

APPELLANT
COURT OF APPEALS
OF THE STATE OF WASHINGTON
BY _____

NO. 289133

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

ROSSI IMPERATO,

Appellant,

v.

WENATCHEE VALLEY COLLEGE

and

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION,

Respondents.

BRIEF OF RESPONDENT WENATCHEE VALLEY COLLEGE

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I. INTRODUCTION

After a series of conflicts with coworkers, Respondent, Wenatchee Valley College (WVC), discharged Rossi Imperato (Appellant). Respondent, Washington Public Employees Association (WPEA or Union), chose to not file a grievance over Appellant's discharge. Appellant waited over seven months after his discharge before filing a complaint in the Chelan County Superior Court. The complaint alleged a breach of contract by WVC and a breach of the duty of fair representation by WPEA. Clerk's Papers (CP) 4-7.

Respondents successfully moved for summary judgment based on Appellant's complaint not being timely filed. CP 308-09. Appellant did not dispute the fact he waited over seven months to file suit, rather he maintained the statute of limitations allowed him at least a year, if not more, to file claims. CP 179. The trial court declined to adopt Appellant's position. CP 299-302. The evidence provided in the parties' briefs and supplemented by oral argument supported the conclusion that Appellant's claims were not timely filed. CP 308-09. The trial court correctly granted summary judgment.

II. ASSIGNMENT OF ERROR

Respondent WVC asserts there was no error in this case and the trial court's decision should be affirmed. WVC sets forth the following as the issues for review to address Appellant's alleged assignments of error.

1. Does Appellant's claim for breach of contract by WVC and breach of the duty of fair representation by WPEA form a "hybrid" claim?
(Assignment of Error 1)
2. Does the six month statute of limitations in RCW 41.56.160 and 41.80.120 apply to Appellant's claims? (Assignment of Error 2)
3. Does the tort tolling of RCW 4.92.100 and 4.92.110 apply to Appellant's claims? (Assignment of Error 3)

III. STATEMENT OF THE CASE

A. Factual Background

WVC hired Appellant as a custodian in 2002. CP 153. As a custodian, Appellant was a member of the bargaining unit represented by the WPEA and covered by a Collective Bargaining Agreement (CBA). CP 153. In 2006, Appellant promoted to a supervisory position that was not covered by the WPEA or the CBA. CP 156. During the time Appellant was a supervisor, he behaved inappropriately and displayed anger towards his subordinates. CP 139, 141. There were numerous conflicts with his coworkers which culminated in a physical confrontation

on February 28, 2007, when law enforcement was called. Appellant was placed on paid home assignment while the incident was thoroughly investigated after which WVC demoted Appellant back to a custodian position in August 2007. Appellant could have appealed his demotion to the Personnel Resources Board but he did not. CP 136–137. This placed Appellant back in the bargaining unit and he was once again represented by the WPEA. CP 136–137, 160. WVC also placed Appellant on a work schedule which separated him from working the same shift as the coworkers with whom he had conflicts. CP 98.

In December 2007 WVC proposed a schedule change following the notice requirements of the CBA. CP 98. This new schedule would have had the Appellant working the same shift as the coworkers he had conflicts with, though they would be working in separate buildings and areas of the campus. CP 98. Appellant opposed this proposed schedule change and complained about it to his supervisor. CP 98. Appellant also complained to his WPEA representative, Linda Fryant, about this proposed schedule change. He wanted the Union to file a grievance on his behalf. CP 120–123. Appellant spoke with Ms. Fryant on the evening of January 3, 2008. During this phone conversation with Ms. Fryant, Appellant threatened to assault Dan Edwards and made disparaging comments about Mike Pritchard, the two coworkers with whom Appellant

had problems. CP 120–123. Throughout his conversation with Ms. Fryant, Appellant used profanity and foul language. CP 120–123. Ms. Fryant told the Appellant she did not want to hear such talk and language from him; however, he persisted. The following morning, Ms. Fryant spoke with Travis Taylor, Facilities & Operations Director at WVC, reporting what had happened the previous evening. After this phone call Ms. Fryant followed up with an email to WVC about the remarks made by Appellant toward Mr. Edwards and Mr. Pritchard expressing her concern for their safety as well as the safety of other union members. CP 120–123. WVC immediately began an investigation. Appellant was represented by a local WPEA representative throughout the investigative process. CP 120–123.

