STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	
CREGAN NEWHOUSE, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128057-U-16 DECISION 12600-A - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
SAM PICH, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128059-U-16 DECISION 12601-A - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
JESSE HILGERS, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128160-U-16 DECISION 12602-A - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

YUSUF JIBRIL, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128163-U-16 DECISION 12603-A - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT
ISAIAH GRAHAM, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128164-U-16 DECISION 12604-A - PECB ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Cregan Newhouse, complainant.

Sam Pich, complainant.

Jesse Hilgers, complainant.

Yusuf Jibril, complainant.

Isaiah Graham, complainant.

Christopher J. Casillas and *Sarah Derry*, Attorneys at Law, Cline & Casillas, for the Seattle Parking Enforcement Officers' Guild.

Andrea Scheele, Assistant City Attorney, Seattle City Attorney Peter S. Holmes, made a limited appearance for the City of Seattle.

The complaints in these consolidated cases were filed by former City of Seattle parking enforcement officers Cregan Newhouse, Sam Pich, Jesse Hilgers, Yusuf Jibril, and Isaiah Graham

against their former union, the Seattle Parking Enforcement Officers' Guild (union).[1] The complaints allege the union interfered with employee rights in violation of RCW 41.56.150(1) by denying each complainant "access to the [union] committee determining proper back wage distribution and excluding [each complainant] from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that [each complainant] was a bargaining unit employee."[2]

The union filed a motion for summary judgment and the parties submitted briefs, the last of which was filed on December 23, 2016. I, Andrew G. Lukes, am the hearing examiner appointed by the Commission.

ISSUES

1. Are there genuine issues of material fact in dispute preventing summary judgment?

2. Did the union breach the duty of fair representation to the complainants by denying them access to the union committee determining the proper distribution of settlement funds and denying them a portion of the settlement funds when four of the complainants voluntarily left the bargaining unit prior to the settlement being reached?

The motion is granted in regard to Newhouse, Pich, Hilgers, and Jibril. The parties do not dispute that these four complainants voluntarily left the bargaining unit before the unfair labor practice settlement was reached. The general rule is that unions do not owe a duty of fair representation to individuals outside of the bargaining unit. There are some exceptions to the general rule, but none apply here. It is presumed that Graham was still a member of the bargaining unit when the settlement was reached, and an issue of fact exists as to whether the union breached its duty of fair representation to him.

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[1] Newhouse filed his complaint on March 22, 2016; Pich filed his complaint on March 23, 2016; and Hilgers, Jibril, and Graham filed their complaints on May 4, 2016.

[2] *City of Seattle (Seattle Parking Enforcement Officers' Guild)*, Decision 12600 (PECB, 2016), at 6–7.

ANALYSIS

Applicable Legal Standards

Summary Judgment Standard

A motion for summary judgment may be granted "if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135. The Commission applies the same standards as Washington State courts in ruling on motions for summary judgment. *State – General Administration*, Decision 8087-B (PSRA, 2004). The courts and the Commission define a material fact as one upon which the outcome of the litigation depends. *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243 (1993); *State – General Administration*, Decision 8087-B. When the moving party shows there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014), *aff'd*, Decision 12091-A (PECB, 2014). Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *City of Seattle (Seattle Police Management Association)*, Decision 12091, *citing Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states,

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Seattle (Seattle Police Management Association)*, Decision 12091, *citing City of Orting*, Decision 7959-A (PECB, 2003). In ruling on a motion for summary judgment, the Commission must consider the material evidence and all reasonable inferences most favorably to the nonmoving party and deny the motion if reasonable people might reach different conclusions as to the facts. *City of Seattle (Seattle Police Management Association)*, Decision 12091, *citing Wood v. City of Seattle*, 57 Wn.2d 469 (1960).

Duty of Fair Representation

A union commits an unfair labor practice if it interferes with, restrains, or coerces public employees in the exercise of their rights. RCW 41.56.150(1). One way unions can violate RCW 41.56.150(1) is by breaching the duty of fair representation. 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). 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).

