

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CENTERVILLE SCHOOL DISTRICT, Employer.	
KEELY R. ROYCE, Complainant, vs. CENTERVILLE CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION, Respondent.	CASE 131515-U-19 DECISION 13030 - PECB ORDER OF DISMISSAL

On May 8, 2019, Keely Royce (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Centerville Classified Public Employees Association (union) as respondent. The complaint was reviewed under WAC 391 45 110,¹ and a deficiency notice was issued on June 10, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Royce 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 Royce. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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.

ISSUE

The complaint alleged:

Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching of its duty of fair representation in not assisting Keely Royce with a change in her job title.

The complaint does not state a cause of action. The complaint does not describe facts that could constitute a duty of fair representation violation within the Commission's jurisdiction.

BACKGROUND

Keely Royce is a food service director at the Centerville School District (employer) and is represented by the Centerville Classified Public Employee Association (union). On January 18, 2019, Ms. Royce allegedly contacted the union to provide information regarding her research on the national average wage for employees holding her position. On January 22, 2019, Ms. Royce contacted the union again requesting additional hours of work. The union told Ms. Royce she would need to provide information supporting her request.

On January 22, 2019, Ms. Royce requested a change in her official job title. The union provided a response to Ms. Royce stating that the employer determined the title of the positions it offers and provided a reference to Article IV, Section 10 of the collective bargaining agreement. Additionally, on January 22, 2019, Ms. Royce requested that the union request a wage increase based on the national average salary for food services directors. The union allegedly provided a response stating that national averages would not likely be used as a comparable.

On April 26, 2019, Ms. Royce's position title was again allegedly changed, but her job duties and pay remained the same. In response Ms. Royce contacted the superintendent to request a change in job title. On April 30, 2019, Ms. Royce allegedly asked the union to look into filing a grievance related to the title change. The union allegedly responded that it would look into it and get back to Ms. Royce.

On May 1, 2019, the union responded to Ms. Royce's request and stated that the union would not file a grievance on the matter as job titles were management prerogative. On the same day, Ms. Royce contacted the superintendent and the superintendent agreed to change Ms. Royce's job title.

ANALYSIS

Duty of Fair Representation

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*

(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).

An employee claiming a breach of duty of fair representation has the burden to file a sufficient complaint and the burden of proof. The complaint must describe specific events, statements, or incidents in support of their complaint. These must include dates and names of the people involved.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen*, 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 can rarely provide all things desired by all of the employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation.

Application of Standard

The complaint does not allege facts that would constitute a duty of fair representation violation. 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 chapter 41.56 RCW. *Dayton School District*, Decision 8042-A.

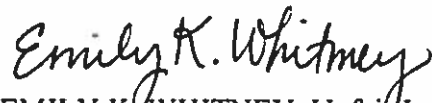
The complaint alleges that the union violated its duty of fair representation by not filing a grievance to have an employee's job title changed and not requesting an increase in wages equivalent to a national standard. This allegation describes employee dissatisfaction with the style of representation provided, but does not state a cause of action for a violation of duty of fair representation. The union is not obligated to agree or support all of the recommendations made by employees in the bargaining unit. The complaint does not allege facts that the union violated the complainant's rights guaranteed by chapter 41.56 RCW. Because the complaint does not include facts necessary to allege a duty of fair representation violation, the complaint must be 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 8th day of July, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "Emily K. Whitney". The signature is written in a cursive style.

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 07/08/2019

DECISION 13030 - 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

CASE 131515-U-19

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