93655-2

No. 74024-5-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ROLAND KILLIAN and DENNIS BAILEY,

Petitioners

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609,

Defendant-Respondent

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

Through a mediation called for in the applicable collective bargaining agreement ("CBA"), and conducted by the Washington Public Employment Relations Commission ("PERC"), Respondent International Union of Operating Engineers, Local 609 ("Local 609" or "Union"), settled grievances it filed under its CBA with the Seattle School District ("SPS" or "District"). Petitioners were members of Local 609 and employees of the Seattle School District. Local 609 filed a union grievance against the district because the Local 609 representative, Michael McBee ("McBee"), believed the District's decision to fire the petitioners was based on a poor investigation. The grievance process led to a mediation under the terms of the Collective Bargaining Agreement ("CBA"). The mediation was conducted by the Public Employment Relations Commission.

During mediation, the District conditioned its monetary offers to settle the grievances not only on the Union's withdrawal of the grievances, but also on the individual grievants' (Petitioners Roland Killian and Dennis Bailey) release of any individual claims they might assert against the District. Local 609 determined that the amounts offered were sufficient to meet the interests of the bargaining unit as a whole. It informed the Petitioners that it would withdraw the grievances and leave

to them whether to accept the monetary offers or reject the offers and pursue their claims in court. The Petitioners rejected the offers and pursued their claims against the District, and also sued the Union, alleging breach of the duty of fair representation and the unauthorized practice of law.

The Superior Court granted summary judgment on the claims for breach of duty of fair representation ("DFR") and the negligent unauthorized practice of law (CP 966-968) and denied Petitioners' motion to amend to plead a new claim under the Consumer Protection Act ("CPA"). CP 966-968, 971-973. The Court of Appeals affirmed, correctly holding, as did the Superior Court, that all claims asserted or sought to be asserted against Local 609 were claims under the duty of fair representation that were time barred by the applicable six-month statute of limitations.

ISSUES PRESENTED

Should this Court deny review because the Petitioners have not established any grounds justifying review by this Court?

STATEMENT OF THE CASE

Petitioners' statement of the case contains several inaccuracies, most significant of which are the statements that Local 609 "worked to settle Mr. Killian's and Mr. Bailey's non-union civil claims," and that "the

negotiated settlement agreement included" provisions for payment broken down into separate amounts for back wages, compensatory damages and costs. Petition at 2-3 (quoting CP 172). The language quoted in the Petition is misleading, as it is actually from a draft settlement agreement proposed by the District through the PERC mediation that was never accepted by the Petitioners.

Petitioners augment this inaccurate statement with another claim that the Union's Executive "Board approved it, both the sums for resolution of the grievance, or back pay and the sums for resolution of Mr. Killian and Mr. Bailey' [*sic*] non-union civil claims." Petition at 15. While Local 609 did settle the grievances it had filed on behalf of the Petitioners, the settlement agreement did not address, let alone purport to release, Petitioners' non-union claims or purport to allocate settlement monies between claims. It simply withdrew the grievances in return for the District continuing to extend the lump sum offers to the Petitioners. CP 430-431.

The grievances followed the District's termination of Petitioners' employment. In 2011, the District placed Bailey and Killian on paid administrative leave while it investigated claims that they had misused SPS's property. CP 84-85. Local 609 was their collective bargaining representative under the Public Employment Collective Bargaining Act ("PECBA") Ch. 41.56 RCW. CP 52-53, 55-56, 69-72. Local 609's

officer Michael McBee represented Killian and Bailey during the course of the District's investigation. CP 57 (115:3-11), 359 (88:10-22). On December 18, 2012, the District concluded there was proper cause to terminate Killian's and Bailey's employment for misconduct. After *Loudermill* hearings, at which McBee represented them (CP 69-72, 231-232 (104:9) (108:10)), 367 (118:27-119:2)), the District terminated their employment on December 27, 2012. CP 69-72.

