

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE – SOCIAL AND HEALTH SERVICES, Employer.	
NEEVE WILLOWS, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 127923-U-16 DECISION 12569 - PSRA PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On February 12, 2016, Neeve Willows (complainant) filed an unfair labor practice complaint against the Washington Federation of State Employees (union). The employer, the Washington State Department of Social and Health Services, is not a party to the issues directly before the Commission. However, every case processed by the Commission must arise out of an employment relationship that is subject to the Commission’s jurisdiction, and the Commission’s docketing procedures require the name of the employer in each case.¹

The complaint was reviewed under WAC 391-45-110,² and a deficiency notice issued on March 1, 2016, indicated that it was not possible to conclude a cause of action existed at that time for some of the allegations of the complaint. The complainant was given a period of 21 days in which

¹ The complainant also filed a case against the employer, which was assigned case number 127922-U-16. Although these cases deal with similar time periods and were addressed in the same deficiency notice, they have not been consolidated.

² At this stage of the proceedings, all of the facts alleged in the 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.

to file and serve an amended complaint or face dismissal of the defective allegations. On March 21, 2016, the complainant filed an amended complaint.

The amended complaint states a cause of action for further case processing concerning the allegations of the union's failure and refusal to provide Willows with copies of the notes taken by union representatives at investigatory meetings between the employer and Willows in 2015. The union must file and serve its answer to these allegations within 21 days following the date of this order. The remaining allegations concerning the union's decision not to file or advance and arbitrate grievances raise issues outside of the Commission's jurisdiction and are therefore dismissed. Some of the allegations are also dismissed for untimeliness.

ISSUES

The allegations of the amended complaint concern:

Union interference with employee rights in violation of RCW 41.80.110(2)(a) by breaching its duty of fair representation by:

1. Refusing to file and process a grievance on behalf of Willows challenging a performance evaluation the employer issued in November 2014.
2. Refusing to advance and arbitrate a grievance filed by Willows seeking to challenge the letter of reprimand she received from the employer on October 14, 2015.
3. Since December 2, 2015, failing and refusing to provide Willows with copies of the notes taken by union representatives at investigatory meetings between the employer and Willows in 2015.
4. Since December 4, 2015, refusing to file and process a grievance on behalf of Willows challenging a written reprimand issued by the employer.

BACKGROUND

According to the facts alleged in the amended complaint, Willows is employed as a Social Services Specialist 3 in the Department of Social and Health Services Children's Administration. Willows

also serves as a union shop steward. The amended complaint describes Willows' employment relationship and union activity dating back to October 2013.

In 2013 Willows filed a grievance seeking overtime compensation for additional hours she was required to work. The complainant alleges that the employer engaged in a pattern of retaliation against her since 2013. Because the Commission can only consider allegations of events that took place in the six months preceding the filing date of the complaint, many of the alleged facts may serve as background information only.

DISCUSSION

Duty of Fair Representation

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 41.80.110(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 such claims, 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 toward one of its members is arbitrary, discriminatory, or in bad faith. *City of Redmond*, 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*, 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:

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.

Analysis

The complaint and amended complaint raise issues with the union's decision not to pursue and ultimately arbitrate grievances over evaluations and discipline. Such issues are not types of duty of fair representation allegations that can be remedied by the Commission. While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 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).

The union's decision not to move the complainant's grievances to arbitration is not within the Commission's jurisdiction. Allegations about the processing or settling of grievances must be pursued through the courts. *Seattle School District*, Decision 9359-A (EDUC, 2007). The Commission does not have jurisdiction over the claims Willows raises against the union concerning the processing of her grievances.

Alleged Violations of the Collective Bargaining Agreement

The complainant alleges various 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 interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004), citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A.

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

Six-Month Statute of Limitations Period

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 41.80.120(1). The six-month statute of limitations period 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).

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. RCW 41.80.120(1). The original complaint was filed on February 12, 2016, and therefore is only timely with regard to events that took place on or after August 12, 2015. The allegations concerning the union's refusal to file and process grievances on behalf of Willows over the November 2014 performance evaluation are untimely filed. As explained above, even if these allegations had been timely filed, they would still fall outside of the Commission's jurisdiction.

CONCLUSION

The amended complaint states a cause of action for further case processing concerning the allegations of union breach of duty of fair representation by the union failing and refusing to provide Willows with copies of the notes taken by union representatives at investigatory meetings between the employer and Willows in 2015. The remaining allegations in the complaint and amended complaint concerning the union's decision not to process grievances are dismissed because they raise issues that are not within the jurisdiction of the Commission. Some of the allegations are also dismissed for untimeliness.

ORDER

1. Assuming all of the facts alleged against the union to be true and provable, the amended complaint states a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.80.110(2)(a) by breaching its duty of fair representation since December 2, 2015, by failing and refusing to provide Neeve Willows with copies of the notes taken by union representatives at investigatory meetings between the employer and Willows in 2015.

2. The allegations against the union described in paragraph 1 of this order will be the subject of further proceedings under Chapter 391-45 WAC.

The union shall:

File and serve its answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order.

An answer shall:

- a. Specifically admit, deny, or explain each fact alleged in the amended complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The remaining allegations of the complaint and amended complaint against the union are DISMISSED for failure to state a cause of action. The allegations about failure to process grievances in November 2014 are also DISMISSED for being untimely filed.

ISSUED at Olympia, Washington, this 22nd day of April, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 04/22/2016

DECISION 12569 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 127923-U-16

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