

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JEFF L. SANDAINE,  Complainant,  vs.  WASHINGTON STATE INDIVIDUAL PROVIDERS,  Respondent.	CASE 133353-U-21  DECISION 13330 - PECB  ORDER OF DISMISSAL
JEFF L. SANDAINE,  Complainant,  vs.  SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 775,  Respondent.	CASE 133354-U-21  DECISION 13331 - PECB  ORDER OF DISMISSAL

*Judith Krebs*, General Counsel, for Service Employees International Union Local 775.

*Jeff L. Sandaine*, the Complainant.

*M. Kate Garcia*, Assistant Attorney General, Attorney General Robert W. Ferguson, for Washington State Individual Providers.

On February 19, 2021, Jeff Sandaine (complainant) filed an unfair labor practice complaint against the Service Employees International Union Local 775 (union) and the state of Washington (employer). This agency docketed the complaint against the employer as case 133353-U-21 and the complaint against the union as case 133354-U-21. Both complaints were reviewed under

WAC 391-45-110<sup>1</sup> and deficiency notices were issued on March 9, 2021, notifying Sandaine that a cause of action could not be found at that time for either case. Sandaine was given a period of 21 days in which to file and serve amended complaints or face dismissal of both cases. On March 19, 2021, Sandaine filed amended complaints.

### ISSUES

The amended complaints alleges the following:

- Contract and settlement violations.
- Other statutory violations.

The amended complaints are dismissed for failure to state a cause of action. Neither complaint states a violation of the collective bargaining laws administered by this agency.

### BACKGROUND

Sandaine is an individual provider who provided home-care services for a relative. As an individual provider, Sandaine is represented by the union for purposes of collective bargaining. Local 775 and the state of Washington are parties to a collective bargaining agreement that expires on June 30, 2021. Chapter 41.56 RCW governs the collective bargaining relationship between Sandaine, Local 775, and the state of Washington.

The gravamen of Sandaine's complaints center around allegations that the employer improperly withheld funds from his earning statements or fraudulently failed to pay him the full amount of monies owed and manipulating his vacation time. Sandaine's complaints includes information detailing how he arrived at the amount of monies owed and time lost. Sandaine claims that the

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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.

employer has violated the Fair Labor Standards Act, chapters 49.48 RCW and 49.52 RCW, and chapters 192-310 and 192-340 WAC by failing to pay him the proper amount for individual provider services. Finally, Sandaine asserts that the employer's actions violated a settlement agreement between the employer and union.

Sandaine's complaints do not allege that the employer's alleged adverse actions were in retaliation for Sandaine's exercise of protected activity under chapter 41.56 RCW. Additionally, while Sandaine indicates that the union is a party to these alleged violations, the complaints do not allege any facts as to how the union has committed an unfair labor practice aside from the allegations that the settlement agreement was violated.

### ANALYSIS

#### *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).

Sandaine filed his complaint on February 19, 2021. Accordingly, only events occurring after August 19, 2020, are timely and all of the events described in the complaint occurred before that date are not timely.

#### *Allegations Outside the Agency's Jurisdiction*

Sandaine's complaints do not describe allegations that fit within the jurisdiction of the agency. The agency'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). For example, this agency has no authority to resolve alleged violations of the Fair Labor Standards Act. *City of Tacoma (Tacoma Police Management Association)*, Decision 12848 (PECB, 2018). Additionally, this agency has no authority to enforce Washington State's wage laws, chapter 49.48 RCW and chapter 49.52 RCW. A complainant seeking enforcement of those statutory provisions must seek redress through the superior courts.

#### *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 has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134 A (EDUC, 2011) (citing *Tacoma School District*, Decision 5722-E (EDUC, 1997)).

Similarly, a grievance settlement agreement is an ordinary contract governed by general contract interpretation principles. *State Farm Mutual Auto Ins. Co. v. Avery*, 114 Wn. App. 299 (2002). The Commission does not assert jurisdiction over private contracts and does not remedy violations of private contracts. Such interpretation and enforcement must be sought through any applicable contractual procedures (i.e., grievance arbitration) or through the superior courts. *State – Washington State Patrol*, Decision 8785 (PSRA, 2004); *City of Kirkland*, Decision 5672 (PECB, 1996); *Community College District 6 - Seattle*, Decision 8115 (CCOL, 2003); *Clark County*, Decision 5851 (PECB, 1997).

ORDER

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

ISSUED at Olympia, Washington, this 6th day of April, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, 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

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ISSUED ON 04/06/2021

DECISION 13330 - 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 133353-U-21

EMPLOYER: WASHINGTON STATE INDIVIDUAL PROVIDERS

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PARTY 2: JEFF L. SANDAINE

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# RECORD OF SERVICE

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ISSUED ON 04/06/2021

DECISION 13331 - 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 133354-U-21

EMPLOYER: WASHINGTON STATE INDIVIDUAL PROVIDERS

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