

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VALENCIA BROOKS, Complainant, vs. CITY OF TACOMA, Respondent.	CASE 127774-U-15 DECISION 12533 - PECB ORDER OF DISMISSAL
VALENCIA BROOKS, Complainant, vs. TACOMA POLICE UNION, LOCAL 6, Respondent.	CASE 127775-U-15 DECISION 12534 - PECB ORDER OF DISMISSAL

On December 14, 2015, Valencia Brooks (complainant) filed two interrelated unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC. The complaint against the City of Tacoma (employer) was assigned case number 127774-U-15, and the complaint against the Tacoma Police Union, Local 6 (union) was assigned case number 127775-U-15. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 23, 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 an amended complaint or face dismissal of the case.

¹ 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.

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

ISSUES

The allegations of the complaints concern:

Employer interference with employee rights in violation of RCW 41.56.140(1) since June 24, 2015, by informing Valencia Brooks that she would need to exhaust all paid leave before using unpaid Family and Medical Leave Act (FMLA) leave in violation of Sections 22.2 and 22.3 of the collective bargaining agreement.

Union interference with employee rights in violation of RCW 41.56.150(1) by informing Valencia Brooks that she would need to exhaust all paid leave before using unpaid FMLA leave in violation of Sections 22.2 and 22.3 of the collective bargaining agreement.

Union interference with employee rights in violation of RCW 41.56.150(1) by breach of its duty of fair representation by accepting a resolution with the employer that would allow Brooks to buy back her paid leave and instead take unpaid leave, when Brooks desired to continue to pursue the grievance.

The issues raised in the complaints are not within the jurisdiction of the Commission. The complaints are dismissed because they do not state a cause of action for further case processing.

BACKGROUND

Brooks is employed as a police officer. According to the facts alleged in the complaints, Brooks informed her supervisor on June 9, 2015, that she would need to have surgery in July and would like to begin FMLA paperwork to take unpaid leave. The employer sent Brooks the paperwork and a letter explaining that the employer's FMLA leave policy required her to use her paid leave concurrently with FMLA leave until she exhausted all paid leave. An unnamed union representative is also alleged to have described the FMLA leave policy in the same manner.

Based on this information, Brooks put in a request to use paid leave from July 6 through August 25, 2015. The complaint alleges that "[d]ue to this development, [the] complainant rescheduled her surgery for September 2, 2015."

Brooks believed that the language in the collective bargaining agreement (CBA) allowed her to use unpaid leave without first exhausting all paid leave. Although not specifically alleged, it appears that Brooks went to the union for assistance. The union met with the employer to discuss the issue. It is not clear whether a formal grievance was filed on this issue.

On August 4, 2015, the union president informed Brooks that her FMLA leave issue had been taken care of and her vacation days would be restored. On August 10, 2015, the employer informed Brooks that her request for unpaid FMLA leave was approved and that her vacation time would be restored. On August 27, 2015, Brooks was informed she would need to pay the employer back more than twelve thousand dollars for the restoration of the vacation time she had used if she wished to instead have used unpaid FMLA leave.

On November 17, 2015, the union president informed Brooks that the union would not be filing a grievance over the requirement that Brooks buy her vacation leave back if she wished to have the leave from July through August counted as unpaid leave.

On November 25, 2015, Brooks asked the employer for an update on what it would cost to buy back her vacation leave. When Brooks received her paycheck on December 4, 2015, she saw the employer had restored her vacation leave, but she owed the employer nearly fourteen thousand dollars.

Brooks ultimately paid the employer back and had her vacation leave restored. The complaints allege this whole situation caused the complainant a great deal of emotional distress and Brooks seeks a variety of monetary damages against the employer and union.

ANALYSIS

Alleged Contract Violations

Legal Standard

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). The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).

Analysis

The complaints allege violations of the parties' CBA based on an allegation that the union and employer initially misinterpreted the way their contract language interacted with FMLA leave requests and communicated inaccurate information to the complainant. Allegations that an employer or union violated sections of a CBA are not matters that the Commission can address. Remedies for contract violations must be sought through the grievance and arbitration machinery within the contract or through the courts. Thus, the portions of the complaints alleging violations of the CBA by the employer or union do not state causes of action before the Commission. *Lake Washington School District*, Decision 6312 (EDUC, 1998).

Duty of Fair Representation

Legal Standard

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 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 (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 Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. The Commission does not assert jurisdiction to remedy violations of

collective bargaining agreements through the unfair labor practice provisions of the statute and does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. *Bremerton School District*, Decision 5722-A. 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*, 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.

Analysis

The complaints describe frustration with the union and employer’s initial explanation of the FMLA leave policy. The complainant argues the union did not fulfill its duty of fair representation because it did not initially describe her FMLA leave use options in accordance with the CBA. These types of allegations are not the types of duty of fair representation allegations

that can be remedied by the Commission. 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 v. Seattle Police Officers' Guild*, 100 Wn.2d 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 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 statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

In August the union worked to resolve the dispute between Brooks and the employer. Brooks was permitted to take unpaid leave rather than her accumulated paid leave. The fact that the complainant disagrees with the union's decision not to subsequently file a grievance, because the union sees the issue as resolved, does not constitute an unfair labor practice within the jurisdiction of the Commission. Represented employees' wages are bargained by their exclusive bargaining representative. The union has the right to settle disputes or determine which grievances to pursue. The facts in the complaint do not describe discrimination, bad faith, or arbitrary conduct by the union. The union's decision on processing the grievance is not within the Commission's jurisdiction. Allegations about the processing or settling of grievances must be pursued through the courts. *Seattle School District*, Decision 9359-A (EDUC, 2007).

Remedy

The Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract or through the superior courts. *South Whidbey School District*, Decision 11134-A (EDUC, 2011); *Bremerton School District*, Decision 5722-A. The complainant's proposed remedy highlights reasons these types of cases must be addressed in the court system. The complainant is seeking fifty thousand dollars for emotional damages in addition to other monetary compensation. The Commission is only empowered to issue remedial orders pursuant to RCW 41.56.160. The Commission does not award punitive damages or compensation for emotional suffering.

CONCLUSION

The complaints describe an employee's frustration with initially receiving misinformation about her FMLA leave usage options. Specifically, the complaints allege that the employer and union provided Brooks with information in June 2015 that was not consistent with Section 22 of the CBA. The Commission does not remedy violations of collective bargaining agreements through unfair labor practice proceedings. The allegations of the complaints concerning violations of the CBA in violation of RCW 41.56.140 and RCW 41.56.150 are dismissed for failing to state a cause of action.

The complaints also allege that the union violated its duty of fair representation by refusing to file a grievance. The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. The allegations concerning the union's decision not to file a grievance over the FMLA leave issue is dismissed for failure to state a cause of action. While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court that can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

ORDER

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

ISSUED at Olympia, Washington, this 21st 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.