

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF TACOMA, Employer.	
DAVID O'DEA, Complainant, vs. TACOMA POLICE MANAGEMENT ASSOCIATION, Respondent.	CASE 129927-U-17 DECISION 12849-A - PECB CORRECTED ORDER DENYING COMPLAINANT'S MOTION TO ALLOW DISCOVERY, DENYING RESPONDENT'S MOTION TO DISMISS, AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Brett A. Purtzer, Attorney at Law, Hester Law Group, Inc., P.S., for David O'Dea.

David A. Snyder, Attorney at Law, Law Offices of David A. Snyder, LLC, for the Tacoma Police Management Association.

David O'Dea was a lieutenant with the City of Tacoma Police Department and a member of the Tacoma Police Management Association (TPMA) bargaining unit. On August 6, 2016, O'Dea was involved in an officer-involved shooting and was placed on post-shooting administrative leave. Between August 6, 2016, and June 22, 2017, the employer investigated the August 6th incident through their Deadly Force Review Board, Internal Affairs Unit, and Disciplinary Review Board. Effective June 23, 2017, O'Dea was terminated. On July 10, 2017, the TPMA filed a step one grievance concerning the termination/discipline on O'Dea's behalf. The City of Tacoma denied the step one grievance, and the TPMA filed a step two grievance, which was also denied by the City of Tacoma.

The TPMA declined to file the grievance at step three of the parties' collective bargaining agreement and notified O'Dea of the decision. O'Dea's private attorney filed a step three grievance request with the City of Tacoma on O'Dea's behalf. The City of Tacoma denied O'Dea's privately filed step three grievance.

On December 19, 2017, O'Dea filed an unfair labor practice complaint with the Public Employment Relations Commission (PERC) against the TPMA and the City of Tacoma. A deficiency notice was issued on January 19, 2018, and on February 23, 2018, O'Dea filed an amended complaint. A preliminary ruling was issued on April 4, 2018, dismissing all of the charges against the City of Tacoma and finding the following causes of action against the TPMA:

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 in not allowing David O'Dea to provide information in the grievance filing and not explaining to O'Dea why the union was not taking the grievance to arbitration.

The TPMA answered the complaint on May 22, 2018. On July 5, 2018, the TPMA filed a motion to dismiss or, in the alternative, for summary judgment. On July 20, 2018, O'Dea responded to the TPMA's motion for summary judgment. Within O'Dea's response brief was a motion to continue to allow discovery. On July 25, 2018, the TPMA replied to O'Dea's response to the motion for summary judgment and included opposition to O'Dea's discovery motion.

ISSUES

1. Should O'Dea's motion to continue to allow discovery be granted?
2. Should the TPMA's motion to dismiss be granted?
3. Are there genuine issues of material fact in dispute preventing summary judgment that show:
 - a. the TPMA interfered with O'Dea's rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation in not allowing him to provide information in the grievance filing, and
 - b. the TPMA interfered with O'Dea's rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation in not explaining to O'Dea why the union was not taking the grievance to arbitration?

O'Dea's motion to continue to allow discovery is denied. The TPMA's motion to dismiss is denied. There are no genuine issues of material fact in dispute that would prevent summary judgment. The union did not interfere with O'Dea's rights by breaching its duty of fair representation. It allowed O'Dea to provide information in the grievance filing challenging his termination, and it explained to O'Dea why it was not taking the grievance to arbitration. The respondent's motion for summary judgment is granted on issue three, above. The case is dismissed.

Issue 1: O'Dea's motion for discovery is denied.

In O'Dea's response to the TPMA's motion to dismiss or, in the alternative, summary judgment, O'Dea included a motion to continue to allow "some discovery surrounding the declarations" submitted by the TPMA in support of its motion. The Commission's rule concerning discovery in WAC 391-08-300 states, in relevant part, that "[p]ursuant to the authority delegated to the agency by RCW 34.05.446(2), other forms of discovery shall not be available in proceedings before the agency." *See also King County*, Decision 9075-A (PECB, 2007). O'Dea's motion to allow discovery is therefore denied.

Issue 2: The TPMA's motion to dismiss is denied.

