

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Employer.	
HEIDI BLAIS, Complainant, vs.	CASE 132100-U-19 DECISION 13106 - PSRA
WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	ORDER OF DISMISSAL

On September 16, 2019, Heidi Blais (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Washington Federation of State Employees (union) as respondent. The complaint was reviewed under WAC 391 45 110,¹ and a deficiency notice was issued on October 10, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Blais 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 Blais. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

¹ 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.

ISSUE

The complaint alleged:

Hostile work environment allegations.

General union discrimination allegations.

The complaint does not describe facts that could constitute a violation within the Commission's jurisdiction. Thus the complaint is dismissed.

BACKGROUND

Heidi Blais is an employee at the Washington State Department of Social and Health Services (employer) and represented by the Washington Federation of State Employees (union). On September 16, 2019, Blais filed an unfair labor practice complaint against the union alleging hostile work environment and discrimination. The complaint alleges that in May 2018 Blais confided information in union shop steward Bill Jorden. In June 2019 Blais learned that in 2018, Jorden allegedly shared some of the information that Blais had told him. On June 11, 2019, Blais allegedly attempted to talk with Jorden about his sharing of information. Jorden later filed a complaint with the employer against Blais and an investigation was launched against Blais.

ANALYSISTimeliness*Applicable Legal Standard*

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 that 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).

Application of Standard

The complaint was filed on September 16, 2019. For the complaint to be timely filed, the facts alleged must have occurred on or after March 16, 2019. The facts alleged that occurred prior to March 16, 2019, are untimely and will be considered for background information only.

The only alleged facts that are timely filed are those facts related to events in June 2019.

Hostile Work Environment

The Commission only has jurisdiction over hostile work environment allegations alleged to be in retaliation for protected union activity. It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.80.110(2)(a). A union interferes with employee rights when an employee could reasonably perceive the union's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *King County (Amalgamated Transit Union, Local 587)*, Decision 8630-A (PECB, 2005).

The complaint alleges that Jordan's actions have created a hostile work environment. The complaint does not allege that the hostile work environment was in retaliation for protected activity. The hostile work environment allegation against the union is not covered by statutes administered by the Public Employment Relations Commission (PERC). Thus the allegation must be dismissed.

Discrimination

Employees can file discrimination allegations against the union related to filing a complaint or providing testimony before PERC. An employee can also file a union discrimination allegation related to the union inducing the employer to commit a violation.

The complaint does not describe allegations that fit within the jurisdiction of the Commission. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.

The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity. The complaint does not allege that Blais was


discriminated against for engaging in protected union activity. Thus the complaint must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 6th day of December, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, 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 12/06/2019

DECISION 13106 - 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 132100-U-19

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