STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE COLLEGES, Employer.	
GILA BURTON-CURL, Complainant, vs. AMERICAN FEDERATION OF TEACHERS WASHINGTON, Respondent.	CASE 139355-U-24 DECISION 13943 - CCOL ORDER OF DISMISSAL

Gila Burton-Curl, the complainant.

Julian Barr, Grievance Chair, for the American Federation of Teachers Washington.

On July 12, 2024, Gila Burton-Curl (complainant) filed an unfair labor practice complaint against AFT Washington (union). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on July 18, 2024, notified Burton-Curl that a cause of action could not be found at that time. Burton-Curl 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 August 9, 2024, Burton-Curl filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for timeliness and failure to state a cause of action.

ISSUE

The amended complaint alleges the following:

> Union interference with employee's rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation in refusing to represent Gila Burton-Curl during the spring quarter or for failing to resolve a wage theft grievance.

The amended complaint is dismissed. The amended complaint includes facts that do not allege facts related to a duty of fair representation violation that may be raised before PERC and many facts are untimely filed.

BACKGROUND

Gila Burton-Curl works as part-time faculty at Seattle Colleges (employer). Burton-Curl is represented by AFT Washington (union). The employer and union are parties to a collective bargaining agreement.

In 2017, 2018, and 2019, Burton-Curl was not given a wage increase. On an unidentified date, the complaint alleges the union did not represent Burton-Curl for priority hire list (PHL) or for a "non-contractional" issued to Burton-Curl.

In July 2022, Burton-Curl was placed on an administrative leave for high-risk employees as an ADA accommodation. The employer allegedly decided Burton-Curl would use sick leave for wages and declined to offer an alternative benefit option for wage payment. On an unidentified date, the union allegedly failed to provide representation. On an unidentified date in 2024, the employer again allegedly failed to pay wages. On an unidentified date, the union allegedly did not provide representation to collect the lost wage.

On an unidentified date, the union allegedly failed to provide representation to Burton-Curl regarding collective bargaining agreement violations including for wages, priority hire, and course scheduling.

On or about October 15, 2023, the union allegedly became aware of widespread issues affecting salary, additional compensation, reimbursement, and benefits of faculty related to failures of the CTC link system, alleged understaffing of payroll, inconsistent applications of salary schedules, and misinterpretations of negotiated raises.

On an unidentified date, the union allegedly did not provide Burton-Curl representation related to course selection and scheduling for spring and summer 2024.

ANALYSIS

Complaint Filing Requirements

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).

In unfair labor practice proceedings before the Commission, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). To meet their obligation, the complainant merely must provide "a simple, concise statement of the claim and the relief sought." *Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352 (2006) (citing CR 8(a)); *see also* WAC 391-45-050(2) (the Commission's requirement of "notice pleading"). Thus, to meet the

burden of pleading, the Commission requires a complainant to file an unfair labor practice complaint form and, "in separate numbered paragraphs," provide a clear and concise statement of the facts constituting the alleged unfair labor practice. WAC 391-45-050; *Apostolis v. City of Seattle*, 101 Wn. App. 300, 306-307 (2000). *City of Seattle*, Decision 4057-A (PECB, 1993).

Complainants must allege facts addressing the basic elements of a cause of action. *Kitsap County*, Decision 12022-A (PECB, 2014). A complainant must describe the facts with sufficient clarity for agency staff to determine whether a cause of action exists "and then sufficient to put the respondent on notice of the charges that it will be expected to" defend against. *Thurston Fire District 3*, Decision 3830 (PECB, 1991). Thus, for example, those facts must include the time, place, date, and participants in all occurrences. WAC 391-45-050(2)(a). The agency staff reviewing the complaint are not empowered "to fill in gaps in a complaint." *City of Tacoma*, Decision 4053-B (PECB, 1992); *South Whidbey School District*, Decision 10880-A (EDUC, 2011) (citing *Jefferson Transit Authority*, Decision 5928 (PECB, 1997)). In other words, a complainant must connect the dots by alleging sufficient facts that would support finding a violation and identifying the violation alleged. *Seattle Colleges*, Decision 13762-A (CCOL, 2024).

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.

Application of Standard

On July 12, 2024, Burton-Curl filed a complaint which included two statements of fact. It appeared that both statements of fact relate to allegations against the union. The statements of fact lacked some dates of events, lacked facts necessary to support finding a violation, and alleged facts outside PERC's jurisdiction. On July 18, 2024, PERC issued a deficiency notice explaining what information was necessary to determine whether the complaint alleged a violation within the Commission's jurisdiction. On August 9, 2024, Burton-Curl filed an amended complaint. The amended complaint does not include numbered paragraphs, does not clearly explain the facts that

occurred, and does not include the dates of occurrence related to the union's alleged failure of the duty of fair representation. Many of the dates that are included in the amended complaint are outside the six-month statute of limitations. The evidence Burton-Curl filed was not a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time, place, date, and participants in all occurrences. WAC 391-45-050(2)(a). Burton-Curl did not meet the burden of pleading, and the filings did not meet the requirements of WAC 391-45-050(2).

Duty of Fair Representation

Applicable Legal Standard

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*, Decision 5086-A. 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.

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).

Application of Standard

The amended complaint lacks facts alleging the union breached its duty of fair representation. The amended complaint alleges that the union failed to provide representation on multiple unidentified dates and related events that occurred outside the six-month statute of limitations. The amended complaint does not provide details of what occurred related to union representation and when the union allegedly failed to represent Burton-Curl. The amended complaint also does not include details of how the lack of representation was arbitrary, discriminatory, or in bad faith.

The amended complaint does allege the union failed to provide representation regarding violations of the collective bargaining agreement on unidentified dates. 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.

Because the amended complaint does not include facts related to how the union's failure to provide representation was arbitrary, discriminatory, or in bad faith; the amended complaint fails to state a cause of action and must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 27th day of August, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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 08/27/2024

DECISION 13943 - CCOL 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 139355-U-24

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