STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE – WASHINGTON STATE PATROL, Employer.	
MICHAEL W. ALDRIDGE, Complainant, vs. WASHINGTON STATE PATROL TROOPERS ASSOCIATION, Respondent.	CASE 130029-U-18 DECISION 12967-A - PECB DECISION OF COMMISSION

Michael W. Aldridge, the complainant.

Alyssa Melter, Attorney at Law, Vick, Julius, McClure, P.S., for the Washington State Patrol Troopers Association.

Chapter 41.56 RCW grants public employees the right to collectively bargain through representatives of their own choosing. For purposes of collective bargaining, a public employee is "any employee of a public employer . . . ." RCW 41.56.030(11). "The ordinary meaning of 'employee' does not include retired workers; retired employees have ceased to work for another for hire." *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 169 (1971).

In *Washington State Patrol*, Decision 2806 (PECB, 1987), this agency certified the Washington State Patrol Troopers Association (union) as the exclusive bargaining representative of a bargaining unit comprised of "all nonsupervisory commissioned employees of the Washington State Patrol, excluding supervisors, confidential employees, trooper cadets, special deputies, any

other employees holding limited commissions, and all other employees of the employer." The union has a duty to fairly represent employees in the bargaining unit.

Complainant Michael Aldridge was employed by the Washington State Patrol (employer) as a trooper effective June 30, 1980. When the agency certified the union as the exclusive bargaining representative of nonsupervisory commissioned employees, Aldridge was a member of the bargaining unit. On July 19, 2002, the employer placed Aldridge on inactive status due to disability pursuant to RCW 43.43.040.[1] On July 26, 2016, the employer completed the Washington State Criminal Justice Training Commission Notice of Peace Officer Separation form.[2] On the form, the employer specified that Aldridge was separated for a medical reason on July 19, 2002.[3] Since July 19, 2002, Aldridge has been on disability status and has not performed law enforcement duties.

On February 2, 2018, Aldridge filed an unfair labor practice complaint against the union. Aldridge alleged the union had interfered with his rights by refusing to process a grievance Aldridge had filed under the collective bargaining agreement between the employer and the union. Aldridge further alleged that the union had induced the employer to commit an unfair labor practice. Examiner Michael Snyder conducted a hearing and issued a decision finding that Aldridge was not a member of the bargaining unit represented by the union; therefore, the union did not have an obligation to process Aldridge's grievance. The Examiner also found that the union did not induce the employer to commit an unfair labor practice. *State – Washington State Patrol (Washington State Patrol Troopers Association)*, Decision 12967 (PECB, 2019).

On February 14, 2019, Aldridge filed a timely appeal. Both Aldridge and the union requested extensions of the time to file their briefs. The Executive Director granted those requests. Aldridge filed his appeal brief on March 11, 2019. The union filed its response brief on April 15, 2019.

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[1] Union (Un.) Ex. 7.

[2] Un. Mot. for Summ. J., Decl. of Alyssa Melter, Ex 2.

[3] *Id.*

On April 16, 2019, Aldridge requested to file a rebuttal brief. On April 18, 2019, the Executive Director denied the request based on WAC 391-45-350. On April 26, 2019, Aldridge filed a motion for reconsideration. On April 30, 2019, the Commission granted Aldridge's request to file a rebuttal brief. On May 7, 2019, Aldridge filed a rebuttal brief. On May 10, 2019, Aldridge filed a motion to reopen the hearing.

There are three issues before the Commission. First, should the hearing be reopened to accept new evidence? Second, did the union breach its duty of fair representation when it did not process Aldridge's grievance? Third, did the union induce the employer to commit an unfair labor practice? We deny Aldridge's motion to reopen the hearing. To determine whether the union breached its duty of fair representation, we must determine whether Aldridge is an employee within the bargaining unit description. We conclude, as the Examiner did, that Aldridge is not included in the bargaining unit. The union's duty to fairly represent employees applies only to employees in the bargaining unit. Aldridge did not meet his burden to prove that the union induced the employer to commit an unfair labor practice. We affirm the Examiner.

ANALYSIS

Issue 1: Should the Hearing Be Reopened to Accept New Evidence?

The chief administrative law judge adopted model rules of procedure for Washington State agencies. RCW 34.05.250; Chapter 10-08 WAC. In addition to the model rules, an agency may adopt its own rules of procedure. RCW 34.05.250. The Commission adopted WAC 391-45-270, which applies in this case.[4] "Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing." WAC 391-45-270.

At the September 25, 2018, hearing, Aldridge testified that the union had given him "bear" stickers after he was placed on disability status.[5] The union vice president testified about the different

[4] Chapter 10-08 WAC does not contain a rule concerning reopening a hearing.