The employee claiming a breach of the duty of fair representation has the burden of proof. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984). A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges its union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. In such cases, the employee bears the burden of establishing that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. *Id.*

Application of Standards

No Disputed Material Facts as to Newhouse, Pich, Hilgers, and Jibril

The material facts are not in dispute as to Newhouse, Pich, Hilgers, and Jibril. The union filed an unfair labor practice complaint with the Commission in December 2014.[3] It alleged that the City of Seattle (employer) unlawfully refused to bargain the elimination of a "furlough overtime program." According to the complaint, the elimination of the program denied bargaining unit members regular overtime opportunities that they previously enjoyed.

The Commission issued a preliminary ruling finding a cause of action for refusal to bargain on December 24, 2014. Thereafter, four of the five complainants voluntarily left the bargaining unit to take positions in other departments within the city before settlement was reached, before the union decided how to distribute the funds, and before any funds were distributed. Jibril left the bargaining unit on February 18, 2015;[4] Newhouse and Pich left the bargaining unit on February 25, 2015; and Hilgers left the bargaining unit on March 24, 2015.

The union first met with the employer to discuss settlement on July 23, 2015. The union's initial settlement proposal was to restore the alleged overtime opportunities going forward, rather than seek a monetary settlement for opportunities lost in the past. The employer rejected that offer and countered, offering a monetary settlement. The parties negotiated over the amount.

On August 27, 2015, the parties entered into a settlement agreement. In exchange for the union's withdrawal of the unfair labor practice complaint, the employer agreed to pay the union $105,000. Motion, Attachment C. The agreement specified payments would be made "as back wages" and paid "directly to [union] members as employees and to whom any distributions shall be made will

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3 Case 26905-U-14.

4 Jibril's complaint initially states that he left the bargaining unit on February 18, 2015. Jibril Complaint, Statement of Facts at 1, ¶ 1.1. Later, it states he left on February 18, 2016. *Id.* at 2, ¶ 1.8. The union caught this mistake, explaining that Jibril left the bargaining unit on February 18, 2015. At the summary judgment stage, Jibril may not rest on mere allegations in his pleading and had a responsibility to present evidence if this date was in dispute. Having failed to do so in his response, it is presumed that Jibril left the bargaining unit on February 18, 2015.

be determined by the [union]." *Id.* at 2. The parties also agreed to a process for assigning the overtime in question prospectively.

Union president Nanette Toyoshima sent an e-mail to bargaining unit members announcing the settlement on September 1, 2015. The e-mail also listed the names of members of a committee the union established to allocate the settlement funds.

Through meetings, conference calls, and e-mails, the union considered several methods of distributing the funds. Ultimately, the union decided to distribute the funds using tiers. Members who worked the least overtime in the two years preceding elimination of the program would be paid at the lowest tier. Members who worked the most would be paid at the highest tier.

The union debated whether to pay former bargaining unit members. The union decided not to include past members because it believed that doing so would harm the interests of current members. Also, the union understood that payment to past members would violate the section of the settlement agreement that stated the employer would pay "[union] members as employees."

On September 22, 2015, the union announced its fund distribution decision to the bargaining unit and the employer. The employer paid the settlement funds to the bargaining unit members according to the union's selected distribution method. None of the complainants received payments.

The Union Did Not Owe a Duty of Fair Representation to Newhouse, Pich, Hilgers, or Jibril

Four of the complainants voluntarily left the bargaining unit prior to the settlement being reached. Upon leaving the unit, the four complainants lost the right to be represented (let alone fairly represented) by the union. Accordingly, their complaints are dismissed.

