

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, Employer.	
JO ANN GIBSON, Complainant, vs.	CASE 134432-U-21 DECISION 13433 - PSRA
WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	ORDER OF DISMISSAL

Jo Ann Gibson, the complainant.

Herb Harris, Coordinator of PERC Activities, for the Washington Federation of State Employees.

On September 3, 2021, Jo Ann Gibson (complainant) filed an unfair labor practice complaint against the Washington Federation of State Employees (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on September 23, 2021, notified Gibson that a cause of action could not be found at that time. Gibson was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

¹ 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.

On October 8, 2021, Gibson filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for timeliness.

ISSUE

The amended complaint alleges the following:

Union interference with employee rights in violation of RCW 41.80.110(2)(a) outside the six month statute of limitations, by breaching its duty of fair representation in not pursuing a grievance to arbitration.

The amended complaint is untimely filed and must be dismissed.

BACKGROUND

Jo Ann Gibson was employed by the Washington State Department of Children, Youth, and Families (employer) as a Social Worker and was represented by the Washington Federation of State Employees. Gibson was supervised by Toni Razote. In 2017 Gibson was ill for a few days and on leave. During one of the days of her leave Gibson missed a court appearance. After the missed court appearance Gibson allegedly could not do anything right according to Razote. Razote allegedly repeatedly made Gibson rewrite referrals, Gibson's court reports were allegedly not approved in a timely manner, and Razote would assigned Gibson extra tasks. Gibson's requests for overtime, protected time, and help were allegedly consistently denied.

In the fall of 2017 Gibson attended a union meeting with other social workers to discuss the workload and the way the social workers were being treated. During that meeting, a union representative informed Gibson the union would file a grievance on Gibson's behalf. The union allegedly never filed the grievance.

On January 19, 2018, Gibson attended an investigation hearing with a union representative. The union representative listed complaints about individual supervisors. The employer allegedly requested a few weeks to address the issues. In 2018 Gibson took a lot of vacation time. When

Gibson was on leave, no one had covered for her cases. Between February 2018 and December 2018, Gibson met with the union approximately seventeen times to discuss the work issues Gibson was having. Each time Gibson met with the union and management, Razote's behavior toward Gibson became worse.

In 2019 Gibson began having workplace investigations every two to three months. Gibson began working after 5:00 p.m. without permission to complete the work. Other social workers worked late without approval, but those employees were not disciplined. On November 25, 2019, Gibson was terminated for insubordination. On an unidentified date, the union filed a grievance on Gibson's behalf for just cause. On an unidentified date, the state grievance committee decided to not support Gibson's grievance.

On July 10, 2021, Gibson learned about filing complaints before the Public Employment Relations Commission (PERC) and allegedly did not know about PERC prior to July 10, 2021.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1)² 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.

² Although the complaint alleges violations of various statutes, this case involves a bargaining unit of state employees that fall under the jurisdiction of chapter 41.80 RCW. The deficiency notice provided notice of the correct statute. The amended complaint included references to various statutes.

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 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)).

The Commission has also ruled that the 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 exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025 (citing *City of Chehalis*, Decision 5040 (PECB, 1995)).

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaint was filed on September 3, 2021. In order to be timely, the complainant would have needed to describe events that took place on or after March 3, 2021. According to the complaint, the complainant’s termination occurred in November 2019 and all

other events occurred prior to that date. On an unidentified date, the union filed a grievance on Gibson's behalf for just cause. On an unidentified date, the state grievance committee decided to not support Gibson's grievance. The complainant was aware of the termination on November 25, 2019. The amended complaint did not include dates of when the grievance was filed or when the grievance committee decided to not support the grievance. The termination date was the last date provided.

The complainant explains that she did not learn of PERC and its services until recently. Unfortunately, chapter 41.80 RCW does not allow for the statute of limitations to be extended because an individual or organization did not know about their statutory rights or PERC. Learning about PERC is not an adverse employment action.

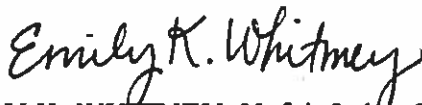
The allegations rising out of interactions between Gibson and the union concerning the grievance filing occurred more than six months before this complaint was filed with the Commission. The allegations of the complaint concerning violations of chapter 41.80 RCW are not timely filed and must be dismissed.

ORDER

The amended complaint charging unfair labor practices in the above-captioned matter is DISMISSED for timeliness.

ISSUED at Olympia, Washington, this 4th day of November, 2021.

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 11/04/2021

DECISION 13433 - 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 134432-U-21

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

PARTY 2: JO ANN GIBSON

REP BY: JO ANN GIBSON
7121 PUMPHOUSE RD
TOPPENISH, WA 98498
jgibson98948@yahoo.com

PARTY 3: WASHINGTON FEDERATION OF STATE EMPLOYEES

REP BY: HERB HARRIS
WASHINGTON FEDERATION OF STATE EMPLOYEES
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
perc@wfse.org