After the investigation was completed, WVC issued a disciplinary letter on February 1, 2008, informing Appellant of his discharge effective February 19, 2008. CP 131–132. Appellant requested WPEA file a grievance over his discharge. CP 94. WPEA, after considering the merits of Appellant’s claim, declined to file a grievance and notified Appellant of their decision by letter dated February 25, 2008. CP 94.

B. Procedural History

Appellant filed his lawsuit on October 14, 2008, 7 months and 23 days after his discharge. CP 4–7. In his complaint, Appellant alleged two

causes of action: 1) a breach of contract by WVC and 2) a breach of the duty of fair representation by WPEA. CP 6. Appellant prayed for damages against WVC on the breach of contract claim and for damages against WPEA on the breach of the duty of fair representation claim. CP 6.

Respondents moved for summary judgment arguing the statute of limitations was six months and had run. CP 21–94 & 95–160. After considering the written briefs and oral arguments, the trial court granted the motion for summary judgment and dismissed Appellant’s claims. CP 308–309.

IV. SUMMARY OF ARGUMENT

The trial court correctly granted summary judgment because the six month statute of limitations had passed. Appellant’s claims are for a breach of contract and a breach of the duty of fair representation. These claims have been recognized, because of their interconnectedness, as a hybrid claim. Further, the duty of fair representation claim and the breach of contract claim have been recognized as forms of an unfair labor practice claim.

Unfair labor practice claims are recognized in RCW 41.56 and 41.80 which provide for a six month statute of limitations. Additionally, the courts have allowed claims for unfair labor practices to be brought

either before the Public Employees Relations Commission (PERC) or in Superior Court, as was done here.

The tolling statute of RCW 4.92 applies only to actions based in tort. Appellant's claims are based on an unfair labor practice claim, and thus the tolling statute does not apply.

The trial court correctly determined the Appellant filed his claims after the six month statute of limitations had passed. Appellant's appeal should be denied.

V. ARGUMENT

A. **Summary Judgment was Properly Granted as There are No Genuine Issues of Material Fact**

Summary judgment will be granted where the pleadings and discovery show there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). An appellate court conducts a de novo review of a summary judgment motion, engaging in the same process as the trial court. Ski Acres, Inc. v. Kittitas County, 118 Wn.2d 852, 854, 827 P.2d 100 (1992). All reasonable inferences are made in favor of the nonmoving party. Korsland v. Dyncorp Tri-Cities Services, Inc., 156 Wn.2d 168, 176, 125 P.3d 119 (2005). Summary judgment is proper when a reasonable person could come to only one conclusion based on the evidence. Korsland at 176.

Appellant was notified of his discharge, effective February 19, 2008, by WVC by letter dated February 1, 2008. CP 131–132. WPEA denied Appellant's request to file a grievance on February 25, 2008. CP 94. Appellant filed suit on October 14, 2008, alleging a breach of contract by WVC and a breach of the duty of fair representation by WPEA. CP 4–7. The breach of contract complaint stems from Appellant's discharge on February 19, 2008. The breach of the duty of fair representation complaint stems from the WPEA's determination on February 25, 2008, to not file a grievance on Appellant's behalf.

Summary judgment was granted based on a violation of the statute of limitations. Even though the underlying facts leading to Appellant's discharge may be in dispute, none of the dates are: 1) WVC discharged the Appellant on February 19, 2008; 2) the WPEA declined to file a grievance on Appellant's behalf on February 25, 2008; and 3) the lawsuit was filed by Appellant on October 14, 2008. For purposes of summary judgment based on a violation of the statute of limitations, the focus is on the dates when the alleged actions accrued. The validity of the alleged breaches may be contested; but, the undisputed dates form a proper basis for summary judgment in regard to the statute of limitations. There is no genuine issue of material fact; the granting of summary judgment was appropriate.

B. RCW 4.92.100 and 4.92.110 Do Not Apply to a Breach of Contract Claim Against the State

RCW 4.92.100 states in pertinent part:

All claims against the state ... for damages arising out of tortious conduct ... shall be presented to the risk management division.

In other words, a tort claim may not be filed in superior court until the claimant has presented a claim to the risk management division of the State. RCW 4.92.110 tolls the statute of limitations on a tort claim for 60 days. This statute explicitly applies only to tort claims made against the State, not a breach of contract claim which is the cause of action filed by the Appellant. CP 4-7.

