

Columbia Basin College (Washington Public Employees Association), Decision 14141-A (PSRA, 2025)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COLUMBIA BASIN COLLEGE, Employer.	
ANGEL BARRAGAN, Complainant, vs. WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	CASE 143012-U-25 DECISION 14141-A - PSRA DECISION OF COMMISSION

Angel Barragan, the complainant.

Kathleen Phair Barnard, Attorney at Law, Barnard Iglitzin & Lavitt LLP, for the Washington Public Employees Association.

SUMMARY OF DECISION

Angel Barragan filed an unfair labor practice complaint against the Washington Public Employees Association (WPEA) asserting that the WPEA breached its duty of fair representation when it did not advance Barragan's grievance to step 2 of the grievance procedure, violated its bylaws, and did not communicate the result of an internal union appeal to Barragan. Unfair Labor Practice Administrator Emily Whitney dismissed the complaint as untimely. The Commission finds that sufficient facts have been alleged to demonstrate timeliness of two of Barragan's issues and remands the complaint to the Unfair Labor Practice Administrator to determine whether the facts alleged in the unfair labor practice complaint state a cause of action.

ALLEGATIONS OF THE COMPLAINTS

On April 11, 2025, Barragan filed an unfair labor practice complaint against the WPEA.¹ In the initial complaint Barragan alleges the following: in mid-September 2023, Barragan initiated the grievance process; the WPEA represented Barragan; in January 2024, the WPEA notified Barragan that the WPEA was withdrawing the grievance; and in January 2024, Barragan filed an internal union appeal. Without providing dates, Barragan asserts that since January 2024, they have contacted the WPEA about the internal appeal on multiple occasions. According to the complaint, the WPEA did not respond. On May 9, 2025, Unfair Labor Practice Administrator issued a deficiency notice. The Unfair Labor Practice Administrator explained that Barragan had failed to allege specific details and dates of the events and explained that the Commission does not investigate complaints. Barragan was provided an opportunity to file an amended complaint to cure deficiencies in the complaint.

Barragan filed an amended complaint on May 15, 2025.² In the amended complaint, Barragan provided more specific dates for some of the events. Barragan was formerly employed by Columbia Basin College in a bargaining unit represented by the WPEA. Barragan alleges that on October 24, 2023, the WPEA filed a grievance on Barragan's behalf. The deadline for advancing the grievance to step 2 of the grievance procedure was December 12, 2023. On December 14, 2023, WPEA representative Danielle Plessner notified Barragan that the WPEA was withdrawing the grievance based on the WPEA's opinion that the grievance was not meritorious.

Barragan filed a timely internal union appeal of the WPEA's decision not to advance the grievance. Barragan alleges that, on an unidentified date, they participated in a conference call with the WPEA Executive Board and WPEA President Amanda Hacker. Barragan alleges that the WPEA's bylaws required the WPEA to respond to Barragan's appeal within 30 days of the executive board meeting or within 7 days of a conference call. According to the complaint, the WPEA never responded to Barragan's appeal and repeated inquiries. Barragan alleges they

¹ Barragan selected system service while e-filing. The agency's e-filing system sent a notice of case filing and the complaint to the two WPEA officials listed on the complaint, including WPEA President Amanda Hacker.

² Barragan filed by email, and there is no evidence that Barragan served the WPEA with the amended complaint.

reasonably believed the appeal remained under consideration by the WPEA. On an unspecified date in October 2024, Barragan realized that the WPEA had defaulted in processing or responding to the appeal. Barragan asserts that the WPEA's failure to meet its grievance deadlines, failure to communicate, and failure to comply with its bylaws breached the duty of fair representation. Barragan asserts that they were unaware of any statute of limitations because the WPEA did not inform them of such thereby impeding their ability to assert their rights in a timely manner.

The Unfair Labor Practice Administrator dismissed Barragan's complaint. *Columbia Basin College*, Decision 14141 (PSRA, 2025).³ Barragan knew when the time for the WPEA to respond to the internal appeal had passed that the WPEA had not responded. *Id.* at 4. The Unfair Labor Practice Administrator dismissed the complaint because it was unclear when Barragan knew the WPEA was not going to respond or had defaulted in processing the grievance. *Id.* at 5. When the WPEA did not respond to the appeal by the time provided in the bylaws, the Unfair Labor Practice Administrator concluded that Barragan knew the appeal was not granted and knew the WPEA had not responded. *Id.* The Unfair Labor Practice Administrator dismissed the complaint as untimely and for failure to allege specific facts and dates. *Id.*

Barragan filed a timely appeal to the Commission. In contrast to the initial filing, Barragan filed the notice of appeal by email to the agency and did not include the WPEA on the email. On appeal, Barragan argues that equitable tolling should apply because they relied on the union's promise to follow up. Barragan included new details and dates in the appeal brief. In response to the appeal, the WPEA urges the Commission to affirm dismissal of the complaint. The WPEA argues for dismissal because Barragan did not serve the WPEA with the complaints or the notice of appeal. Next, the WPEA requests dismissal because the complaint is untimely and argues that the complaint was filed more than a year after Barragan learned the WPEA was not processing the grievance.

