

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,  Employer.	
CLAUDE R. BROWN,  Complainant,  vs.  AMALGAMATED TRANSIT UNION LOCAL 587,  Respondent.	CASE 134472-U-21  DECISION 13439 - PECB  ORDER OF DISMISSAL

*Claude R. Brown*, the complainant.

*Munia Jabbar*, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 587.

On September 22, 2021, Claude R. Brown (complainant) filed an unfair labor practice complaint against the Amalgamated Transit Union Local 587 (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on October 19, 2021, notified the complainant that a cause of action could not be found at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

---

<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.

No further information has been filed by the complainant. The Unfair Labor Practice Administrator dismisses the complaint for timeliness and failure to state a cause of action.

### ISSUE

The complaint alleges the following:

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation due to unidentified action.

The complaint does not describe facts that could constitute a duty of fair representation violation within the Commission's jurisdiction and based on the dates included in the complaint, the complaint is untimely filed.

### BACKGROUND

Claude Brown is a regular operator employed by King County (employer) and represented by the Amalgamated Transit Union Local 587 (union).

In June 2021, a federal jury allegedly found that Brown had been denied promotional opportunities and had been retaliated against on numerous occasions. On August 12, 2021, Brown entered into mediation with the employer and a settlement agreement was allegedly reached.

On an unidentified date, the governor allegedly issued a proclamation for high risk employees that required accommodations being available to those employees.

The employer allegedly has a policy for being relieved of duty and being placed on paid administrative leave until a question of fitness is resolved. The collective bargaining agreement allegedly states that a regular operator will work the assignment that they pick.

On July 23 and 24, 2020, Brown was allegedly working his picked assignment and as an operator that was what he was required to do. On an unidentified date or time, the employer allegedly ordered Brown to take work that would expose Brown to the virus. On an unidentified date, the

employer decided to relieve Brown of duty because of Brown's refusal. The employer allegedly refused to place Brown on paid administrative leave.

On an unidentified date, Brown filed a grievance. On unidentified dates, the employer allegedly denied the first step and second step grievances. The third step is allegedly the step where the union determines it will not take a grievance to arbitration.

## ANALYSIS

### Statement of Facts Incomplete

Complaints must contain a statement of facts with numbered paragraphs. The statement of facts should include the times, dates, places, and participants in occurrences. In this case the complainant submitted the ULP complaint form, an incomplete statement of facts, and attached documents. Some of the allegations in the complaint are written as generalizations. In order for these allegations to be evaluated for possible cause of action, the complainant was notified to amend the complaint to contain "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences" as required by WAC 391-45-050(2). The complainant did not file an amended complaint.

### Timeliness

#### *Applicable Legal Standard*

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).

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 (PSRA, 2011) (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 22, 2021. In order to be timely, the complainant would have needed to describe events that took place on or after March 22, 2021. There are facts that occurred in 2021 which appear to be outside of PERC’s jurisdiction. The only other date provided in the statement of facts is July 23 and 24, 2020. Those facts would be reviewed as background information. The other alleged facts lack dates to determine timeliness. The complainant was provided an opportunity to file an amended complaint correcting the deficiencies. The complainant did not file an amended complaint.

Duty of Fair Representation*Applicable Legal Standard*

It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.56.150(1). The duty of fair representation originated with decisions of the Supreme Court of the United States holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944). 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). A union breaches its duty of fair representation when its conduct is more than merely negligent; it must be arbitrary, discriminatory, or in bad faith; or be based on considerations that are irrelevant, invidious, or unfair. *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington State Supreme Court adopted three standards to measure whether a union has breached its duty of fair representation:

1. The union must treat all factions and segments of its membership without hostility or discrimination.
2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.
3. The union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a wide range of flexibility in the standard to allow for union discretion in settling disputes. *Allen*, 100 Wn.2d at 375. There is no statutory requirement that a union must accomplish the goals of each bargaining unit member, and complete satisfaction of all represented employees is not expected. A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member can prove the union violated rights guaranteed in statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. 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.

A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *City of Redmond (Redmond Employees Association)*, Decision 886; *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825.

*Application of Standard*

The complaint does not specify the allegation against the union. Based on the facts alleged and attachments it is presumed that a duty of fair representation violation is being alleged. The complaint lacks facts to sufficiently allege a duty of fair representation violation. The complaint alleges that Brown was represented by the union. While the complaint lacks dates of occurrence, it also alleges that Brown filed a grievance, and the grievance was processed at least through step two of the grievance process. The complaint then alleges that the union generally may deny grievances at step three. The complaint does not include any specific facts related to what occurred in this instance. The complaint then points to additional attached documents, but does not explain the events that occurred, the parties involved, and the dates of occurrence. The complaint lacks facts alleging union's actions or inactions were arbitrary, discriminatory, or in bad faith.

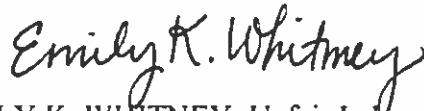
The complainant was provided an opportunity to correct the deficiencies and file an amended complaint. The complainant did not file an amended complaint. Because the deficiencies were not corrected, the complaint must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 23rd 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 11/23/2021

DECISION 13439 - 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 134472-U-21

EMPLOYER: KING COUNTY

REP BY: ROBERT S. RAILTON  
KING COUNTY  
500 4TH AVE RM 450  
SEATTLE, WA 98104  
bob.railton@kingcounty.gov

PARTY 2: CLAUDE R. BROWN

REP BY: CLAUDE R. BROWN  
4909 30TH AVE S  
SEATTLE, WA 98108  
snookybrown@hotmail.com

PARTY 3: AMALGAMATED TRANSIT UNION LOCAL 587

REP BY: KEN PRICE  
AMALGAMATED TRANSIT UNION LOCAL 587  
2815 2ND AVE STE 230  
SEATTLE, WA 98121  
kprice.president@atu587.org

MUNIA JABBAR  
FRANK FREED SUBIT & THOMAS LLP  
705 2ND AVE STE 1200  
SEATTLE, WA 98104-1729  
mjabbar@frankfreed.com