PERC's preliminary ruling process, codified in WAC 391-45-110, uses the same standard and analysis as a Washington State Civil Rule 12(b)(6) motion to dismiss.¹ Once a properly-filed complaint is received by the agency, it is reviewed under the preliminary ruling process in WAC 391-45-110 where the unfair labor practice administrator assumes the alleged facts in the complaint are true and provable. If one or more allegations in the complaint state a cause of action, a preliminary ruling is issued summarizing the issue or issues that will go forward to hearing. WAC 391-45-110(2). If all or part of the alleged facts do not state a cause of action that constitutes a violation of the law, a deficiency notice is issued identifying the defects in the complaint. WAC 391-45-110(1). *King County*, Decision 9075-A.

¹ For purposes of processing under WAC 391-45-110, all of the facts alleged in a 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 Commission. In making such rulings, the Executive Director is no less impartial than a federal judge making a ruling under Section 12(b)(6) of the Federal Rules of Civil Procedure, or a state superior court judge making a ruling under Section 12(b)(6) of the superior court civil rules. *Spokane County*, Decision 6708 (PECB, 1999).

A motion to dismiss filed *after* the preliminary ruling process has already found a cause of action to exist using the same “if true and provable” standard would be a relitigation of the preliminary ruling. The Commission has consistently held that respondents may not have a “‘second bite at the apple’ or an opportunity to re-litigate the preliminary rulings issued in unfair labor practice cases by the Executive Director or designee under WAC 391-45-110.” *City of Orting*, Decision 7959-A (PECB, 2003). *See also City of Yakima*, Decision 3880 (PECB, 1991) (“A right of appeal exists if allegations are dismissed as failing to state a cause of action. In distinct contrast, however, no right of appeal attaches to [a] conclusion under WAC 391-45-110 that a case should be heard by an Examiner.”).

A preliminary ruling was issued on April 4, 2018, finding causes of action existed, and an examiner was assigned to hold an evidentiary hearing. The TPMA’s motion to dismiss the causes of action found in the April 4, 2018, preliminary ruling is an attempt to appeal that ruling and, as stated above, no right of appeal attaches to a conclusion under WAC 391-45-110 that a cause of action exists. Therefore, respondent’s motion to dismiss is denied.

Issue 3: There are no genuine issues of material fact in dispute preventing summary judgment as to whether the TPMA breached its duty of fair representation in (a) not allowing O’Dea to provide information in the grievance filing and (b) not explaining to O’Dea why the union was not taking the grievance to arbitration.

ANALYSIS

Applicable Legal Standards

Summary Judgment

A motion for summary judgment may be granted “if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” WAC 10-08-135. The Commission applies the same standards as Washington State courts in ruling on motions for summary judgment. *State – General Administration*, Decision 8087-B (PSRA, 2004). The courts and the Commission define a material fact as one upon which the outcome of the litigation depends. *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243 (1993); *State – General Administration*, Decision 8087-B.

When the moving party shows there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Atherton Condominium Apartment–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

See City of Seattle (Seattle Police Management Association), Decision 12091 (PECB, 2014), *aff'd*, Decision 12091-A (PECB, 2014).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Seattle (Seattle Police Management Association)*, Decision 12091, *citing City of Orting*, Decision 7959-A. In ruling on a motion for summary judgment, the Commission must consider the material evidence and all reasonable inferences most favorably to the nonmoving party and deny the motion if reasonable people might reach different conclusions as to the facts. *City of Seattle (Seattle Police Management Association)*, Decision 12091, *citing Wood v. City of Seattle*, 57 Wn.2d 469 (1960).

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).

The employee claiming a breach of the duty of fair representation has the burden of proof. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984). 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)*, Decision 11291-A (PECB, 2012). 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).

