

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERCITY TRANSIT, Employer.	
GAIL JAMES, Complainant,	CASE 26670-U-14-6796
vs.	DECISION 12172 - PECB
AMALGAMATED TRANSIT UNION, LOCAL 1765, Respondent.	ORDER OF DISMISSAL

On August 8, 2014, Gail James filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Amalgamated Transit Union, Local 1765 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 15, 2014, indicated that it was not possible to conclude that a cause of action existed at that time. James was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On September 5, 2014, James filed an amended complaint. The Unfair Labor Practice Manager reviewed the case filings and dismisses the amended complaint for failure to state a cause of action.

¹ 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.

DISCUSSION

The amended complaint cured the first defect of the original complaint. The amended complaint contains numbered paragraphs and clear and concise statements of fact.

James also sent in additional documents on September 17, 2014, including an amendment to the remedy sought, a letter, payroll records, minutes from a union executive board meeting, and a copy of the union's constitution and bylaws. The September 17 document submission does not constitute a second amended complaint. It does not comply with WAC 391-45-050, Contents of Complaint and was filed after the 21 day period to amend in response to the deficiency notice, which ended on September 5, 2014. The documents were not previously referenced in either the complaint or the amended complaint.

The amended complaint still does not state a cause of action for which the Commission has jurisdiction. The allegations of the complaint and amended complaint concern union interference with employee rights in violation of RCW 41.56.140(1), by breach of its duty of fair representation. James alleges that the union failed to file a grievance over overtime opportunities that were not offered to her based on seniority as described in the parties collective bargaining agreement.

The Commission does not have jurisdiction over the interpretation of collective bargaining agreements, including seniority issues. The Public Employment Relations Commission has jurisdiction over collective bargaining statutes in the State of Washington. When a union is certified as the exclusive bargaining representative, the union assumes a duty of fair representation. A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). In rare circumstances, the Commission asserts jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges its union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*. In such cases, the employee bears the burden of establishing that the union took some action aligning itself

against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. *City of Seattle (Seattle Police Officers' Guild)*. The complaint did not contain any facts to indicate that the union's failure to process James's grievance was arbitrary, discriminatory, or done in bad faith. Rather, the facts indicate that the union failed to file a timely grievance on James's behalf and apologized to her for not filing the grievance.

Although a union has a duty of fair representation to its members, the Commission declines to assert jurisdiction on breach of the duty of fair representation allegations arising exclusively from the processing of claims under an existing collective bargaining agreement. The complaint does not provide facts showing that the union's actions were in violation of Chapter 41.56 RCW. James can seek relief for her missed overtime opportunities through internal union procedures or the courts.

CONCLUSION

Unions are private organizations. The Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006). The Public Employment Relations Commission only has jurisdiction over certain employer-employee relationships. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District*, Decision 5086-A (EDUC, 1995). If the allegations do not rise to the level of an unfair labor practice, that does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.

Assuming all the facts were true and provable, the complaint and amended complaint do not state a cause of action.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of October, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, 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/ DEBBIE HOBBS

CASE NUMBER: 26670-U-14-06796 FILED: 08/08/2014 FILED BY: PARTY 2
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 BAR UNIT: TRANSIT BUS
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