

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	Employer.	
CLAUDE R. BROWN,	Complainant,	CASE 27185-U-15
vs.		DECISION 12759-A - PECB
AMALGAMATED TRANSIT UNION LOCAL 587,	Respondent.	DECISION OF COMMISSION

Claude R. Brown, the complainant.

Christie J. Fix, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 587.

Claude Brown filed an unfair labor practice complaint and an amended complaint against the Amalgamated Transit Union Local 587 (union). The Commission's unfair labor practice manager found a cause of action existed for union interference with employee rights by breach of the duty of fair representation. Examiner Karyl Elinski conducted a hearing and issued a decision finding that the union did not interfere with employee rights by breaching its duty of fair representation. *King County (Amalgamated Transit Union Local 587)*, Decision 12759 (PECB, 2017). Brown filed a timely appeal.

The issue before the Commission is whether the union interfered with employee rights by breaching its duty of fair representation by representing Claude Brown in an arbitrary, discriminatory, or bad faith manner. We affirm the Examiner. Brown did not meet his burden to

prove that the union's decision not to advance his grievance to the next step of the grievance procedure was arbitrary, discriminatory, or made in bad faith.

Applicable Legal Standards

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. The Commission also reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the examiner's conclusions of law. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). The Commission reviews factual findings for substantial evidence in light of the entire record. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Public Employment Relations Commission v. City of Vancouver*, 107 Wn. App. 694, 703 (2001); *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000). This deference, while not slavishly observed on every appeal, is highly appropriate in fact-oriented appeals. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

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. *Id.*, 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 the exclusive representatives safeguard employee rights. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012).

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 (1967); *City of Seattle (Seattle Police Officers' Guild)*,

Decision 11291-A, *citing City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's action or inaction was arbitrary, discriminatory, or in bad faith. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A, *citing City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

Application of Standards

Brown filed a grievance alleging that the employer improperly processed his application for a promotion. The union represented Brown at Steps 1 and 2 of the grievance procedure. After Step 2, Union Vice President and Assistant Business Representative Neil Safrin reviewed the grievance. Safrin thought the grievance would be difficult to prove and that the remedy Brown requested was problematic. Based on his analysis, Safrin concluded the union was unlikely to prevail on the grievance at arbitration and decided that the union would not advance the grievance to Step 3.

On appeal, Brown asserted that the question whether the union violated the contract was not answered by the Examiner. The issue before the Examiner was not whether the grievance was meritorious or whether the employer or union violated the collective bargaining agreement. The Examiner was limited to ruling on whether the union had acted arbitrarily, discriminatorily, or in bad faith when it decided not to advance Brown's grievance to Step 3 of the contractual grievance procedure.

In handling a nonfrivolous grievance, a union has the responsibility to at least investigate the grievance objectively and in more than a perfunctory manner. *City of Redmond (Redmond Employees Association)*, Decision 886. The union investigated the grievance and requested documents from the employer. Brown did not prove that the union failed to investigate the grievance or that the union investigated it in a perfunctory manner.

A union must have a reason for not processing a grievance. *Othello School District (Public School Employees of Washington)*, Decision 3037 (PECB, 1988). Safrin explained why he decided the

union should not advance the grievance. While Brown may not agree with Safrin's assessment of the likelihood of the union prevailing on the grievance, the union was acting within its rights to evaluate the grievance and choose not to advance it.¹ Brown did not prove that the union's reason for not advancing the grievance to Step 3 was arbitrary, discriminatory, or in bad faith.

Conclusion

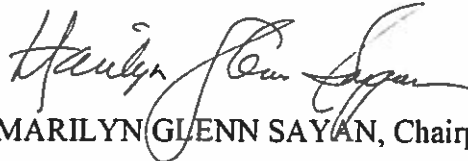
Substantial evidence supports the Examiner's findings of fact, which in turn support the conclusions of law. Brown did not meet his burden to prove that the union acted arbitrarily, discriminatorily, or in bad faith when it chose not to advance Brown's grievance to Step 3.

ORDER

The findings of fact, conclusions of law, and order issued by Examiner Karyl Elinski are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 4th day of January, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK E. BRENNAN, Commissioner



MARK BUSTO, Commissioner

¹ It is not the Commission's place to comment on the likelihood of the union prevailing at the next step of the grievance procedure.



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 01/04/2018

DECISION 12759-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 27185-U-15

EMPLOYER: KING COUNTY

REP BY: ROBERT S. RAILTON
KING COUNTY
ADM-ES-0450
500 4TH AVE RM 450
SEATTLE, WA 98104
bob.railton@kingcounty.gov
(206) 263-1967

KRISTI D. KNIEPS
KING COUNTY
OFFICE OF LABOR RELATIONS
500 4TH AVE RM 450
SEATTLE, WA 98104
kristi.knieps@kingcounty.gov
(206) 477-1896

PARTY 2: CLAUDE R. BROWN

REP BY: CLAUDE R. BROWN
4909 30TH AVE S
SEATTLE, WA 98108
snookybrown@hotmail.com
(206) 722-5261

PARTY 3: AMALGAMATED TRANSIT UNION LOCAL 587

REP BY: CHRISTIE J. FIX
FRANK FREED SUBIT & THOMAS LLP
705 2ND AVE STE 1200
SEATTLE, WA 98104-1798
cfix@frankfreed.com
(206) 682-6711

MICHAEL SHEA
AMALGAMATED TRANSIT UNION LOCAL 587
2815 2ND AVE STE 230
SEATTLE, WA 98121
mshea.president@atu587.org
(206) 448-8588