

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	
KEVIN MCPHERSON, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.	CASE 128760-U-17 DECISION 12697 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
KENNETH J. YOUNG, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.	CASE 128761-U-17 DECISION 12698 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
WILLIAM C. RUHLAND, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.	CASE 128762-U-17 DECISION 12699 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

RORY A. FRIEL,

Complainant,

vs.

AMALGAMATED TRANSIT UNION,
LOCAL 587,

Respondent.

CASE 128763-U-17

DECISION 12700 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

FRANKIE ROSS,

Complainant,

vs.

AMALGAMATED TRANSIT UNION,
LOCAL 587,

Respondent.

CASE 128764-U-17

DECISION 12701 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

KIMBERLY BAIRD,

Complainant,

vs.

AMALGAMATED TRANSIT UNION,
LOCAL 587,

Respondent.

CASE 128765-U-17

DECISION 12702 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

RYAN PERRAULT,

Complainant,

vs.

AMALGAMATED TRANSIT UNION,
LOCAL 587,

Respondent.

CASE 128766-U-17

DECISION 12703 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

AHMAD YOUSEFBEIGI,
 Complainant,
 vs.
 AMALGAMATED TRANSIT UNION,
 LOCAL 587,
 Respondent.

CASE 128767-U-17
 DECISION 12704 - PECB
 PRELIMINARY RULING AND
 ORDER OF PARTIAL DISMISSAL

JEFFRY MORGAN,
 Complainant,
 vs.
 AMALGAMATED TRANSIT UNION,
 LOCAL 587,
 Respondent.

CASE 128768-U-17
 DECISION 12705 - PECB
 PRELIMINARY RULING AND
 ORDER OF PARTIAL DISMISSAL

GRANT ARNOT,
 Complainant,
 vs.
 AMALGAMATED TRANSIT UNION,
 LOCAL 587,
 Respondent.

CASE 128769-U-17
 DECISION 12706 - PECB
 PRELIMINARY RULING AND
 ORDER OF PARTIAL DISMISSAL

MICHAEL S. BAILEY,
 Complainant,
 vs.
 AMALGAMATED TRANSIT UNION,
 LOCAL 587,
 Respondent.

CASE 128770-U-17
 DECISION 12707 - PECB
 PRELIMINARY RULING AND
 ORDER OF PARTIAL DISMISSAL

KEVIN D. GOODMAN,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128771-U-17
DECISION 12708 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

CLAUDE R. BROWN,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128772-U-17
DECISION 12709 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

ANTHONY F. ENGRISSEL,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128773-U-17
DECISION 12710 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

STEVE CHICHESTER,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128774-U-17
DECISION 12711 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

WARREN YEE,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128775-U-17
DECISION 12712 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

CATHERINE WEAVER,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128776-U-17
DECISION 12713 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

KENNY W. OLSON,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128777-U-17
DECISION 12714 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

DOUG LANE,
Complainant,
vs.
AMALGAMATED TRANSIT UNION,
LOCAL 587,
Respondent.

CASE 128778-U-17
DECISION 12715 - PECB
PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

<p>DARRYL EASTER, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.</p>	<p>CASE 128779-U-17 DECISION 12716 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>
<p>KALEB ASTLE, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.</p>	<p>CASE 128780-U-17 DECISION 12717 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>
<p>BRIAN ORMOND, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.</p>	<p>CASE 128811-U-17 DECISION 12718 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>
<p>KIMBERLY O'NEAL, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.</p>	<p>CASE 128812-U-17 DECISION 12719 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>

On February 15, 2017, twenty one unfair labor practice complaints were filed by individual employees against the Amalgamated Transit Union, Local 587 (union or respondent). The cases

were numbered 128760-U-17 through 128780-U-17. On February 24, 2017, two additional employees filed complaints against the union. These cases were numbered 128811-U-17 and 128812-U-17. Because the complaints were identical and concerned the same events, these cases are being processed jointly.

The employer, King County, is not a party to these cases. However, the employer's name will be used to identify the cases because Commission docketing procedures require each case to be attached to a public employer to establish jurisdiction.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 15, 2017, indicated that it was not possible to conclude that a cause of action existed at that time. The complainants were given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases. On March 31, 2017, the complainants requested an extension of the due date for filing amended complaints to allow the group of employees to coordinate their amended filing. The extension was granted and established an April 18, 2017, due date.

