

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,

Employer.

JONATHAN D. ALLISON,

Complainant,

vs.

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Respondent.

CASE 131314-U-19

DECISION 12993 - PSRA

ORDER OF DISMISSAL

On February 19, 2019, Jonathan Allison (Allison or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 15, 2019, indicated that it was not possible to conclude that a cause of action existed at that time. Allison was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by Allison. Allison's complaint is dismissed for failure to state a cause of action that can be redressed by the statutes this agency administers.

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.

BACKGROUND

In 2016, Allison worked at the Special Commitment Center of the Department of Social and Health Services (employer). He was included in a bargaining unit of psychologists represented by the Washington Federation of State Employees (union).

In March 2016 the employer initiated an investigation against Allison. Allison's union representative, John Watson, filed several grievances concerning the investigation that were apparently rejected by the employer. The union declined to submit those grievances to arbitration because Allison continued to be employed at that time.

In March 2018 the employer initiated a second investigation. Watson took notes about the second investigation. Watson's employment with the union was apparently terminated and Angie Simpson became Allison's new union representative.

On August 16, 2018, the employer terminated Allison's employment. Allison received a final investigation report with his termination letter, which allegedly contained significant discrepancies. On November 16, 2018, Allison sent an e-mail to Simpson requesting Watson's notes. Simpson responded that the location of those notes were unknown.

ANALYSIS

Allison's complaint contained both procedural and substantive defects that precluded further processing.

Procedural Defects

The rules for contents of complaints are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences."

Complainants must number the paragraphs in the attached statement of facts. WAC 391-45-050. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer. Additionally, an unfair labor practice complaint should contain a separate statement of remedy sought by the complainant as described in WAC 391-45-050(3).

Allison failed to properly number the paragraphs in the complaint and failed to include a separate paragraph requesting a remedy for the alleged unfair labor practices. While these procedural defects warrant dismissal of Allison's complaint, there are substantive defects that also warrant dismissal.

Duty of Fair Representation

It is an unfair labor practice for a union to restrain or coerce public employees in the exercise of their rights. RCW 41.80.110(2)(a). 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).

This agency is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. However, the agency 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 this agency 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. *Id.* 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).

Allison alleged that the union the union was "not motivated to represent [him] adequately." The complaint lacked facts alleging how the union's conduct was arbitrary, discriminatory, or in bad

faith. Allison's dissatisfaction with the level of representation does not form the basis for a cause of action unless he can demonstrate the union violated rights guaranteed in statutes administered by the Commission. Allison failed to do so and therefore the duty of fair representation allegations are dismissed.

Failure to Provide Notes

Employees covered by Chapter 41.80 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from restraint, coercion, or discrimination. RCW 41.80.050. It is an unfair labor practice for a union to interfere, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.80 RCW. RCW 41.80.110(2)(a).

Allison failed to allege facts that an employee could reasonably perceive the union's actions as a threat of reprisal or force, or promise of benefit, associated with union activity of the employee or other employees. Allison's interference allegations are dismissed.

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 25th day of April, 2019.

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 04/25/2019

DECISION 12993 - PSRA 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 131314-U-19

EMPLOYER: WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

PARTY 2: JONATHAN D. ALLISON

REP BY: JONATHAN D. ALLISON
3009 52ND PL NE
TACOMA, WA 98422
all1938@aol.com

PARTY 3: WASHINGTON FEDERATION OF STATE EMPLOYEES

REP BY: HERB HARRIS
WASHINGTON FEDERATION OF STATE EMPLOYEES
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
herbh@wfse.org