As former Commission Executive Director Marvin Schurke said, "A union does not owe a duty of fair representation to employees outside of the bargaining unit . . . ." *City of Chelan*, Decision 6266 (PECB, 1998). This is because the duty to fairly represent an employee only arises when a

union is certified as the exclusive bargaining representative of the bargaining unit to which that employee belongs. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B. Because a union has no rights to represent non-bargaining unit members, it would not make sense to assign the union a duty to fairly represent non-bargaining unit members. *See City of Yakima*, Decision 2387-B (PECB, 1986); *City of Wenatchee*, Decision 2216 (PECB, 1985) (explaining that unions have no right to bargain on behalf of employees outside the bargaining unit they represent).

The Legislature's intent to limit a union's duties only to those employees it represents is clear:

> The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and *shall be required to represent, all the public employees within the unit* without regard to membership in said bargaining representative . . . .

RCW 41.56.080 (emphasis added). The limiting language "employees *within* the unit" excludes employees *outside* the unit.

At least one Commission examiner specifically held that the duty of fair representation "extends only to members within the bargaining unit." *Castle Rock School District (Castle Rock Education Association)*, Decision 4722 (EDUC, 1994). Because the complainant there was not a bargaining unit member, "the union owed him no duty of representation." *Id.*

United Steelworkers of America, AFL-CIO, Local Union No. 2869, 239 NLRB 982 (1978), is directly applicable.[5] Under very similar factual circumstances, the National Labor Relations Board determined that unions do not breach the duty of fair representation when they "limit distribution to those affected employees in the unit as of the date of settlement . . . ." *Id.* at 983.

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[5] Decisions construing the National Labor Relations Act (NLRA) are persuasive in interpreting state labor acts that are similar to the NLRA. *Nucleonics Alliance, Local 1-369 v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984).

The United States Supreme Court held that retirees are not entitled to a duty of fair representation because they are no longer members of the unit. *Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971). The Court reasoned, "Since retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer." *Id.*

The Fifth Circuit Court of Appeals also held that no duty of fair representation is owed to employees outside the bargaining unit. In *Cooper v. General Motors Corp.*, 651 F.2d 249 (5th Cir. 1981), employees were moved in and out of the unit according to workload demands. The plaintiffs' duty of fair representation claims failed because the plaintiffs were outside the unit at the time of the complained-of union action.

The Seventh Circuit Court of Appeals concurred. "The [u]nion owes no duty to those it does not represent. If it does not have a duty to represent them at all, it does not have a duty to represent them 'fairly.'" *Merk v. Jewel Companies, Inc.*, 848 F.2d 761, 766–67 (7th Cir. 1988).

Newhouse, Pich, Hilgers, and Jibril all left the bargaining unit by the date of the unfair labor practice settlement. Accordingly, the union owed them no duty of fair representation. Their complaints are dismissed.

No Exceptions Extend a Duty of Fair Representation to Newhouse, Pich, Hilgers, or Jibril

There are some limited exceptions to the general rule that former bargaining unit members are not owed a duty of fair representation. None of those exceptions are applicable in regard to Newhouse, Pich, Hilgers, and Jibril.

The most obvious exception is for former members who were terminated allegedly without just cause. If a union processed or refused to process such a former member's grievance in an arbitrary, discriminatory, or bad faith manner, he or she may have a valid duty of fair representation claim against the former union. A New York State court explained, "[T]he union's representation duties to that former employee do not end in circumstances in which the severance from employment is

being contested or there is some other basis upon which to conclude that there is a continuing nexus to employment . . . ." *Baker v. Thompson*, 194 Misc.2d 116, 750 N.Y.S.2d 486 (Sup. Ct. 2002) (citations omitted). This exception does not apply here because Newhouse, Pich, Hilgers, and Jibril all left the bargaining unit voluntarily.

The complainants argue that they were owed a duty of fair representation because there was a "continuing nexus" to their employment. They make three unavailing arguments in support of this claim. First, the complainants argue that Articles 19 and 20 of the collective bargaining agreement between the union and the employer "protects . . . employees which transfer to other departments within the City." Response at 7. Article 19 is entitled "Transfer, Voluntary Reduction, Layoff, and Service Credit." Article 20 is entitled "Probationary Period and Trial Service Period."

