

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY,  Employer.	
PAMELA KAVANAGH,  Complainant,	CASE 128290-U-16
vs.	DECISION 12614-A - PECB
TEAMSTERS LOCAL 763,  Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

*Pamela Kavanagh*, the complainant.

*Thomas Leahy*, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 763.

On June 29, 2016, Pamela Kavanagh (complainant) filed an unfair labor practice complaint against Teamsters Local 763 (union). The employer, Snohomish County, is not a party to the issues directly before the Commission.<sup>1</sup> The complaint was reviewed and a deficiency notice issued on July 29, 2016. An amended complaint was filed on August 17, 2016. A preliminary ruling and order of partial dismissal issued September 14, 2016, giving a cause of action for union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation. On September 29, 2016, the union filed its answer to the complaint. Examiner Elizabeth Snyder held a hearing on March 8, 2017. On May 22, 2017, the parties submitted post-hearing briefs to complete the record.

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<sup>1</sup> 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.

### ISSUE

As framed by the preliminary ruling, the issue in this case is whether the union interfered with employee rights since January 4, 2016, by pursuing a working out of class grievance for the purpose of advancing the interests of the Sergeants' bargaining unit to the detriment of the union's Corrections Support bargaining unit?

The complainant did not prove that the union interfered with employee rights under RCW 41.56.150(1) by breaching its duty of fair representation because the complainant did not prove that the union's conduct was arbitrary, discriminatory, or in bad faith.

### BACKGROUND

The union represents classified employees working for Snohomish County. The two bargaining units at issue are the Sergeants' bargaining unit, consisting of sergeants and lieutenants, and the Support bargaining unit, comprised of public, professional, office clerical employees, and driver employees working in corrections support services. During the relevant time period, the Sergeants' collective bargaining agreement (CBA) was effective January 1, 2011, through December 31, 2014. The Support CBA was also effective January 1, 2011, through December 31, 2014.

Pamela Kavanagh is a bargaining unit member in the Support group, and currently holds the title of Booking Support Officer (BSO) Lead. In the fall of 2014, Debi Humann, the business representative for both the Sergeants' bargaining unit and the Support bargaining unit, negotiated the creation of the position of Booking Support Officer lead, which is currently, and has always been, held by Kavanagh. The job description for this position describes tasks such as the processing of timesheets, scheduling time off, and assisting in conducting performance evaluations. The negotiated job description did not require the BSO lead to actually perform the evaluations.

On March 27, 2015, Jon Bates, a member of the Sergeants' bargaining unit, filed a skimming grievance arguing that the BSO lead position was completing timesheets, employee evaluations, and schedules for BSO's; work historically performed by the Sergeants' unit. The parties resolved the grievance on October 15, 2015, and agreed that scheduling and timesheets would fall under the periphery of the BSO lead job description. However, there was no agreement who would perform the evaluations.

Around December 21, 2015, BSO's in the bargaining unit began to express concern to Humann that Kavanagh was performing their evaluations, where in the past a member of the Sergeants' bargaining unit completed this duty. On December 28, 2015, the union filed a grievance on behalf of the Support bargaining unit claiming that the BSO lead should not be performing employee evaluations because that duty was supervisory in nature and had been previously performed by the Sergeants' bargaining unit. When Humann files grievances on behalf of a group it is almost always because the individuals bringing forward the complaint believe if they filed the grievance there would be retaliation or some other negative consequence.

On January 7, 2016, Humann received correspondence from Bureau Chief Aston that the parties reached resolution and the BSO lead position would no longer perform the BSO's evaluations. The employer did not agree to the compensation requested by the union for Kavanagh's previously performed evaluation work. According to the CBA, the "working out of class" clause allows for an employee performing duties in a higher level classification to receive additional pay. Humann testified that although Kavanagh did not receive this higher pay, she (*i.e.* Kavanagh) had also not requested any monetary compensation and believed the resolution of the grievance to be reasonable because it resolved the underlying issue.

In an e-mail Kavanagh sent to the union on January 19, 2016, Kavanagh explained that she felt the union was not representing her interests in this matter because Humann was the business agent for both bargaining units. She also stated that she had contacted Humann before the meeting regarding the working out of class grievance and told Humann she would like to be present for the meeting. Humann, however, did not inform or invite Kavanagh to the meeting.