³ For the allegations that Barragan did not include specific dates for, the Unfair Labor Practice Administrator calculated dates based on the timeline provided in the complaint. The burden of pleading, including the assertion of specific dates of events, rests on the complainant. WAC 391-45-050(2)(a).

ANALYSIS

Applicable Legal Standards

Standard of Review

An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action under the collective bargaining statute. *Federal Way School District*, Decision 13809-A (PECB, 2024); *see also* RCW 34.05.419. During this initial review, all facts are assumed true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004) at 3. The initial review allows the agency to identify complaints that the agency cannot remedy. *See* RCW 34.05.416. In deciding whether complaints dismissed during the preliminary review state a cause of action, the Commission is in the same position as the Unfair Labor Practice Administrator and reviews only the facts alleged in the complaint and amended complaint. *Port of Everett*, Decision 12641-A (PORT, 2017); *King County*, Decision 11221-A (PECB, 2011).

Statute of Limitations

The statute of limitations is a legal question, which the Commission reviews *de novo*. *Snohomish County*, Decision 12826-A (PECB, 2018) (citing *Bilanko v. Barclay Court Owners Association*, 185 Wn.2d 443, 448 (2016)). The 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 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 allegations. *City of Pasco*, Decision 4197-A (PECB, 1994). In such a case, the statute may be “tolled” for the period between the acts or events and the time of actual or constructive notice of the events. *City of Renton*, Decision 12563 (PECB, 2016). When a complainant has actual knowledge of a potential unfair labor practice for purposes of tolling the statute of limitations is an issue of fact. *State – Corrections*, Decision 11025-A (PSRA, 2011) (accepting as fact the date the union asserted that it learned of the alleged violation for purposes of determining whether the alleged facts stated a cause of action). The burden of proving the statute of limitations should be tolled lies with the complainant who is claiming the statute of limitations should be tolled. *City of Renton*, Decision 12563 (PECB, 2016); *City of Pasco*, Decision 4197-B (PECB, 1999).

Application of Standards

The WPEA urges us to dismiss the complaint and the appeal because, according to the WPEA, Barragan did not serve it with the complaint, amended complaint, or notice of appeal. The record indicates that Barragan initiated the unfair labor practice complaint through the agency's e-filing system and selected system service. The system served the WPEA with the complaint. Barragan filed subsequent documents via email. The service requirements are different when a party files documents via e-filing or via email. *Compare* WAC 391-08-120(6)(a) with WAC 391-08-120(6)(b). While the Commission permits self-represented litigants some leeway in the presentation of their case, the rights of other parties to the proceeding must also be considered. *Seattle Colleges*, Decision 9753-A (CCOL, 2008). Failure to serve the opposing party on the same day documents are filed with the agency is grounds for dismissal. *Washington State University*, Decision 12396 (PSRA, 2015).

Typically, the Commission confines its review of orders of dismissal at the preliminary review to whether the complaint was timely and whether the complaint states a cause of action. We will follow our typical process and, at this time, not address whether Barragan complied with the requirement to serve the WPEA with the amended complaint. The WPEA is not precluded from raising the issue of service should the complaints state a cause of action. While the WPEA has alleged Barragan did not serve it with the notice of appeal, the WPEA filed a response brief and does not assert it was prejudiced in its ability to respond to the appeal. Accordingly, we address the appeal before us.

Barragan asserts that three actions by the WPEA breached the duty of fair representation:

- That the WPEA failed to comply with its bylaws by not responding to their internal appeal within 30 days;
- That the WPEA did not advance their grievance to step 2;
- That the WPEA failed to communicate whether their internal union appeal was granted.⁴

⁴ Complainant's Am. Compl. ¶ 13.

The Unfair Labor Practice Administrator dismissed the complaints as untimely. For purposes of our analysis, we focus only on whether the allegations are timely and not on whether the allegations state a cause of action for breach of the duty of fair representation. With respect to the first allegation, we affirm the Unfair Labor Practice Administrator. We reverse the Unfair Labor Practice Administrator's decision regarding the second and third allegations.