[5] Tr. 115:2–5.

colors and meanings of bear stickers.[6] In his motion to reopen the hearing, Aldridge avers that on April 29, 2019, three months after the Examiner's decision, he e-mailed the union vice president to request bear stickers. As of May 10, 2019, no one from the union had provided Aldridge with bear stickers. Aldridge alleges the union's failure to provide him with bear stickers raises concerns about the credibility of the union vice president's testimony that should be considered before making a final decision. Aldridge cites RCW 34.05.562(2)(b), which allows a court to remand a matter to the agency.

We deny Aldridge's motion to reopen the hearing. RCW 34.05.562 is inapplicable because this is an appeal to the Commission of an examiner's decision, not an appeal of the Commission's decision to the court. Further, evidence about whether or not the union will provide Aldridge with bear stickers is collateral and has no bearing on the ultimate question in this case—whether Aldridge is an employee and a member of the bargaining unit.

Issue 2: Did the Union Breach its Duty of Fair Representation?

Applicable Legal Standards

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions of law and applications of law, as well as interpretations of statutes, de novo. The Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

The Commission reviews factual findings for substantial evidence in light of the entire record. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to

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[6] Tr. 157:9–158:7.

the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000). This deference is highly appropriate in fact-oriented appeals. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

Status as a Public Employee

"'Public employee' means any employee of a public employer . . . ." RCW 41.56.030(11). Chapter 41.56 RCW applies to "officers of the Washington state patrol appointed under RCW 43.43.020." RCW 41.56.473. These officers are eligible for interest arbitration. RCW 41.56.475. Uniformed personnel who qualify for interest arbitration cannot be included in the same bargaining unit as employees who do not qualify for interest arbitration. *City of Seattle*, Decision 689-A (PECB, 1979); *City of Pasco*, Decision 2636-B (PECB, 1987).

Duty of Fair Representation

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). A union commits an unfair labor practice if it interferes with, restrains, or coerces public employees in the exercise of their rights. RCW 41.56.150(1). One way unions can violate RCW 41.56.150(1) is by breaching the duty of fair representation. 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. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 367 (1983); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (citing *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3199-B (PECB, 1991)).

A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d at 366; *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges a union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. The employee bears the burden of proof and must establish that the union took some action aligning itself against bargaining unit

employees on an improper or invidious basis, such as union membership, race, sex, national origin, or other reasons. *Id.* If the employee proves a prima facie case, the burden shifts to the union to establish that its actions were not in violation of the duty of fair representation. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d at 366–67.

Membership in a bargaining unit entitles an employee to union representation. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). "[T]he union's duty of fair representation for each employee terminates once the employee retires." *Navlet v. Port of Seattle*, 164 Wn.2d 818, 840 (2008) (citing *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. at 172).

Application of Standards

On appeal, Aldridge asserts that the "determinative issue" in this case is whether Aldridge ceased to be a commissioned officer when the employer placed him on job-related disability status. Aldridge asserts that only the chief of the Washington State Patrol may determine the definition of the word "commissioned." Aldridge asserts that he maintains his commission, that he is a member of the bargaining unit, and that the union breached its duty of fair representation by not processing his grievance.

The duty to represent employees extends from the union's role as the exclusive bargaining representative. To be entitled to representation, a complainant must be an employee included in the bargaining unit.

We conclude that Aldridge is not an employee included in the bargaining unit and that the union is not obligated to represent Aldridge. First, Aldridge is not a commissioned officer; therefore, he is not a member of the bargaining unit. Second, the bargaining unit is eligible for interest arbitration and cannot include employees who are not eligible for interest arbitration. Troopers on disability retirement no longer have authority to enforce the laws of Washington; thus, they cannot be included in the bargaining unit with employees who can enforce the laws and are eligible for interest arbitration. Third, troopers on inactive status do not share a community of interest with

troopers on active status. Fourth, the union is only obligated to represent bargaining unit employees.

Aldridge is Not a Commissioned Officer Who Can Be Included in the Bargaining Unit

On appeal, Aldridge asserts that he remained a nonsupervisory commissioned employee within the bargaining unit description and that the union had a duty process the grievance he filed with the employer on November 9, 2017.[7] He contends that he was commissioned by the employer in 1980 and that his commission was not revoked when the employer changed his status to inactive due to job-related disability.

Under RCW 43.43.020, the chief of the Washington State Patrol has the authority to appoint "competent persons to act as Washington state patrol officers." RCW 43.43.040(1) establishes a process for the chief to relieve from active duty troopers who were injured while performing their duties. RCW 43.43.040(2)(a) further provides for compensation for officers on disability status.

