

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS,

EMPLOYER.

JASON PARKER,

Complainant,

vs.

TEAMSTERS LOCAL 117

Respondent.

CASE 131574-U-19

DECISION 13047 - PSRA

ORDER OF DISMISSAL

On June 6, 2019, Jason Parker filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Teamsters Local 117 as respondent. On June 10, 2019, Parker filed an amended complaint. The amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on July 3, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Parker was given a period of 21 days in which to file and serve a second amended complaint or face dismissal of the case.

Nothing further has been received from the complainant. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

ISSUE

The amended complaint alleges:

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.

Union interference with employee rights in violation of RCW 41.80.110(2)(a) within six months of the date the amended complaint was filed, by breaching its duty of fair representation in communicating with the employer on Jason Parker's behalf.

Union inducement of employer to commit an unfair labor practice in violation of RCW 41.80.110(2)(b) within six months of the date the amended complaint was filed, by unidentified union actions.

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

BACKGROUND

Jason Parker (complainant) is a custody and corrections officer at the Washington State Department of Corrections (employer) and is represented by Teamsters Local 117 (union). In March through May 2019, the complainant allegedly sent various e-mail correspondence to managers of the employer. The complainant alleges the e-mail correspondence was protected activity, but does not include specific details of the e-mail correspondence. In response to the e-mail correspondence, on April 30, 2019, the employer allegedly issued a directive to the complainant. The directive informed the complainant that he could only send e-mail correspondence that was directly related to the accomplishment of his assigned correctional officer duties, as determined by his assigned position.

On May 1, 2019, the complainant allegedly sent e-mail correspondence to his union business representative and shop steward. On May 9, 2019, the complainant allegedly received an investigation notice with a charge of insubordination. On May 27, 2019, the complainant reached out to the union for assistance. The complainant allegedly asked the union to reach out to the employer on his behalf. On May 28, 2019, the complainant allegedly withdrew his request for union assistance. That same day, the union contacted the employer on behalf of the complainant.

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 41.80.110(2)(a). 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).

Application of Standard

The amended complaint does not allege any specific arbitrary, discriminatory, or bad faith conduct by the union. The amended complaint alleges that the union contacted the employer on the complainant's behalf after the complainant asked the union to contact the employer, and later withdrew the request. A union member's dissatisfaction with the style of representation provided, does not state a cause of action for a violation of duty of fair representation. The complainant was provided an opportunity to correct these defects and file a second amended complaint and did not. Because the complaint does not include facts necessary to allege a duty of fair representation violation, the complaint must be dismissed.

Union Inducement of Employer to Commit an Unfair Labor Practice*Applicable Legal Standard*

Under chapter 41.80 RCW the test for inducement is relatively narrow. RCW 41.80.110(2)(b) reads in relevant part that it shall be an unfair labor practice for an employee organization: “To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section.” RCW 41.80.110(1)(c) reads in relevant part that it shall be an unfair labor practice for an employer: “To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment.”

To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A union will commit a violation of RCW 41.80.110(2)(b) by merely asking the employer do something unlawful, “even if the employer has the good sense to refuse the request.” *See Shoreline School District (Service Employees International Union, Local 6)*, Decision 5560 (PECB, 1996). The classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

Application of Standard

The amended complaint lacks facts that the union requested the employer to do anything unlawful. The facts allege that the employer directed the complainant to stop sending e-mail correspondence unless it directly related to his assigned duties. The union then contacted the employer on the complainant’s behalf. There are no facts alleged that the union asked the employer to do anything unlawful. Because the complaint does not include facts necessary to allege a union inducement of the employer to commit an unfair labor practice 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 30th day of July, 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 07/30/2019

DECISION 13047 - PSRA 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 131574-U-19

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