

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CENTRAL VALLEY SCHOOL DISTRICT, Employer.	
RHONDA AUSTING, Complainant, vs.	CASE 128430-U-16 DECISION 12633 - EDUC
CENTRAL VALLEY EDUCATION ASSOCIATION, Respondent.	ORDER OF DISMISSAL

On September 12, 2016, Rhonda Austing (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Central Valley Education Association (union) as respondent. The employer, Central Valley School District, is not a party to the case.¹ The complaint was reviewed under WAC 391-45-110,² and a deficiency notice issued on September 28, 2016, indicated that it was not possible to conclude a cause of action for further case processing 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.

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.

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.

DISCUSSION

The allegations of the complaint concern the following:

Union interference with employee rights in violation of RCW 41.59.140(2)(a)(i) since March 10, 2016, by breaching its duty of fair representation and failing or refusing to file, investigate, and pursue grievances over the employer's decision to involuntarily transfer Rhonda Austing to Mica Peak High School.

It is not possible to conclude that a cause of action exists at this time. From the allegations of the complaint and the remedies the complainant is seeking, it appears that this matter would need to be resolved through internal union complaint procedures or in the court system, not before the Commission. The court system can remedy duty of fair representation cases that arise out of grievance processing.

ANALYSIS

Applicable Legal Standard

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).

Application of Standard

The complaint alleges that the union violated its duty of fair representation by failing or refusing to file, investigate, and pursue grievances over the employer's decision to transfer Austing involuntarily from her longtime position at University High School to a newly created position at Mica Peak High School. Austing alleges that the employer's decision to transfer her to a different school in the middle of the school year violated provisions of the collective bargaining agreement. The complaint also alleges that Austing lost approximately \$500–\$600 of income a month as a result of the transfer, because she is no longer able to earn additional pay for advising FCCLA and Crimson Crew. Austing requests that the union make her whole for her loss of income.

According to the complaint, the union filed a grievance over Austing's transfer. The union's executive board voted to resolve the grievance with the employer by posting the new position at Mica Peak High School. The complaint alleges that the settlement of the grievance did not address the effects of the employer's actions on Austing's health and income. The complaint also alleges the grievance was poorly written and did not include all of the potential contract violations identified by Austing.

The allegations of the complaint revolve around the union's filing of the grievance over Austing's transfer and the union's subsequent decision to settle the grievance. 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 361, 375 (1983). In this case it appears the union exercised its discretion and decided to settle a grievance.

Allegations about the processing or settling of grievances must be pursued through the courts. *Seattle School District*, Decision 9359-A (EDUC, 2007). For example, in *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982), an allegation that the union refused to process a grievance was insufficient to state a cause of action. The decision explained that the Commission will not assert jurisdiction if allegations arise exclusively from the processing of claims under an existing collective bargaining agreement. The Commission will only assert jurisdiction over breach of duty of fair representation claims if an employee has alleged arbitrary, discriminatory, or bad faith conduct by the union in negotiating a collective bargaining agreement or in the representation of the complainant or others in the bargaining unit. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012), citing *Mukilteo School District (Public School Employees of Washington)*, Decision 1381.

Allegations Against the Employer

The complaint raises arguments that the employer has acted unlawfully by placing special restrictions on Austing's ability to communicate with her co-workers. Austing alleges that from November 17, 2015, until August 26, 2016, the employer forbade her from having any contact with anyone at University High School. In the remedies section the complainant requests that the employer cease and desist its conduct.

The interference allegations against the employer cannot be evaluated, because the complaint was filed against the union. If the complainant wished to pursue allegations against the employer, a separate complaint against the employer would have needed to be filed with the Commission. Allegations against an employer cannot be addressed by the Commission in a case filed against a union.

CONCLUSION

The entirety of the complaint against the union arises out of an alleged contract violation and related grievance processing. The Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. From the statement of facts, this dispute appears to fall outside of the Commission's jurisdiction. This dispute can more appropriately be remedied through internal union complaint procedures or through the courts.

ORDER

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

ISSUED at Olympia, Washington, this 22nd day of November, 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 11/22/2016

DECISION 12633 - EDUC has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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