

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	Employer.	
RANDY WEAVER	Complainant,	CASE 130674-U-18
vs.		DECISION 12902 - PECB
KING COUNTY CORRECTIONS GUILD	Respondent.	PRELIMINARY RULING AND PARTIAL DISMISSAL

On June 7, 2018, Randy Weaver filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County Corrections Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 6, 2018, indicated that it was not possible to conclude that a cause of action existed at that time for some allegations in the complaint. Weaver was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On July 11, 2018, Weaver filed an amended complaint. Weaver's amended complaint did not materially alter any facts contained within his original complaint but added new facts that alleged new causes of action.

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.

ISSUES

The allegations of the June 7, 2018, complaint concern:

1. Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty of fair representation when the union ceased to provide and/or pay for Weaver's legal representation in a lawsuit.
2. Union discrimination in violation of RCW 41.56.040, when the union ceased to provide and/or pay for Weaver's legal representation in a lawsuit.
3. Union discrimination in violation of RCW 41.56.040, when the union unseated Weaver as union president.

The newly asserted allegations of the July 11, 2018, amended complaint concern:

1. Union inducement of employer in violation of RCW 41.56.150(2), within six months of the date the complaint was filed, by requesting that Weaver be disciplined.
2. Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the amended complaint was filed, by breaching its duty of fair representation when the union failed to provide Weaver with legal representation concerning his removal as union president.

The first allegation, concerning the union's duty of fair representation when it ceased to provide and/or pay for Weaver's legal representation in a lawsuit, states a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The second and third allegations of the first complaint and both allegations of the amended complaint are dismissed at the preliminary ruling stage for failure to state causes of action.

BACKGROUND

The union represents a bargaining unit of nonsupervisory corrections officers at King County (employer). The leadership structure of the union includes a president, vice-president, secretary,

treasurer, and eight shift representative positions. The president, vice-president, secretary, treasurer, and eight shift representative positions constitute the union's executive board.

The union's articles of incorporation vest the executive board with the management of the affairs of the corporation. The union's by-laws also vest the president, with the approval of the executive board, the "authority to engage such technical and professional services, including legal counsel. . . ." Jared Karstetter served as the union's legal advisor since at least 1998.

Weaver served as the union's interim president between June 26, 2013, and February 25, 2014. On February 26, 2014, the union's membership elected Weaver as president.

Weaver and other union members believed a union officer may have been involved in corrupt activities against the union and on January 15, 2016, ordered an investigation. During the course of the investigation, Weaver became concerned about Karstetter's actions and inactions including Karstetter's disclosure of confidential attorney-client information to the King County Internal Investigations Unit. Several union members ultimately filed complaints against Karstetter with the Washington State Bar Association. Karstetter asked the union to provide him with representation in the bar complaints but the executive board was split on the issue; some wanted to provide him with representation while others did not. The executive board authorized Weaver to obtain legal advice on whether to represent Karstetter.

On April 27, 2016, Weaver received a legal memorandum recommending that Karstetter's services be terminated. The executive board voted to terminate Karstetter's legal services on the same day. Karstetter was notified of the decision on April 28, 2016. The executive board also notified the membership of its decision on April 28, 2016, by providing the membership with a copy of the legal memorandum.

On May 24, 2016, Karstetter filed a lawsuit (Karstetter lawsuit) against Weaver as well as others. On May 25, 2016, the union held new elections and Weaver was voted out of office. Weaver allegedly anticipated the union would file a counterclaim to the Karstetter lawsuit on his behalf.

On June 1, 2016, the union adopted a resolution to provide legal representation to Weaver and the other defendants in the Karstetter lawsuit. On November 8, 2017, the union reaffirmed its commitment to provide Weaver representation in the Karstetter lawsuit.

