

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE FERRIES,

Employer.

DAMIAN J. GREENE,

Complainant,

vs.

INLANDBOATMEN'S UNION OF THE  
PACIFIC,

Respondent.

CASE 127848-U-16

DECISION 12558 - MRNE

ORDER OF DISMISSAL

On January 21, 2016, Damian J. Greene (complainant) filed a complaint charging unfair labor practices and naming the Inlandboatmen's Union of the Pacific (union) as the respondent. The employer, Washington State Ferries, 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 in each case.

The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 2, 2016, indicated that it was not possible to conclude a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint. On February 17, 2016, the complainant filed an amended complaint. The Unfair Labor Practice

<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.

Manager reviewed the complaint and amended complaint and dismisses this case for failure to state a cause of action under Chapter 47.64 RCW.

### ISSUES

The allegations of the complaint and amended complaint concern:

1. Union interference with employee rights in violation of RCW 47.64.130(2)(a)(i) since September 2015 by breaching its duty of fair representation to Damian J. Greene and deciding not to advance grievances over Greene's seniority date and status.
2. Maintaining a dues and fees structure that favors new union members.

The allegations of the complaint and amended complaint do not qualify for further case processing by the Commission. The case is dismissed for failure to state a cause of action.

### BACKGROUND

This case concerns the processing of grievances filed over Greene's seniority date and status with the Washington State Ferries (employer). In order to understand the dispute, a brief overview of Greene's employment history is relevant.

According to the facts alleged in the complaint and amended complaint, Greene was hired by Saga Foods, Inc. in 1979 to work aboard Washington State ferries in the galley department. Greene paid initiation dues to the union and became a "full-book" member of the Inlandboatmen's Union of the Pacific. In 1981 Greene was offered a job with the employer, but he turned it down and took a withdrawal from the union.

In 1984 Greene was hired by the employer and reactivated his union membership. Greene continued to work for the employer until the late 1980s when he left his position to accept other employment. Greene again withdrew his active status in the union. He continued to pay the

union an annual withdrawal maintenance fee until sometime in the 1990s when the union informed him this was no longer required.

In June 2015 Greene decided that he wanted to go back to work for the employer. Greene contacted the union to reactivate his union membership. The union activated Greene's ability to access the members-only portion of the union's website and informed him he was "good to go." Greene started the employer's orientation on July 6, 2015, and completed the orientation program.

On September 1, 2015, the employer published a seniority list. Greene learned that of the 10 employees in his July 14, 2015, hiring group he was number eight on the seniority list. Greene believed that he should have been number one on the seniority list because of his previous work experience and union membership in the 1980s.

In September 2015 Greene filed a contractual grievance challenging his seniority placement within his hiring group. Greene argued that he should have been given the most senior seat in his hiring group based on his previous employment history.

The union ultimately decided not to move Greene's grievance forward and explained its decision in a letter. In an e-mail dated October 6, 2015, union business agent Christopher Simmons further explained that "the [executive board] decided not to move forward with the grievance based on the fact that the union was not giving out referrals at that time because the state had said they were finished hiring for the year."

In October 2015 Greene filed a second grievance over his seniority date. The union again decided not to advance Greene's grievance. In an October 13, 2015, e-mail Simmons explained, "My formal reason for denying the grievance is I don't believe the current CBA [collective bargaining agreement] supports your resolution request. You don't get to leave your job and get rehired within the same organization 25 years later and expect your original seniority."

Greene cites several CBA provisions in support of his grievances. Greene alleges that the union is interfering with his ability to pursue his grievances. The complaint also states that “age discrimination [may be] a factor.” The age discrimination argument is not explained or developed in the complaint or amended complaint.

## DISCUSSION

### Applicable Legal Standards

Unfair labor practices for exclusive bargaining representatives of marine employees are described in RCW 47.64.130(2):

It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

### *Duty of Fair Representation*

It is an unfair labor practice for a union to restrain or coerce employees in the exercise of their collective bargaining rights. RCW 47.64.130(2)(a)(i). The duty of fair representation is implicit in the Marine Employees’ Act, Chapter 47.64 RCW. *O’Hara v. Washington State Ferries and Inlandboatmen’s Union of the Pacific*, MEC Decision 53 (1990). The duty of fair representation originated with decisions of the United States Supreme Court 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 of a group of employees under a collective bargaining statute. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB,

2002), citing *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3199-B (PECB, 1991).

