

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY, Employer.	
PAMELA KAVANAGH, Complainant,	CASE 128290-U-16
vs.	DECISION 12614 - PECB
TEAMSTERS LOCAL 763, Respondent.	PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On June 29, 2016, Pamela Kavanagh (complainant) filed an unfair labor practice complaint against Teamsters Local 763 (union). The employer, Snohomish County, is not a party to the issues directly before the Commission.¹ The complaint was reviewed under WAC 391-45-110,² and a deficiency notice issued on July 29, 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 complaint.

On August 17, 2016, the complainant filed an amended complaint.

The defective allegations of the complaint and amended complaint concerning internal union matters such as how a union communicates with its members about grievances filed on their behalf or whether the union allows non-union members to attend meetings where internal union matters

¹ 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.

² 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.

will be discussed are dismissed for failure to state a cause of action. The Unfair Labor Practice Manager finds a cause of action for the allegation concerning the union's pursuance of a grievance for the purpose of advancing the interests of the Sergeants bargaining unit to the detriment of the union's Corrections Support bargaining unit. The union must file and serve its answer to the amended complaint within 21 days following the date of this order.

DISCUSSION

The allegations of the complaint and amended complaint concern:

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation by:

- a. On an unspecified date, filing a grievance on Pamela Kavanagh's behalf without her knowledge. The grievance alleged that Kavanagh performed duties outside of her Booking Support Officer classification and sought back wages at the Sergeant rate of pay for Kavanagh.
- b. Since January 4, 2016, pursuing a grievance regarding Kavanagh's working out of class for the purpose of advancing the interests of the Sergeants bargaining unit to the detriment of the union's Corrections Support bargaining unit.
- c. Since February 2, 2016, refusing to allow Kavanagh to invite a non-bargaining unit corrections deputy who is represented by a different union to attend a grievance meeting with Mary Keefe, a representative from the union.

The allegation concerning the union's pursuance of a grievance that advanced the interests of the Sergeants bargaining unit to the detriment of union's Corrections Support bargaining unit states a cause of action for further case processing. The remaining allegations do not qualify for further case processing. The Commission does not get involved with internal union matters such as how a union communicates with its members about grievances filed on their behalf or whether the union allows non-union members to attend meetings where internal union matters will be discussed.

Timeliness

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 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 start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice of” the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

To determine timeliness the Commission looks at the dates of events in the complaint in relation to the filing date. Allegations without dates cannot be processed. The complaint was filed on June 29, 2016. In order to be timely, the complaint would have needed to describe triggering events that took place on or after December 29, 2015. Many of the alleged facts describe conduct that took place prior to December 29, 2015. These facts will be considered as background information only.

ANALYSIS

Applicable Legal Standards

Duty of Fair Representation

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 (PECB, 1997). While the Commission does not assert jurisdiction over such claims, 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 is more than merely negligent; the union’s conduct must be arbitrary, discriminatory, or in bad faith or be based on considerations that are irrelevant, invidious, or unfair. *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. *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 of fair representation:

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.

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).

Application of Standards

The only allegation that describes a cause of action for breach of duty of fair representation concerns the union pursuing a grievance on Kavanagh's behalf for the ulterior motive of advancing the Sergeants bargaining unit's interests to the detriment of the Corrections Support bargaining unit.

No Jurisdiction Over Internal Union Practices or Policies

The remaining allegations relate to internal union affairs which the Commission has no jurisdiction to remedy. 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 (PSRA, 2006).

The allegation that the union filed a grievance on Kavanagh's behalf without her knowledge does not state a cause of action. It is axiomatic that the union owns the grievance. The union has broad discretion to determine how to enforce the collective bargaining agreement, including what matters to pursue in the grievance and arbitration process. Unless there are allegations that the union is failing to communicate with an employee for discriminatory or other unlawful reasons, poor communication by the union to its membership does not constitute a violation of any statute within the Commission's jurisdiction.

The allegation that the union refused to allow Kavanagh to invite a corrections deputy who is in a different bargaining unit and represented by a different union to attend a grievance meeting with union representative Mary Keefe is also a matter of internal union affairs. According to the complaint, Keefe explained to Kavanagh that the meeting was to discuss internal union matters and it was not appropriate to have a non-bargaining unit member present. It does not violate any statute within the Commission's jurisdiction for a union to refuse to allow a bargaining unit

member to bring a non-member to a private meeting at which internal union procedures or grievance processing will be discussed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the amended complaint states a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation since January 4, 2016, and pursuing a grievance regarding Pamela Kavanagh's working out of class for the purpose of advancing the interests of the Sergeants bargaining unit to the detriment of the Corrections Support bargaining unit.

The above allegation of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The union shall file and serve its answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order.

An answer shall:

- a. Specifically admit, deny, or explain each fact alleged in the amended complaint, as set forth in paragraph 1 of this order, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in

the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The remaining allegations of the complaint and amended complaint concerning breach of duty of fair representation in violation of RCW 41.56.150(1) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of September, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, 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 09/14/2016

DECISION 12614 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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