On April 17, 2017, the complainants filed an amended complaint signed by Claude Brown. On April 18, 2017, a second version of an amended complaint was filed by Danna Daily. Follow-up communication with the complainants revealed that the second amended complaint was filed in error. Daily, who sent in the April 18, 2017, document requested to withdraw the filing. In this decision the term amended complaints will be used to refer to the amended complaint filed by Brown on April 17, 2017.

ISSUES

The allegations of the complaints and amended complaints concern:

Union interference with employee rights in violation of RCW 41.56.150(1) by:

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.

1. Since January 17, 2017, breaching its duty of fair representation by tentatively agreeing to provisions in a new collective bargaining agreement that are less attractive to rail employees than to bus employees.
2. Since February 23, 2017, breaching its duty of fair representation by not allowing bargaining unit rail employees who are members in good standing of the union to vote on proposed changes to the contractual seniority system.

The first allegation concerning the substance of the tentatively agreed to contract does not qualify for further case processing. The Commission does not assert jurisdiction addressing employees dissatisfaction with the substantive terms of the contracts negotiated by their exclusive bargaining representative. The second allegation, concerning the union not allowing bargaining unit rail employees who are members in good standing to vote on proposed changes to the seniority system, qualifies for further case processing.

BACKGROUND

According to the facts alleged in the complaints, the transit bargaining unit consists of close to 3,000 employees working on the bus side and about 70 employees on the rail side. The employees who filed these complaints work on the rail side.

The complaints allege that the union has been advocating for, or agreeing to, takeaways from rail employees while negotiating for a 2017 collective bargaining agreement. The complaints allege that the tentative agreement that the union presented to the membership on January 17, 2017, appears to make rail work less attractive to individuals wanting promotional and educational opportunities. The amended complaints go on to allege that the union is attempting to remove any rail incentives for rail operators including the elimination of wage or shift differentials.

The amended complaints also allege that the union is attempting to bribe the membership to vote for the tentative agreement. Specifically, the complaints allege that the tentative contract agreement would provide full-time bus operators with a one-time payment of a vacation day worth approximately \$500, but excludes rail operators and part-time employees from this payment eligibility.

The amended complaint references several attachments. It should be noted that the preliminary review process is based on reviewing the text of the complaint. The attachments to a complaint will not be evaluated or considered at this preliminary stage of case processing. The statement of facts attached to the complaint must describe all documents that are relevant to understanding the allegations.

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 United Supreme Court decisions where the Court held 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 Standard

The complaints lack concrete examples or explanations of how the union's actions toward rail employees were arbitrary, discriminatory, or in bad faith. Similarly, the complaints do not explain how the union's actions in bargaining were based on considerations that are irrelevant, invidious, or unfair.

The complaints allege that the union is attempting to coerce the acceptance of the tentative agreement by bribing employees with a special one-time ratification incentive payment for full time operators only. While the complainants characterize this ratification incentive as a bribe, there is no basis in the complaints to support this conclusion. The tentative agreement's provision for one vacation day that is immediately cashed out for full-time operators as a form of one-time ratification incentive does not appear to be arbitrary, discriminatory, or in bad faith.

The allegations concerning the dissatisfaction with certain terms of the tentatively agreed to CBA do not describe a breach of duty of fair representation. There is no statutory requirement that a union must accomplish the goals of each bargaining unit member or job classification, and complete satisfaction of all represented employees is not expected. Rail employees are not a protected class. The fact that certain terms of the tentative agreement are less appealing to rail employees than to bus drivers, is not enough to warrant further processing of the allegation.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaints and amended complaints state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), since February 23, 2017, by breaching its duty of fair representation and not allowing bargaining unit rail employees who are members in good standing to vote on proposed changes to the seniority system.

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

2. The union shall:

File and serve their answers 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 complaints and amended complaints concerning union interference with employee rights in violation of RCW 41.56.150(1) since January 17, 2017, by breaching its duty of fair representation and tentatively agreeing to provisions in a new collective bargaining agreement that are less attractive to rail employees than to bus employees are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 30th day of May, 2017.

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 05/30/2017

DECISION 12697 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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