STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

XENIA M. DAVIDSEN PEREA, Complainant, vs. CITY OF EVERETT, Respondent.	CASE 143103-U-25c DECISION 14200 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
XENIA M. DAVIDSEN PEREA, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	

Alexander Loannidis and *Bernard Zamaninia*, Attorneys at Law, National Right to Work Foundation, for the complainant.

James Trefry, General Counsel, for the Washington State Council of County and City Employees.

Peter A. Altman, Attorney at Law, Summit Law Group PLLC, for the City of Everett.

On February 13, 2025, Xenia Davidsen Perea (complainant) filed an unfair labor practice (ULP) complaint against the Washington State Council of County and City Employees, Council 2 (union). A deficiency notice was issued March 11, 2025, by the Washington State Public Employment Relations Commission (PERC) because the complaint was untimely filed and did not include facts related to the types of violations that can be filed with PERC. The complainant was afforded 21 days to file and serve an amended complaint, which occurred on March 31, 2025.

Separately, on February 21, 2025, the complainant filed a ULP charge against the City of Everett (city or employer). A deficiency notice was issued on March 18, 2025, by PERC because the complaint was untimely filed and did not include facts related to the types of violations that can be filed with PERC. An amended complaint against the employer was filed on April 7, 2025. On April 30, 2025, a cause of action statement and consolidated case order was issued by PERC, finding causes of action against both the union and the employer, and consolidating both cases for processing. Examiner Christopher Casillas was assigned as the hearing examiner for the consolidated case.

On June 20, 2025, the employer filed a motion for summary judgment. A pre-hearing conference was held the same day, during which both the complainant and union stated an intent to file separate cross-motions for summary judgment. A consolidated briefing schedule was established by the undersigned examiner that provided the complainant and union until July 3, 2025, to file their respective motions and supporting briefs. Thereafter, each party was permitted to file a response brief no later than July 29, 2025, and each party was permitted to file a reply brief no later than August 5, 2025. All parties filed their respective briefs within the established schedule.

ISSUES

1. Are there genuine issues of material fact in dispute that would prevent judgment in this case, and if not, are the moving parties entitled to judgment as a matter of law?
2. Was the complaint timely filed within the statute of limitations?
3. Did the union unlawfully interfere with the complainant by continuing to accept union dues payments after the complainant revoked dues payments?
4. Did the union breach its duty of fair representation in continuing to accept dues payments from the employer for the complainant after it notified the employer to stop withdrawing dues?
5. Did the employer unlawfully interfere with the complainant by making threats of reprisal or force or promises of benefit because of the complainant’s revocation of union dues?

The union and employer's motions for summary judgment are granted. The complainant's cross motions for summary judgment are denied. Summary judgment is appropriate in favor of the city and union because there are no material facts in dispute, and both parties are entitled to judgment as a matter of law. The complaints filed against the union and city are outside the six-month statute of limitations. The complainant's argument that each paycheck issued within the six-month statute of limitations was a new event, in turn making the complaints timely, is rejected. Even if the complaints were determined to be timely, there is insufficient proof to carry the complainant's burden of proof on the interference charges against the union and the city. Although the complainant has a protected right to withdraw union membership and stop dues deductions, there is no evidence that either the city issued any threats or made any promises associated with this activity, or that the union engaged in any activity that reasonably could be viewed as acts of violence, intimidation and reprisal. Similarly, the record lacks any evidence that the union violated its duty of fair representation owed to the complainant by continuing to accept dues payments after notifying the city to discontinue the deductions. At best, the union's mistake in accepting those deductions was negligent, but simple negligence does not violate the duty of fair representation.

BACKGROUND

The Everett Municipal Employees Local No. 113 (Local 113) of the union represents a bargaining unit of municipal employees for the employer that includes a custodian job classification. The complainant was hired into the custodian classification by the employer, and on July 7, 2021, signed and submitted a union membership and dues check-off card. The dues check-off card authorized the employer to deduct union dues from the complainant's paycheck and remit those dues to the union. The signed payroll deduction form indicated that the complainant could withdraw union membership at any time but that the payroll deductions would continue for at least one year, and year-to-year thereafter, unless the complainant provided notice of revocation no less than 30 days, and no more than 45 days, prior to the anniversary date of the authorization.

On April 15, 2024, the complainant emailed Michael Rainey, the president and executive director of the union, as well as Jeff Jesmer, president of Local 113, notifying them of the complainant's decision to withdraw union membership. Subsequently, on June 4, 2024, the complainant

hand-delivered a notice of revocation of dues deduction to the union's Local 113 office in Everett, WA. The letter was date-stamped by Local 113 for June 4, 2024, to confirm its receipt. On June 17, 2024, Barbara Corcoran, a business manager with the union, emailed Dean Koutlas, an employee in the city's human resources division, with an attached memorandum directing the employer to discontinue dues deductions for the complainant as of July 7, 2024.