Application of Standards: Grievance Information —Issue 3(a)

As defined by the preliminary ruling, the only issue concerning the content of the grievance filed by the TPMA on O'Dea's behalf in this case is whether the TPMA did not allow O'Dea to provide information concerning the grievance because its conduct was "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 177; *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. O'Dea's response to the TPMA's summary judgment motion, declarations, and attached documentary evidence includes arguments, facts, and discussions concerning a myriad of other issues and concerns involving the same set of facts in other forums such as the City of Tacoma's Deadly Force Review Board, Civil Service Board, and Internal Affairs Unit. The Commission has long held that "[o]nce an examiner is assigned to hold an evidentiary hearing, the examiner can rule *only upon the issues framed by the preliminary ruling.*" *King County*, Decision 9075-A (PECB, 2007), *citing King County*, Decision 6994-B (PECB, 2002) (emphasis added).

The declarations and attached documentary evidence supplied by the TPMA Treasurer Captain Fred Scruggs and the TPMA President Lieutenant Alan Roberts as well as the declarations and attached documentary evidence supplied by O'Dea and his wife, Beverly O'Dea, in opposition to the TPMA's motion show O'Dea was allowed to, and did, provide the TPMA information concerning his grievance. Therefore, the TPMA's conduct was not arbitrary, discriminatory, or in bad faith.

The TPMA submitted two declarations and attached documentary evidence from Scruggs and Roberts. In his sworn declaration, Roberts stated that the TPMA had assigned points of contact from the TPMA to liaison with O'Dea and that, over a 12-month period, the TPMA met with

O'Dea "on many occasions and carefully reviewed in good faith numerous documents and memoranda that he provided" Respondent's Mot. to Dismiss, Decl. of Lieutenant Alan Roberts, at 2:21-22.

In his sworn declaration, Scruggs stated he had been one of the TPMA's liaisons with O'Dea and that, over a 12-month period, he had met with O'Dea "on many occasions and carefully reviewed in good faith numerous documents and memoranda that he provided" He also stated that he had discussed with O'Dea his "request that additional contact provisions be cited" in the grievance and received an e-mail with input on what O'Dea believed should be included in the grievance. Respondent's Mot. to Dismiss, Decl. of Captain Fred Scruggs, at 1:20-21; 2:4-6.

Scruggs' and Roberts' sworn declarations concerning meeting with O'Dea, and discussing and receiving input in person and via e-mail and memorandum from him are further supported and corroborated by O'Dea's and his wife's sworn declarations and attached documentary evidence in opposition to the TPMA's motion. O'Dea submitted a 33-page sworn declaration with 51 exhibits attached; his wife submitted a 17-page sworn declaration with eight exhibits attached. The overwhelming majority of their declarations and attachments concerned issues unrelated to the issue of what input O'Dea provided to the TPMA concerning the grievance filing, such as various documents, conversations, events, and processes concerning the Tacoma Police Department's Deadly Force Review Board, Internal Affairs Unit, and Civil Service Board. On the issue of whether O'Dea was allowed to supply information to the TPMA concerning the grievance, the O'Deas' declarations corroborate Scruggs and Roberts' declarations that O'Dea had met with, spoke on the phone and in person with, and exchanged e-mails with the TPMA representatives on multiple occasions concerning the grievance filed on his behalf.

O'Dea's declaration details the following input directly concerning the grievance he was allowed to, and did, provide to the TPMA:

June 29, 2017: O'Dea sent an e-mail with the subject line "Re: Local 26 E-board meeting"² to Scruggs, Roberts, and the TPMA's then attorney, Christopher Casillas, and attached a document

² The TPMA's Executive Board meeting.

titled "PERC.docx," which he described as a document detailing issues that [he] believed needed to be addressed by TPMA. Complainant's Resp. to TPMA's Mot. for Summ. J., Decl. of David O'Dea in Opp'n to Resp't's Mot. to Dismiss and for Summ. J., Ex. 37.

July 6, 2017 (9:15 a.m.): O'Dea sent an e-mail to Scruggs and Roberts with a subject line of "O'Dea Grievance Issues Email #1," which he described as containing attachments of "various documents, links to video, and audio files that [he] believe[d] [were] very relevant to the union's discussions and thoughts about moving forward with grieving [his] termination." He further stated that the "first document contains items and relevant information to PERC issues, grievance matters, investigation issues, etc." That e-mail included an attached "Grievance Issues" document that is a 10-page, single-spaced document detailing O'Dea's input/ideas on what should be included in his grievance. In his declaration, O'Dea stated that the attached "Grievance Issues" document "contained items and relevant information to PERC issues, grievance matters, and investigation issues that the TPMA Executive Board needed to consider." Complainant's Resp. to TPMA's Mot. for Summ. J., Decl. of David O'Dea in Opp'n to Resp't's Mot. to Dismiss and for Summ. J., at 4:13–15 and Ex. 40.

