable inferences from those facts in light most favorable to the complainant. I can only reach but one conclusion that there are no issues of material fact that could be discerned at a hearing and the union is entitled to judgment as a matter of law. *Spokane County*, Decision 13510-B; WAC 10-08-135; WAC 391-08-155.

Respondent's Request for Attorney's Fees and Costs

The union asserts that the complainant's allegations are frivolous, cites Lare's prior allegations against the union raised to and ultimately dismissed by this agency,[13] and seeks the extraordinary remedy of attorney's fees and costs. In a case addressing frivolous prosecution claims, the Commission analyzed the provisions of both chapters RCW 41.56 and RCW 41.59 to reach a determination that an underlying express condition of both statutory schemes requires that an unfair labor practice must have occurred, and the award must be against the party committing it. *Anacortes School District*, Decision 2464-A (EDUC, 1986). Here, there is no finding that an unfair labor practice occurred. As such, the union's request for the award of attorney's fees and costs is denied.

CONCLUSION

The complainant has not established any material evidence demonstrating that there are material facts in dispute, and as such, summary judgment is appropriate. The unfair labor practice was not timely filed per the statutory requirements. Even if Lare had timely filed the complaint, Lare failed to present evidence substantiating that the union's withdrawal of his grievance that was recommended for arbitration by the union's executive board constituted arbitrary, discriminatory, or bad faith conduct. As such, I grant the union's Motion for Summary Judgment and dismiss the complaint.

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[13] *King County (Amalgamated Transit Union Local 587)*, Decision 13453-A.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).

2. The Amalgamated Transit Union Local 587 is a bargaining representative within the meaning of RCW 41.56.030(2) and represents transit operators employed by the employer.

3. Lare is a part-time transit operator for the employer and a member of the bargaining unit described in finding of fact 2.

4. On September 16, 2020, Lare filed a grievance against Metro citing several CBA articles and two MOAs.

5. Lare's grievance sought the remedy of the difference in pay between his picked work assignment routes and the routes he was reassigned to, including all leave and retirement credits he would have earned, but for the reassignment.

6. Seventeen other part-time transit operators filed similar grievances seeking the pay differential between picked assignments and their reassigned routes.

7. One of the grievances, filed by Randy White, was chosen by the union as the "lead" grievance, while the seventeen others, including Lare's, were held in abeyance.

8. Metro and the union were parties to a collective bargaining agreement (CBA) effective November 1, 2019, through October 31, 2022.

9. Metro and the union negotiated a memorandum of agreement (MOA) titled, "Reassignment of PTO Work Assignments Due to Layoffs," which was fully executed on July 16, 2020. The MOA proscribed a reassignment process for part-time operators who were not impacted by the layoffs and indicated that such employees had their work assignments cancelled in their entirety due to the reduced transit schedule being operated by Metro.

10. Lare cited Article 16.4.I in his September 16, 2020, grievance. Article 16.4.I states, "If the start time and/or quit time of any assignment picked by a PTO is changed for the remainder of the shake-up or the assignment is cancelled for the remainder of the shake-up, the pay of the picked assignment will be guaranteed for the remainder of the shake-up."

11. White's grievance proceeded through Steps 1 through 3 of the parties' CBA grievance process in 2021 and was denied by Metro at each step.

12. On September 24, 2021, union attorney Cutler provided union leadership with an opinion memo indicating that based on the negotiation history leading into the July 2020 MOA, it would be highly unlikely that an arbitrator would sustain White's grievance. Cutler advised she did "…. not recommend advancing his grievance (or the parallel grievances currently being held in abeyance) to arbitration."

13. The union distributes a monthly publication, the *News Review*, both online and to bargaining unit employee worksites.

14. On February 14, 2022, the union advised Metro that it was scheduling arbitration for White's grievance.

15. The union's March 2022 issue of the *News Review* reported in its "Arbitration Update" section that White's "PTO picked work guarantee issue" was approved to go to arbitration by the membership during the February meeting cycle and was pending the scheduling of the arbitration.

