

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
DONNA TINNER, Complainant, vs. PROFESSIONAL AND TECHNICAL EMPLOYEES LOCAL 17, Respondent.	CASE 128324-U-16 DECISION 12618 - PECB ORDER OF DISMISSAL

On July 12, 2016, Donna Tinner (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Professional and Technical Employees Local 17 (union) as respondent. The employer, King 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 August 12, 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. On August 19, 2016, the complainant filed an amended complaint.

The allegations of the amended complaint concern:

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.

Union interference with employee rights in violation of RCW 41.56.150(1) since February 16, 2016, by breaching its duty of fair representation and failing or refusing to file and process a grievance over discipline issued to bargaining unit employee Donna Tinner.

The amended complaint provided complete dates of occurrences and cured the timeliness defect. The February 16, 2016, triggering date is within the six-month statute of limitations period.

Although the complaint was timely filed, the dispute over the union's failure to file a grievance does not fall under the jurisdiction of the Commission. The allegations involve grievance processing and related remedies. These matters would need to be resolved in the court system, not before the Commission. The court system can remedy duty of fair representation cases that arise out of grievance processing. The Commission does not have the authority to grant the type of monetary damages the complainant is seeking.

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 complaint and amended complaint allege that the union violated its duty of fair representation by failing to file a timely grievance over a 10-day unpaid disciplinary suspension issued to the complainant. The complainant alleges that the union representative forgot to file a grievance on her behalf after telling her the union would grieve the 10-day unpaid suspension. The complainant goes on to allege that the union discriminated against her because of her race and gender but does not describe any facts linking her race or gender to the union's inaction.

The entirety of the complaint and amended complaint revolves around the union's failure to file and process a grievance over a disciplinary action. The Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. Based upon the statement of facts, this dispute appears to fall outside of the Commission's jurisdiction. This dispute can be remedied through internal union procedures or through the courts.

Request to Divert Union Dues to Charity

The complainant seeks an order allowing her to divert her union dues payments to a charity program because of her dissatisfaction with the union. The employer and union bargain collectively under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. RCW 41.56.122 both authorizes union security arrangements and provides for nonassociation only on religious grounds:

A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member.

WAC 391-95-230(2) sets forth the standard for employees who assert the right of nonassociation on the basis of personal religious beliefs. Diversion of union dues to a charity because of personal dissatisfaction with a union is not a remedy available through unfair labor practice proceedings or under WAC 391-95-230(2). Only religious objectors under WAC 391-95-230(2) are permitted to divert their required union dues payments to an approved charity.

Request for Damages

The complainant is also seeking \$100,000 of compensatory damages. The Commission does not have the authority to address claims of personal damages for pain and suffering of individual employees. Compensation for pain and suffering that resulted from the union's inaction should be pursued through the courts.

Conclusion

The Unfair Labor Practice Manager dismisses the complaint and amended complaint for failure to state a cause of action.

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 19th day of September, 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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RECORD OF SERVICE - ISSUED 09/19/2016

DECISION 12618 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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