

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SKAGIT VALLEY COLLEGE,  Employer.	
CLORETTA FRANKLIN,  Complainant,	CASE 128962-U-17
vs.	DECISION 12752 - PSRA
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION,  Respondent.	ORDER OF DISMISSAL

On May 5, 2017, Cloretta Franklin (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Washington Public Employees Association (union) as respondent. The employer, Skagit Valley College, is not a party to this case. However, the employer's name will be used to identify the case because Commission docketing procedures require each case to be attached to a public employer to establish jurisdiction. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on June 7, 2017, indicated that it was not possible to conclude that 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.

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.

<sup>1</sup> 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.

ALLEGATIONS

The allegations of the complaint concern:

Union interference with employee rights in violation of RCW 41.80.110(2)(a) since March 1, 2017, by breaching of its duty of fair representation in representing bargaining unit employee Cloretta Franklin.

Union refusal to bargain in violation of RCW 41.80.110(2)(d) [and if so, derivative interference in violation of RCW 41.80.110(2)(a)] since March 1, 2017, by breach of its good faith bargaining obligations.

UNION'S DUTY OF FAIR REPRESENTATION*Legal Standards*

RCW 41.80.050 secures rights for employees covered by the PSRA, including the right to:

[S]elf-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion.

Additionally, RCW 41.80.080(3) secures representation rights for all employees in a bargaining unit covered by the PSRA:

The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

That duty of fair representation applies equally to bargaining unit employees who are union members and to bargaining unit employees who are not union members. The duty of fair

representation owed under RCW 41.80.080 closely mirrors the duty of fair representation owed under the similar provision in the Public Employees' Collective Bargaining Act (PECB), RCW 41.56.080. *Community College 7 (Shoreline)(Washington Federation of State Employees)*, Decision 9094-A (PSRA, 2006).

In *State – Natural Resources*, Decision 8458-B (PSRA, 2005), the Commission held that in order to achieve its statutory mission of uniform administration of collective bargaining law, unless a specific legislative intent directs otherwise, cases decided under the PECB, Chapter 41.56 RCW, are applicable to cases decided under the PSRA, Chapter 41.80 RCW. Because the union's duty under RCW 41.80.080 is substantially similar to the duty under RCW 41.56.080, cases interpreting a union's duty of fair representation under the latter statute apply to allegations that the duty was breached arising under Chapter 41.80 RCW.

While ample federal case precedent interpreting the duty of fair representation exists, the *Allen* Court outlined and explained the standards to be applied to Washington cases involving alleged breaches of the duty of fair representation:

- A union must treat all factions and segments of its membership without hostility or discrimination. A finding of discrimination requires a showing that an individual was deprived of a right based on their assertion of a protected activity, and that there is a causal connection between the exercised right and the discriminatory action. *Educational Service District 114*, Decision 4361-A (PECB, 1994) (citing *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991));
- A union's broad discretion in asserting the rights of individual members must be exercised in good faith and honesty;
- The union must avoid arbitrary conduct. A union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" as to be irrational. *Airline Pilots Association, International v. O'Neill*, 499 U.S. 65, 67 (1991) (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953)).

Each requirement "represents a distinct and separate obligation, the breach of which may constitute the basis for civil action." *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 375 (quoting *Griffin v. United Automobile, Aerospace & Agricultural Implement Workers*, 469 F.2d 181

(1972)). The duty of fair representation doctrine seeks to assure “the individual employee [or minority] that his union will represent his interest unless it conflicts with the group’s interest”. *Allen v. Seattle Police Officers’ Guild*, 100 Wn.2d 361, 375 (quoting Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 Tex. L. Rev. 1119, 1155 (1973)).

To prove that a union has breached its duty of fair representation, a complainant employee bears the burden of showing that the union behaved irrationally, invidiously, fraudulently, deceitfully, dishonestly, or indifferently as to the rights of bargaining unit employees, or that the union’s conduct was so grossly deficient as to be properly equated with arbitrary action. The complainant must also demonstrate a causal nexus between the breach of the union’s duty of fair representation and the harm suffered by the employee. By adopting the standard set forth in *Griffin v. United Automobile*, the *Allen* court specifically rejected the notion that bad faith is a required element to prove a breach of the duty. *Allen v. Police Officers’ Guild*, 100 Wn.2d 361, 374.

