Washington State Department of Social and Health Services (Washington Federation of State Employees), Decision 13733 (PSRA, 2023)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Employer.	
THOMAS TAYLOR, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 137428-U-23 DECISION 13733 - PSRA ORDER OF DISMISSAL

Thomas Taylor, the complainant.

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for the Washington Federation of State Employees.

On August 31, 2023, Thomas Taylor (complainant) filed an unfair labor practice complaint against the Washington Federation of State Employees (union). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on September 25, 2023, notified Thomas that a cause of action could not be found at that time. Thomas was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. No further information has been filed by Thomas.

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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.

ISSUES

The complaint alleged the following:

> Union interference in violation of RCW 41.80.110(2)(a) by breaching its duty of fair representation owed to Thomas Taylor by failing to file a grievance on Thomas's behalf concerning the employer's decision to terminate Taylor's employment for his refusal to comply with the employer's COVID-19 vaccine mandate.
>
> Violations of the collective bargaining agreement.
>
> Allegations outside of this agency's jurisdiction.

The complaint is dismissed because the allegations in the complaint are either not timely or outside of this agency's jurisdiction.

BACKGROUND

Taylor worked for the Washington State Department of Social and Health Services (employer) in an unidentified role. He was represented by the union for purposes of collective bargaining.

According to the complaint, the employer instituted a COVID-19 vaccination mandate in 2021 and then allegedly engaged in religious discrimination and threatened Taylor with termination. On an unidentified date, Taylor contacted the union to request that they assist him with filing a grievance to protect his religious beliefs and job interest.

The complaint asserted that on October 22, 2021, the union (through its counsel) informed Taylor that there was no intent on the part of the union to submit a grievance on Taylor's behalf. On October 26, 2023, the union reiterated this intent by informing Taylor that it had no grievance pending on his behalf regarding the COVID-19 mandate. Taylor asserted that the union filed grievances regarding the COVID-19 mandate for other employees.

On November 11, 2021, Taylor learned from union representative Brenda Baldwin that the union directed its representatives to not file any grievances concerning religious exemptions for the

COVID-19 mandate. On December 16, 2021, union representative Jazmyn Ryan emailed Taylor a "secret" union document that directed representatives to deny union representation to any employee who declined to get vaccinated based on religious beliefs or for medical reasons.

Taylor asserted that the union's actions breached its duty of fair representation owed to Taylor and also breached the nondiscrimination provisions of the collective bargaining agreement.

ANALYSIS

Applicable Legal Standards

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 41.80.110(2)(a). 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).

Contract Violations

The 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)).

Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1) governs the time for filing complaints:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That 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 . . . . This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. 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)).

The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Renton*, Decision 12563-A (PECB, 2016) (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). Under the "discovery rule," the statute of limitations does not begin to run until the complainant, using reasonable diligence, would have discovered the cause of action. *U.S. Oil & Refining Co. v. State Department of Ecology*, 96 Wn.2d 85, 92 (1981). The doctrine of equitable tolling requires the exercise of reasonable diligence on the part of the complainant. *Adult Residential Care, Inc.*, 344 NLRB 826 (2005). The party asserting equitable tolling should apply bears the burden of proof. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379 (2009). To prove that the statute should be tolled, the complainant would need to show deception or concealment of the facts forming the basis of the unfair labor practice complaint and the exercise

of diligence by the complainant. *City of Renton*, Decision 12563-A (citing *Millay v. Cam*, 135 Wn.2d 193, 206 (1998)).

The Commission has also ruled that the statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025 (citing *City of Chehalis*, Decision 5040 (PECB, 1995)).

Application of Standards

Taylor's allegation that the union breached its duty of fair representation is not timely because it was not filed within the six-month statute of limitations. Taylor filed his complaint on August 31, 2023. Accordingly, only those facts that occurred on or after February 28, 2023, or facts that were reasonably learned of after February 28, 2023, are timely.

None of the facts alleged in the complaint occurred on or after February 28, 2023, and none of the facts alleged in the complaint were reasonably learned by Taylor on or after February 28, 2023. Taylor asserted that he received specific emails from union representatives in October, November, and December 2021, and that those emails demonstrate the union breached its duty of fair representation. Thus, the facts demonstrate that the complainant knew of the alleged duty of fair representation violation prior to February 28, 2023.

Taylor's allegation that the union breached the nondiscrimination clause of the collective bargaining agreement also fails to state a cause of action before this agency. As noted above, this agency 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. The proper forum for Taylor to have sought redress for this allegation was either through the grievance procedure contained within the collective bargaining agreement or through the superior courts.

Finally, the allegations claiming WFSE violated other statutes such as RCW 49.60.190, RCW 9A.46.020, Title 29 CFR 1605, and the National Labor Relations Act all failed to state causes of action before this agency. This agency's jurisdiction is limited to enforcing Washington's public sector collective bargaining law such as chapter 41.80 RCW and the Commission lacks the statutory authority to enforce the other statutes cited in the complaint.

ORDER

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

ISSUED at Olympia, Washington, this 3rd day of November, 2023.

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 11/03/2023

DECISION 13733 - PSRA 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 137428-U-23

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