

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	Employer.	
ROBERT LEE,	Complainant,	CASE 130434-U-18
vs.		DECISION 12907-A - PECB
KING COUNTY SECURITY GUILD,	Respondent.	DECISION OF COMMISSION

Desmond D. Kolke, Attorney at Law, Law Offices of Desmond D. Kolke, for the complainant, Robert Lee.

Spencer Nathan Thal, Attorney at Law, Vanguard Law, PLLC, for the King County Security Guild.

On February 9, 2018, Robert Lee filed an unfair labor practice complaint against the King County Security Guild (union). The unfair labor practice administrator issued a preliminary ruling finding a cause of action for interference with employee rights by the union “breaching its duty of fair representation by engaging in arbitrary, discriminatory or bad faith conduct in the representation of” Lee. The union filed an answer.

The union filed a motion for summary judgement. Lee responded. Examiner Elizabeth Snyder granted the union’s motion for summary judgment. Lee appealed.

The standard of review on summary judgment is de novo. *Washington Federation of State Employees v. State of Washington*, 127 Wn.2d 544, 551 (1995); *Kiona-Benton City School District (Kiona Benton Education Association)*, Decision 11862-A (EDUC, 2014). On review, the Commission performs the same inquiry as the Examiner. *Freedom Foundation v. Gregoire*,

178 Wn.2d 686, 694 (2013); *Kiona-Benton City School District (Kiona Benton Education Association)*, Decision 11862-A. On appeal, the issue is whether there are any genuine issues of material fact that would contravene the motion for summary judgment. *Jacobsen v. State of Washington*, 89 Wn.2d 104, 108 (1977); *Cowlitz County*, Decision 12483-A (PECB, 2016).

The Examiner's decision contains errors in factual description. Nonetheless, we find there are no genuine issues of material fact and summary judgment was appropriate.

BACKGROUND

On June 20, 2017, Lee was scheduled to work an overtime shift with a female employee, Lynn Lester. Lester had filed a complaint against Lee. The employer determined it would be in the best interest of both parties if Lee and Lester did not work together. Therefore, Security Chief Collin Sanders cancelled Lee's overtime shift. After investigating the complaint, the employer found the complaint unsubstantiated.

On June 20, 2017, Lee filed a notice of intent to grieve and a gender bias complaint with the union. During July 2017 Lee and union vice president Deryl King exchanged voice mail and e-mail messages about the grievance. Although King concluded that Lee did not have a valid grievance, he pursued the grievance at step 1. The union filed the grievance on July 20, 2017.

On August 4, 2017, the union and employer held a grievance meeting. Sanders attended the meeting on behalf of the employer, and King and union representative Avi Negron attended the meeting on behalf of the union. To settle the grievance, the employer offered Lee the opportunity to work a full eight-hour overtime shift on a different day or two hours of overtime pay. Lee rejected the employer's offers.

On August 31, 2017, the employer e-mailed the union a Step 1 Grievance Response dated August 10, 2017. The employer denied the grievance because the union did not timely file the grievance and because the employer cancelled the overtime shift more than three hours before it was scheduled to begin. The union chose not to advance the grievance to step 2.

ANALYSIS

Legal Standard

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 agreement. *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 (1967); *City of Redmond*, 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 discriminatory or in bad faith. *City of Renton*, Decision 1825 (PECB, 1984).

Application of Standard

In his complaint, Lee alleged that the union’s failure to represent him was due to “gender based favoritism” and that the union’s failure to file the grievance breached the duty of fair representation and was based on the union’s desire to accommodate the female employee. To support these theories, he offered evidence of the union representing Lester, with whom he was scheduled to work, in disciplinary actions. On appeal, Lee argued that there was a dispute as to whether the union’s failure to file the grievance in a timely manner breached its duty of fair representation.

In its motion for summary judgment, the union asserted that the grievance was without merit. The union asserted that it represents members with divergent issues. In this case, it assigned a representative to represent Lee. The union argued that the complainant sought an inference that because the union successfully represented a female employee and the complainant is male, the

union was motivated by invidious discrimination when it did not pursue the grievance. The union argued that the facts did not support such an inference.

On appeal, Lee contends that asking the union to file a grievance “required [the union] to perform a ministerial and procedural act which did not require the exercise of judgment.” A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *City of Seattle (Seattle Police Officers’ Guild)*, Decision 11291-A (PECB, 2012). The union concluded that the grievance was without merit. Accordingly, the union acted within its rights when it decided not to pursue the grievance.

Despite the union’s evaluation of the grievance, the union represented Lee in a grievance meeting and secured settlement offers. Lee rejected the settlement offers that would have made him whole. Despite the union concluding that the grievance lacked merit and filing the grievance late, the union effectively represented Lee when it secured offers that would have made him whole.

On summary judgement, we must determine whether there are any issues of material fact. We conclude, as the Examiner did, there are no issues of material fact. In response to the motion for summary judgment, the complainant did not offer evidence to counter the facts that the union represented him, that the union secured a “make whole” settlement offer, or that Lee rejected the settlement offer. Rather, Lee focused on his theory of the case that the union favored the female employee over him. This assertion and the evidence of the union representing Lester do not create an issue of material fact.

CONCLUSION

Summary judgment was appropriate. There are no questions of material fact. The union represented Lee. Lee did not establish any facts that showed that the union discriminated against him based on his gender. Finally, the lack of explanation as to why the union filed the grievance late, on July 20, 2017, is not dispositive evidence that the union breached its duty of fair representation.

ORDER

Findings of fact 1 thru 10 and 12 through 14 are AFFIRMED and adopted as the Findings of Fact of the Commission. Finding of fact 11 is VACATED.

The Conclusions of Law and Order issued by Examiner Elizabeth Snyder are AFFIRMED and adopted as the Conclusions of Law and Order of the Commission.

ISSUED at Olympia, Washington, this 27th day of November, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner

Commissioner Spencer Nathan Thal
did not participate in the consideration or
decision of this case.



RECORD OF SERVICE

ISSUED ON 11/27/2018

DECISION 12907-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 130434-U-18

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