

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE FERRIES, Employer.	
DOUG SCHLIEF, Complainant, vs. FERRY AGENTS, SUPERVISORS AND PROJECT ADMINISTRATORS ASSOCIATION, Respondent.	CASE 128001-U-16 DECISION 12577 - MRNE ORDER OF DISMISSAL

On March 8, 2016, Doug Schlief (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Ferry Agents, Supervisors and Project Administrators Association (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 391-45-110,¹ and a deficiency notice issued on March 25, 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 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.

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

DISCUSSION

The allegations of the complaint concern:

Union interference with employee rights in violation of RCW 47.64.130(2)(a)(i) since September 28 (year unspecified) by breaching its duty of fair representation to Doug Schlieff and deciding not to advance Schlieff's grievance.

It is not possible to conclude that a cause of action exists at this time for further case processing.

BACKGROUND

This case concerns the processing of a grievance filed by Schlieff over whether the employer can require a terminal supervisor to be certified to conduct breath alcohol testing and urine collection for drug testing. According to the facts alleged in the complaint, when Schlieff transferred back into a bargaining unit position, he notified the union and management that he did not intend to become certified to conduct breath alcohol testing and urine collection for drug testing. On an unknown date, manager Shawn Vogt directed Schlieff to get certified to conduct breath alcohol testing and urine collection for drug testing. On September 28 (year unknown) Schlieff filed a contractual grievance challenging the directive that he become certified to conduct alcohol and drug testing.

The complaint does not contain specific dates of the alleged union's actions or inactions. The complaint vaguely explains that the union ultimately decided not to move Schlieff's grievance forward in the grievance process. The complainant describes his frustration with the union's lack of effort to hear his arguments in support of the grievance before making a decision on how to proceed.

The complainant cites several provisions of the collective bargaining agreement in support of his grievance. He alleges it was unfair that the union discussed his grievance directly with representatives of the employer without including him in the conversation. The complainant also expresses frustration with a conversation about his grievance that took place at a union general membership meeting on an unspecified date. The complainant believes that the consideration of his grievance was made in bad faith and that he was discriminated against. When the complainant raised the issue of his grievance and certification for alcohol and drug testing at the following union general membership meeting, the complainant felt the union president had “stacked the deck” against him.

Timeliness

Six-Month Statute of Limitations Period

There is a six-month statute of limitations for unfair labor practice 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 47.64.132(1). The six-month statute of limitations period begins to run when the complainant knows or should know of the violation. *Washington State Ferries*, MEC Decision 210 (1999).

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. The complaint was filed on March 8, 2016, and therefore is only timely with regard to events that took place on or after September 8, 2015.

Missing Dates of Events

The rules for contents of complaints are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

In this case the complaint does not contain dates for all of the allegations. Many of the allegations in the complaint also do not contain times or locations of occurrences for the alleged statements

and events. At minimum, the complete dates of occurrences are needed to determine whether the allegations are timely filed and to allow the union to respond to the allegations.²

Duty of Fair Representation

Legal Standard

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 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. *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 *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).

² Line 78 of the statement of facts references "the attached grievance." It should be noted that there was no grievance or other attachments filed with the complaint.

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.

Analysis

The allegations of the complaint revolve around the union's decision not to pursue a grievance over a terminal supervisor being directed to become certified to conduct breath alcohol testing and urine collection for drug testing. 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. In this case it appears the union followed up on the grievance by discussing the matter with the employer before exercising its discretion and deciding not to pursue the grievance. Based on the facts described in the complaint, it appears the union made a conscious decision not to pursue the grievance because it did not agree with the complainant's position.

Although the complaint states that the complainant felt discriminated against, it does not contain facts describing discrimination. Vague allegations that reference the possibility of discrimination are not adequate to move a case forward in the preliminary review process set forth in WAC 391-45-110. The facts in the complaint also do not describe bad faith or arbitrary conduct by the union, substantial evidence of fraud, deceitful action, or dishonest conduct.

The Commission does not have jurisdiction over allegations of the breach of duty of fair representation by unions involving contractual grievances. *Washington State Ferries (International Organization of Masters, Mates & Pilots)*, Decision 11924. The complainant can seek a remedy for this type of contractual issue through internal union procedures or the courts.

CONCLUSION

The union decided not to advance Schlieff's grievance over a directive that he become certified to conduct alcohol and drug testing. As currently described in the complaint, the union's decision on how to process Schlieff's grievance is not within the Commission's jurisdiction. This case is dismissed for failure to state a cause of action for further case processing under Chapter 47.64

RCW. The complainant may seek a remedy through internal union procedures or the courts. Lastly, many of the allegations in the complaint do not contain dates and appear to be untimely filed.

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action and for untimeliness.

ISSUED at Olympia, Washington, this 20th day of May, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "J. Bradley", is written over the printed name of Jessica J. Bradley.

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 05/20/2016

DECISION 12577 - MRNE has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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