## ANALYSIS

### Applicable Legal Standards

#### *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).

While the Commission does not assert jurisdiction over “breach of duty of fair representation” claims arising exclusively out of the processing of contractual grievances, 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 under RCW 41.56.150(1) when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *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 and must demonstrate that the union’s actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton*, Decision 1825 (PECB, 1984).

The Washington State Supreme 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 union’s broad discretion in asserting the rights of individual members must be exercised in complete good faith and honesty.
- The union must avoid arbitrary conduct.

Each requirement represents a distinct and separate obligation. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 375 (1983) (quoting *Griffin v. United Automobile, Aerospace & Agricultural Implement Workers*, 469 F.2d 181, 183 (4<sup>th</sup> Cir. 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." *Id.* (quoting Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 Tex. L. Rev. 1119, 1155 (1973)).

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).

These standards also recognize that bargaining unit employees' individual goals may not always be achieved through collective bargaining. *C-Tran*, Decision 7087-B. 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 (1983)).

#### Application of Standards

*The complainant did not prove that the union interfered with her rights when the union pursued a working out of class grievance for the purpose of advancing the interests of the Sergeants' bargaining unit to the detriment of the union's Corrections Support bargaining unit.*

Kavanagh argues that Humann acted in bad faith when she filed the working out of class grievance on behalf of the Corrections Support bargaining unit. She claims that Humann purposefully filed the grievance in bad faith and under false pretenses for the benefit of the Sergeants' bargaining unit. Kavanagh argues in her brief that the working out of class grievance, which pertains to her performing evaluations, is a separate issue from the skimming grievance filed by the Sergeants' unit and should not have even been mentioned in the working out of class grievance. Kavanagh

also contends that Humann felt the resolution of the grievance satisfactory, even though Kavanagh did not get paid for her additional work.

Kavanagh was unable to show the union violated its duty of fair representation because she did not show any connection between the Corrections Support units' working out of class grievance and Humann favoring the interests of the Sergeants' unit over the Corrections Support unit. Although the issue of evaluations was not settled during negotiations over the skinning grievance, Kavanagh did not prove that the union acted arbitrarily, discriminatorily, or in bad faith when it filed the working out of class grievance to address the issue of who would be performing evaluations. It appears that the union filed the working out of class grievance because it was prompted by concerns from several of the Corrections Support bargaining unit members over Kavanagh's involvement in their evaluations. Since the grievance is owned by the union, Humann was well within her limits to bring forward the grievance on behalf of the bargaining unit. Additionally, Humann explained that she found the resolution of the working out of class grievance to be satisfactory even though a monetary remedy was not given, especially considering that Kavanagh had not asked for any monetary compensation. The union did not act arbitrarily or in bad faith where the job description for the BSO lead did not require performing evaluations and there had been no dispute that the work had been previously performed by the Sergeants' bargaining unit.

*Even if the Commission had issued a preliminary ruling giving a cause of action to Kavanagh's claim that Humann representing both bargaining units created a conflict of interest, the union still would not have violated its duty of fair representation.*

Kavanagh argues both in hearing and in brief that the union breached its duty of fair representation by allowing Humann to represent both bargaining units. The preliminary ruling does not give this argument a cause of action, and is therefore not before me. WAC 391-45-110(2)(b). However, I do believe that it is still an important issue to discuss since it came up many times during hearing. In January 2016, Kavanagh e-mailed the union to express growing concerns she had that Humann could not represent both bargaining units at the same time in a fair manner and that she had been ignored by the union when she requested to be part of the negotiating process regarding her

involvement in the evaluation work and was not invited to participate in the grievance meeting. Kavanagh points to internal union notes taken in 2015 which states that if language in the contract is not clear, and a grievance is filed, than Humann would involve another business agent to represent the other party. Although Humann believed the language of the job description to be clear, Kavanagh did not agree.

Even if the Commission had given a cause of action for this issue, the union would not have violated its duty of fair representation because there is no indication that the union acted arbitrarily, discriminatorily, or in bad faith by allowing Humann to continue representing both units during the grievance negotiation process and by not replacing Humann with another business representative because the BSO lead's job description regarding evaluations is clear. The job description states in plain language that it "assists in conducting performance evaluations." The intent of the language was not for the BSO lead to independently perform the evaluations in a supervisory role, but rather to aid in its completion.