Unbeknownst to the union at the time of Corcoran's email, Koutlas's final working day with the employer was June 13, 2024. After this date, Koutlas took an extended period of paid leave until officially retiring from the city later in the year. On June 10, 2024, Kandy Bartlett, the employer's labor and administrative services director, sent an internal email to some city employees notifying them of Koutlas's final working day of June 13, 2024. There is no evidence that any outside parties were notified of Koutlas's leave and eventual retirement prior to June 17, 2024. Following Koutlas's last day in the office, and up until his official retirement later in the year, Koutlas's email inbox remained active. No one from the city was assigned to monitor Koutlas's email, and it was not set up to forward messages to another city employee while the inbox remained active. As a result, no one presently working for the city was aware of the union's request to stop dues deductions for the complainant until the ULP charge in this matter was filed with PERC.

The first paycheck issued to the complainant following the requested July 7, 2024, cut-off date for dues deduction occurred on July 19, 2024. The paystub for this date shows that the city continued to deduct union dues from the complainant in the amount of $33.23. In a series of emails from mid-July 2024, Tracy Ridge, the administrative coordinator for the city's parks and facilities division, corresponded with Kate Low, the human resources administrative assistant, about stopping dues deductions for the complainant. Low notified Ridge and the complainant that the request for cancellation must come from the union. In an email on July 18, 2024, Low confirmed that the city never received an official revocation from the union and could not act until the city received notice directly from the union. That same day, Ridge emailed Jesmer requesting help to stop the deduction for the complainant. Jesmer replied to Ridge and the complainant on July 22, 2024, informing them that dues cancellation is handled by the state council and not the local. Jesmer offered to inquire with the state council. On August 1, 2024, the complainant replied to

Jesmer asking why the local was unable to initiate the cancellation. Outside of the above-referenced emails, there is no record of any additional communication involving the complainant and any city or union official regarding dues deductions.

The city continued to deduct dues from the complainant's paycheck until the final deduction on February 14, 2025. The day prior the complainant filed a ULP charge against the union. The complainant received paystubs during this entire period and was aware that the dues deductions continued throughout this period. On the same day the first complaint in this matter was filed, February 13, 2025, the union again notified the city to discontinue dues deductions for the complainant. In total, between July 7, 2024, and February 14, 2025, the city deducted dues from the complainant on thirteen paychecks for a total amount of $435.95, which deductions were remitted to the union.

On March 25, 2025, the union issued a check to the complainant in the amount of $398.76, representing dues that were deducted from the complainant's paycheck between the period of July 1, 2024,[1] through December 31, 2024. In the February 28, 2025, paycheck to the complainant, the city refunded union dues in the amount of $103.65, which represented the amount of union dues that were deducted from the first three pay periods in 2025. Following a final deduction of dues in the February 14, 2025, paycheck, no additional union dues deductions for the complainant were made by the city.

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[1] The first paycheck of July 2024 was issued on July 5, 2024. This is two days before the requested effective date for the cessation of dues deduction in the union's original letter to the city on Jun 17, 2024. In reimbursing the complainant, the union chose to refund all of the July dues even though the first paycheck of that month occurred prior to the requested cessation date.

ANALYSIS

Applicable Legal Standard(s)

Summary Judgment

Summary judgment is properly granted if there are no material issues of fact and the moving party is entitled to judgment as a matter of law. *Spokane County*, Decision 13510-B (PECB, 2022) (citing *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995)); WAC 10-08-135. A material fact is one upon which the outcome of the litigation depends. *Spokane County*, Decision 13510-B (citing *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249 (1993)). The trier of fact must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Id.* The motion should be granted if, from all the evidence, a reasonable person could reach but one conclusion. *Id.*

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. *Pierce County*, Decision 7018-A (PECB, 2001) (citing *Adams County*, Decision 6907 (PECB, 1999)). "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)). When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (PSRA, 2021), *aff'd*, Decision 13333-A (PSRA, 2021) (citing *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014)).

The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (citing *State – General Administration*, Decision 8087-B

