

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CURTIS WOO,		
	Complainant,	CASE 127712-U-15
vs.		DECISION 12525 - PECB
CITY OF SEATTLE,		
	Respondent.	ORDER OF DISMISSAL
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CURTIS WOO,		
	Complainant,	CASE 127713-U-15
vs.		DECISION 12526 - PECB
SEATTLE POLICE OFFICERS' GUILD,		
	Respondent.	ORDER OF DISMISSAL

On November 10, 2015, Curtis Woo (complainant) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. Case 127712-U-15 names the City of Seattle (employer) as the respondent. Case 127713-U-15 names the Seattle Police Officers' Guild (union) as the respondent. The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on November 25, 2015, 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 amended complaints or face dismissal of the cases.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

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

SUMMARY OF ALLEGATIONS

The allegations in Case 127712-U-15 against the employer concern:

Employer conducting a flawed, biased, and untimely investigation into allegations of misconduct by retired employee Curtis Woo.

Contract violations by the employer.

The allegations in Case 127713-U-15 against the union concern:

Union interference with employee rights in violation of RCW 41.56.150(1) since May 12, 2015, by breaching its duty of fair representation and refusing to arbitrate a grievance or file a new grievance on behalf of retired employee Curtis Woo.

Contract violations by the union.

The facts described in the complaints do not state a cause of action for further case processing. Additionally, the complaints do not contain numbered paragraphs as required by agency filing rules. WAC 391-45-050. The complaints are dismissed for failure to state a cause of action under RCW 41.56.

ANALYSISTimeliness and Six-Month Statute of Limitations

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if an unfair labor practice complaint is filed within six months of the occurrence. “[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 six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003).

The initial complaints were filed on November 10, 2015, and therefore are timely with regard to triggering events that took place on or after May 10, 2015. There are many facts and allegations in the complaints that took place before May 10, 2015. They will be considered for background purposes only.

### Discrimination Allegations

The complaints allege that the City of Seattle and the Office of Professional Accountability (OPA) “conducted a flawed and biased investigation, failed to meet internal deadlines, and essentially waited until the officer’s retirement before staining his reputation and making a finding of a violation of the law.” The complainant believes that OPA no longer had jurisdiction over him for acts he undertook during his employment, once he voluntarily terminated employment and resigned his commission as an officer on June 30, 2013.

### *Legal Standards*

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee’s exercise of rights protected by Chapter 41.56 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a prima facie case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee’s exercise of a protected activity and the employer’s action.

Ordinarily, an employee may use circumstantial evidence to establish a prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

### *Analysis*

The Commission does not have authority to address general allegations of discrimination or unequal treatment. The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity.

In this case, basic elements of a discrimination allegation are missing from the complaints. The facts do not indicate that the complainant participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so. The complaints also fail to describe involvement in protected union activity or explain a causal connection between union activity and the employer's investigation into allegations of misconduct. Based on the facts as stated, it does not appear that the Commission has jurisdiction over the allegations concerning an unfair or discriminatory investigation of Woo's conduct.

### Union's Duty of Fair Representation

The complainant argues that the union is required by the collective bargaining agreement (CBA) to either request arbitration of his earlier grievance or to file a separate grievance on his behalf. The complaints state that Woo believes the union is required under the CBA to follow through and represent him even though he was retired at the time that OPA concluded its investigation.

### *Legal Standard*

The complainant argues the union did not fulfill its duty of fair representation because it would not agree to take his grievance to arbitration or file a new grievance on his behalf. The complaints describe the complainant's disagreement with the union's decision not to arbitrate a grievance on

his behalf. When determining whether a complaint states a cause of action, all facts alleged are assumed to be true and provable, and the question is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.56.150(1).

The Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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 (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2001), citing *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, 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).

A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *City of Redmond*, Decision 886 (PECB, 1980); *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 (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

#### *Analysis*

The union has the right to decide which grievances to pursue. The union does not have an obligation to arbitrate all grievances. The fact that Woo disagrees with the union’s decision not

to arbitrate his grievance does not constitute an unfair labor practice within the jurisdiction of the Commission. In order to breach its duty of fair representation, the facts would have to show that the union's conduct in representing Woo was arbitrary, discriminatory, or in bad faith and involved something other than processing of grievances. The complaints describe that, even though Woo retired in 2013, the union continued to represent him in investigations and name-clearing hearings up until the employer made its final investigation findings in May 2015. The facts do not describe conduct by the union that would constitute a breach of its duty of fair representation. It appears that the union continued to provide Woo with representation for nearly two years after he retired from the bargaining unit.

#### Alleged Violations of the Collective Bargaining Agreement

The complaints allege contract violations by the employer and the union. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), citing *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004), citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

#### CONCLUSION

The allegations concerning a flawed and biased investigation are not covered by statutes administered by the Commission because they do not involve discrimination for union activity or collective bargaining. The complaint against the union does not state a cause of action for alleged

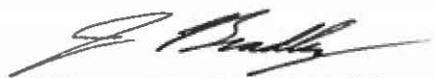
violations of the union's duty of fair representation because the claims arise out of the union's decisions about grievance processing. The Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. The complaints also allege that the employer and union violated the CBA. An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA.

ORDER

The complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 4th day of January, 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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MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 01/4/2016

DECISION 12525 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 127712-U-15

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**RECORD OF SERVICE - ISSUED 01/4/2016**

DECISION 12526 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY:  DEBBIE BATES

CASE NUMBER: 127713-U-15

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