

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EUGENE DEMESA, Complainant, vs. PIKE PLACE MARKET PRESERVATION DEVELOPMENT AUTHORITY, Respondent.	CASE 131156-U-18 DECISION 12961 - PECB ORDER OF DISMISSAL
EUGENE DEMESA, Complainant, vs. TEAMSTERS LOCAL 117, Respondent.	CASE 131157-U-18 DECISION 12962 - PECB ORDER OF DISMISSAL

On November 29, 2018, Eugene DeMesa (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission (Commission) under Chapter 391-45 WAC, naming the Pike Place Market Preservation Development Authority (employer) and Teamsters Local 117 (union) as respondents. The cases were numbered 131156-U-18 (against the employer) and 131157-U-18 (against the union). The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on December 14, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. DeMesa was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the case.

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.

On December 21, 2018, DeMesa filed an amended complaint. The unfair labor practice administrator dismisses the complaint for failure to state a cause of action.

ISSUE

The complaint alleges:

Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaints were filed, by breaching its duty of fair representation in not helping Eugene DeMesa regarding an unemployment benefits appeal.

No specific violations alleged against the employer.

The complaint does not include any alleged facts against the employer. The complaint lack facts alleging the union refused to help DeMesa on an arbitrary basis, discriminatory basis, or in bad faith; or be based on considerations that are irrelevant, invidious, or unfair. Because the complaint lacks necessary facts, the complaint must be dismissed for failure to state a cause of action.

BACKGROUND

The complaint alleges on August 28, 2018, DeMesa called the union to ask for help because his unemployment benefits had been appealed by the employer. The union allegedly responded that because DeMesa had contacted a lawyer, it could not help him. The complaint alleged that DeMesa had only consulted with an attorney.

ANALYSIS

No Facts Alleged Against the Employer

The complaint form had the box checked that the allegations were against both the employer and union. The amended complaint does not include any allegations against the employer. Complaints must contain a statement of facts with numbered paragraphs. WAC 391-45-050. The statement of facts should include the times, dates, places, and participants in occurrences. The amended

complaint only included facts alleging a union violation. Because there are no facts alleging the employer committed a violation, the complaint against the employer must be dismissed.

Union Duty of Fair Representation Allegation Lacks Facts Necessary to Find a Cause of Action

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 duty of fair representation originated with decisions of the Supreme Court of the United States holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944). 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 Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute and does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. *Bremerton School District*, Decision 5722-A (PECB, 1997). 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 more than merely negligent; it must be arbitrary, discriminatory, or in bad faith; or be based on considerations that are irrelevant, invidious, or unfair. *City of Redmond*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach

of the duty of fair representation has the burden of proof. *City of Renton*, Decision 1825 (PECB, 1984).

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington State Supreme Court adopted three standards to measure whether a union has breached its duty of fair representation:

1. The union must treat all factions and segments of its membership without hostility or discrimination.
2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.
3. The union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

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. *Allen*, 100 Wn.2d at 375. 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. 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 Standard

The amended complaint alleges that DeMesa contacted the union and requested assistance regarding appealed unemployment benefits. The amended complaint also alleges that the union stated it could not help DeMesa. The complaint fails to allege facts that the union's actions were arbitrary, discriminatory, or in bad faith; or be based on considerations that are irrelevant, invidious,


or unfair. Dissatisfaction with the level of representation does not form the basis for a cause of action. The complaint must be dismissed for failure to state a cause of action.

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 7th day of January, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 01/07/2019

DECISIONS 12961 – PECB and 12962 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASES 131156-U-18 and 131157-U-18

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