(PSRA, 2004)). Consistent with Civil Rule 56, if the nonmoving party fails to respond, summary judgment may then be appropriate. *City of Seattle (Seattle Police Management Association)*, Decision 12091; *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states the following:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The facts that the nonmoving party must submit in response to a summary judgment motion cannot be based solely off pleadings or be conclusory in nature; instead, they must come in the form of evidence. As noted by the Washington Court of Appeals, "[t]he 'facts' required by CR 56(e) to defeat a summary judgment motion are evidentiary in nature. Ultimate facts or conclusions of fact are insufficient. Likewise, conclusory statements of fact will not suffice." *Overton v. Consolidated Insurance Co.*, 145 Wn.2d 417, 431 (2002) (citing *Grimwood v. University of Puget Sound*, 110 Wn.2d 355, 359, 753 (1988)). "In opposing summary judgment, a party may not rely merely upon allegations or self-serving statements." *Haley v. Amazon.com Services, LLC*, 25 Wn. App. 2d 207, 220 (2022) (citing *Newton Insurance Agency & Brokerage, Inc. v. Caledonian Insurance Group, Inc.*, 114 Wn. App. 151, 157 (2002)). "[T]he nonmoving party cannot rely on the allegations made in its pleadings." *Haley v. Amazon.com Services, LLC*, 25 Wn. App. 2d 207 at 221 (citing *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 (1989)). The nonmoving party "must respond with affidavits or other documents allowed by Civil Rule 56(e)." *Haley v. Amazon.com Services, LLC*, 25 Wn. App. 2d 207 at 221 (citing *Seybold v. Neu*, 105 Wn. App. 666, 676 (2001)).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003) (citing *Port of Seattle*, Decision 7000 (PECB, 2000)).

Statute of Limitations

"[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 41.56.051(1).[2] 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 *City of Selah (City of Selah Employees Association)*, Decision 5382 (PECB, 1995), the Commission addressed the six-month limitation period and noted that its "precedents in this area are consistent with the rulings of the National Labor Relations Board [NLRB] under the similar limitations in the federal law." The Commission specifically cited *U.S. Postal Service*, 271 NLRB 397 (1984). In *Bryant & Stratton Business Institute*, 321 NLRB 1007 (1996), the NLRB explained its case law on the six-month statute of limitations, including its decision in *U.S. Postal Service*, as follows:

> In *U.S. Postal Service Marina Center*, 271 NLRB 397 (1984), the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences became effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired. However, as the Board emphasized in a subsequent decision, "*Postal Service Marina Center* . . . was limited to unconditional and unequivocal decisions or actions." *Stage Employees IATSE Local 659 (Paramount Pictures),* 276 N.L.R.B. 881 (1985). Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b), the Respondent. *Service Employees Local 3036 (Linden Maintenance)*, 280 N.L.R.B. 995 (1986).

Under the standard used by the NLRB and embraced by the Commission, the six-month statute of limitations period begins at the time the employer provides clear and unequivocal notice to the

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[2] In 2025, the Washington State Legislature enacted Senate Bill 5435, which reorganized and added subchapter headings to Chapter 41.56 RCW. The Washington State Office of the Code Reviser maintains a rule prohibiting the reuse of section numbers when a chapter reorganization occurs, which has resulted in many new section numbers. During the pendency of this proceeding, the new section numbers took effect. All references to this chapter in the decision are to the reordered sections as codified at the time of this decision.

union. Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice. *Community College District 17 (Spokane)*, Decision 9795-A (PSRA, 2008).

In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Emergency Dispatch Center*, Decision 3255-B. 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 Pasco*, Decision 4197-A (PECB, 1994).

The Commission has previously rejected a continuing violation theory. In *City of Bremerton*, Decision 7739-A, the Examiner found that the union's complaint was untimely because the union was aware of the existence of a "me too" clause and a parity clause in two other collective bargaining agreements more than six months prior to filing a complaint. The union argued that it met its burden of proof to establish a continuing violation by showing that the clauses interfered with its bargaining rights. The Commission affirmed the Examiner. At any time in the future, if the "me too" clause interfered with the union's rights, it could file a complaint. Absent actual evidence that the existing "me too" clause interfered with employee rights within the statute of limitations, the complaint was untimely. *See also King County*, Decision 3558-A (PECB, 1990) (rejecting a continuing violation theory and noting that while the loss of a wage premium is ongoing the mere fact of such continuation does not form the basis for lengthening the statute of limitations period for filing complaints).

Multiple violations, each giving rise to its own statute of limitations, may occur as part of a larger event. In *Seattle School District*, Decision 9982-A (PECB, 2009), the employer conducted an investigation of a complaint by an employee against the union representing the employee. The union filed its complaint on March 13, 2007, and the employer conducted the investigation between May 2006 and July 19, 2006. The Examiner found that events occurring before September 13, 2006, were time-barred. The Commission agreed. The union was aware that the employer was

investigating the complaint. The events occurring more than six months prior to the union filing its complaint were outside the statute of limitations. However, certain events, such as the issuance of the investigator's report, resulting discipline, and other procedural violations, may occur at different times and may be independent triggering events.