McBee then filed grievances under the CBA on behalf of Killian and Bailey. Article XVIII of the CBA covering their bargaining unit contains a four-step process for grievances alleging a violation of the CBA. CP 186-190, 349-351 (45:5-53:12). McBee represented them in each step through the CBA grievance process. CP 95-106, 233-234 (111:25-112:24), 349 (45:5-48:8), 234 (114:14-20), 235 (117:21-118:24); CP 235-236 (120:7-121:3). After the District denied the grievances at step three, CP 104-107, McBee proposed mediation of the grievances—an optional step under the CBA grievance procedure—and he informed the Petitioners of that. CP 109, 193. On June 5, 2013, McBee wrote an e-mail to Killian to notify him that SPS was willing to go to mediation and informing him that any District proposal at mediation "would most certainly include a clause in which you agree not to sue the District at a future date." CP 661. Because Killian had previously indicated that he

had retained legal counsel, McBee wrote, "I would advise you to consult with him/her and let me know your answer [regarding mediation]." *Id.* On June 9, Killian responded to McBee's email and indicated that he had consulted with his attorney, Chellie Hammack and, pursuant to her advice, he agreed to go to mediation. *Id.*, CP 236 (124:10-13).

On June 13, 2013, SPS and Local 609 filed a joint grievance mediation request with PERC. CP 111-114, 374-375 (145:10-149:22), 119 (125:4-17), 116-126, 132 (89:4-8). In the first mediation session the District, through the mediator, proposed settlements in the low five figures separately to each Petitioner, and the mediation ended without settlement. CP 374-375 (148:20-149:22), 301 (92:18-20), 237-238 (125:1-129:9). On September 9, 2013, the second day of mediation, the District presented, through the PERC mediator, settlement drafts that, in addition to resolving the grievances, included releases of individual claims and broke the monetary settlement into wages and attorney's fees but left the place for those dollar amounts blank. CP 373 (144:14-23), 167-170, 194 ¶8. In order to encourage improved offers, McBee informed the District that Local 609's Executive Board would be voting that evening on whether to authorize proceeding to the arbitration step under the CBA.[1] CP 361

[1] Because of the risks associated with arbitration, a case may only be advanced to arbitration if is approved by the Union's Executive Board, subject only to later review at a membership meeting. CP 350 (52:12-53:12). In this instance, because there would be

(96:27-35). The District offered Bailey $60,000, but he said he was done and left. CP 302 (93:12-96:1), CP 303 (98:17-20). Killian received an offer of $75,000, which he also rejected. CP 238 (132:14-19). Because the District's offers, conveyed through the PERC mediator, also included releases of statutory claims, the mediator and McBee advised Plaintiffs to provide the settlement drafts and offers to their counsel, which they did. CP 379 (165:3-7), 379-380 (167:6-169:7), 239 (135:18-136:1), 376 (154:2-155:1), 377-378 (159:23-161:9).

Later that evening, McBee presented the District's monetary offers to settle the grievances to the Union's Executive Board and recommended that they authorize arbitration because the mediator had predicted that the District might increase its monetary offers, and he felt that a decision to authorize arbitration of the grievances would put leverage on the District to increase its offers. CP 362 (100:3-22), 378 (163:22-165:2), 381 (174:23-176:6), 382 (177:3-13). The Board voted to move the grievances to arbitration, though the Board would consider rescinding that decision if the District offered the equivalent of two years' salary to each Plaintiff. CP 381 (174:23-176:6), 382 (178:15-179:23). McBee informed Killian and Bailey that the Board had voted to proceed to arbitration, but that it

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no membership meetings over the summer in which the membership would have the opportunity to review the Executive Board's decision on arbitration, the membership voted before the summer break to allow the Board complete authority on that decision. CP 388-389 (204:23-205:18).

was possible that the Union would settle its grievances if the District offered more money. CP 385 (190:13-21). McBee had also explained to them that, if the Union settled the grievances, they could accept the offers from the District or pursue their claims in court, whichever they chose. CP 383 (183:19-184:17).[2]

On September 17, 2013, through a phone call from the mediator to McBee, the District offered $100,000 for Killian and $75,000 for Bailey if the Union would settle the grievances and if each would also agree to release all legal claims. CP 380 (169:23-170:7); *see also* CP 425-428. McBee, who was not in Seattle, emailed the Executive Board to present a motion that it had requested—that is, to reconsider its decision to take the grievances to arbitration if the District increased its offers. CP 429. His email to the Board explained:

> This is the largest settlement offer I've seen from the District for one of our members. Although this does not overturn the termination this would be a significant victory for our members in addressing the terrible investigation process SSD has put in place in the last few years. Were we to proceed to arbitration it would be the Local's expense and there would be no guarantee of victory.

