

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RICHLAND SCHOOL DISTRICT, Employer.	
VICKEY MOORE, Complainant, vs. PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Respondent.	CASE 127655-U-15 DECISION 12499 - PECB ORDER OF DISMISSAL

On October 9, 2015, Vickey Moore (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Public School Employees of Washington (union) as respondent. The employer, Richland School District, is not a party to the issues directly before the Commission. 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 Unfair Labor Practice Manager reviewed the complaint under WAC 391-45-110¹ and issued a deficiency notice on October 27, 2015. The deficiency notice explained that the complaint did not describe facts that could constitute an unfair labor practice under the jurisdiction of the Commission. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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.

The complainant filed a supplemental letter (amended complaint) on November 16, 2015. The Unfair Labor Practice Manager reviewed the complaint and amended complaint. The amended complaint did not cure the defects of the original complaint. The complaints are dismissed for failure to state a cause of action.

ISSUE

The allegations of the complaint and amended complaint concern:

Union interference with employee rights in violation of RCW 41.56.150(1) by breach of its duty of fair representation since June 23, 2015, by failing and refusing to make proposals in bargaining specific to the reclassification of three accounts payable positions.

BACKGROUND

The complainant is employed in an accounts payable position in a classified employees bargaining unit. According to the complaint and amended complaint, in 2014 the employer proposed reclassifying three bargaining unit accounts payable positions. The employer's reclassification proposal would have resulted in pay increases for those employees. The employer proposed a letter of agreement that contained the reclassifications and a statement that "[t]he District will reject any requests for additional wage changes to the Amended Schedule A [wage table] while the Collective Bargaining Agreement is closed." The complainant alleges that upon learning of the employer's proposal, other employees in the bargaining unit sent the complainant hostile e-mail messages that were abusive and contained personal attacks against her and other employees in her work area.

In November 2014 the union conducted a vote to determine whether the bargaining unit would accept the employer's reclassification proposal, and the majority of the bargaining unit membership voted the offer down. The complaint describes that the bargaining unit officers appeared happy that the proposal was voted down. After the vote concluded, the complainant asked her union representative about options for future reclassification of the accounts payable

positions. The union representative and union president told the complainant to bring the issue back to the table during contract negotiations in the spring of 2015.

On June 23, 2015, the union's negotiating team met to prepare for negotiations. One of the accounts payable employees was on the negotiating committee and raised the issue of proposing reclassification for the three accounts payable positions. The union president allegedly said that the proposal was not up for discussion because the bargaining unit had voted it down in November. The union decided not to make bargaining proposals for wage reclassification or other specific pay increases for the accounts payable positions.

The complaint alleges that the union is discriminating against the three accounts payable employees and is not representing them. The complainant puts forward a variety of market-based arguments and justifications in support of reclassifying the three accounts payable positions to a higher pay range.

DISCUSSION

Duty of Fair Representation

Legal Standard

The Commission explained the test for union interference: "An interference violation exists when an employee could reasonably perceive actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. The employee is not required to show an intention or motivation to interfere . . ." *King County (Amalgamated Transit Union, Local 587)*, Decision 8630-A (PECB, 2005).

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 and does so when an employee

alleges its union aligned itself in interest against bargaining unit employees based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. 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, or other reasons. *Id.*

Analysis

The complainant is frustrated that the union decided not to make pay increases or reclassification for the three accounts payable positions a priority in contract bargaining. The facts seem to indicate that the union exercised its discretionary decision-making authority to determine what issues the union's negotiating team would focus on in bargaining. The Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006).

Often when collective bargaining decisions are made that affect a large group of employees, not all employees in the group are going to agree with, or feel the same way about, the decision. An employee's dissatisfaction is not in itself enough to establish an interference cause of action or breach of duty of fair representation. The complainant makes many vague references to discrimination against the three accounts payable employees but does not describe any improper or invidious basis for discrimination. The deficiency notice directed the complainant to include additional facts if the complainant had evidence that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis. The amended complaint did not provide any additional explanation as to why the accounts payable employees think the union is discriminating against them.

CONCLUSION

The complaint and amended complaint describe employee frustrations with internal union politics and decision making. The employees in the three accounts payable positions are upset that their union's leadership will not agree to make proposals in bargaining that would specifically increase

the pay for their job classification or reclassify their positions. The fact that the employer has previously expressed willingness to grant a reclassification for these positions, albeit at the expense of considering any wage adjustments for other bargaining unit positions, makes the situation feel all the more unfair for those three employees.

Not every situation that seems unfair and involves a public sector union falls within the scope of the unfair labor practice statutes administered by the Commission. 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. There are limited circumstances in which the Commission has jurisdiction to hear cases that involve disputes between unions and their membership. The facts alleged in this case do not describe the type of duty of fair representation case that falls under the jurisdiction of the Commission.

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.

ISSUED at Olympia, Washington, this 10th day of December, 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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RECORD OF SERVICE - ISSUED 12/9/2015

DECISION 12499 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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