The Commission has also determined that multiple independent violations can give rise to independent statute of limitations in the specific context of refusal to bargain violations. In *Spokane County*, Decision 13510-B, the employer sent the union proposed ground rules in August 2019 to request open bargaining. The union's complaint was not filed until September 23, 2021, but the complaint included allegations that in May 2021 the union requested to bargain mandatory subjects in closed meetings and in June the employer responded by insisting on open bargaining. In this context, the Commission noted that "[b]y not pursuing an unfair labor practice complaint on an earlier event, the union did not waive its right to pursue later refusals to bargain" occurring within six months of the date the complaint was filed. *Id.* The Commission went on to conclude that "[i]n a refusal to bargain or a failure to meet allegation, each time the union requests bargaining over mandatory subjects and the employer refuses, the employer triggers the statute of limitations." *Id.*

Duty of Fair Representation

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 agreement. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002) (citing *City of Seattle (IFPTE Local 17)*, Decision 3199-B (PECB, 1991)). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. *Id.*

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington 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.

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. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees),* Decision 13333, *aff'd*, Decision 13333-A (citing *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 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 (PECB, 1984).

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 that the union violated rights guaranteed in statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). In collective bargaining, there is no statutory requirement that guarantees each member of the bargaining unit the accomplishment of their individual goals or even adoption of those goals by the union. *City of Seattle*, Decision 3470-A (PECB, 1990). Being involved in a collective process necessarily requires the individual to submit to the will of the majority. *Id.* A wide range of reasonableness must be allowed the statutory bargaining representative in serving the unit it represents. *Id.*

Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or to exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for an employer to interfere with, restrain, or coerce public

employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.045(1). It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.047(1).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *State – Washington State Patrol*, Decision 11863-A (PECB, 2014); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, 98 Wn. App. 809 (2000). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *State – Washington State Patrol*, Decision 11863-A; *Kennewick School District*, Decision 5632-A (PECB, 1996). An employer may interfere with employee rights by making statements, through written communication, or by actions. *State – Washington State Patrol*, Decision 11863-A; *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *remedy aff'd*, 98 Wn. App. 809. To establish union interference and coercion in violation of RCW 41.56.047(1), a complainant must establish the existence of "union tactics involving violence, intimidation and reprisals." *Community College District 13 (Lower Columbia College)*, Decision 8117-B (PSRA, 2005) (citing *National Labor Relations Board v. Drivers Local 639*, 362 U.S. 274 (1960)).

To meet its burden of proving interference, a complainant need not establish that an employee was engaged in protected activity. *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014); *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had anti-union animus for an interference charge to prevail. *Id.*

Authority of Agent

An agent's authority to bind his principal may be of two types, either actual or apparent. *King v. Riveland*, 125 Wn.2d 500, 507 (1994); *Community College District 13 (Lower Columbia College)*,

Decision 8117-B. Actual authority may be express or implied. Implied authority is actual authority, circumstantially proved, which the principle is deemed to have actually intended the agent to possess. *Id.* Both actual and apparent authority depend upon objective manifestations made by the principal. *Id.* With actual authority, the principal's objective manifestations are made to the agent. *Id.* With apparent authority, they are made to a third person or party. *Id.* Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. *Waterville School District*, Decision 11556 (EDUC, 2012) (citing *Tyson Foods, Inc.*, 311 NLRB 552 (1993); *National Labor Relations Board v. Donklin's Inn*, 532 F.2d 138 (9th Cir. 1976); *Alliance Rubber Co.*, 286 NLRB 645 (1987)). Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such a belief. *Tyson Foods, Inc.*, 311 NLRB 552 (citing Restatement (Second) of Agency § 27 cmt. (1958). "Authority to perform particular services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services." *Walker v. Pacific Mobile Homes, Inc.*, 68 Wn.2d 347, 351 (1966).

When determining whether an employee is an agent, the Commission examines the totality of the circumstances. *Waterville School District*, Decision 11556 (citing *LVI, Inc.*, 2006 WL 2647512 (NLRB Div. of Judges, 2006)). Under the Restatement (Third) of Agency, "[a]n agent's actual authority may be terminated by: . . . (4) . . . the occurrence of circumstances on the basis of which the agent should reasonably conclude that the principal no longer would assent to the agent's taking action on the principal's behalf, as stated in §3.09 . . . ." Restatement (Third) of Agency § 3.06 (2006).

Application of Standard(s)

There Are No Genuine Issues of Material Fact

In its entirety, the pleadings, briefs, and supporting declarations and exhibits submitted by the parties are consistent. Since the material facts are undisputed, a judgment may be issued as a matter of law. There is no dispute that the complainant made a timely request to revoke union membership

and withdraw authorization for the deduction of dues from the complainant's paycheck by the employer. The union received the notice of revocation and acted in a timely manner to notify the city to cease the deduction of union dues from the complainant's paycheck as of July 7, 2024.