Id. He also informed the Board that he would be notifying the Plaintiffs of SPS' offer:

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[2] Petitioners inaccurately state that it was "unknown" to them that McBee continued to negotiate through the mediator with the District after the second in-person mediation session. Pet. At 10.

> I have calls into both [Plaintiffs] but remember, the grievance belongs to the union and we decide to proceed or not. I will be recommending to both of [the Plaintiffs] that they consult with their attorney before deciding to accept or reject their individual offers. If they reject, and it's up to them, they can pursue their claims in court.

CP 429. This email reflected McBee's earlier discussion with the Board in the September 9 meeting that, if the Board approved a settlement of the grievances, the District, in exchange, would make the offers and the Petitioners would be free to consult with their attorney about accepting or rejecting the offers to settle legal claims. CP 383 (182:2-24); CP 508. The Board voted to drop the Union's the grievances in exchange for the District extending those settlement offers to Petitioners. CP 505-506, *Id.* (184:18-185:2), CP 383 (182:6-24), CP 384 (188:12-15), CP 385 (189:18-190:21).

On the same day, September 17, 2013, McBee sent written copies of the District's offers to Killian and Bailey, informing them that the Union had agreed to withdraw its grievances and that it would not be proceeding to arbitration. CP 383 (182:6-24), CP 384 (187:17-24), CP 387 (200:16-21). McBee also informed them that they should consult with counsel before deciding whether to accept the offers or reject them. CP 383 (184:15-17), CP 388 (203:4-13).

Killian and Bailey discussed the offers with their counsel that day,

September 17, 2013, and later in that same day their counsel sent a letter to Local 609's attorney, stating:

> Today, after meeting with both my clients to discuss the issues, and after our discussion, McBee called my clients again extending an offer made by SPS. Further, McBee told both of my clients that if they did not accept the offers extended, the union would decline to represent them further and would not pursue an arbitration on their behalf.

CP 135-136.

On September 20, 2013, Local 609 executed a written settlement agreement, which provided that the Union would not pursue arbitration of the CBA grievances in exchange for the District extending offers of $100,000 and $75,000 to Killian and Bailey, respectively, in return for them releasing their civil claims.[3] CP 430-431. The settlement affected the grievances only, and left Petitioners free to pursue their legal claims against the District should they reject those offers. CP 430-431, 508 (203:4-203:13). They rejected the District's final settlement offers. CP 504-505 (183:16-184:3), 239-240 (136:12-137:13), CP 204 (102:16-24).

On October 12, 2013, during a regularly scheduled monthly Local 609 membership meeting, all of the previous months' decisions by the Executive Board were read out, including the decision not to arbitrate Petitioners' grievances. CP 54, (16:6-16), CP 133 (101:3-9). Bailey, who

[3] The grievance settlement did not break down these gross sums and did not include a release of claims by the Petitioners. CP 430 (¶¶ 2.0 and 2.1).

was in attendance, heard the announcement. *Id.* Bailey relayed this announcement to Killian on the same day or shortly after. CP 125-126 (175:20-176:2). On October 14, 2013, Petitioners' counsel wrote to Local 609's counsel stating that the Petitioners were aware of the Union's decision not to pursue arbitration: "This Saturday during the union meeting, it was publically announced that the union board had voted not to pursue arbitration despite the fact that it appears the decision was made in September." CP 138-139 . On October 18, 2013, Local 609's counsel wrote to Petitioners' counsel indicating once again that Local 609 would not pursue arbitration of the grievances. CP 659.

Petitioners filed lawsuits on May 29, 2014, which were later consolidated into the instant suit. Those lawsuits alleged that Local 609 had breached its duty of fair representation and had negligently engaged in the unauthorized practice of law, and alleged claims against the District (as they were free to do, despite the Union's settlement of its grievances under the CBA). CP 387 (198:15-21), CP 1-12, 824-828, 933, 939-942, 974-985. In August 2015, the Superior Court granted summary judgment dismissing all claims against Local 609 (CP 966-968) and denied Plaintiffs' motion to amend their complaint to add a claim of violation of the CPA. CP 971-973. The Court of Appeals affirmed those decisions and Plaintiffs petitioned this Court for review.