Barragan's allegation that the WPEA failed to comply with its bylaws is untimely. Barragan alleges that they filed a timely internal union appeal of the WPEA's decision not to advance the grievance to step 2. Barragan alleges that on an undisclosed date they participated in a conference call with the WPEA and expected a response between 7 and 30 days of the call as required by the WPEA's bylaws. We agree with the Unfair Labor Practice Administrator that after the 30 days passed and the WPEA did not respond, Barragan knew or should have known that the WPEA's response was outside the time specified in the bylaws. Decision 14141 at 4. The alleged facts lack the necessary specificity to determine when the conference call occurred and when Barragan expected a response. We infer, however, from Barragan's other allegations that the conference call and expected response occurred before October 11, 2024, and this allegation is, therefore, untimely.

Barragan's claim that the WPEA's failure to advance Barragan's grievance to step 2 would ordinarily be untimely, since they knew of the WPEA's unwillingness to proceed to step 2 on December 14, 2023, well more than six months before the filing of the PERC complaint. However, Barragan filed a timely internal union appeal of that action, and we must determine the effect of that internal process. In the private sector, employees must generally exhaust their intra-union remedies before filing suit, and the statute of limitations for filing an action for breach of the duty of fair representation is tolled while intra-union appeals are pending. *See Clayton v. UAW*, 451 U.S. 679 (1981); *Frandsen v. Brotherhood of Ry., et al*, 782 F.2d 674 (7th Cir. 1986). We do not have that same exhaustion requirement for filing complaints with PERC for breaching the duty of fair representation. However, in the interest of efficiency and allowing parties to resolve their own disputes, tolling the statute of limitations during the processing of internal union appeals is useful and appropriate.

The difficult question in this appeal is when that tolling ended. As alleged by Barragan, the WPEA never provided an answer to the appeal, despite Barragan's repeated inquiries. Assuming Barragan's allegations to be accurate, the tolling period would end when Barragan knew or reasonably should have known that the WPEA was not going to act on their appeal. *See generally Killian v. Seattle Public Schools*, 189 Wn.2d 447, 454-455 (2017) (finding a cause of action accrues when the plaintiff knew or should have known of the essential elements of the claim). Barragan claims that they realized this in October 2024. If that is the operative date, 10 days in October would be beyond the statute of limitations and 21 days in October would be inside the statute of limitations. While we normally require that a complainant identify specific dates, WAC 391-45-050(2), in this situation, the WPEA may bear some responsibility for Barragan's inability to identify a specific date. Accordingly, inasmuch as Barragan's allegation that they had realized in October that the WPEA was not going to act on their appeal and that most of October is within the statute of limitations, we do not find it appropriate to dismiss this complaint at this stage.

For the same reasons, it is not appropriate to dismiss Barragan's complaint that the WPEA breached its duty of fair representation by failing to communicate about their internal appeal.

The Unfair Labor Practice Administrator did not determine whether these two particular allegations, if timely, state causes of action. Accordingly, we remand to the Unfair Labor Practice Administrator to make that determination. If it is determined that one or both allegations state a cause of action and a hearing is held, the WPEA may still raise a timeliness defense. If that defense is raised, an Examiner will determine, based on the evidence, whether Barragan knew or should have known before October 11, 2024, that the WPEA was not going to grant their appeal and advance the grievance and whether Barragan knew or should have known before October 11, 2024, that the WPEA was not going to respond to the appeal.

Along with the appeal brief, Barragan filed new facts and evidence that were not presented to the Unfair Labor Practice Administrator in the complaint and amended complaint. Complainants, including individuals without legal representation, are expected to comply with the Commission's rules. An appeal of dismissal at the preliminary review stage is not the time for a complainant to continue to "perfect" a complaint. Rather, it is an opportunity for review of the Administrator's decision. Complainants are given the opportunity to amend their complaint before

the Administrator. WAC 391-45-110(2) and WAC 391-45-070. Accordingly, they must file complaints with sufficient details, including dates, to allow agency staff to determine whether a complaint is timely and states a cause of action without engaging in inferences. *See Seattle Colleges*, Decision 13762-A (CCOL, 2024).

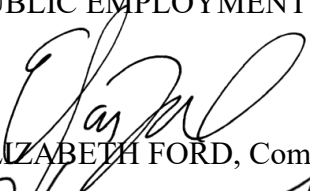
In deciding the appeal, the Commission did not consider new evidence on appeal that was not presented to the Unfair Labor Practice Administrator. On remand to the Unfair Labor Practice Administrator, the parties will not be permitted to file additional evidence or arguments. The Unfair Labor Practice Administrator shall make the decision based on the complaint and amended complaint.

ORDER

The order of dismissal issued by Unfair Labor Practice Administrator Emily K. Whitney is REVERSED in part. The case is remanded to the Unfair Labor Practice Administrator to determine whether the amended complaint states a cause of action.

ISSUED at Olympia, Washington, this 7th day of November, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ELIZABETH FORD, Commissioner



HENRY E. FARBER, Commissioner

Commissioner Mark Lyon did not participate in the consideration or decision of this case.