

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ISSAQUAH SCHOOL DISTRICT, Employer.	
KEVIN MALLAJI, Complainant, vs. TEAMSTERS LOCAL 763, Respondent.	CASE 138319-U-24 DECISION 13868 - PECB ORDER OF DISMISSAL

Kevin Mallaji, the complainant.

Thomas A. Leahy, Attorney at Law, Reid, Ballew, Leahy & Holland, L.L.P., for the Issaquah School District.

On February 1, 2024, Kevin Mallaji (complainant) filed an unfair labor practice complaint against Teamsters Local 763 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 6, 2024, notified Mallaji that a cause of action could not be found at that time. Mallaji was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 7, 2024, and March 21, 2024, Mallaji filed an amended complaint and additional information to support his complaint.

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.

ISSUE

The original and amended complaints allege the following:

Union interference in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation owed to Kevin Mallaji by failing to represent him during disciplinary proceedings brought by the employer against Mallaji.

The original and amended complaints are dismissed because they lack facts demonstrating the union's failure to represent Mallaji was based upon invidious reasons.

BACKGROUND

On January 13, 2023, Mallaji started work as a Custodian with the Issaquah School District (employer). His position is represented by Teamsters Local 763 (union) for purposes of collective bargaining.

According to the original complaint, the employer trained Mallaji to perform his custodial duties which he claims he successfully completed. On February 16, 2023, Mallaji's supervisor, Dawn, claimed that he was not performing his job as a Custodian. The complaint did not provide Dawn's full name. Mallaji allegedly sent Dawn proof that he was performing his job and that Dawn responded that his work was "pretty good" but that he needed additional training. Mallaji finished this additional training on February 24, 2024.

On February 28, 2023, Dawn allegedly told Mallaji that he would not go back to Maywood Middle School because the lead had concerns about his work. The original complaint asserted that Dawn did not tell Mallaji what those concerns were even though Mallaji asked. Mallaji claims in his complaint that he believes Dawn was discriminating against him for unidentified reasons and wanted to give better assignments to her friend and to punish Mallaji.

On March 8, 2023, Mallaji requested accommodations to observe Ramadan by starting work early so he could leave by 6pm. Dawn allegedly changed Mallaji's hours to 3pm to 11pm. When Mallaji complained to Human Resources, his hours were changed as requested.

In March of 2023, Dawn allegedly moved Mallaji to Beaver Lake Middle School and informed the supervisors there that Mallaji had poor performance. On March 13, Mallaji sent Dawn pictures of his performance and asked his current supervisor, Drew, about his performance. The complaint did not provide Drew's full name but does allege that Drew told Mallaji that he was doing a good job. However, on March 20, 2023, Drew asked Mallaji to the custodian office and accused Mallaji of "giving him the finger" because a blue glove that was placed on the desk was positioned to show the middle finger. Mallaji denied the act was intentional.

Around April 12, 2023, Mallaji's day supervisor, Matt, informed him that he observed Mallaji for two weeks and that he was doing a good job, but the employer may nevertheless extend his probation period. The original complaint did not provide Matt's full name. On April 14, 2023, union Shop Steward Jeff Garbe forwarded Mallaji an email exchange that extended his probation period. While Mallaji asked Garbe why his probation was being extended, Garbe allegedly told Mallaji it was because of his "Performance and attendance at work." Mallaji alleged that he was never informed that his performance or attendance was under question and the only time off he requested because human resources instructed him to wait at home for 3 days while they decided how to handle his Ramadan request.

On April 27, 2023, Mallaji met with Human Resources Director Amanda Dorery, his union representatives, and Matt to discuss the extension of his probation. Mallaji alleged that when responded to the employer's complaints that the employer made up new accusations, including improperly taking time off, poor performance, and for not getting along with people at work.

In May 2023, Mallaji worked at Pine Lake Middle School with Custodial Lead and Shop Steward Charles Floyd. Sometime during that workday, Floyd allegedly told Garbe that "Kevin doesn't know how to do his job." Mallaji also asserts that Dawn kept assigning him to schools "further

north” to make his commute hard. He alleges Dawn did this in retaliation for requesting a work assignment that was closer to his residence.

On August 23, 2023, Dawn allegedly called Mallaji to a meeting with Floyd where Dawn accused Mallaji of violating the employer’s policies and procedures. Mallaji claims that he carefully responded to each accusation. Mallaji claimed Dawn’s accusations demonstrate discriminatory behavior against him. The employer allegedly hired an investigator to look into the allegation, but Mallaji has not heard about the results of the investigation.

Following that meeting, Mallaji met with Floyd with questions concerning how to write his response to the accusation. Floyd allegedly told Mallaji to call him and Floyd would help write the response. Mallaji claimed that he tried calling Floyd three times, left a voicemail, and Floyd never called him back. On September 7, 2024, Union President Jason Powell allegedly told Mallaji that even though people have said he does good work, in the future they will say that he does bad work. Mallaji claimed that this proves the union knew the employer would mistreat Mallaji, demonstrates that the union is not representing Mallaji, and the union is taking sides with the employer to make Mallaji look bad.

