

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ARTAVIA N. SMALLEY, Complainant, vs. PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA, Respondent.	CASE 132205-U-19 DECISION 13129 - PECB ORDER OF DISMISSAL
ARTAVIA N. SMALLEY, Complainant, vs. AMALGAMATED TRANSIT UNION LOCAL 758, Respondent.	CASE 132206-U-19 DECISION 13130 - PECB ORDER OF DISMISSAL

On October 23, 2019, Artavia N. Smalley (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Pierce County Public Transportation Benefit Area (employer) and Amalgamated Transit Union Local 758 (union) as respondents. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on November 25, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Smalley was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

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 Smalley. The Unfair Labor Practice Administrator dismisses the complaints for timeliness and failure to state a cause of action.

ISSUE

The complaints alleged:

- General employer discipline allegation related to the collective bargaining agreement outside the six-month statute of limitations.
- Union interference with employee rights in violation of RCW 41.56.150(1), outside the six-month statute of limitations, by breaching its duty of fair representation regarding unidentified actions.

The complaints described facts that occurred outside the six-month statute of limitations. Additionally, the complaints did not describe facts that could constitute a violation within the Commission's jurisdiction. Thus the complaints are dismissed.

BACKGROUND

Smalley was a transit operator at Pierce County Public Transportation Benefit Area (employer) and was represented by the Amalgamated Transit Union Local 758 (union). On July 13, 2017, Smalley entered into a last chance agreement with the employer. On January 16, 2019, Smalley was placed on administrative leave following an alcohol test. On January 28, 2019, Smalley attended a *Loudermill* meeting. On February 5, 2019, Smalley was discharged from the employer.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. A complaint must 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. *State – Corrections*, Decision 11025 (PSRA, 2011), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month 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 complainant did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025, *citing City of Chehalis*, Decision 5040 (PECB, 1995).

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 that 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).

Application of Standard

The allegations of the complaints concerning violations of chapter 41.56 RCW are not timely filed.

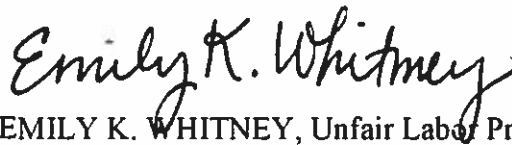
The complaints were filed on October 23, 2019. For the complaints to be timely filed, the facts alleged must have occurred on or after April 23, 2019. All of the alleged facts occurred prior to April 23, 2019. Unfortunately, RCW 41.56.160(1) does not allow for the statute of limitations to be extended because an individual or organization did not know about their statutory rights. Smalley did not file amended complaints. Because the facts alleged are untimely filed, the complaints are dismissed.

ORDER

The 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 7th day of January, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "Emily K. Whitney". The signature is written in a cursive style with a large initial "E".

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 01/07/2020

DECISION 13129 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132205-U-19

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RECORD OF SERVICE

ISSUED ON 01/07/2020

DECISION 13130 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132206-U-19

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