On March 14, 2018, and April 11, 2018, the union held officer elections and a new executive board was seated. On April 25, 2018, the new executive board allegedly adopted a resolution ceasing payment of legal fees to the defendants, including Weaver, in the Karstetter lawsuit. The union's officers and members allegedly reported false, unsubstantiated, and/or exaggerated information to the employer's ombudsman and internal investigations units. As part of those complaints, the complaining officers and members allegedly requested that Weaver be disciplined by the employer.

ANALYSIS

Applicable Legal Standards

Timeliness

There is a six-month statute of limitations for unfair labor practice complaints. “[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.” RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice” of the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Complaint Must Be Sufficiently Detailed

WAC 391-45-050(2) requires the complainant to include “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.” Complaints must contain specific descriptions and dates of occurrences so that the respondents can look into the allegations and respond. The Commission cannot address vague

allegations or generalizations that lack required details including times, dates, places, and participants in occurrences.

Discrimination

Generally, there are two types of union discrimination violations that this agency will process. The first is where a union induces the public employer to take a negative action against a bargaining unit employee. RCW 41.56.150(2). To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for nonpayment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

The second is where a union discriminates against an employee for filing an unfair labor practice complaint with this agency or providing testimony at an agency-conducted hearing. RCW 41.56.150(3). A violation concerning discrimination for filing unfair labor practice charges cannot stand absent allegations that the complainant has previously filed an unfair labor practice complaint with the Commission. *Pierce Transit*, Decision 9074 (PECB, 2005).

Union Inducement of Employer to Commit an Unfair Labor Practice

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for nonpayment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A.

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 587)*, 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. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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). The duty of fair representation is breached if the union’s conduct toward one of its members is arbitrary. *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980). 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). 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 inaction were discriminatory or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB 1984).

Application of Standards

Weaver’s allegation that the union unlawfully unseated him as president on May 25, 2016, is not timely because it occurred more than six-months prior to the filing of the complaint and therefore is not within the jurisdiction of this agency. Weaver’s complaint also lacks facts supporting a union discrimination allegation for filing unfair labor practice charges. The complaint does not contain factual allegations describing Weaver’s involvement with filing an unfair labor practice charge.

Weaver’s complaint lacks supporting facts for a union inducement of employer to commit an unfair labor practice allegation in violation of RCW 41.56.150(2). Although Weaver alleges that members and officers reported false, unsubstantiated, and/or exaggerated information to the

employer's ombudsman and internal investigations units, the complaint lacks specific dates for these allegations and fails to identify who allegedly acted on behalf of the union. There are no facts or allegations claiming that the union or its agent conducted these acts in connection with the complainant's protected union activities or other legally protected status.

Finally, Weaver's allegation that until April 25, 2018, he believed the union would file a counterclaim to the Karstetter lawsuit on his behalf with regard to the union's decision to remove him as president fails to allege facts that state a cause of action. While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a wide range of flexibility in the standard to allow for union discretion in settling disputes. 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. Here, the complaint simply states that the union failed to take an action that Weaver desires but contains no facts demonstrating that that union's decision to not file a counterclaim on Weaver's behalf was arbitrary, discriminatory, or in bad faith.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the first interference allegation of the complaint and amended complaint in Case 130674-U-18 states a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty of fair representation when the union ceased to provide and/or pay for Weaver's legal representation in a lawsuit.

The interference allegation will be the subject of further proceedings under Chapter 391-45 WAC.

2. The King County Corrections Guild shall:

File and serve their answer to the allegation 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 allegations of the complaint and amended complaint in Case 130674-U-18 concerning:

- a. union discrimination in violation of RCW 41.56.040, when the union ceased to provide and/or pay for Weaver's legal representation in a lawsuit;
- b. union discrimination in violation of RCW 41.56.040, when the union unseated Weaver as union president;

- c. union inducement of employer in violation of RCW 41.56.150(2) by requesting that Weaver be disciplined; and
- d. union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation when the union failed to provide Weaver with legal representation concerning his removal as union president

are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 9th day of August, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

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 08/09/2018

DECISION 12902 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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