ARGUMENT

A. The Court of Appeals Decision Comports With Washington Precedent.

Review may be warranted where a Court of Appeals decision conflicts with a decision of Washington Courts, RAP 13.4(b)(1)&(2), but there is no such conflict here. RAP 13.4(b)(1)&(2). Petitioners contend that the decision below is in conflict with *Morales v. Westinghouse Hanford Co.*, 73 Wn. App. 367, 371 (Div. III, 1994). However, the Court of Appeals decision does not conflict with *Morales,* which held that statutory discrimination claims are independent of any rights inherent in a collective bargaining agreement. Nor has Local 609 argued against this black letter rule. Rather, the undisputed fact is that Local 609 did not enter into any settlement of the Petitioners' separate individual claims.

Petitioners argue a conflict with *Morales* because the District's proposals to settle the grievances were contingent on Petitioners also agreeing to settle their individual claims. However, the Union respected the separate nature of the individual claims and did not act on the Petitioners' behalf regarding those claims. It simply decided to settle its contractual grievances when the offers to settle the grievances reached a high dollar value and left to the Petitioners whether to act on the second

contingency necessary to collect the settlement offers, whether to release their individual claims, or whether to persue those claims in court.

To the extent that Petitioners contend that Local 609 engaged in the unauthorized practice of law by *receiving offers* from the District through the offices of a PERC mediator who was mediating the resolution of the Union's grievances under the CBA, where those monetary offers were also contingent on the Petitioners' release of individual claims, that is an allegation of a breach of the duty of fair representation, not the unauthorized practice of law. As the Court of Appeals noted, the act of receipt of those offers, and any comment made by McBee about the offers, were made in "the collective bargaining mediation process between the appellants and SPS" and therefore, any unauthorized practice of law claim arising in the course of the grievance procedure is subsumed in a DFR claim against the Union. *Killian v. Int'l Union of Operating Engineers Local 609–A*, 2016 WL 4442562, at *5 (Wn.App.). Additionally, "because the Petitioners' CPA claim is based on the [] unauthorized practice of law claim, [the Court of Appeals] conclude[d] that their CPA claims are also subsumed in the DFR claim...". *Id.*

Because the alleged negligence—the unauthorized practice of law—arose "in the course of the grievance process under the CBA," the Court of Appeals correctly held that "the union member may sue the union

[only] for breach of the duty of fair representation." *Killian*, 2016 WL 4442562, at *4-5 (citing *Peterson v. Kennedy*, 771 F.2d 1244, 1259 (9th Cir. 1985) *cert. denied* 475 U.S. 1122 (1986)).[4]

In *Peterson*, the Ninth Circuit held that legal malpractice claims against union attorneys were subsumed as DFR claims against the union, because the attorney was performing a function in the collective bargaining process that would otherwise be assumed by the union's business agents or representatives. *Peterson*, 771 F.2d at 1255, 1258 ("[Plaintiff's] malpractice claim against the union's attorney was subsumed in and precluded by the breach of the duty [of fair representation] claim").

B. The Court of Appeals Decision Comports With Washington Public Policy.

Petitioners contend that the Court of Appeals erred in restricting union liability in processing grievances to the duty of fair representation, and that review is therefore appropriate under RAP 13.4(b)(4). They argue the decision below is contrary to Washington State public policy because "there is no reason" for applying the shorter limitation period

[4] The Court of Appeals observed that "this court may look to the interpretation of federal labor law where the law is similar to state law. ...Here, the parties rely predominantly on federal case law. *Killian*, 2016 WL 4442562, at *4 (Wash. Ct. App. Aug. 22, 2016) (citing *Navlet v. Port of Seattle*, 164 Wn.2d 818, 828-29, 194 P.3d 221 (2008)); *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 372, 670 P.2d 246 (1983).

applicable to DFR claims to their negligence claims against their union. Petition at 15. However, the Court of Appeals clearly enunciated the sound reasons for doing so:

> Courts should accord substantial deference to a union's decisions regarding grievance processing, because a union must balance collective and individual interests in making these decisions. Id. The collective bargaining system by its very nature subordinates the interest of an individual employee to the collective interests of all the employees in the bargaining unit. ... The DFR is breached when a union's conduct is discriminatory, arbitrary, or in bad faith.

Killian, 2016 WL 4442562, at *3 (citing *Lindsey v. Mun. of Metro. Seattle*, 49 Wash.App. 145, 148, 741 P.2d 575 (1987)).