Notice of the revocation from the union was delivered to an employee in the city's human resources division. However, as of June 13, 2024, the city employee who received the notice, Koutlas, began an extended period of paid leave that culminated in retiring from the city, during which time Koutlas's email inbox was not monitored. No active city employee received the union's notice sent on June 17, 2024. It was not until almost eight months later, after the ULP complaint in this matter was filed with PERC, that an active city employee learned of the request to stop union dues deductions for the complainant.

During the period from the union's original notice to a (since retired) city official in June to the filing of the complaint in this matter, the city continued to deduct dues from the complainant on each bi-monthly paycheck. On July 19, 2024, the first paycheck was issued to the complainant after the requested revocation date of July 7, 2024. Around this same time, the complainant was copied on a series of emails between Ridge and Low, city employees, in which Low confirmed that the city had not received an official request from the union to stop dues deductions for the complainant. The complainant emailed Jesmer on August 1, 2024, and asked why Local 113 could not process the dues revocation, but this was the last communication between the complainant and anyone at the city or union regarding dues deductions.

After the complaint was filed, the union again notified the city to cease dues deductions and those deductions ended with the February 14, 2025, paycheck. Upon learning of the error, the union issued a refund of all dues collected from the complainant between July and December of 2024. Separately, the employer refunded the dues collected between January and February of 2025.

Summary Judgment Is Appropriate on the Basis of Timeliness

In this case, the triggering event for the commencement of the six-month statute of limitations is based on when the complainant had clear and unequivocal notice that the request to stop dues deductions from the complainant's paycheck was not honored. The union emailed Koutlas on June

17, 2024, with an attached memorandum requesting the city cease union dues deduction for the complainant as of July 7, 2024. On July 19, 2024, the complainant received the first paycheck after the cessation date that still included a deduction of union dues of $33.23, which was the same amount as prior paychecks. During this same time, the complainant was copied on a series of emails between Ridge, Low, and Jesmer, inquiring about the continued deduction of union dues when the complainant had requested the deductions stop.

Although the complainant likely lacked knowledge as to why the city continued to deduct dues from her paycheck, there is no doubt that the complainant was aware that deductions were ongoing after the requested cessation date. Through the email exchange between Ridge, Low, and Jesmer, and the July paycheck, the record is clear that the complainant had clear and unequivocal knowledge, by no later than July 19, 2024, that the request to stop dues deductions was not honored. July 19, 2024, therefore, is the triggering event for which the six-month statute of limitations clock begins to run. The original complaint against the union was filed by the complainant on February 13, 2025, which is beyond the six-month statute of limitations. The subsequent complaint filed against the city on February 21, 2025, is also necessarily outside the statute of limitations period as well.

Ordinarily, on these facts alone, the analysis finding the complaint untimely would end; however, the complainant advances a novel argument that each time the city issued a paycheck to the complainant with a union dues deduction it represented a new event that reset the statute of limitations clock based on the date of each paycheck. Under the complainant's theory, each of the paychecks issued within six months of the date that the complaints were respectively filed against the union and the city are within the statute of limitations and independent violations of the complainant's statutory rights. For the reasons detailed below, the complainant's multiple violations theory is rejected.

The present case is distinguishable from prior Commission decisions issued under the multiple violations theory because those cases involved multiple independent violations occurring within the context of a broader event. In *Seattle School District*, the broader alleged unlawful investigation against a union member began outside the statute of limitations, but specific alleged

violations of the employee's rights, including the issuance of the investigator's final report and the imposition of discipline, occurred within the six-month window. Similarly, in *Spokane County*, involving a refusal to bargain allegation, the Commission noted that while the initial refusal to bargain violation alleged against the employer occurred outside the statute of limitations, in each instance thereafter where the employer refused to bargain over a mandatory subject of bargaining a new violation occurred. Common to both cases is the fact that while dates within the broader event period were outside the statute of limitations, separate independent violations, albeit part of the broader event, occurred within the requisite six months. This case does not involve independent violations within the context of a broader event; therefore, the theory of multiple violations is inapplicable to the case at hand.

In this situation, there was a singular event that gave rise to allegations of interference—the union's and city's failure to take appropriate measures to discontinue union dues deductions from the complainant's paycheck when requested. There was not a new violation of the complainant's statutory rights each time a new paycheck was issued that included union dues deductions. Instead, subsequent paychecks were simply a continuation of the initial event, and alleged violation, to discontinue automatic union dues deductions by no later than the requested cessation date of July 7, 2024. The facts of this case, therefore, fit squarely within the continuing violation theory, which the Commission has previously rejected as a mechanism to toll the statute of limitations.