This is still a somewhat higher standard of proof than the “reasonable employee’s perception” test applied to most “employer interference” claims under RCW 41.80.110(1)(a) and “union restraint” claims under RCW 41.80.110(2)(a), but the higher burden of proof is accompanied by a broader range of remedies than the “cease and desist” and “post notices” remedies usually available for “interference” and “restraint” violations. *See, e.g., Grant County Public Hospital District 1*, Decision 8378 (PECB, 2004), *aff’d*, Decision 8378-A (PECB, 2004) (also requiring an employer to make good faith submission of a proposed collective bargaining agreement to board of commissioners for ratification).

These standards provide unions with substantial discretion in their decision making, even if the ultimate decision proves to be wrong. *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998); *Allen v. Seattle Police Officers’ Guild*, 100 Wn.2d 361, 375 (recognizing that unions require flexibility to settle disputes). These standards also recognize that bargaining unit employees’ individual goals may not always be achieved through collective bargaining. *C-Tran*, Decision 7087-B (PECB, 2002) (citing *Allen v. Seattle Police Officers’ Guild*, 100 Wn.2d 361 (1983)). While unions are not required to bargain collective bargaining agreement provisions of equal benefit to all bargaining unit employees, and while equality of treatment is not the standard on which to judge

the union's duty of fair representation, unions are nevertheless prohibited from aligning themselves in interest against one or more employees in the bargaining units they represent. *C-Tran*, Decision 7087-B (citing *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361).

### *Analysis*

The complaint contains little detail or explanation of why the union did, or failed to do, that could constitute a breach of its duty of fair representation. The complaint fails to describe how the union behaved irrationally, invidiously, fraudulently, deceitfully, dishonestly, or indifferently as to the rights of bargaining unit employees, or that the union's conduct was so grossly deficient as to be properly equated with arbitrary action. The complainant had an opportunity to amend the complaint to provide additional information to explain this allegation, but did not file any additional information with the Commission.

## UNION REFUSAL TO BARGAIN

### *Legal Standard*

The complaint also alleges union refusal to bargain. An individual employee cannot file a refusal to bargain complaint as an individual. *King County*, Decision 7139 (PECB, 2000), citing *Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District*, Decision 5979 (PECB, 1997). Only the parties to the collective bargaining relationship (the union or the employer) can file a refusal to bargain unfair labor practice case. The employer is the only party with standing to file and pursue refusal to bargain claims against the union.

### *Analysis*

The complainant is a bargaining unit employee. The complaint alleges that the union failed to bargain when its agent failed to confer at reasonable times, and proceeded with a demand to bargain, with respect to wages, and conditions of employment of Franklin, while showing signs of intoxication or under the influence of alcohol. This argument seems to mix a duty of fair representation allegation in with a refusal to bargain allegation. The requirements for a duty of fair representation claim are explained above. As an individual employee, Franklin cannot file a

refusal to bargain case. Only the employer can file a timely complaint alleging that the union refused to bargain in violation of RCW 41.80.110(1)(e).

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 20th day of July, 2017

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**

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
MARK E. BRENNAN, COMMISSIONER  
MARK R. BUSTO, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

**RECORD OF SERVICE - ISSUED 07/20/2017**

DECISION 12752 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128962-U-17

EMPLOYER: SKAGIT VALLEY COLLEGE

REP BY: FRANKLIN PLAISTOWE  
OFFICE OF FINANCIAL MANAGEMENT  
2ND FL RAAD BLDG  
PO BOX 47500  
OLYMPIA, WA 98504  
labor.relations@ofm.wa.gov  
(360) 407-4140

ANDREW L. LOGERWELL  
OFFICE OF THE ATTORNEY GENERAL  
7141 CLEANWATER DR SW  
PO BOX 40145  
OLYMPIA, WA 98504-0145  
andrewl1@atg.wa.gov  
(360) 664-4167

THOMAS KEEGAN  
SKAGIT VALLEY COLLEGE  
2405 E COLLEGE WAY  
MOUNT VERNON, WA 98273-5899  
thomas.keegan@skagit.edu  
(260) 416-7995

PARTY 2: CLORETTA FRANKLIN

REP BY: CLORETTA FRANKLIN  
1976 BRIARWOOD DR  
OAK HARBOR, WA 98277  
mscleo.franklin@gmail.com  
(360) 525-7866

PARTY 3: WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

REP BY: KENT STANFORD  
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION  
140 PERCIVAL ST NW  
OLYMPIA, WA 98502-5438  
kent@wpea.org  
(360) 943-1121