The decision below perfectly comports with the public policy of this State. In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 372, 670 P.2d 246 (1983), the Court noted that RCW 41.56.080, which provides that a union representing public employees in Washington is the exclusive representative of the bargaining unit employees that selected it, "parallels that contained in section 9 of the NLRA" and held that a cause of action for breach of the duty of fair representation was also implied in RCW 41.56.080 (citing *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 909, 17 L.Ed.2d 842 (1967)).[5]

[5] The duty of fair representation was recognized under the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151-169, "as a judicial response to the broad power granted to unions as the exclusive representatives of their members" under Section 9 of that Act. *Allen*, 100 Wn.2d at, 367, 670 P.2d at 249.

As the Court of Appeals pointed out, Washington courts "'accord substantial deference' to a union's decisions regarding grievance processing, because a union must balance many collective and individual interests in making these decisions. ... The collective bargaining system by its very nature subordinates the interests of an individual employee to the collective interests of all the employees in the bargaining unit." *Killian*, 2016 WL 4442562, at *3. *See also*, *Allen*, 100 Wn.2d at 368, 670 P.2d 246; *Lindsey*, 49 Wn. App. at 149, 741 P.2d at 577-78 (1987) (citing *Peterson v. Kennedy,* 771 F.2d 1244, 1253 (9th Cir. 1985); *Johnson v. U.S. Postal Service,* 756 F.2d 1461, 1466 (9th Cir. 1985); *Dutrisac v. Caterpillar Tractor Co.,* 749 F.2d 1270, 1273 (9th Cir. 1983); *Vaca,* 386 U.S. at 182, 87 S.Ct. at 912.).

Therefore, the standard of care owed by unions toward their members is encapsulated in the duty of fair representation. *United Steelworkers of America v. Rawson,* 495 U.S. 362, 374, 110 S.Ct. 1904, 109 L.Ed. 2d 362 (1990) (observing that the **only** implied duty in a union's relations with its members was the duty of fair representation and that, "[i]f an employee claims that a union owes him a more far-reaching duty, he must be able to point to language in the collective-bargaining agreement specifically indicating an intent to create obligations enforceable against the union by the individual employees"); *Johnson v.*

Graphic Communications, 930 F2d 1178 (7th Cir. 1991) (malpractice allegations that union officers gave inaccurate legal advice where those officers "held themselves out to be experts in representation, collective bargaining . . ." treated as DFR); *Bautista v. Pan Am World Airlines,* 828 F2d 546, 549 (9th Cir. 1987) (allegation that union provided inaccurate legal information to strikers after expiration of contract at 837 (11th Cir. 1984) (allegation that union's misrepresentation that striking employees' jobs were secure was treated as a DFR).

Other public sector collective bargaining statutes have been similarly interpreted to limit a union's scope of liability to the scope of its duty of fair representation. *See e.g., Weiner v. Beatty*, 121 Nev. 243, 249-50, 116 P.3d 829, 832 (2005) (the duty of fair representation under Nevada's public sector collective bargaining act "governs the relationship between union members and union representatives" and therefore the plaintiff's legal malpractice "claim directly implicates the union's duty of fair representation"); *Brown v. Maine State Employees Ass'n*, 690 A.2d 956, 960 (1997) ("Brown's labeling of his claim as one for attorney malpractice does not alter" its character as a DFR claim); *Best v. Rome*, 858 F. Supp. 271, 275 (D. Mass. 1994) *aff'd,* 47 F.3d 1156 (1st Cir. 1995); *Hussey v. Operating Engineers Local Union No. 3*, 35 Cal. App. 4th 1213, 1219-20, 42 Cal. Rptr. 2d 389, 392-93 (1995) (claim denominated as

negligence action was DFR claim, subject to DFR standards because "union does not owe a duty of due care to its members"). *Cf.*, *Weiner v. Beatty*, 121 Nev. 243, 249-50, 116 P.3d 829, 833 (2005) (union agents should not be held to a negligence standard of care when the union for whom they work is liable only if its representation is 'arbitrary, discriminatory, or in bad faith'"); *Lucien v. Conlee*, No. 081066, 2009 WL 1082367, at *2-3 (Mass. Super. Mar. 27, 2009) (same); *Callahan v. New Mexico Fed'n of Teachers-TVI*, 2006-NMSC-010, 139 N.M. 201, 206-07, 131 P.3d 51, 56-57 (same).

