

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	Employer.	
ROBERT LEE,	Complainant,	CASE 129808-U-17
vs.		DECISION 12807 - PECB
KING COUNTY SECURITY OFFICERS GUILD,	Respondent.	ORDER OF DISMISSAL

On October 30, 2017, Robert Lee (Lee) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming King County Security Officers Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on November 16, 2017, indicating that it was not possible to conclude that a cause of action existed at that time. Lee 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 Lee. The complaint is dismissed for failure to state a cause of action.

ISSUE

The complaint alleges the following:

Union interference with employee rights in violation of RCW 41.56.150(1) since an unspecified date, by breaching its duty of fair representation by failing to properly file a grievance on Robert Lee's behalf.

<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.

The complaint is dismissed for three reasons. First, the complaint does not describe facts that could constitute a union interference duty of fair representation unfair labor practice within the Commission's jurisdiction. Second, the complaint does not include a brief statement of facts identifying dates, participants involved, places the events occurred; the sections of the Revised Code of Washington alleged to have been violated; and remedies requested for the alleged violations. Third, the complaint does not have numbered paragraphs or dates, participants involved, and places the events occurred.

### BACKGROUND

The King County Security Officers Guild (union) represents security officers, security officers – dispatch, and security sergeants employed by King County (employer). Lee allegedly is a bargaining unit member of the union. Lee alleges the union breached its duty of fair representation.

According to the complaint, in either June or July of 2017, Lee presented a grievance against a co-worker. The complaint alleges that the union failed to properly file grievance paperwork until after Lee obtained his own personal attorney. Additionally, on an unspecified date, union board members refused to answer phone calls, e-mails, and board representative mediation requests.

### ANALYSIS

#### Statement of Facts, Alleged Violations, and Remedies Requested

In this case, it is not possible to conclude that a cause of action exists at this time. Unlike the National Labor Relations Board, PERC does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for the presentation of its case. *See* WAC 391-45-270. The requirements for the contents of the complaint are explained in WAC 391-45-050.

The complaint lacked the requirements of WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.” The complainant

did not include a clear and concise statement of facts constituting the alleged unfair labor practices. The complaint was vague and did not contain dates for or the names of participants in the events described in any of the allegations. For example, the complaint was unclear as to when the failure to represent events occurred. There are missing dates of when board persons refused to answer phone, e-mail, and board mediation.

Additionally the complaint lacked a statement of the remedy sought and indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated. Because the complaint lacked the requirements of WAC 391-45-050, Lee failed to present his case before PERC. Thus the complaint is dismissed.<sup>2</sup>

#### Union Interference – Duty of Fair Representation

##### *Applicable Legal Standard*

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 Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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*, Decision 3199-B (PECB, 1991). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. 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 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)*,

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<sup>2</sup> Complainants must number the paragraphs in the attached statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer. In this case, Lee did not number each of the paragraphs in the statement of facts.

Decision 11291-A. In rare circumstances, the Commission asserts jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. 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)*. 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. *City of Seattle (Seattle Police Officers' Guild)*.

*Application of Standard*

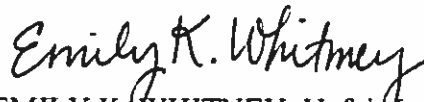
In the complaint, the alleged facts do not describe union interference by breaching its duty of fair representation under RCW 41.56.150(1). The complaint did not explain or develop this allegation. The complaint alleged that the union failed to represent Lee until he retained his own attorney, and the complaint asked PERC to investigate the allegation. The complaint did not include information regarding how 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. The complaint does not state a cause of action for union interference by breaching its duty of fair representation. Thus the complaint is dismissed.

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 18th day of December, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, 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 12/18/2017**

DECISION 12807 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 129808-U-17

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PARTY 3: KING COUNTY SECURITY GUILD

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