July 6, 2017 (9:19 p.m.): O'Dea sent another e-mail to Scruggs and Roberts with a subject line of "O'Dea grievance." In it, he discussed what he felt should be included in his soon-to-be filed grievance and his reasons for various inclusions. Complainant's Resp. to TPMA's Mot. for Summ. J., Decl. of David O'Dea in Opp'n to Resp't's Mot. to Dismiss and for Summ. J., Ex. 39.

July 10, 2017 (8:35 a.m.): O'Dea e-mailed Scruggs another detailed listing of contract violations and issues he believed should be included in the grievance, in addition to the one that the TPMA had identified. He stated that he was "thinking it [was] more than just a violation of Article 24 and being too severe" and listed Article 6 (Management Rights), Article 17 (Manuals of Rules and Procedures), and Article 25 (Employee Rights) along with his reasoning for believing they should also be grieved. Complainant's Resp. to TPMA's Mot. for Summ. J., Decl. of David O'Dea in Opp'n to Resp't's Mot. to Dismiss and for Summ. J., Ex. 44.

In her declaration, Beverly O'Dea stated she and O'Dea had "discussed the level of discipline issue with [Scruggs] on several occasions, attempting to also include [Roberts] in those discussions"

and that “[t]his was one of the specific topics which we addressed with [Scruggs] during his visit *when we discussed the drafting of the grievance.*” Complainant’s Resp. to TPMA’s Mot. for Summ. J., Decl. of Beverly O’Dea in Opp’n to Resp’t’s Mot. to Dismiss and for Summ. J., at 5:7–9 and 5:18–21. (emphasis added).

On July 8, 2017, O’Dea was provided with a copy of the grievance that the TPMA planned to file on his behalf via e-mail from Roberts. Roberts also stated that he would wait until Wednesday, July 12, 2017, to file the grievance, allowing O’Dea and his attorney time to review the document. However, instead of waiting until July 12, Roberts filed the grievance on July 10, 2017, while meeting with the police chief on other matters.

In his brief, O’Dea claims Roberts’ failure to honor the timeline and allow O’Dea to review the final grievance resulted in it being filed “without any input from [O’Dea].” The evidence does not support a finding that O’Dea was not allowed to give any input. Rather, it shows he was not allowed to provide *further* input; i.e., beyond the input discussed above, which was given in person, on the phone, by e-mail, and in memorandum. Viewing this one event in isolation ignores the evidence, discussed above, that on multiple occasions O’Dea discussed and provided the TPMA input concerning the grievance filing. Not reviewing the final draft that the TPMA decided to file does not alter the fact that O’Dea was allowed to provide input in multiple formats prior to the grievance being filed.

The sworn declarations and evidence of both Scruggs and Roberts, along with the O’Deas’ corroborating sworn documentary evidence, conclusively show that the TPMA received input from O’Dea on multiple occasions. The TPMA received input, including at his home and on the phone as well as receiving multiple e-mails and memoranda on the subject of what the grievance at-issue in this case should contain. 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. Here, the evidence presented shows that the TPMA did not act arbitrarily, discriminatorily, or in bad faith and did not interfere with O’Dea’s rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation in not allowing him to provide information in the grievance filing.

Conclusion

There are no genuine issues of material fact in dispute that would prevent summary judgment. The TPMA's motion for summary judgment is granted. The TPMA allowed O'Dea to provide information in the grievance filing that challenged his termination. On the narrow issue of whether the TPMA interfered with O'Dea's rights by breaching its duty of fair representation by not allowing him to provide information in the grievance filing, the written record presented by both parties in support of and in opposition to the motion show the union did not interfere with O'Dea's rights by breaching its duty of fair representation. This allegation is dismissed.

