

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHARON E. KRAMER, Complainant, vs. RENTON TECHNICAL COLLEGE, Respondent.	CASE 131188-U-18 DECISION 12968 - PECB ORDER OF DISMISSAL
SHARON E. KRAMER, Complainant, vs. RENTON PROFESSIONAL TECHNICAL ASSOCIATION, Respondent.	CASE 131189-U-18 DECISION 12969 - PECB ORDER OF DISMISSAL

On December 12, 2018, Sharon E. Kramer (Kramer or complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Renton Technical College (employer) and Renton Professional Technical Association (union) as respondents. The cases were numbered 131188-U-18 (against the employer) and 131189-U-18 (against the union). The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 31, 2018, indicated that it was not possible to conclude that a cause of action existed at that time. Kramer was given a period of

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.

21 days in which to file and serve an amended complaint or face dismissal of the case. No further information has been filed by the complainant.

The allegations of the complaint against the employer concern:

Employer contract violations.

Employer domination in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)] by using an unnamed human resources employee who belongs to the bargaining unit to undermine union support.

General discrimination violations.

The allegations of the complaint against the union concern:

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation in not moving Sharon Kramer's grievance forward to arbitration.

Union contract violations.

The complaints do not describe facts that could constitute a violation of the statutes within the Commission's jurisdiction. The complaints are dismissed.

BACKGROUND

The Renton Professional Technical Association represents a bargaining unit of professional and technical employees at the Renton Technical College. Sharon Kramer is an employee in the bargaining unit.

Case 131188-U-18

The complaint against the employer alleged the employer investigated Kramer for an unspecified reason. During the course of the investigation, the employer allegedly informed Kramer that the investigation would be extended for an unspecified amount of time. The employer allegedly ignored this timeline.

Kramer also alleged that the employer failed to follow the contractual grievance procedure, introduced new charges against her, and used an unidentified “ex co-worker” from Green River College to investigate. Kramer also asserted that the employer used an unidentified human resources employee to undermine the union. The human resources employee is allegedly a bargaining unit member.

Finally, Kramer alleged that an unidentified “Human Resources/Union Representative” witnessed a supervisor engaging in an unidentified form of discrimination and harassment but did not report it to human resources or advise the complainant to report it to human resources.

Case 131189-U-18

Kramer’s complaint against the union alleges that the union failed to assist Kramer in processing a grievance and failed to take that grievance to arbitration despite alleged assurances that the grievance would be supported. Kramer claims that the union failed to provide her with information as to how she could process the grievance on her own.

Kramer also alleged that the union was aware that Kramer’s supervisor engaged in retaliation and harassment against Kramer but did nothing to stop those actions and that the union advised Kramer against reporting the incidents. Finally, the complaint alleged that the union failed to “recognize and remove” an unidentified human resources employee who was allegedly undermining the union.

ANALYSIS

Procedural Defects Found in Both Complaints

Both complaints make general statements about the employer’s actions and union’s lack of action. Neither complaint identified the names of individuals who acted on behalf of the employer or who failed to act on behalf of the union. The failure to identify employer and union officials who are alleged to have committed the unfair labor practice violations is problematic. WAC 391-45-050(2) requires the complainant to identify alleged participants. Additionally, neither complaint included the date(s) of the occurrences.

At minimum, the date(s) of the occurrences and the names of some of the participants were needed to determine whether these allegations were timely filed and to allow the employer to respond to the allegations. The complainant's failure to amend her complaints to include "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences" as required by WAC 391-45-050(2) constitutes a procedural defect that warrants dismissal of the complaints.

Substantive Defects for Case 131188-U-18

In addition to the procedural defects described above, Kramer's complaints contained substantive defects that also warrant dismissal.

Contract Violations

Kramer alleged the employer violated the provisions of the grievance procedure in the existing collective bargaining agreement. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *Tacoma School District*, Decision 5465-E (EDUC, 1997). The allegations that the employer violated provisions of the existing collective bargaining agreement are dismissed.

Employer Domination

Kramer also alleged that the employer attempted to dominate the union by using an unidentified human resources employee to undermine the union. Commission decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term "domination" is thus directly tied to the term

“assistance” and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer’s actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference. It is appropriate to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.

Kramer’s complaint failed to allege facts that could constitute a domination violation. The complaint failed to allege that the employer was providing unlawful assistance to the union or that it was attempting to control the union through its actions. This allegation of the complaint is dismissed for failure to state a cause of action.

General Discrimination Violations

Finally, Kramer’s complaint alleged that an unidentified “Human Resources/Union Representative” witnessed a supervisor engaging in an unidentified form of discrimination and harassment but did not report it to human resources or advise the complainant to report it to human resources. The Commission’s jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Id.* This portion of the complaint is dismissed for failure to state a cause of action.

Substantive Defects for Case 131189-U-18

Duty of Fair Representation

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 requires an

exclusive bargaining representative to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville & 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 (Redmond Employees Association)*, 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 (Washington State Council of County and City Employees)*, 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).

Kramer alleged that the union failed to assist her in processing a grievance and failed to take that grievance to arbitration despite alleged assurances that the grievance would be supported. Kramer also alleged that the union was aware that her supervisor engaged in retaliation and harassment against Kramer but did nothing to stop those actions. Finally, the complaint claims that the union advised Kramer against reporting the incidents.

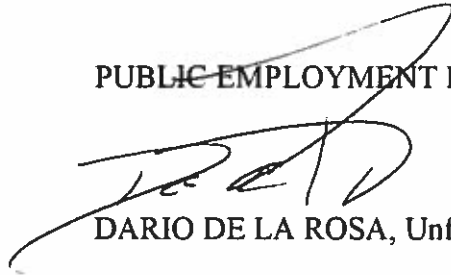
These allegations lack facts alleging that the union breached its duty of fair representation. Kramer's dissatisfaction with the level of representation does not form the basis for a cause of action unless she can demonstrate that the union violated rights guaranteed in statutes administered by the Commission.

ORDER

The complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 29th day of January, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'D. De La Rosa', is written over the text of the Public Employment Relations Commission.

DARIO DE LA ROSA, 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 01/29/2019

DECISION 12968 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 131188-U-18

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RECORD OF SERVICE

ISSUED ON 01/29/2019

DECISION 12969 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 131189-U-18

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