The only way that the multiple violations theory could have been applied to reset the statute of limitations period with each paycheck is if the complainant, during subsequent pay periods, affirmatively renewed the effort to discontinue the deductions and those efforts failed. That is not what happened in this case. The complainant only made one request in June 2024 to discontinue dues deductions, followed by some efforts in mid-July 2024 to correct the problem when the deductions continued past July 7, 2024. Thereafter, however, there is no evidence of the complainant taking any additional action with the union or the city to make a new request to stop the dues deduction. The only new act was the filing of this ULP complaint on February 13, 2025. The subsequent issuance of additional paychecks after the initial request was simply the

continuation of an earlier alleged violation that the complainant had clear and unequivocal notice of no later than July 19, 2025.

Summary Judgment in Favor of the Union on the Interference Claim is Also Appropriate

Notwithstanding a finding that the alleged violations against the union are outside the statute of limitations, the complainant still lacks sufficient proof of union interference for continuing to accept dues after it had submitted the revocation request. Local 113 received the complainant's request to discontinue dues deductions on June 4, 2024, and it submitted a memorandum to the city on June 17, 2024, to stop the deductions no later than July 7, 2024. The union did continue to receive dues from the complainant through the February 14, 2025, paycheck even though it was aware that the complainant had revoked authorization. Dues for July 1, 2024, through December 31, 2024, were refunded to the complainant on March 25, 2025. Between the time dues should have stopped and the filing of the ULP complaint, the only communication between the union and the complainant about this request was a brief email exchange between Jesmer and Davidsen Perea in mid-July 2024.

Applying this factual record to the standard for measuring unlawful union interference, a violation cannot be found. There is no evidence that the union engaged in tactics toward the complainant that involved "violence, intimidation and reprisals." *Community College District 13 (Lower Columbia College*), Decision 8117-B (citing *National Labor Relations Board v. Drivers Local* 639, 362 U.S. 274). The most the union can be found liable for in this situation is negligence by continuing to accept dues from the complainant even though it knew the complainant was no longer a member and had requested the dues deduction to stop. This was an error, but it would be necessary to stretch the contours of this error to untenable lengths in order to equate it to an act of intimidation. The facts show that Local 113 acted promptly to notify the city's human resources division of the dues cessation request. It is true that despite its knowledge of making this request, the union continued to accept dues remittance from the complainant. But an administrative error is not tantamount to unlawful interference, particularly where there is no evidence that the union's actions involved any form of violence, intimidation and reprisals directed at the complainant.

These are not the types of actions, or lack thereof, that the interference standard is meant to guard against, and protect employees from, who are engaged in protected activity.

Summary Judgment in Favor of the Union on the Duty of Fair Representation Claim is Also Appropriate

Setting aside the jurisdictional finding in this case, the complainant's claims that the union violated the duty of representation owed to a member lacks sufficient evidence to support an unlawful interference violation. The Commission has repeatedly stated that mere negligence or a lack of skill by a union in exercising its representational duties is insufficient to find a violation. Instead, the complainant must demonstrate that the union acted, or failed to act, in a manner for which there is sufficient evidence documenting conduct that is arbitrary, discriminatory, or done in bad faith. There is no evidence of such behavior let alone sufficient evidence to carry the complainant's quantum of proof requirement.

The union received the complainant's request to stop dues deductions on June 4, 2024. Two weeks later, the union's business manager emailed a memorandum to one of the city's human resources employees that notified the city of the request to stop dues deductions for the complainant by no later than July 7, 2024. The only other communication between the complainant and the union was a single email exchange in mid-July 2024 where Jesmer responded to an email from Ridge, with a copy to the complainant, indicating that the state council managed these requests, rather than the local. This was followed by a lone reply from the complainant to Jesmer that inquired as to why the local was unable to process the request. This represents the entirety of the union's interactions with the complainant over the topic of dues from June 4, 2024, until the filing of the complaints in this matter.

The union acted within two weeks of receiving the complainant's request to stop dues deductions. It notified what it thought was an agent of the employer with the request to discontinue deductions as of July 7, 2024. The union did fail to notice or conduct an audit of its record to discover that, subsequent to this cut-off date, it continued to receive dues from the complainant. But, at best, this represents simple negligence on the part of the union to properly track dues receipts. There is no evidence to support a conclusion that any of the union's actions, or the failure to track dues

receipts, was targeted at the complainant in a manner that could reasonably be considered arbitrary, discriminatory, or done in bad faith.

Summary Judgment in Favor of the City on the Interference Claim is Also Appropriate

Even if the complaint was determined to be within the six-month statute of limitations, summary judgment in favor of the city is appropriate because the complainant cannot carry her burden of proof that the city unlawfully interfered with employee rights. An employee's statutory right to revoke dues deductions from their paycheck is memorialized in RCW 41.56.061(3). However, the statutory right to cessation is predicated on the employer first receiving notice from the exclusive bargaining representative that the employee has revoked authorization. In this instance, the employer never received any notice until February 2025—after the complaint against the union was filed with PERC.