In September 2023, Mallaji claimed that Dawn discriminated against him by treating him differently than a substitute custodian named Esther. The complaint did not provide Esther’s full name. Mallaji claimed that both he and Esther forgot to clean a bathroom during this time, but Dawn punished Mallaji for this minor mistake by reassigning him to schools that were farther away from where he lived to make it hard for him to commute. Mallaji also claimed that because Esther is friends with Dawn’s husband, Dawn assigned Esther to a school that Mallaji had been working at that was more convenient for Esther. Mallaji asserted that this shows Dawn’s favoritism towards Esther and racial discrimination towards Mallaji.

On an unidentified date in late September 2023, Garbe sent Mallaji an email informing him that Garbe is no longer going to be Mallaji’s shop steward.

Mallaji's original complaint asserted that in October and November 2023, Susana Santiago, the lead at Apollo Elementary School, accused him of creating drama by trying to touch the union representative's hand and by talking loudly. In late October 2023, Floyd allegedly told Santiago that Mallaji tried to hold Floyd's hand and talked loudly after the meeting on August 23, 2023. Sandra Flores, a friend and coworker told me this after Susana told her. Mallaji asserted that these claims demonstrate that the shop stewards and employers are making false accusations and colluding against him.

On October 13, 2023, Mallaji inquired about a warehouse driving position. He claims that a coworker told him that they "hire by 'who do you know'" and refused to consider his application even though he has over 25 years of experience with a class A commercial drivers license. Mallaji also claimed that the employer did not post this position and kept it quiet to allow a family member of a current driver to accept the position.

In November 2023, Mallaji alleged that Dawn accused him of clocking out early and wanted him to claim 15 minutes of vacation time. Mallaji claimed that he clocked out 1 minute early and that other employees also clock out slightly early and they are not asked to claim vacation time. Mallaji also claimed that he clocked out early because a senior employee was verbally abusive towards him and Mallaji felt unsafe.

At the end of November, Mallaji asked his new supervisor Nicole and Dawn to schedule him closer to where he lived. Mallaji claims that Nicole and Dawn ignored his seniority and gave a friend with less seniority the schools closer to Mallaji's residence. Mallaji also claims that Nicole and Dawn harshly stated, "we assign you." On December 7, 2023, the employer placed Mallaji on paid administrative leave for misconduct and took Mallaji's badge, escorted him off the premises, and instructed him not to talk with anyone.

At a December 18, 2023, meeting, the employer informed Mallaji that he was placed on leave for using a computer on December 5, 2023. Mallaji asserts that he was never told about the policy and was often invited to use other computers by faculty and teachers. Mallaji claimed that he thought he was following policy and that he was not aware of any policies prohibiting from using the

computers. On December 19, 2023, Mallaji met with an investigator and was again informed that he was placed on leave for using a computer.

On January 10, 2024, Union President Jason Powell sent Mallaji an email that allegedly asserts that the union is refusing to represent him. The contents of that email are not explained in the original complaint, but Mallaji asserts that the email simply repeats the allegations against Mallaji and uses inflammatory words like “civility, poor performance.”

Mallaji’s amended complaints do not contain any new additional facts. Rather, the amended complaints include documentation that supports the allegations in the original complaint.

ANALYSIS

Applicable Legal Standards

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)).

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. 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

Mallaji filed his original complaint on February 1, 2024. Accordingly, only those factual allegations that occurred on or after August 1, 2023, can be considered for purposes of finding a cause of action under chapter 41.56 RCW. All other facts may only be considered background information.

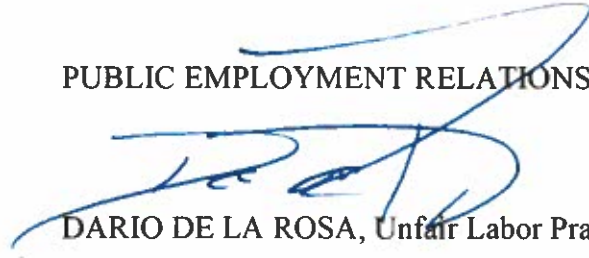
Mallaji argues that the union breached its duty of fair representation by failing to represent him as he faces charges from the employer and asserts that the union instead listens to and takes the side of the employer without investigating details and allowing Mallaji to respond to the charges. These allegations do not form the basis because Mallaji did not allege any specific arbitrary, discriminatory, or bad faith conduct by the union. 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 alleges the union violated rights guaranteed in chapter 41.56 RCW. Mallaji's asserts through conjecture that the union's actions were aligned against him but he failed to allege specific facts demonstrating that the union aligned itself against Mallaji's interests on an improper or invidious basis, such as union membership, race, sex, national origin, etc. Rather, the facts as plead suggest the union exercised its discretionary decision-making authority concerning the handling of the allegations brought against Mallaji and this Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006).

ORDER

The original and amended complaints charging unfair labor practices in the above-captioned matter are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read 'Dario de la Rosa', is written over the text of the 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 06/11/2024

DECISION 13868 - 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 138319-U-24

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