Application of Standards: Failure to Explain Why Not Arbitrating Grievance—Issue 3(b)

O'Dea claims that he was given no explanation as to why the TPMA would not take his grievance to arbitration under step three of the parties' grievance procedures. However, the evidence presented by the TPMA and corroborated by O'Dea's own declaration shows that he was, in fact, given an explanation. On July 24, 2017, the TPMA's full executive board met with O'Dea to allow him to present his case for taking his grievance to arbitration. Roberts' and Scruggs' sworn declarations both state that O'Dea was allowed to present any information he deemed relevant and O'Dea's sworn declaration stated that he presented information that "ran the gamut," including:

The DFRB [Deadly Force Review Board] being held without first hearing from me, which I believed violated my Due Process rights; the lengthy delay by the Department before they interviewed me in Internal Affairs in violation of the CBA; the failure by the Department to provide me all documents on which they based their decision in violation of the CBA; the Chief unilaterally changing not only Department policy but public policy in his applying his expectations of a reasonable officer rather than the Department policy and Supreme Court rulings; the written questions to the Range Sergeant in violation of past practice; and the unilateral change in Department policy made by the Chief when he accepted and enforced the Range Sergeant's statement that I should have targeted the driver of the vehicle as he posed the threat. I presented information and facts of the twenty-four recent Officer Involved Shootings . . . and [pointing] out numerous contradictions contained in the investigative material and specific violations of the CBA Articles 6, 17, 24, and 25.

O'Dea's sworn declaration stated that on August 9, 2017, he received an e-mail from Scruggs with the TPMA's letter notifying him of its decision to not take his grievance to arbitration. The letter stated that "after careful consideration of your request, meeting with you, and reviewing the

investigation and related documents, the Association has decided that it will not grieve and arbitrate the City's decision to terminate your employment." O'Dea Declaration, Exhibit 50 and Roberts Declaration, Exhibit 3.

O'Dea further declared that on August 10, 2017, he spoke with Scruggs who further explained to him that the decision was based on "a 'decision of our attorney.'" O'Dea states that he asked Scruggs about specifics but that Scruggs did not clarify and Roberts did not respond to messages left on his mobile and work phones.

The TPMA's reasons, as stated to O'Dea in its August 9th letter to him and in the August 10th discussion with Scruggs, show that the TPMA explained to O'Dea that it had based its decision on the following:

1. Careful consideration of O'Dea's request.
2. Meeting with O'Dea and reviewing the investigation and related documents.
3. The TPMA's attorney's advice.

It may be true that O'Dea disagreed with the TPMA's decision and that the TPMA did not divulge the specifics of the advice it received from its attorney, but that does not equate to a failure of the TPMA to inform him that it was not taking his grievance to arbitration nor that the TPMA failed to give O'Dea a reason for its decision. The evidence presented shows the TPMA did not act arbitrarily, discriminatorily, or in bad faith and did not interfere with O'Dea's rights in violation of RCW 41.56.150(1).

Conclusion

The written record presented by both parties in support of and in opposition to the motion show there are no genuine issues of material fact in dispute that would prevent summary judgment. The TPMA's motion for summary judgment is therefore granted. The TPMA explained to O'Dea why it was not taking the grievance to arbitration. On the narrow issue of whether the TPMA interfered with O'Dea's rights by breaching its duty of fair representation by not explaining to O'Dea why the union was not taking the grievance to arbitration, the union did not interfere with O'Dea's rights by breaching its duty of fair representation. This allegation is dismissed.

FINDINGS OF FACT

1. The City of Tacoma is a public employer within the meaning of RCW 41.56.030(12).
2. The Tacoma Police Management Association (TPMA) is an exclusive bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of commissioned personnel holding the permanent ranks of lieutenant and captain employed by the employer.
3. Complainant David O'Dea was a lieutenant at the City of Tacoma Police Department and a member of the bargaining unit described in finding of fact 2.
4. The TPMA and the City of Tacoma were parties to a collective bargaining agreement effective from January 1, 2015, through December 31, 2017.
5. The TPMA assigned points of contact to liaison with O'Dea and those contacts met with O'Dea on multiple occasions over a 12-month period to discuss his grievance and review documents and memoranda O'Dea provided concerning his grievance.
6. On June 29, 2017: O'Dea sent an e-mail to Scruggs, Roberts, and the TPMA's then attorney, Chris Casillas, with the subject line "Re: Local 26 E-board meeting" and attached a document titled "PERC.docx," which he described as a document "detailing issues that I believed needed to be addressed by TPMA" concerning his grievance.
7. On July 6, 2017, O'Dea sent an e-mail to Scruggs and Roberts with a subject line of "O'Dea Grievance Issues Email #1" containing attachments of "various documents, links to video, and audio files that [he] believe[d] [were] very relevant to the union's discussions and thoughts about moving forward with grieving [his] termination."
8. One of the documents attached to the e-mail identified in finding of fact 7 was a detailed, typed, 10-page, single-spaced document identified by O'Dea as containing "items and