The complainants point to no specific language in the 10 pages that make up Articles 19 and 20 that would grant them the right to be fairly represented by the union under the specific circumstances of this case. The articles appear to grant rights of reinstatement to certain laid-off employees and rights of reversion to employees who transfer out of the bargaining unit to new positions within the city but then fail to satisfactorily complete their trial service periods in the new positions. These articles might be significant if the complainants argued that they were treated in an arbitrary, discriminatory, or bad faith manner by the union while seeking reinstatement or reversion. Under the facts of this case, however, I fail to see the relevance of Articles 19 and 20.

The complainants' second argument for "continuing nexus" is that because the union successfully negotiated retroactive pay for hours they worked before leaving the bargaining unit in 2015 when it settled the latest collective bargaining agreement, that the union also had an obligation to represent them in the settlement at issue here. The complainants cite no authority for this proposition.

The argument is based on the false premise that the union was acting pursuant to a duty of fair representation to the former bargaining unit members when it negotiated retroactive pay for them in the last round of contract negotiations. To the contrary, it is extremely common for unions to

settle contracts that exclude former bargaining unit members from retroactive pay increases without violating the duty of fair representation. Just because the union acted above and beyond its duty to the complainants in one instance did not create a duty for the union to do so thereafter.

The third argument the complainants make for "continuing nexus" is that the settlement was "back wages" for a period when they were members of the bargaining unit. This argument is based on the complainants' overly literal, out-of-context interpretation of the settlement agreement which says,

> The City agrees that it will pay, as back wages, the amount of $105,000. The payment of back wages shall be paid directly to Guild members as employees and to whom any distributions shall be made will be determined by the Guild. The Guild shall communicate the proper allocation to the City within 30 days of the execution of this document. The City will pay the amount as wages within 30 calendar days after receipt of the distribution formula from the Guild, and it shall be subject to all regular payroll withholding, including deductions for retirement contributions. This payment shall be reported to the Internal Revenue Service using a W-2 form.

Motion, Attachment C at 2. To start, the complainants admit in their response that "[t]he settlement amount of $105,000 was not meant to be for actual time worked." Response, Paston Decl. at 2. Instead, they claim "[i]t was to represent a portion of the 'back wages' that would have been earned by those who had consistently worked furlough overtime." *Id.* This is a misinterpretation of the facts.

When read in context, the phrase "as back wages" was intended to describe *how* the employer would pay out the settlement funds, not to characterize the funds as payment owed to specific bargaining unit members for their loss of wages during a specific time period. In fact, the settlement agreement specifies twice that the employer admitted no wrongdoing. Motion, Attachment C at 1, 2. In other words, the employer did not admit that it was paying the funds because it owed individual bargaining unit members for their lost opportunities to earn overtime. The employer agreed to pay the settlement funds in exchange for the union's withdrawal of the

unfair labor practice complaint. These facts do not create a "continuing nexus" that entitles Newhouse, Pich, Hilgers, and Jibril to a duty of fair representation.

Complainants' Summary Judgment Standard Argument Is Unavailing

This decision relies on the summary judgment standard explained above. It was most recently affirmed by the Commission in 2014. *City of Seattle (Seattle Police Management Association)*, Decision 12091. According to that standard, once a properly supported summary judgment motion is made, the adverse party may no longer rely on the mere allegations or denials in its pleading but must respond with specific facts that show a genuine issue necessitating a hearing. As explained above, the union's motion, supporting declaration, and attachments showed that it did not owe a duty of fair representation to Newhouse, Pich, Hilgers, or Jibril at the time the settlement was agreed to. The complainants' response failed to set forth specific facts showing otherwise. Accordingly, summary judgment is appropriate for the union in regard to Newhouse, Pich, Hilgers, and Jibril.