RCW 4.92.100 and 4.92.110 do not apply here. These statutes are only invoked when a tort claim is made against the State. Appellant's complaint alleges a breach of contract against WVC, not a tort. CP 4-7. Appellant does not affirmatively allege he filed a tort claim with the state risk management office, though his argument infers such a filing. However, this claim does not make his lawsuit filed in superior court a tort. CP 172-174.

The Washington Supreme Court has specifically found:

Unfair labor practice claims under chapter 41.56 RCW are not tort claims for damages and are thus not subject to the claims filing statute.

Wright v. Terrell, 162 Wn.2d 192, 196, 172 P.3d 329 (2007). The Wright court applied RCW 4.96, which pertains to local government entities; but, the analysis is the same for RCW 4.92 which applies to state agencies, which WVC is.

The claims filing statute, RCW 4.92, is not applicable as a tort lawsuit was not filed against WVC. Thus, it does not toll the statute of limitations for 60 days as claimed by the Appellant.

C. A Breach of Contract Claim Against an Employer and a Breach of the Duty of Fair Representation Claim Against a Union Form a “Hybrid” Claim

Two claims were filed by the Appellant: 1) against WVC, the employer and a state entity, a breach of contract; and 2) against WPEA, the Union, a breach of the duty of fair representation. CP 4–7. The United States Supreme Court recognized in 1983 that a claim against an employer for breach of contract is “inextricably interdependent” with a claim against a union for breach of the duty of fair representation. DelCostello v. Int’l Bhd. Of Teamsters, 462 U.S. 151, 164, 103 S. Ct. 2281 (1983). DelCostello discussed how these two claims are interconnected and do not exist alone in a vacuum.

To prevail against either the company or the Union, ... [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union. ... The employee may, if he chooses, sue one defendant

and not the other; but the case he must prove is the same whether he sues one, the other, or both.

DelCostello, at 165. The Court referred to this action for breach of contract against an employer and breach of the duty of fair representation by the union as a “hybrid § 301/fair representation claim.” DelCostello, at 165.

In DelCostello, the Court dealt with a breach of contract claim based on § 301 of the Labor Management Relations Act (LMRA). DelCostello, at 164. The LMRA does not apply to Appellant’s claims because the LMRA exempts state employers and thus is not controlling. 29 U.S.C. § 152(2). However, Appellant’s claims carry the same interdependency as a “hybrid” claim because Appellant must prove both causes of action in order to prevail. Appellant’s claims are the same underlying claims alleged in a “hybrid § 301/fair representation claim.”

Washington State recognized, as the United States Supreme Court in DelCostello did, that for a claimant to succeed on a breach of the duty of fair representation claim against a union:

[T]he employee must prove: (1) the employer's action violated the terms of the collective bargaining agreement and (2) the union breached its duty of fair representation.

Womble v. Local Union 73 of the Int’l Bhd. Of Electrical Workers, AFL-CIO, 64 Wn. App. 698, 703, 826 P.2d 224 (1992). Without using the

words “hybrid claim,” Washington recognized the interdependency of a breach of contract claim with a breach of the duty of fair representation claim.

D. The Trial Court Applied the Correct Six Month Statute of Limitations

The trial court determined the correct statute of limitations in this hybrid case is six months. No error was committed in granting the summary judgment motions of the Respondents.

1. General Considerations

A statute of limitations is “a declaration of legislative policy to be respected by the courts.” O’Neil v. Estate of Murtha, 89 Wn. App. 67, 73, 947 P.2d 1252 (1997). A statute of limitations is a creature of legislation and created to protect individuals and courts from stale claims. Burns v. McClinton, 135 Wn. App. 285, 293, 143 P.3d 630 (2006). As time passes, the reliability of evidence and memory deteriorates. Burns at 293. A statute of limitations grants a period of time for potential parties to be on notice of the threat of litigation. Kittinger v. Boeing Co., 21 Wn. App. 484, 486-87, 585 P.2d 812 (1978). After the statutory period has passed, a party is no longer subject to the fear of the possibility of litigation. Kittinger at 486–487. A statute of limitations grants closure to a party to a potential lawsuit.

The statute of limitations in labor claims begins to run when the employee discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged violation. Zuniga v. United Can Co., 812 F.2d 443, 448 (9th Cir. 1987). CP 302. Appellant contends (Brief of Appellant at 15) the statute of limitations is in derogation of the common law and requires strict construction citing to French v. Gabriel, 57 Wn. App. 217, 788 P.2d 569 (1990). French does not support this claim. The page, in a footnote, cited by Appellant references out-of-state service, not the statute of limitations, as claimed. French at 226 n.3. Appellant's reliance on French is misplaced.