16. By letter dated April 5, 2022, the union advised Metro that it was withdrawing the grievance of White and "all related grievances in abeyance regarding a picked work guarantee . . . ."

17. The union advised White of the decision to withdraw his grievance sometime around April 4, 2022.

18. The union's May 2022 *News Review* issue, distributed in early May, advised that White's grievance was withdrawn.

19. On May 25, 2022, Lare sent the following e-mail to Anderson:

> Greetings Ron:
>
> What is the status of my attached, "Chuck Lare's grievance for not paid original work downloaded PDF.pdf"?
>
> The last communication of its status was in your email, January 28, 2021, stating, "All grievance were place in abeyance with the lead grievant to be heard at the 2nd step."
>
> The May 2022 News Review under Arbitration states, "5. Randy White ["lead grievant"]: Grieved his PTO picked work guarantee issue. Membership approved the grievance in the February meeting cycle [overwhelmingly 42 "Yes to 3 "No"], The Grievance was withdrawn."
>
> Speaking with Mr. White today, he stated in his meeting with you and President Price, for the record, he is opposed to the grievance being withdrawn."
>
> Stay well, thanks.
> Chuck Lare [….]

20. On May 29, 2022, Anderson responded to Lare and explained that the union withdrew White's grievance as the lead grievant and all grievances that were in abeyance. Anderson's e-mail explained that the decision was made based on the union attorney's opinion letter and "overwhelming" evidence presented by Metro.

21. Lare's May 10, 2023, Response to the Motion for Summary Judgment includes the following pleadings:

> […]
>
> 37. Aggrieved Operator Randy White's grievance was selected by the union for the representative grievance hearings. The 17 other aggrieved operators', Lare being one of the 17, grievances were placed in abeyance.
>
> 38. Metro denied Operator White's grievance at all three grievance steps and thereby all 18 aggrieved operators, including Lare's, grievances were denied.

22. On February 24, 2022, Lare sent an e-mail to Union Vice President Anderson. The e-mail was also addressed with courtesy copies to approximately sixteen other recipients, including one addressee who appears to have the same e-mail address as that used by Mr. Rosen to communicate with White. This e-mail reads:

> Greetings Ron:
>
> My understanding is the membership voted overwhelmingly to support our grievance for Not paid original Picked Work grievance at this month's union meetings.
>
> I request you select an attorney for arbitration other than Julian. Julian was a party to the King County negotiations in question, is of the opinion we would lose in arbitration – our interests would best be served by a different attorney."
>
> Stay well, thanks.
>
> Chuck Lare […]

23. On January 7, 2023, White affirmed in an email to Rosen that he had advised Lare within a week or two of Anderson informing him of the union's decision to withdraw the grievance from arbitration.

24. Lare's claim that he was not aware that his grievance would not go to arbitration until May 29, 2022, lacks credibility.

25. Lare had constructive knowledge that the union withdrew his grievance prior to, if not by May 25, 2022.

26. Lare filed the instant unfair labor practice complaint on November 28, 2022.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. Based on findings of fact 17-19, and 21-26, the statute of limitations for this complaint, as defined by RCW 41.56.160(1) began to run on or before May 25, 2022.

3. No genuine issue of material fact remains as to the timeliness of Lare's complaint under WAC 10-08-135.

4. The complaint in this case was not timely filed under RCW 41.56.160(1).

5. No genuine issue of material fact remains as to the union president's withdrawal of a grievance filed on Lare's behalf that was recommended for arbitration by the union's executive board under WAC 10-08-135.

6. Based on findings of fact 9, 12, 16, 17, and 19-22, the union president's withdrawal of a grievance filed on Lare's behalf that was recommended for arbitration by the union's executive board was not a violation of the union's duty of fair representation in violation of RCW 41.56.150(1).

ORDER

The motion for summary judgment is granted and the complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 14th day of September, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAGE A. TODD, Examiner

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 09/14/2023

DECISION 13711 - 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 136067-U-22

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