

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,

Employer.

MICHELLE HEITMAN,

Complainant,

vs.

SEATTLE POLICE OFFICERS' GUILD,

Respondent.

CASE 24470-U-11-6267

DECISION 11291 - PECB

ORDER OF DISMISSAL

On December 30, 2011, Michelle Heitman (Heitman) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle Police Officers' Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 6, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. Heitman was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On January 27, 2012, Heitman filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.140(1), regarding its representation of Heitman. The complaint was found to be

<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

deficient. It is an unfair labor practice for a union to interfere with the collective bargaining rights of a union member through threats of reprisal or force or promises of benefit, and/or to breach its duty of fair representation because of the union member's union activities or status; through arbitrary or bad faith action or inaction; or because of discrimination based upon race, gender, and similar invidious factors. However, the Commission does not assert jurisdiction in cases involving the breach of the duty of fair representation arising solely out of the processing of claims—including grievances—arising under existing collective bargaining agreements. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). In addition, the Commission does not assert jurisdiction to remedy alleged violations of collective bargaining agreements through unfair labor practice proceedings. *City of Walla Walla*, Decision 104 (PECB, 1976). Jurisdiction over those issues rests with internal union procedures or the courts. *See Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

It does not appear from the statement of facts that Heitman is claiming union interference with her collective bargaining rights by threats of reprisal or force or promises of benefit. In Paragraph 2.47 Heitman claims that the union is in breach of the collective bargaining agreement through its alleged inaction on her behalf, but she does not show that the union's alleged inaction is based upon her union activities or status, or that it is arbitrary, in bad faith, or because of her race, gender, or other invidious reasons. In addition, as an individual employee, Heitman does not have standing to bring unfair labor practice claims against either the employer or union for breach of the collective bargaining agreement.

The statement of facts centers on the union's alleged refusal or failure to file a grievance on her behalf; the remedy request specifically focuses on the grievance issue. Heitman does not provide facts indicating that the union's alleged refusal or failure to file a grievance was based upon unlawful reasons. Heitman states in Paragraph 2.46 of the statement of facts that the union told her it would not file a grievance because of a "perceived conflict of interest." There are no facts indicating that the union's stated reason was arbitrary, given in bad faith, or otherwise invidious.

Heitman also claims that the employer has refused or failed to generally act on her behalf apart from filing a grievance; for example, stating that the union did not offer assistance or advice. However, those non-specific claims do not provide sufficient information to state a cause of action. This complaint substantially appears to concern the union's duty of fair representation under the grievance and arbitration provisions of the collective bargaining agreement. The Commission does not appear to have jurisdiction, and Heitman must look to the union's internal procedures or to the courts for a remedy.

#### Amended Complaint

The amended complaint argues that the union's refusal or failure to file a grievance, or otherwise act on Heitman's behalf, is on its face arbitrary and in bad faith, and that in addition, it is discrimination based upon her marital status. As with the complaint, the amended complaint does not provide sufficient information to state a cause of action regarding the union's alleged refusal or failure to generally act on Heitman's behalf outside of filing a grievance.

Regarding the allegation of the union making an arbitrary or bad faith decision to not file a grievance, Heitman's assertion appears to be that the union's professed reason—a perceived conflict of interest between its representation of Heitman and her former husband—is sufficiently non-responsive to raise a question of whether the denial is arbitrary, made in bad faith, and sufficiently problematic to send the matter to a hearing before a Commission examiner. However, there are no surrounding facts supporting Heitman's assertion. Heitman does not provide information indicating that the union's decision was based upon her union activities or status. Heitman also does not provide information indicating invidious, disparate treatment of her by the union, for example: There are no allegations indicating that the union routinely files grievances on behalf of one bargaining unit member against another (intra-bargaining unit grievances) and in the past has not refused to file intra-bargaining unit grievances on the basis of perceived conflicts of interest; and/or that the union routinely files intra-bargaining unit grievances on behalf of male bargaining unit members against female bargaining unit members, but refuses or fails to file intra-bargaining unit grievances on behalf of female bargaining unit members against male bargaining unit members.

Regarding the allegation of discrimination based upon marital status, Heitman does not provide information indicating invidious, disparate treatment, for example: There are no allegations indicating that the union routinely files intra-bargaining unit grievances on behalf of *unmarried* bargaining unit members against other *unmarried* bargaining unit members, but refuses or fails to file intra-bargaining unit grievances involving *married-married*, and/or *unmarried-married* bargaining unit members.

A charge of arbitrary, bad faith, or discriminatory conduct does not by itself state a cause of action, but must include information showing that an unfair labor practice could be found. The amended complaint restates the union's professed reason for declining to file a grievance on Heitman's behalf: A perceived conflict of interest involving two bargaining unit members. There are no facts indicating that the union's professed reason is suspect. The Unfair Labor Practice Manager declines to find that a union's refusal or failure to file a grievance because of a perceived conflict of interest constitutes a per se violation of Chapter 41.56 RCW. Heitman's claim arises out of the processing of a contractual grievance; she should pursue a remedy through internal union procedures or the courts. The Commission does not have jurisdiction, and the amended complaint must be dismissed.

Finally, both the complaint and amended complaint contain allegations against the employer. The deficiency notice did not address those allegations made in the original complaint, because it was not necessary in the context of defects to Heitman's complaint against the union. However, because the amended complaint reiterates the allegations against the employer, it is appropriate to generally comment on those allegations in this decision. Heitman did not file a separate complaint against the employer or check the employer violation boxes on the amended complaint form. Thus, the Unfair Labor Practice Manager determines that the allegations relative to the employer are intended as background information and not as separate claims against the employer, and no action is necessary regarding the employer in this ruling. The employer is not a party to the issues directly before the Commission in this case and will not be required to appear or participate in this proceeding. However, every case processed by the Commission must arise out of an employment relationship that is subject to the Commission's jurisdiction, and the

Commission's docketing procedures require the name of the employer in each case. Thus, the employer will continue to receive correspondence concerning this matter.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 24470-U-6267 is DISMISSED for failure to state a cause of action.

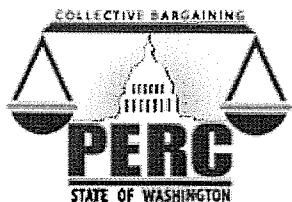
ISSUED at Olympia, Washington, this 8th day of February, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written in a cursive style.

DAVID I. GEDROSE, Unfair Labor Practice Manager

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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24470-U-11-06267 FILED: 12/30/2011 FILED BY: PARTY 2  
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