2. The Correct Washington Statute of Limitations for an Unfair Labor Practice is Six Months

The Washington Legislature has adopted statutes of limitations for many different types of actions. Breach of contract claims are generally subject to a six year statute of limitations. RCW 4.16.040(1). Tort claims fall under a three year statute of limitations. RCW 4.16.080. Unfair labor practice claims are subject to a six month statute of limitations. RCW 41.56.160 and 41.80.120.

Appellant argues that RCW 41.56.160 does not apply to establish a six month statute of limitations in this matter¹. However, RCW 4.16.005 does permit this six month statute of limitations. It states:

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

RCW 4.16.005. RCW 41.56.160 and 41.80.120² are the “special cases” delineating a different limitation from RCW 4.16. The Legislature prescribed in 1983 that the statute of limitations in unfair labor practice claims is six months. CP 37, 49–53.

Appellant argues RCW 41.56 does not explicitly mention filing unfair labor claims in superior court; but, Washington courts have maintained jurisdiction over unfair labor practice claims made under RCW 41.56. Council of County & City Emps. v. Hahn, 151 Wn.2d 163, 86 P.3d 774 (2004). The Supreme Court of Washington determined that unfair labor practice claims under this statute are not limited to only being filed with PERC, but found an unfair labor practice claim may be filed in

¹ Appellant does not cite to a specific statute of limitations. He merely claims he filed timely. Appellant’s Brief at 25. In Appellant’s response brief to the summary judgment motions in superior court, he did not cite to a specific statute of limitations either. Rather, he claimed the statute of limitations is two years. CP 179.

² RCW 41.56 was enacted before RCW 41.80, which applies to WVC. Both statutes provide for unfair labor practice claims with a six month statute of limitations. The Washington cases cited to only refer to RCW 41.56, but the same analysis would apply to RCW 41.80.

superior court, which is what happened in the case at hand. As Yakima v. Fire Fighters, 117 Wn.2d 655, 818 P.2d 1076 (1991) found, there is concurrent jurisdiction.

PERC unquestionably has authority to rule on unfair labor practice complaints. Indeed, PERC is recognized both by statute, and case law as possessing expertise in the labor relations area. However, this expertise and authority do not divest the superior courts of jurisdiction in all cases to resolve unfair labor practice complaints which involve interpretation of public employee collective bargaining statutes.

Both PERC and the court thus had the authority to resolve the question posed in this case. (Cites omitted.)

Yakima at 674–675. Washington courts have recognized the applicability of RCW 41.56 to file an unfair labor practice claim in superior court or before PERC. See, Hahn and Yakima, *supra*.

The Supreme Court of Washington in a case of first impression held RCW 41.56.080, required unions to “represent, all the public employees within the unit without regard to membership,” thus imposing the duty of fair representation on unions. Allen v. Seattle Police Officers’ Guild, 100 Wn.2d 361, 371, 670 P.2d 246 (1983).

The plaintiffs in Allen alleged their union violated its duty of fair representation by engaging in disparate treatment of its members on the basis of race. Allen at 365. In upholding this allegation as a valid claim, the Court held unions must “represent fairly the interests of all its

members.” Allen at 374 (emphasis in original). Appellant alleges the WPEA did not fairly represent his interests and thus the interests of all its members, especially his.

Even though the Allen court affirmed the finding for the union of no violation of the duty of fair representation, it imposed the duty of fair representation to unions certified under RCW 41.56.080. Allen at 372. WPEA is the certified bargaining representative under RCW 41.56.080. CP 13. The Allen court continued that the duty to represent contained in RCW 41.56.080 “should be interpreted broadly.” Allen at 372. Further explaining its reasoning for broad interpretation, the Allen court added:

[W]e believe the importance of the rights involved in the employment arena and the potential for abuse ... require that the doctrine cover a wide range of union activities.

Allen at 373. Appellant alleged a breach of the duty of fair representation by the WPEA.

The next logical step is to apply the six month statute of limitations. Applying a different statute of limitations would result in turning RCW 41.56 and 41.80 into piecemeal litigation.

The Allen court further held:

[W]here Washington’s Public Employees Collective Bargaining Act [Chapter 41.56 RCW] is substantially similar to the NLRA, decisions under that act, while not controlling, are persuasive.