It appears that the underlying issue in this case revolves around the strained relationship between Kavanagh and Humann. In Kavanagh's amended complaint her request for remedy is assignment of another union business agent to represent her and the Corrections Support bargaining unit. The Commission has no jurisdiction over internal union affairs and generally does not get involved in such matters. Nor is there any statute prohibiting a business representative from representing a supervisory and its corresponding subordinate bargaining unit. Humann was in the best position to file the grievance on behalf of the Corrections Support bargaining unit because she was the business representative who initially negotiated the job description for the BSO lead position and because the Corrections Support bargaining unit members requested her to do so. Poor communication does not necessarily mean the union violated its duty of fair representation.

### CONCLUSION

Although Kavanagh may not have been satisfied with the representation she received from the union, she was unable to show that the union breached its duty of fair representation by acting arbitrarily, discriminatorily, or in bad faith. The union did not breach its duty of fair

representation to its bargaining unit employees, and therefore did not interfere with employee rights guaranteed by RCW 41.56.150(1).

#### FINDINGS OF FACT

1. Snohomish County is a public employer within the meaning of RCW 41.56.030(12).
2. Teamsters Local 763 is a bargaining representative within the meaning of RCW 41.56.030(2) and represents the Corrections Support and Sergeants' bargaining units.
3. Pamela Kavanagh, a member of the Support bargaining unit represented by the union, holds the position as Booking Support Officer Lead.
4. During the relevant time period, the Sergeants' collective bargaining agreement (CBA) was effective January 1, 2011, through December 31, 2014. The Support CBA was effective January 1, 2011, through December 31, 2014.
5. Pamela Kavanagh is a bargaining unit member in the Support group, and currently holds the title of Booking Support Officer (BSO) Lead. In the fall of 2014, Debi Humann, the business representative for both the Sergeants' bargaining unit and the Support bargaining unit negotiated the creation position of Booking Support Officer lead, which has always been held by Kavanagh. The job description for this position describes tasks such as the processing of timesheets, scheduling time off, and also assisting in conducting performance evaluations. The negotiated job description did not require that the BSO lead actually perform the evaluations.
6. On March 27, 2015, Jon Bates, a member of the Sergeants' bargaining unit, filed a skimming grievance, arguing that the BSO lead position was completing timesheets, employee evaluations, and schedules for BSO's; work historically performed by the Sergeants unit.



7. The parties resolved the grievance on October 15, 2015, and agreed that scheduling and timesheets would fall under the periphery of the BSO lead job description. However, there was no agreement who would perform the evaluations.
8. On December 28, 2015, the union filed a grievance on behalf of the Support bargaining unit claiming that the BSO lead should not be performing employee evaluations because that duty was supervisory in nature and had been previously performed by the Sergeants' bargaining unit.
9. When Humann files grievances on behalf of a group it is almost always because the individuals bringing forward the complaint believed there would be retaliation or some other negative consequence.
10. On January 7, 2016, Humann received correspondence from Bureau Chief Aston that the parties reached resolution and the BSO lead position would no longer perform the BSO's evaluations.
11. The employer did not agree to the compensation requested by the union for Kavanagh's previously performed evaluation work. According to the CBA, the "working out of class" clause allows for an employee performing duties in a higher level classification to receive additional pay. Humann testified that although Kavanagh did not receive this higher pay, she (*i.e.* Kavanagh) had also not requested any monetary compensation, and believed the resolution of the grievance to be reasonable because it resolved the underlying issue.
12. In an e-mail Kavanagh sent to the union on January 19, 2016, Kavanagh explained that she felt the union was not representing her interests in this matter because Humann was the business agent for both bargaining units. She contacted Humann before the meeting regarding the working out of class grievance and told her she would like to be present for the meeting. Humann did not inform or invite her to the meeting.

CONCLUSIONS OF LAW

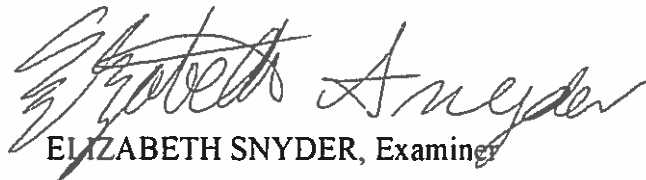
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By its actions described in Findings of Fact 8-11, the union did not interfere with employee rights in violations of RCW 41.56.150(1) by breaching its duty of fair representation.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 21st day of August, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ELIZABETH SNYDER, 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



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### RECORD OF SERVICE - ISSUED 08/21/2017

DECISION 12614-A has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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