

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PASCO SCHOOL DISTRICT,

Employer.

VICTOR OCHOA,

Complainant,

vs.

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 280,

Respondent.

CASE 139097-U-24

DECISION 13913 - PECB

ORDER OF DISMISSAL

*Victor Ochoa*, the complainant.

*Thomas A. Leahy*, Attorney at Law, Reid, Ballew, Leahy & Holland, L.L.P., for the International Union of Operating Engineers Local 280.

On June 5, 2024, Victor Ochoa (complainant) filed an unfair labor practice complaint against the International Union of Operating Engineers Local 280 (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on June 18, 2024, notified Ochoa that a cause of action could not be found at that time. Ochoa was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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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.

No further information has been filed by Ochoa. The complaint is dismissed for timeliness and failure to state a cause of action.

### ISSUE

The complaint alleges the following:

Union interference in violation of RCW 41.56.150(1) by breaching its duty of fair representation owed to Victor Ochoa by failing to adequately represent Ochoa.

The complaint is dismissed for timeliness and failure to state a cause of action. Ochoa does not allege any facts within the six-month statute of limitations that state a violation of the duty of fair representation.

### BACKGROUND

Victor Ochoa was hired in January 2023 as a Mechanic in the Pasco School District. Ochoa's position was in a bargaining unit represented by the International Union of Operating Engineers Local 280.

In the complaint, Ochoa lists a number of events beginning in January 2023 through his termination from employment on January 8, 2024. Turning to the events occurring within six months from the date the complaint was filed, Ochoa asserts that he and another Mechanic met with their supervisor and shop lead on December 6, 2023, to discuss working conditions and what they needed to do to advance to the Mechanic two level. The complaint states that Ochoa expressed concern that the employer was engaged in direct dealing with them and that a union representative should be present.

Ochoa states that on December 19, 2023, the supervisor gave Ochoa examples of witnessing or hearing Ochoa be negative. The supervisor also allegedly expressed concerns about Ochoa's attitude. On December 20, 2023, Ochoa received written notice that he was under investigation. The complaint alleges that on December 27, 2023, Ochoa was hand delivered a letter of the

accusations against him. Ochoa alleges that he was given a letter of direction from his supervisor on January 5, 2024, that complaints against Ochoa are credible. On January 8, 2024, Ochoa alleges that he was summoned to Human Resources and provided notice of his immediate termination.

In email correspondence following the filing of the complaint against the union, Ochoa stated, “union failed to represent me in the events, they were at the meetings but didn’t do anything for me. I was the one that did all the talking and the union rep was silent like she was in agreement with the employer.”

## ANALYSIS

### Applicable Legal Standards

#### *Statute of Limitations*

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).

#### *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 Legal Standards

Ochoa does not identify any activities occurring on or after December 5, 2023, involving the union. None of the facts identified from that date forward even mention the presence of the union at any event. In a number of events that occurred prior to December 5, 2023, Ochoa specifically references when the union was present.

Even if the union was present at the events identified that occurred within the six-month statute of limitations, they do not state a violation of the duty of fair representation. Ochoa does not allege any specific arbitrary, discriminatory, or bad faith conduct by the union. Rather, Ochoa claims a violation based upon the quality of the representation. A bargaining unit 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. None of the facts alleged demonstrate that the union aligned itself against Ochoa's interests on an improper or invidious basis, such as union membership, race, sex, national origin, etc. Ochoa was provided an opportunity to file and serve an amended complaint. Ochoa did not file an amended complaint. Because the complaint does state timely facts alleging a violation within the Commission's jurisdiction, the complaint must be dismissed.

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 18th day of July, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

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 07/18/2024

DECISION 13913 - 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 139097-U-24

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