Chapter 446-40 WAC provides a procedure and standards for disability retirement and defines active service and disability. Chapter 446-40 WAC refers to disability retirement. WAC 446-40-010 and WAC 446-440-130. "'[A]ctive service' . . . is defined as all performance of duties of whatever type, performed pursuant to orders by a superior of the member, provided, such duties shall be consistent with the responsibilities of the Washington state patrol." WAC 446-40-020(1). Active service consists of "line duty" and "other duty." *Id.* "'Disability' is defined as any injury or incapacitation of such an extent as to render a member of the Washington state patrol mentally or physically incapable of active service." WAC 446-40-020(4). An individual placed on disability status pursuant to RCW 43.43.040 is considered a retiree and not an active employee.

Notably, the word "commissioned" is not used in chapter 43.43 RCW and is not defined in the applicable statutes or regulations. The word "commissioned" comes from our description of the bargaining unit in *Washington State Patrol*, Decision 2806, not from chapter 43.43 RCW. Therefore, we are not determining what "commissioned" means in the context of chapter 43.43

[7] The November 9, 2017, grievance is not part of the evidentiary record in this case.

RCW; rather, we are determining what "commissioned" means in the context of the certification issued by this agency. We have the authority to interpret our bargaining unit descriptions.

The Commission has in prior decisions defined "commissioned." In the absence of a specific definition in a statute, we apply the common definition of a term found in the dictionary. For purposes of interest arbitration, law enforcement officers other than employees of the Washington State Patrol are tied to the definition in RCW 41.26.030. In *City of Pasco*, Decision 2636-B, the Commission determined whether an employee met the definition of law enforcement officer under RCW 41.56.030(13). The Commission noted that chapter 41.26 RCW, the Law Enforcement Officers' and Firefighters' Retirement System, required beneficiaries to be "commissioned" to enforce the criminal laws. Finding no definition of the term "commission" in chapter 41.26 RCW, we adopted the definition in BLACK'S LAW DICTIONARY (5th ed. 1979):

> . . . a warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.)

We conclude that the term "commissioned" as used in *Washington State Patrol*, Decision 2806, means charged with the authority to enforce the laws of Washington State by the chief of the Washington State Patrol. Thus, a "commissioned employee" in the bargaining unit must have authority to enforce the laws. An employee without authority to enforce the laws would fall under the certification's exclusion of "all other employees of the employer" and not be included in the bargaining unit.

The employer placed Aldridge on inactive status due to disability effective July 19, 2002.[8] At that time, the employer relieved Aldridge of his authority to enforce the laws, rules, and regulations of the state of Washington.[9] The employer completed the Notice of Peace Officer Separation form on July 26, 2016, specifying that Aldridge was separated for a medical reason on July 19, 2002.[10]

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[8] Un. Ex 7.

[9] *Id.*

[10] Un. Mot. for Summ. J., Decl. of Alyssa Melter, Ex. 2.

A trooper placed on disability status does not have authority to enforce the laws. *See State v. Hendrickson*, 98 Wn. App. 238, 244 (1999). In the absence of the authority to enforce the laws, we find Aldridge is not a commissioned officer within the meaning of the bargaining unit description.

While RCW 43.43.050 states that troopers may "retain their ranks and positions until death or resignation, or until suspended, demoted, or discharged in the manner" provided in chapter 43.43 RCW, the agency has defined the bargaining unit as one of "commissioned employees." The bargaining unit is limited to employees who have authority to enforce the laws. The requirement that the union represent an employee is contingent on the employee's performance of law enforcement duties for the employer.

Aldridge Is Not an Employee Eligible for Interest Arbitration

The union represents employees in a bargaining unit that is eligible for interest arbitration. RCW 41.56.475. To be included in the bargaining unit and entitled to representation, Aldridge must come within the bargaining unit definition. Commission regulations prohibit including employees who are eligible for interest arbitration in the same bargaining unit as employees who are not. "Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration." WAC 391-35-310.

Aldridge, who is on inactive status and receives disability retirement compensation, is prohibited from exercising law enforcement authority. Thus, he would not be eligible for interest arbitration and could not be included in the bargaining unit. *See Energy Northwest*, Decision 6851 (PECB, 1999) (finding disabled former nuclear security officers could not be included in a unit with their active counterparts because they were not considered "uniformed personnel" within the meaning of RCW 41.56.030(7)).[11] By the same token, Aldridge cannot be considered "uniformed personnel" and thus cannot be included in the bargaining unit.

[11] RCW 41.56.030(7) has been renumbered. Uniformed personnel is defined in RCW 41.56.030(13).