The evidence is conclusive that the original notice sent by the union to the employer on June 17, 2024, was sent exclusively to Koutlas, who by that date was no longer an authorized agent of the city. Although the city did not communicate with any external parties at the time, the record is clear that on June 10, 2024, Bartlett notified other city employees that Koutlas's last day working for the city would be June 13, 2024. Notwithstanding the fact that Koutlas remained a paid city employee after that date while exhausting paid leave and that the email inbox remained active, Koutlas's authority to serve as an agent of the city was terminated by June 13, 2024. By that date, Koutlas entered an approved paid leave status and eventually retired from the city. The city communicated as much internally to other staff. The city's lack of awareness of the union's June 17, 2024, memo is evidenced by Low's July 18, 2024, email that notified Ridge and the complainant that the city had not received any notice from the union, which is required. As such, the complainant's statutory right to revoke dues deductions never materialized because an agent of the employer, as the term "employer" is used in RCW 41.56.061, never received confirmation from the exclusive bargaining representative of the revocation.

The absence of a protected right in this situation is fatal to a finding of employer interference; however, even setting aside that defect, the complainant has also failed to offer sufficient evidence that the employer affirmatively acted through threats or promises to deprive the complainant of a

protected right. Simply put, the evidence in this case is that the employer failed to act. The interference standard, however, is intended to capture deliberate actions by the employer that manifest themselves through threats of reprisals or force, or promises of benefit, associated with protected employee activity. In the absence of any knowledge that the union had submitted a request to stop further dues deductions, the city maintained the same trajectory it had been on with this employee by continuing to deduct dues. The city took no purposeful action against the employee, and certainly there is no evidence of threats or promises made to the employee, because the city was unaware a request had been made. Central to the interference standard is evidence that the employer acted in some manner; whereas in this case, the city simply did nothing (due to a lack of knowledge).

The complainant's argument is that the city should be liable for continuing to deduct dues because of its own negligence and that Koutlas remained a city employee, despite being on leave, which meant the city had notice from the union to stop dues deductions. While arguments can be made around improved procedures for monitoring inboxes for employees on leave or transitioning to retirement, this city's failure to take such steps is not equivalent to unlawful interference. The city's mistake in not implementing proper procedures to monitor employee inboxes coupled with the unfortunate timing of the request to stop dues deductions resulted in an undesirable situation for the complainant who otherwise acted within her rights and did what was required of her to stop the deduction of union dues. But poor procedures and bad timing alone do not rise to the level of unlawful interference.

CONCLUSION

Summary judgment in favor of the city and union is appropriate in this case because there are no material facts in dispute and both moving parties are entitled to judgment as a matter of law. The complaints against the city and union must be dismissed because they were both filed outside the six-month statute of limitations. The triggering event for the allegations in both cases is when the complainant had clear and unequivocal notice that the city continued to deduct dues and remit those to the union after a valid cessation request was made by the complainant. The argument that each subsequent paycheck where dues were deducted constituted a new event is rejected, as those

actions represented continuing violations of the original alleged unlawful event. Even if the complaints were timely, the interference violation against both the city and union must be dismissed. The complainant does not carry the burden of proof demonstrating that the city made any threats or promises associated with the exercise of protected employee activity, and there is no evidence of the union expressing violence or engaging in intimidating acts in reprisal against the complainant. The final charge against the union, for allegedly violating the duty of fair representation in continuing to accept dues after the request for cessation was submitted, likewise requires independent dismissal. Although potentially negligent for not monitoring its records more closely, simple negligence does not equate to actions that can reasonably be considered as arbitrary, discriminatory, or done in bad faith. The union's mistake does not violate its statutory duty of fair representation.

FINDINGS OF FACT

1. The City of Everett (city or employer) is a public employer as defined by RCW 41.56.030(13).

2. The Washington State Council of County and City Employees, Council 2 (union), and its affiliate, the Everett Municipal Employees Local No. 113 (Local 113), are bargaining representatives within the meaning of RCW 41.56.030(2).

3. Xenia M. Davidsen Perea is a public employee as defined by RCW 41.56.030(12).

4. Local 113 of the union represents a bargaining unit of municipal employees for the employer that includes a custodian job classification. The complainant was hired into the custodian classification by the employer, and on July 7, 2021, signed and submitted a union membership and dues check-off card. The dues check-off card authorized the employer to deduct union dues from the complainant's paycheck and remit those dues to the union. The signed payroll deduction form indicated that the complainant could withdraw union membership at any time but that the payroll deductions would continue for at least one year, and year-to-year thereafter, unless the complainant provided notice of revocation no

less than 30 days, and no more than 45 days, prior to the anniversary date of the authorization.

5. On April 15, 2024, the complainant emailed Michael Rainey, the union president and executive director, and Jeff Jesmer, the Local 113 president, notifying them of the complainant's decision to withdraw union membership. Subsequently, on June 4, 2024, the complainant hand-delivered a notice of revocation of dues deduction to the union's Local 113 office in Everett, WA. The letter was date-stamped by Local 113 for June 4, 2024, to confirm its receipt.