The Court of Appeals' holding that Petitioners' unauthorized practice of law and Consumer Protection Act claims (which were premised entirely on the unauthorized practice of law claim) were subsumed in the duty of fair representation claims is thus entirely consistent with Washington law and the holdings of federal and state sister courts interpreting their collective bargaining statutes.

C. There Is No Error Or Grounds For Review In The Holding That Petitioners' Claims Were Time Barred.

Petitioners' DFR claims, as well as their unauthorized and negligent practice of law and CPA claims (which are subsumed in their DFR claims), are time barred by the six-month statute of limitations applicable to such actions. *Imperato v. Wenatchee Valley Coll.*, 160 Wn.

App. 353, 364, 247 P.3d 816, 821 (2011). Here, Division One of the Court of Appeals found persuasive the *Imperato* decision of Division Three, applying the six-month limitation period in RCW 41.56.160. [6] *Killian*, 2016 WL 4442562, at *6 ("We adhere to *Imperato*."). Thus, rather than there being grounds for review under RAP 13(b)(2) (conflict with a published decision of the Court of Appeals) as argued by Petitioners, the consistency of the decision below with the *Imperato* decision counsels against review.

Divison One held, as did the *Imperato* court, that the six-month statute of limitations applies to DFR claims filed directly in superior court, as well as those filed with PERC. It agreed that

> application of the six month statute of limitation period to DFR claims would serve several important policies: (1) It would prevent piecemeal litigation; (2) Applying a different statute of limitations to DFR claims filed in superior court would frustrate the role of PERC in promptly resolving labor disputes; and (3) It would provide consistency, because federal law also establishes a six month statute of limitations. ... In so holding, the *Imperato* court rejected the argument that it should apply the three year statute of limitations in RCW 4.16.080, the six year statute of limitations for breach of a written agreement in RCW 4.16.040,

[6] RCW 41.56.160(1) sets forth a six-month statute of limitations for unfair labor practice claims filed with PERC:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

> or the two year statute of limitations in RCW 4.16.130. Id. at 362, 364, 247 P.3d 816.

Killian, 2016 WL 4442562, at *6 (citing *Imperato*, 160 Wn. App. at 362, 364).

Petitioners' claims are time barred, as their Complaints were not filed until May 29, 2014, CP 1-12, 974-985. Whether applying NLRA jurisprudence by analogy or under Washington's common law discovery rule, the six-month limitation period ran, at the latest, "over a month after the expiration of the six month statute of limitations period." *Killian*, 2016 WL 4442562, at *8. *See also*, *Harris v. Alumax Mill Prod., Inc.*, 897 F.2d 400, 403-404 (9th Cir. 1990) (employee knew or should have known of alleged breach no later than the date on which a union representative informed the employee it would not pursue a grievance on his behalf).[7] *Funkhouser v. Wilson*, 89 Wash.App. 644, 666–67, 950 P.2d 501 (1998) (a cause of action accrues when a claimant knows or, in the exercise of due diligence, should have known all the essential elements of the cause of action), *affirmed by C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wash.2d 699, 985 P.2d 262 (1999).

[7] As discussed above, Washington courts analyzing cases under the PECBA may look to federal decisions interpreting the NLRA to the extent those laws are "substantially similar." The PECBA is "substantially similar" to the NLRA, 29 U.S.C. §§ 151–169 (1976), *State ex rel. Wash. Fed'n of State Employees v. Board of Trustees,* 93 Wn.2d 60, 67–68, 605 P.2d 1252 (1980), and both acts provide a six-month limitation period for claims based upon "any unfair labor practice." 29 U.S.C. § 160(b); RCW 41.56.160(1).

The Court of Appeals carefully reviewed each communication from Local 609 to the Petitioners and concluded that, despite Petitioners' arguments to the contrary, they received oral notice that the Union was not proceeding to arbitration at least by October 12, 2013, and that oral notice was confirmed in writing by at least October 18, 2013, which means that the limitation period ran, at the latest, in mid-April 2013. *Killian v. Int'l Union of Operating Engineers Local 609–A*, No. 74024-5-I, 2016 WL 4442562, at *7-8.

CONCLUSION

This Court should deny the petition for review.

RESPECTFULLY SUBMITTED this 21st day of October, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2016, I caused the foregoing Answer to Petition for Review to be served by hand delivery, addressed to:

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