The complainants rely heavily on the summary judgment standard as explained in *City of Orting*, Decision 7959-A. Specifically,

> WAC 10-08-135 does not give respondents a "second bite at the apple" or an opportunity to re-litigate the preliminary rulings issued in unfair labor practice cases by the Executive Director or designee under WAC 391-45-110. In responding to a motion for summary judgment, an Examiner must operate within the context of a preliminary ruling that has been issued by higher authority, and is confined to ruling on admissions or defects which have become evident since the issue of the preliminary ruling.
>
> Thus, a summary judgment in this case would have to have been based upon admissions against interest or other statements made by complainant independent of the complaint itself.

City of Orting, Decision 7959-A (emphasis omitted) (quoting *Port of Seattle*, Decision 7603-A (PECB, 2003)). Much of the complainants' response focuses on the last sentence of this passage. They argue that they have made no "admissions against interest or other statements . . . independent of the complaint[s]," so summary judgment is inappropriate.

To start, the complainants did make at least one admission against interest upon which this decision relies. This was through the Paston declaration that stated, "The settlement amount of $105,000 was not meant to be for actual time worked." Response, Paston Decl. at 2. This post-complaint admission against interest clarified that the employer's settlement payment was a quid pro quo for the union withdrawing its unfair labor practice complaint. That fact was critical in determining there was no "continuing nexus" to entitle Newhouse, Pich, Hilgers, and Jibril to a duty of fair representation by the union.

Furthermore, the focus of *City of Orting* is that preliminary rulings finding a cause of action to exist are not appealable. This decision does not allow appeal of the preliminary ruling. Additional evidence introduced in the union's motion and the complainants' response was relied upon in reaching this decision. In addition to Paston's declaration, this decision relies on the language of the settlement agreement (which was first introduced as an attachment to the union's motion).

Issues of Material Fact Exist as to Graham's Complaint

Summary judgment of Graham's complaint is denied. There is uncertainty about the date Graham left the bargaining unit. Graham's complaint contains either a typo or an omission. It states Graham left the bargaining unit "[o]n September, 2015." The union presented evidence that Graham left the bargaining unit on September 8, 2015. Because this evidence was not refuted in the complainants' response, it is presumed Graham left on that date. Graham is therefore presumed to be a bargaining unit member as of August 27, 2015, the date of the settlement. It is also presumed Graham was a member of the bargaining unit on September 1, 2015, yet he did not receive a copy of Toyoshima's e-mail announcing the settlement. Answer to Graham Complaint at 3, ¶ 1.10. This is enough uncertainty to deny summary judgment.

In sum, the issues of material fact that necessitate a hearing include, but are not necessarily limited to, the following: whether Graham knew or should have known of the alleged violations prior to November 6, 2015; whether Graham was a member of the bargaining unit on August 27, 2015, when the settlement between the union and the employer was reached; and, if Graham was a

bargaining unit member after August 27, 2015, whether the union breached its duty of fair representation to him.

CONCLUSION

The motion is granted in regard to Newhouse, Pich, Hilgers, and Jibril. The parties do not dispute that these four complainants voluntarily left the bargaining unit before the unfair labor practice settlement was reached. The general rule is that unions do not owe a duty of fair representation to individuals outside of the bargaining unit. There are some exceptions to the general rule, but none apply here. It is presumed that Graham was still a member of the bargaining unit when the settlement was reached, and an issue of fact exists as to whether the union breached its duty of fair representation to him.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(12).

2. The Seattle Parking Enforcement Officers' Guild (union) is an exclusive bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of all full-time, regular part-time, and temporary parking enforcement officers (PEOs) employed by the employer.

3. Complainants Cregan Newhouse, Sam Pich, Jesse Hilgers, Yusuf Jibril, and Isaiah Graham are former PEOs who were members of the bargaining unit described in Finding of Fact 2.

4. The union and the employer were parties to a collective bargaining agreement effective from January 1, 2011, through December 31, 2013. The agreement was extended through December 31, 2014, by mutual agreement.