relevant information to PERC issues, grievance matters, and investigation issues that the TPMA Executive Board needed to consider.”

9. On July 6, 2017, O’Dea sent a second e-mail to Scruggs and Roberts with a subject line of “O’Dea grievance,” which further discussed what he [felt] should be included in his soon-to-be filed grievance and his reasons for various inclusions.
10. On July 10, 2017, O’Dea e-mailed Scruggs a third e-mail detailed listing of contract violations and issues he believed should be included in the grievance, stating he was “thinking it [was] more than just a violation of Article 24 and being too severe . . .” and listed Article 6 (Management Rights), Article 17 (Manuals of Rules and Procedures), and Article 25 (Employee Rights) along with his reasoning for believing they should also be grieved.
11. On July 8, 2017, O’Dea was provided with a copy of the grievance that the TPMA planned to file on his behalf and was advised the TPMA would wait until Wednesday, July 12, 2017, to file the grievance to allow O’Dea and/or his attorney time to review the document.
12. On July 10, 2017, the TPMA filed the grievance on O’Dea’s behalf with the City of Tacoma, which challenged O’Dea’s termination for a just cause violation under Article 24 of the parties’ collective bargaining agreement.
13. On July 24, 2017, the TPMA’s full executive board met with O’Dea and allowed him to present his case for taking his grievance to arbitration.
14. On August 9, 2017, O’Dea received an e-mail from Scruggs that included the TPMA’s letter notifying him of their decision that the TPMA would not be taking his grievance to arbitration.
15. The e-mail identified in finding of fact 14 stated that “after careful consideration of your request, meeting with you, and reviewing the investigation and related documents, the

Association has decided that it will not grieve and arbitrate the City's decision to terminate your employment."

16. On August 10, 2017, O'Dea spoke with Scruggs who further explained to him that the decision was based on "a 'decision of our attorney.'" O'Dea stated that he asked Scruggs about specifics but that Scruggs did not clarify and Roberts did not respond to messages left on his mobile and work phones.
17. On August 9, 2017, the TPMA explained to O'Dea via letter it had had based its decision to not arbitrate his grievance based on careful consideration of his request and meeting with O'Dea and reviewing the investigation and related documents.
18. On August 10, 2017, Scruggs further explained that the TPMA's decision was also based on a legal memorandum from the TPMA's attorney.

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. According to findings of fact 5 through 12, no genuine issue of material fact exists under WAC 10-08-135 that the TPMA did not interfere with O'Dea's rights by breaching its duty of fair representation under RCW 41.56.150(1) by not allowing O'Dea to provide information in the grievance filing. Accordingly, the moving party is entitled to judgment as a matter of law, and the respondent's motion for summary judgment on this issue is granted.
3. According to findings of fact 13 through 18, no genuine issue of material fact exists under WAC 10-08-135 that the TPMA did not interfere with O'Dea's rights by breaching its duty of fair representation under RCW 41.56.150(1) by not explaining to O'Dea why the union was not taking the grievance to arbitration. Accordingly, the moving party is entitled to

judgment as a matter of law, and respondent's motion for summary judgment on this issue is granted.

ORDER

Respondent's motion is GRANTED and Case No. 129927-U-17 is hereby DISMISSED.

ISSUED at Olympia, Washington, this 24th day of October, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



GUY OTILIO COZZ, 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 10/24/2018

CORRECTED DECISION 12849-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 129927-U-17

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