Allen at 372. Since Allen, Washington courts have used federal cases to interpret provisions of RCW 41.56. See e.g., Navlet v. Port of Seattle, 164 Wn.2d 818, 828-29, 194 P.3d 221 (2008); Lindsay v. Municipality of Metropolitan Seattle, 49 Wn. App. 145, 148, 741 P.2d 575 (1987). The case at hand falls under the purview of RCW 41.56; thus, following federal case law is appropriate. Soon after DelCostello was decided by the United States Supreme Court, Washington was faced with a similar situation.

Fowlkes v. Int'l Bhd. Of Electrical Workers, Local No. 76, 58 Wn. App. 759, 795 P. 2d 137 (1990), was a case filed by a union member against his union for alleged discriminatory job referral practices. Fowlkes claimed his lawsuit was a common law action sounding in contract/tort. The Court of Appeals first determined the state had jurisdiction over this matter and was not pre-empted by federal jurisdiction. The Court determined even though a party may delineate his cause of action in a certain manner that is not the determining factor for the court.

Indeed, Fowlkes specifically stated that his was not a fair representation case. However, jurisdiction is based on the nature of the case. It is not the label affixed to the cause of action under state law that controls the determination of the relationship between state and federal jurisdictions. Rather, it is the concern with delineating *areas of conduct* which must be free from state regulation if national policy is to be

left unhampered. ... If the facts presented indicate that the subject of the cause of action is one which the court has authority to adjudicate, that is sufficient. ... This case is cognizable in state court, either as a claim based on a collective bargaining agreement, or as a claim based on the duty of fair representation, ... (cites omitted, emphasis in the original)

Fowlkes at 767.

The same can be argued here. Appellant may claim his lawsuit is based in tort; but, “jurisdiction is based on the nature of the case” which is a breach of the duty of fair representation and breach of contract – the “hybrid” unfair labor practice claim. Only when Appellant was faced with the prospect of having missed the six month statute of limitations for his case, did he raise the tort tolling statute and argue his claim was actually based in tort. However, the trial court correctly determined Appellant’s claims (breach of contract and breach of the duty of fair representation) were in the nature of an unfair labor practice, not in tort; thus, the tolling statute does not apply. See, Wright discussion above.

The Fowlkes court applied the DelCostello holding applying the six month statute of limitations when there is the “hybrid” claim which is the “inextricably interdependent” breach of the duty of fair representation and the breach of contract claims. Fowlkes at 768. This is Appellant’s claim. The allegation in Fowlkes claimed unequal treatment, which the court held equivalent to an allegation of breach of the duty of fair

representation. Fowlkes at 766. Appellant claims that WPEA treated him differently which is the same breach of the duty of fair representation found in Fowlkes.

Moreover, the Fowlkes court agreed with the National Labor Relations Board (NLRB) “that a breach of the duty of fair representation is also an unfair labor practice.” Fowlkes at 766. Fowlkes further found:

When the essence of the complaint is that the union failed to act fairly on the member’s behalf, it is so closely related to fair representation claims that the federal limitations statute [six months] should be applied.

Fowlkes at 769. Fowlkes determined a six month statute of limitations was applicable to an unfair labor practice claim which is the basis for a breach of the duty of fair representation and breach of contract claims. Fowlkes did not apply the DelCostello rule because Fowlkes’ cause of action accrued before DelCostello was decided. Thus, the Fowlkes court did not find it proper to retroactively apply DelCostello. Fowlkes at 770-771. But this reason does not exist in this case. The six month statute of limitations was established by the Fowlkes court in 1990. The legislature has not clarified or changed this six month statute of limitations for the “hybrid” breach of the duty of fair representation and breach of contract claims found by Fowlkes. As the Supreme Court has stated:

[T]he Legislature is presumed to be aware of judicial interpretation of its enactments, and where statutory

language remains unchanged after a court decision the court will not overrule a clear precedent interpreting the same statutory language.

Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting Friends of Snoqualmie Valley v. King County Boundary Review Bd., 118 Wn.2d 488, 496–97, 825 P.2d 300 (1992)).

The six month statute of limitations applies for the “inextricably interdependent” claims of breach of contract and breach of the duty of fair representation which are part of an unfair labor practice claim governed by RCW 41.56 and 41.80. Appellant failed to timely file his lawsuit.

3. Legislative and Public Policy Considerations Support a Six Month Statute of Limitations

Application of a six month statute of limitations to hybrid claims furthers legislative purpose and social policy. In granting summary judgment on the current action, the trial court identified four policies that are advanced by a six month statute of limitations. CP 299–302.

