

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GLORIA BUTTS,  Complainant,  vs.  FEDERAL WAY SCHOOL DISTRICT,  Respondent.	CASE 131413-U-19  DECISION 13010 - PECB  ORDER OF DISMISSAL
GLORIA BUTTS,  Complainant,  vs.  PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,  Respondent.	CASE 131414-U-19  DECISION 13011 - PECB  ORDER OF DISMISSAL

On March 28, 2019, Gloria Butts filed complaints charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Federal Way School District (employer) and Public School Employees of Washington (union) as respondents. The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and deficiency notices were issued on April 25, 2019, indicated that it was not possible to conclude that a cause of action existed at that time. Butts was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

No further information has been filed by Butts. The complaints are dismissed for failure to state a cause of action.

<sup>1</sup> 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*Allegations Against the Union*

Butts is a member of the union and an employee of the district.<sup>2</sup> Her complaints claim that she has had three different union representatives since 2003.

Butts alleged that her first union representative, Ed Wolf, refused to file a racial discrimination, bullying, and retaliation grievance on her behalf during the 2008-2009 school year. She claims that each time she contacted Wolf that he did not return her calls.

Butts alleged that her second union representative, Barbara Johnson, refused to provide her with a grievance form following Butts' September 14, 2016, termination.<sup>3</sup> The complaint alleged that Johnson assigned the matter to an unidentified building representative who did not have access to complete the grievance before the contractual deadline.

Butts alleged that her third union representative, Kris Mott, provided her with a grievance form and that she submitted a grievance to the union and employer on October 1, 2018. Butts also alleged that she met with Mott on an unspecified date and that Mott indicated that he would get documents concerning a promotion that Butts did not receive from the employer. Butts claimed that as of March 25, 2019, Mott had not responded to Butts about the grievance, had not provided the requested documents, and failed to adequately represent her.

Finally, Butts claims that each of these union representatives refused to file grievances on her behalf or allowed grievances to "die" because of her race.

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<sup>2</sup> Although the complaint does not affirmatively state that Butts is an employee of the Federal Way School District, it appears that she continues to be an employee of the district. *Federal Way School District (International Union of Operating Engineers, Local 286)*, Decision 12853 (PECB, 2018).

<sup>3</sup> In *Federal Way School District (International Union of Operating Engineers, Local 286)*, Decision 12853, Butts' alleged that she was terminated on September 16, 2016.

*Allegations Against the Employer*

Butts alleged that the employer had, on an unspecified date, violated the parties' collective bargaining agreement in an unspecified manner. Butts' complaint against the employer contained no other facts.

*Request for an Investigation*

As part of her complaints, Butts asked this agency to conduct an investigation to determine if either the union or employer committed an unfair labor practice.

ANALYSIS

Butts' complaints contained procedural and substantive defects that precluded further processing by this agency.

Procedural Defects*Numbered Paragraphs*

The rules for contents of a complaint 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 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).

Butts failed to properly number the paragraphs in the complaints and failed to include a separate paragraph requesting a remedy for the alleged unfair labor practices.

*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 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 (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).

Butts alleged that the union's failure to process her grievances and respond to her was based upon an invidious reason, race. While this allegation potentially stated a cause of action before this agency, Butts' request that this Commission investigate her claims cannot be granted because this agency does not investigate or prosecute complaints. *King County*, Decision 6767 (PECB, 1999), *aff'd*, Decision 6767-A (PECB, 1999). Rather, the complainant is responsible for presenting evidence and testimony that demonstrates an unfair labor practice has occurred. Had Butts amended her complaint to correct the noted deficiencies, she would have been responsible for presenting her case to a neutral agency examiner.

#### *Contract Violations*

Butts' claims that the employer violated the existing collective bargaining agreement fails to state a cause of action that can be redressed through the unfair labor practice provisions. *City of Walla Walla*, Decision 104 (PECB, 1976). Allegations that the union and/or employer violated a collective bargaining agreement are not matters that the Commission can address through the unfair labor

practice provisions. Remedies for contract violations must be sought through the grievance and arbitration machinery within the contract, or through the courts. The portions of the complaints alleging violations of the collective bargaining agreement by the employer do not state causes of action. *Lake Washington School District*, Decision 6312 (EDUC, 1998).

ORDER

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

ISSUED at Olympia, Washington, this 24th day of May, 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

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ISSUED ON 05/24/2019

DECISIONS 13010 – PECB and 13011 - PECB have been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASES 131413-U-19 and 131414-U-19

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