6. On June 17, 2024, Barbara Corcoran, a business manager with the union, emailed Dean Koutlas, an employee in the city's human resources division, with an attached memorandum directing the employer to discontinue dues deductions for the complainant as of July 7, 2024.

7. Unbeknownst to the union at the time of Corcoran's email, Koutlas's final working day with the employer was June 13, 2024. After this date, Koutlas took an extended period of paid leave until officially retiring from the city later in the year. On June 10, 2024, Kandy Bartlett, the employer's labor and administrative services director, sent an internal email to some city employees notifying them of Koutlas's final working day of June 13, 2024. There is no evidence that any outside parties were notified of Koutlas's leave and eventual retirement prior to June 17, 2024.

8. Following Koutlas's last day in the office, and up until his official retirement later in the year, Koutlas's email inbox remained active. No one from the city was assigned to monitor Koutlas's email, and it was not set up to forward messages to another city employee while the inbox remained active. As a result, no one presently working for the city was aware of the union's request to stop dues deductions for the complainant until the ULP charge in this matter was filed with the Public Employment Relations Commission.

9. The first paycheck issued to the complainant following the requested July 7, 2024, cut-off date for dues deduction occurred on July 19, 2024. The paystub for this date shows that the city continued to deduct union dues from the complainant in the amount of $33.23.

10. In a series of emails from mid-July 2024, Tracy Ridge, the administrative coordinator for the city's parks and facilities division, corresponded with Kate Low, the human resources administrative assistant, about stopping dues deductions for the complainant. Low notified Ridge and the complainant that the request for cancellation must come from the union. In an email on July 18, 2024, Low confirmed that the city never received an official revocation from the union and could not act until the city received notice directly from the union. That same day, Ridge emailed Jesmer requesting help to stop the deduction for the complainant. Jesmer replied to Ridge and the complainant on July 22, 2024, informing them that dues cancellation is handled by the state council and not the local. Jesmer offered to inquire with the state council. On August 1, 2024, the complainant replied to Jesmer asking why the local was unable to initiate the cancellation. Outside of the above-referenced emails, there is no record of any additional communication involving the complainant and any city or union official regarding dues deductions.

11. The city continued to deduct dues from the complainant's paycheck until the final deduction on February 14, 2025. The day prior the complainant filed a ULP charge against the union. The complainant received paystubs during this entire period and was aware that the dues deductions continued throughout this period.

12. On the same day the first complaint in this matter was filed, February 13, 2025, the union again notified the city to discontinue dues deductions for the complainant. In total, between July 7, 2024, and February 14, 2025, the city deducted dues from the complainant on thirteen paychecks for a total amount of $435.95, which deductions were remitted to the union.

13. On March 25, 2025, the union issued a check to the complainant in the amount of $398.76, representing dues that were deducted from the complainant's paycheck between the period of July 1, 2024, through December 31, 2024. In the February 28, 2025, paycheck to the

complainant, the city refunded union dues in the amount of $103.65, which represented the amount of union dues that were deducted from the first three pay periods in 2025. Following a final deduction of dues in the February 14, 2025, paycheck, no additional union dues deductions for the complainant were made by the city.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. As described in findings of fact 4–13, there are no genuine issues of material fact under WAC 10-08-135, and the city and union are entitled to judgment as a matter of law.

3. As described in findings of fact 4–13, the complaints against the union and city were filed outside the six-month statute of limitations and are untimely.

4. As described in findings of fact 4–13, Davidsen Perea did not meet her burden of proof to show union restraint or coercion in violation of RCW 41.56.047, within six months of the date the complaint was filed, by continuing to accept union dues payments after Davidsen Perea revoked dues payment authorization.

5. As described in findings of fact 4–13, Davidson Perea did not meet her burden of proof to show union interference with employee rights in violation of RCW 41.56.047, within six months of the date the complaint was filed, by breaching its duty of fair representation into in continuing to accept dues payments from Davidsen Perea.

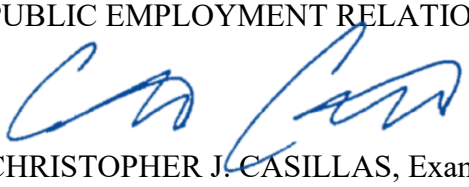
6. As described in findings of fact 4–13, Davidson Perea did not meet her burden of proof to show employer interference with employee rights in violation of RCW 41.56.045, within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Davidsen Perea after revoking union dues.

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED. The hearing scheduled for October 17, 2025, is CANCELLED.

ISSUED at Olympia, Washington, this 9th day of September, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTOPHER J. CASILLAS, Examiner

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.