1) The legislature drafted RCW 41.56 intending that unfair labor practice claims be filed within six months. CP 301. Washington courts have applied RCW 41.56 to claims filed both before PERC and in the courts. See, Yakima at 674–675 and Hahn at 167. In light of this consistent application by the courts, the legislature has not overruled these cases, thus approving the application of RCW 41.56 and by analogy RCW

41.80 to the courts. See, Friends of Snoqualmie Valley, supra. The judicial precedence of following statutory intent would logically apply the six month statute of limitations to unfair labor claims, including the “hybrid” claim of breach of contract and breach of the duty of fair representation.

2) Applying a different statute of limitations for unfair labor claims filed in courts would frustrate the purpose of PERC. CP 209–302. Instead of providing a quick, efficient resolution to labor claims, potential plaintiffs could sit on their claims and hold employers hostage with the threat of litigation for years after six months have passed. Such inconsistency would reward claimants for being dilatory rather than proactive and would disregard the purpose of statutes of limitations. This would also undermine the clear legislative intent that unfair labor claims be filed within six months. A statute of limitations is a creature of the legislature and recognition that as witnesses move on and memories fade, the ability to find an efficient and thorough conclusion becomes more difficult. See, Burns, supra. Adopting a separate statute of limitations between PERC and the courts would lead to “an inexplicable and indefensible differentiation.” CP 301.

3) A six month statute of limitations is consistent with federal law.

CP 299–302. In enacting RCW 41.56.160 and then RCW 41.80.120, the legislature intentionally chose to craft these statutes to closely mirror federal law. CP 49, 301. Both the state and federal statutes deal with labor claims, both reference an administrative commission to deal with those claims, and both prescribe a six month statute of limitations. The statutes lack any indication towards a contrary conclusion. CP 301.

4) Lastly, applying a six month statute of limitations provides equality between state and private employees. CP 301. Different statutory periods would allow some classes of employees to make claims years after other employees saw their claims grow stale. This would produce a bizarre distinction between the same types of claims because of who the employees work for. Private employees would have only six months to seek any remedy while state employees would get six months for PERC claims but much longer for a judicial remedy. This is inherently unfair. A six month statute of limitations provides consistency and predictability to all potential claims by employees. To apply a different statute of limitations would produce disparate treatment to employees and their claims as well as to their employers. CP 301.

VI. CONCLUSION

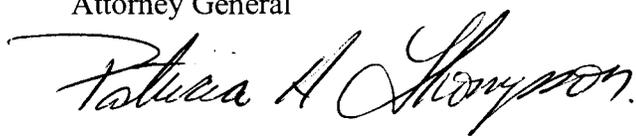
Appellant alleged a breach of contract by WVC and a breach of the duty to fair representation by WPEA. CP 4–7. The United States

Supreme Court in DelCostello has held that a breach of contract and a breach of the duty of fair representation form a “hybrid” claim and are “inextricably interdependent” in the context of federal law and are a form of an unfair labor claim. Washington has also recognized this “hybrid” claim of breach of contract and breach of the duty of fair representation as a type of unfair labor claim. Both RCW 41.56.160 and 41.80.120 prescribe a six month statute of limitations on unfair labor claims. RCW 4.92 does not provide a 60-day extension of the statute of limitations for a breach of contract claim.

Appellant was discharged from WVC on February 19, 2008. The current action was filed October 14, 2008. This was beyond the six months Appellant had to file his claim. Respondents’ motions for summary judgment were correctly granted. Therefore, the trial court’s judgment should be affirmed and Appellant’s appeal denied.

RESPECTFULLY SUBMITTED this 12 day of August, 2010.

ROBERT M. MCKENNA
Attorney General

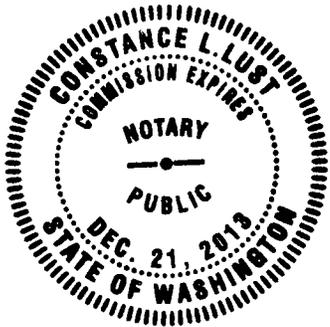


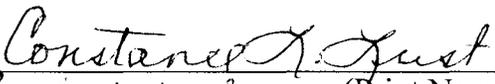
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Karin Skalstad

SIGNED and SWORN to before me, this 12 day of August,
2010.




Constance L. Lust (Print Name)
NOTARY PUBLIC in and for the State
of Washington, residing at Davenport
My appointment expires: 12-21-13