The elements needed to prove breach of duty of fair representation under Chapter 47.64 RCW were explained in *Reynolds v. Washington State Ferries*, MEC Decision 79 (1992), and include:

- a. Arbitrary or bad faith conduct on the part of the union. *Vaca v. Sipes*, 386 U.S. 171 (1967).
- b. Substantial evidence of fraud, deceitful action or dishonest conduct. *Humphrey v. Moore*, 375 U.S. 335, 348 (1964).

The burden of demonstrating breach of duty by a union involves more than demonstrating mere errors of judgment. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-571 (1976).

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. The Commission does not assert jurisdiction to remedy alleged contract violations under the unfair labor practice provisions of the collective bargaining statutes it administers. *Washington State Ferries (Marine Engineers Beneficial Association)*, Decision 11688 (MRNE, 2013). Likewise, the Commission does not have jurisdiction over allegations of a breach of the duty of fair representation by unions involving contractual grievances. *Washington State Ferries (International Organization of Masters, Mates & Pilots)*, Decision 11924 (MRNE, 2013). The complainant must seek to remedy contract violations through internal union procedures or the courts.

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. An 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 Washington State Supreme Court 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. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.
3. The union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

#### Application of Legal Standards

##### *Grievances Over Seniority*

The allegations of the complaint and amended complaint revolve around the union's decision not to pursue grievances over Greene's seniority. While an exclusive bargaining representative has the obligation to provide fair representation, in this case it appears the union exercised its discretion and decided not to pursue Greene's grievances because it did not share Greene's interpretation of how some contract language applied to determining his seniority status. The union has the right to determine which grievances to pursue. Courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d at 375.

The facts in the complaint and amended complaint do not describe discriminatory, bad faith, or arbitrary conduct by the union. Nor do the facts describe substantial evidence of fraud, deceitful action, or dishonest conduct. Although the complaint also states that "age discrimination [may be] a factor," the complaint and amended complaint do not contain facts describing age discrimination. Vague allegations that reference the possibility of discrimination are not adequate to move a case past the preliminary review process set forth in WAC 391-45-110. The

Commission does not have jurisdiction over allegations of a breach of the duty of fair representation by unions involving contractual grievances. The complainant must seek a remedy through internal union procedures or the courts.

#### *Union Membership Dues and Fees*

In the amended complaint Greene argues that it is discriminatory toward older employees that the union is now using a different initiation dues and fees structure for full-book members than he was subject to when he joined the union in 1979. The complainant points out that the new structure allows “permit” members to pay their union initiation fees over a longer period of time, reducing the economic hardship of the initiation fees. Greene feels his wages are unfairly impacted by the union’s membership dues and fees structure and the fact that he is a full-book union member.

The statute governing union unfair labor practices, RCW 47.64.130(2)(a)(i), explicitly states that it “does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . .” The Commission does not have statutory jurisdiction to get involved with the rights of marine employee unions to prescribe their own rules with respect to the acquisition or retention of membership.

#### CONCLUSION

The allegations of the complaint and amended complaint revolve around the union’s decision not to pursue grievances over Greene’s seniority. The union’s decisions on how to process Greene’s grievances are not within the Commission’s jurisdiction. Similarly, the Commission does not remedy alleged contract violations under the unfair labor practice provisions of the collective bargaining statutes it administers. Allegations about the processing or settling of contractual grievances must be pursued through the courts.

The complaint and amended complaint also raise issues concerning the union’s membership dues and fees structure. The Commission does not have statutory jurisdiction to get involved in this

subject matter. Under Chapter 47.64 RCW it is the right of the union to prescribe its own rules with respect to the acquisition or retention of membership.

ORDER

The complaint and amended complaint charging unfair labor practices in the above-captioned matter are DISMISSED for failure to state a cause of action for further case processing.

ISSUED at Olympia, Washington, this 25th day of March, 2016.

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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**RECORD OF SERVICE - ISSUED 03/25/2016**

DECISION 12558 - MRNE has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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