

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SKAMANIA COUNTY,

Employer.

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TEDDI MIDLAND,

Complainant,

vs.

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL  
UNION, LOCAL 11,

Respondent.

CASE 27072-U-15-6905

DECISION 12351 - PECB

ORDER OF DISMISSAL

On March 5, 2015, Teddi Midland (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Office and Professional Employees International Union (OPEIU), Local 11 (union) as respondent. The employer, Skamania County, is not a party to the issues directly before the Commission in this case. 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 be used to identify each case.

The complaint was reviewed using the preliminary review process described in WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on April 16, 2015. The notice explained that it was not possible to conclude that a cause of action was stated in the complaint. The complainant was

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<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.

given a period of 21 days in which to file and serve an amended complaint to correct the defects, or face dismissal of the case.

No further information was filed by the complainant. The complaint is dismissed for failure to state a cause of action.

### DISCUSSION

The complaint alleges union interference with employee rights in violation of RCW 41.56.150(1), by breach of its duty of fair representation by:

1. Failing to notify Teddi Midland of layoff or advise her on the issue in December 2014.
2. Failing to represent members' interests in contract negotiations and refusing to file an unfair labor practice complaint against the employer.
3. Failing to conduct a contract ratification vote in a confidential manner.
4. Removing a bargaining unit employee from a union membership meeting because the employee was a "protected member."
5. Failing to oversee the unit placement of new or unrepresented job positions.
6. Failing to pursue grievances to enforce the collective bargaining agreement (CBA).

### TIMELINESS

There is a six-month statute of limitations for filing ULP complaints. "[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." RCW 41.56.160(1). The complaint did not contain dates for most of the alleged unfair labor practices. Because there is not date of occurrence, it is not possible to conclude that the allegations described above as numbers two through six were timely filed. Allegations two through six are dismissed as untimely.

UNION DUTY OF FAIR REPRESENTATIONDuty of Fair Representation Legal Standard

The duty of fair representation originated with decisions of the Supreme Court of the United States holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944). The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the exclusive bargaining representative under a collective bargaining statute. *C-Tran*, Decision 7088-B (PECB, 2002), citing *City of Seattle*, Decision 3199-B (PECB, 1991).

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. While the Commission does not assert jurisdiction over “breach of duty of fair representation” claims arising exclusively out of the processing of contractual grievances, the Commission does process other types of “breach of duty of fair representation” complaints against unions. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). The duty of fair representation is breached if the union’s conduct toward one of its members is arbitrary. *City of Redmond*, Decision 886 (PECB, 1980). 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 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union’s actions or inactions were arbitrary, discriminatory or in bad faith. *City of Renton*, Decision 1825 (PECB 1984).

In *Allen v. Seattle Police Officers’ Guild*, 100 Wn.2d 361 (1983), the Supreme Court of the State of Washington adopted three standards to measure whether a union has breached its duty:

- (1) [The union] must treat all factions and segments of its membership without hostility or discrimination.
- (2) [T]he broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.

- (3) [T]he union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

#### Analysis of Duty of Fair Representation Allegations

An employee claiming a breach of duty of fair representation has the burden to file a sufficient complaint and the burden of proof. In allegation one Midland argues that the union could have done a better job of representing her and her co-workers but does not allege any specific arbitrary, discriminatory, or bad faith conduct by the union.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen*, at 375. There is no statutory requirement that a union must accomplish the goals of each bargaining unit member, and complete satisfaction of all represented employees is not expected. A union can rarely provide all things desired by all of the employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation.

A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member can prove the union violated rights guaranteed in Chapter 41.56 RCW. *Dayton School District*, Decision 8042-A (EDUC, 2004). Allegations one (notification of layoff) and two (failure to represent members' interests in bargaining) describe employee dissatisfaction with the level and quality of representation provided but do not state a cause of action for a violation of duty of fair representation.

#### Union Contract Ratification Vote

The complainant also raises concerns about the internal union contract ratification process and voting. Specifically, the complaint alleges that the union's internal process of voting to accept the last contract was not confidential because it was done by e-mail.

Chapter 41.56 RCW regulates relationships between employers and employees, and regulates relationships between employers and the organizations representing their employees, but does very little in the arena of regulating the internal affairs of labor organizations. Internal union voting procedure for assessing membership support of a contract agreement is governed by the union's own constitution and by-laws. How or if a union conducts a contract ratification vote is a matter of internal union affairs. No statute compels employee ratification votes on tentative agreements reached by unions and employers in collective bargaining. *Western Washington University, (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006), *citing Naches Valley School District*, Decision 2516-A (EDUC, 1987).

#### Excluding a "Protected Member" from Union Meetings Allegation is Unclear

The complaint alleges the union unfairly excluded a "protected member" from attending a union membership meeting. It is not clear as to what the term "protected member" means. The complaint does not name the "protected member" who was alleged to have been excluded for the meeting on an unspecified date. The complaint is vague on this allegation and does not comply with WAC 391-45-050(2).

#### No Jurisdiction over Alleged Contract Violation

The complaint alleges that the union is allowing the employer to violate the CBA. A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. *State – Labor and Industries*, Decision 8263 (PSRA, 2003). If the union determines the concerns have merit, the union has the right to file a grievance under the parties' collective bargaining agreement. If the union determines that the concerns lack merit, the union has no obligation to file a grievance.

While a union owes a duty of fair representation to bargaining unit members, claims that a union interfered with a union member's access to contractual rights must be pursued before a court which can assert jurisdiction to determine and remedy any underlying contractual violation. *State – Labor and Industries*, Decision 8263. The Commission does not assert jurisdiction to remedy

contract violations through the unfair labor practice provisions of the statutes it administers. *Dayton School District*, Decision 8042-A citing *City of Walla Walla*, Decision 104 (PECB, 1976).

### CONCLUSION

Allegation one, notification of layoff, does not state a cause of action for a violation of duty of fair representation. Midland argues that the union could have done a better job of representing her and her co-workers but does not allege any specific arbitrary, discriminatory, or bad faith conduct by the union. A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member alleges the union violated rights guaranteed in Chapter 41.56 RCW.

Allegations two through six are untimely filed and are outside of the Commissions' jurisdiction. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions taking place in the six months before the filing of the complaint.

NOW, THEREFORE, it is

### ORDERED

The 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 4th day of June 2015.

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**

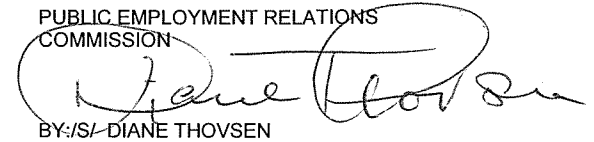
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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION



BY: /s/ DIANE THOVSEN

CASE NUMBER: 27072-U-15-06905                      FILED: 03/05/2015                      FILED BY: PARTY 2  
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