5. The union filed an unfair labor practice complaint with the Commission in December 2014. It alleged that the employer unlawfully refused to bargain the elimination of a "furlough

overtime program." According to the complaint, the elimination of the program denied bargaining unit members regular overtime opportunities that they previously enjoyed.

6. The Commission issued a preliminary ruling finding a cause of action for refusal to bargain on December 24, 2014.

7. Four of the five complainants voluntarily left the bargaining unit to take positions in other departments within the city before settlement was reached, before the union decided how to distribute the funds, and before any funds were distributed. Jibril left the bargaining unit on February 18, 2015; Newhouse and Pich left the bargaining unit on February 25, 2015; and Hilgers left the bargaining unit on March 24, 2015.

8. The union first met with the employer to discuss settlement on July 23, 2015. The union's initial settlement proposal was to restore the alleged overtime opportunities going forward, rather than seek a monetary settlement for opportunities lost in the past. The employer rejected that offer and countered, offering a monetary settlement. The parties negotiated over the amount.

9. On August 27, 2015, the parties entered into a settlement agreement. In exchange for the union's withdrawal of the unfair labor practice complaint, the employer agreed to pay the union $105,000. The agreement specified payments would be made "as back wages" and "paid directly to [union] members as employees and to whom any distributions shall be made will be determined by the [union]." The parties also agreed to a process for assigning the overtime in question prospectively.

10. Union president Nanette Toyoshima sent an e-mail to bargaining unit members announcing the settlement on September 1, 2015. The e-mail also listed the names of members of a committee the union established to allocate the settlement funds.

11. Through meetings, conference calls, and e-mails, the union considered several methods of distributing the funds. Ultimately, the union decided to distribute the funds using tiers.

Members who worked the least overtime in the two years preceding elimination of the program would be paid at the lowest tier. Members who worked the most would be paid at the highest tier.

12. The union debated whether to pay former bargaining unit members. The union decided not to include past members because it believed that doing so would harm the interests of current members. Also, the union understood that payment to past members would violate the section of the settlement agreement that stated the employer would pay "[union] members as employees."

13. On September 22, 2015, the union announced its fund distribution decision to the bargaining unit and the employer. The employer paid the settlement funds to the bargaining unit members according to the union's distribution method. None of the complainants received payments.

14. It is presumed Graham left the bargaining unit on September 8, 2015, after the settlement was reached between the union and the employer. Yet, Graham did not receive a copy of Toyoshima's e-mail discussed in Finding of Fact 10. Graham did not receive any portion of the settlement funds.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. According to Findings of Fact 5 through 13, no genuine issue of material fact exists under WAC 10-08-135 as to the complaints filed by Newhouse, Pich, Hilgers, and Jibril, and the union did not owe them a duty of fair representation under RCW 41.56.150(1) because they were no longer members of the bargaining unit when the settlement was reached. Accordingly, the union is entitled to judgment as a matter of law as to Newhouse, Pich, Hilgers, and Jibril.

3. According to Findings of Fact 5, 6, and 8 through 14, issues of material fact exist under WAC 10-08-135 as to Graham's complaint. Therefore, it is not possible to determine whether the union had or had not breached a duty to Graham under RCW 41.56.150(1). Summary judgment is not appropriate as to Graham.

ORDER

The motion is GRANTED in regard to Cases 128057-U-16, 128059-U-16, 128160-U-16, and 128163-U-16, and those cases are hereby DISMISSED.

The motion is DENIED in regard to Case 128164-U-16, and further proceedings are hereby ordered.

ISSUED at Olympia, Washington, this 14th day of February, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Andrew G. Lukes

ANDREW G. LUKES, Examiner

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.

COLLECTIVE BARGAINING
PERC
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 02/14/2017

DECISION 12600-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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RECORD OF SERVICE - ISSUED 02/14/2017

DECISION 12601-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 128059-U-16

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 02/14/2017

DECISION 12602-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 128160-U-16

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MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 02/14/2017

DECISION 12603-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 128163-U-16

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MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 02/14/2017

DECISION 12604-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 128164-U-16

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