

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID L. MORSE, Complainant, vs. TACOMA SCHOOL DISTRICT, Respondent.	CASE 128621-U-16 DECISION 12662 - EDUC ORDER OF DISMISSAL
DAVID L. MORSE, Complainant, vs. TACOMA EDUCATION ASSOCIATION, Respondent.	CASE 128622-U-16 DECISION 12663 - EDUC ORDER OF DISMISSAL

On December 13, 2016, David L. Morse (complainant) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. Case 128621-U-16 names the Tacoma School District (employer) as the respondent. Case 128622-U-16 names the Tacoma Education Association (union) as the respondent. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on January 12, 2017, indicating that it was not possible to conclude a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases. On February 2, 2017, the complainant's counsel requested an extension to file an amended complaint. I granted the complainant a 10-day extension to file amended complaints, making the due date February 13, 2017.

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

SUMMARY OF ALLEGATIONS

The allegations of the complaint against employer in case 128621-U-16 concern:

Employer violation of collective bargaining agreement by involuntarily transferring David L. Morse from a teaching position at Stadium High School to a teaching position at Lincoln High School in September of 2015.

The allegations of the complaint against union in case 128622-U-16 concern:

Union interference with employee rights in violation of RCW 41.59.140(2)(a)(i), by breaching its duty of fair representation and failing and refusing to file and process a grievance over the employer's decision to involuntarily transfer Morse from a teaching position at Stadium High School to a teaching position at Lincoln High School in the fall of 2015.

The allegations in the complaints do not qualify for further case processing. Both complaints are untimely filed. Additionally, the complaint against the employer does not allege a statutory violation of Chapter 41.59 RCW. The types of grievance related matters at issue in the complaint against the union would need to be resolved in the court system, not before the Commission. The court system has the authority to remedy contract violations and duty of fair representation cases that arise out of grievance processing. The complaints are dismissed for failure to state a cause of action under Chapter 41.59 RCW.

ANALYSIS

Six Month Statute of Limitations to File Complaints

The statute of limitations for filing an unfair labor practice complaint under Chapter 41.59 RCW is six months from the date of occurrence. RCW 41.59.150(1). *South Whidbey School District*, Decision 10880-A (EDUC, 2011). 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).

The Commission has previously held that the only exception to the strict enforcement of the six-month statute of limitations is where the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *South Whidbey School District*, Decision 10880-A, citing *City of Pasco*, Decision 4197-A (PECB, 1994).

Analysis of Timeliness

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaints were filed on December 13, 2016. In order to be timely, the complainant would have needed to describe events that took place on or after June 13, 2016. According to the facts in the complaint, Morse became aware he was being involuntarily transferred in September 2015. Thereafter, on a date not specified in the complaint but presumably in the fall of 2015, Morse asked the union president to file a grievance. The union informed Morse that it would not be filing a grievance because the union did not believe that Morse’s involuntary transfer violated the CBA.

The complainant’s involuntary transfer occurred in the fall of 2015. These allegations took place well outside of the six-month statute of limitations period. The statute is clear that “a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint . . .” RCW 41.59.150(1).

The complainant notes that it was only in September of 2016 that Morse learned of his rights under the collective bargaining agreement. Unfortunately, RCW 41.59.150(1) does not allow for the statute of limitations to be extended because an individual or organization did not know about their statutory rights.

The allegations, which concern interactions between the union and employer concerning the complainant’s involuntary transfer and related request that the union file a grievance, occurred more than six months before the complaints were filed with the Commission. The complaints are untimely filed.

VIOLATION OF CONTRACT

The complaints allege contract violations by the employer. 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). 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.

DUTY OF FAIR REPRESENTATION

Legal Standards

It is an unfair labor practice for a union to restrain or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060. RCW 41.59.140(2)(a)(i). 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).

Duty of Fair Representation Analysis

The complaint alleges that the union violated its duty of fair representation by failing or refusing to file, investigate, and pursue a grievance over the employer’s decision to involuntarily transfer Morse to a different school in the middle of the school year. Morse believed the employer’s actions violated provisions of the collective bargaining agreement.

The allegations of the complaint revolve around the employer's decision to transfer Morse and the union's decision not to file a grievance over Morse's involuntary transfer. 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 361 (1982).

Allegations about the processing or settling of grievances must be pursued through the courts. *Seattle School District*, Decision 9359-A (EDUC, 2007). For example, in *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982) an allegation that the union refused to process a grievance was insufficient to state a cause of action. The decision explained that the Commission will not assert jurisdiction if allegations arise exclusively from the processing of claims under an existing collective bargaining agreement. The Commission will only assert jurisdiction for "duty of fair representation" if an employee alleged arbitrary, discriminatory, or bad faith conduct by the union in negotiating a collective bargaining agreement or in the representation of the complainant or others in collective bargaining unit. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012), citing *Mukilteo School District (Public School Employees of Washington)*, Decision 1381. Distinguishing out cases that focus on grievance processing and directing these cases to the courts is pragmatic because the courts have much broader authority to remedy the underlying issues involved in a disputed grievance.

CONCLUSION

Both of the complaints are untimely filed. All of the allegations of the complaints took place more than six months before the complaints were filed. Additionally, the entirety of the complaint against the employer arises out of an alleged contract violation. Filing an unfair labor practice complaint is not the correct avenue for addressing a contract violation. Similarly, the complaint against the union concerns the union's decision not to file and process grievances. The Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances.

ORDER

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

ISSUED at Olympia, Washington, this 1st day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 03/1/2017

DECISION 12662 - EDUC has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 128621-U-16

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