Aldridge Does Not Share a Community of Interest with the Bargaining Unit

Employees receiving disability retirement compensation do not share a community of interest with bargaining unit employees. *See Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. at 175. When grouping employees in bargaining units, the agency considers "the duties, skills, and working conditions of the public employees." RCW 41.56.060(1). Troopers on active duty perform duties consistent with the responsibilities of the employer. WAC 446-40-020(1). Troopers on inactive status do not perform any duties for the employer.[12] The legislature established the benefits an officer placed on disability status would receive. RCW 43.43.040(2)(a). The employer and union have not negotiated benefits for individuals on disability retirement status.[13]

Unlike active duty troopers who report to work, troopers on disability status no longer report to the employer for work. Unlike active duty troopers who attend training, troopers on inactive status no longer attend training.[14] And unlike troopers on active status who have the authority to enforce laws and have the power of arrest, troopers on inactive status no longer have authority to enforce the laws or the power of arrest.[15] These differences in duties and working conditions lead to a conclusion that troopers on inactive status do not share a community of interest with troopers on active status. Therefore, troopers on disability retirement status would not be included in the bargaining unit.

The Union Did Not Breach its Duty of Fair Representation

An employee has a right to representation—and a union would have a duty of representation—if the employee proves that the employee is included in the bargaining unit. *See Shoreline School District (Service Employees International Union, Local 6)*, Decision 5560-A (PECB, 1996) (citing *Castle Rock School District (Castle Rock Education Association)*, Decision 4722 (EDUC, 1994),

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[12] Tr. 67:11–22.

[13] Tr. 30:18–23.

[14] Tr. 150:17–151:5; 152:11–14.

[15] Tr. 70:5–17; 58:1–10

aff'd, Decision 4722-B (EDUC, 1995)). Unions are afforded discretion in determining whether to process a grievance "because unions must balance the interests of the aggrieved individuals with the interests of the collective." *Killian v. Seattle Public Schools*, 189 Wn.2d 447, 454 (2017) (citing *Lindsey v. Municipality of Metropolitan Seattle*, 49 Wn. App. 145, 148 (1987)). An employee has no right to compel a union to process a grievance in the manner desired by the employee. *See City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980).

Aldridge is not an employee within the bargaining unit. Thus, the union was not required to process Aldridge's grievance. Even if Aldridge were within the bargaining unit, Aldridge has not presented sufficient evidence to prove the union breached its duty of fair representation. Aldridge did not present evidence of communication from the union to him stating that the union would not process his grievance. Therefore, Aldridge has not met his burden of proving that the union breached its duty of fair representation.

Issue 3: Did the Union Induce the Employer to Commit an Unfair Labor Practice?

Applicable Legal Standards

A union commits an unfair labor practice if it causes or attempts to cause an employer to commit an unfair labor practice. RCW 41.56.150(2). To induce an employer to commit an unfair labor practice, a union must request that the employer do something unlawful. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). If an employer can legally agree to what a union requests, then the union does not violate the statute. *Id.* The complainant has the burden to prove that the union induced the employer to commit an unfair labor practice. WAC 391-45-270.

Application of Standards

In the complaint, Aldridge alleged that the union had induced the employer to commit an unfair labor practice by communicating to the employer the union's decision not to process his grievance.

Aldridge filed a grievance on November 9, 2017.[16] The employer's labor and policy advisor Karl Nagel called union vice president Mark Soper before the employer responded to Aldridge.[17] Nagel interpreted the certification to exclude troopers on disability status from the bargaining unit. He called Soper to ask the union's understanding.[18]

On November 17, 2017, Captain Timothy Coley e-mailed Aldridge to schedule a meeting to discuss the grievance.[19] In the e-mail, Coley informed Aldridge that the employer would process the grievance under Washington State Patrol Regulation 7.00.030 because Aldridge was a non-represented employee. Aldridge responded requesting information about how the employer concluded he was a non-represented employee.[20]

Nagel wrote to Aldridge that "an officer of the [union] confirmed with [Nagel] the union does not represent employees in disability status under the statute."[21] Nagel asked Aldridge to confirm that Aldridge was on inactive disability status. Aldridge responded that his employment status was inactive due to a job-related injury.[22] Aldridge expressed concern about the union contacting the employer rather than contacting him.[23]

Aldridge has not met his burden to prove that the union induced the employer to commit an unfair labor practice. The uncontradicted evidence is that Nagel called the union vice president. There is no evidence that the union asked the employer to take any action that violated chapter 41.56 RCW.

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16 Un. Ex. 3.

17 Tr. 20:19–21:8; 22:18–23:5.

18 Tr. 22:2–14.

19 Un. Ex. 3.

20 *Id.*

21 Complainant Ex. 1 and Un. Ex. 3.

22 Un. Ex. 3.

23 *Id.*

CONCLUSION

We deny the motion to reopen the hearing. We have reviewed the transcript, exhibits, and briefs. The applicable statutes and the evidence in the record support the Examiner's conclusion that Aldridge is not an employee within the bargaining unit description. Substantial evidence supports the Examiner's findings of fact, which in turn support the Examiner's conclusions of law. We affirm the Examiner.

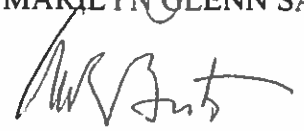
ORDER

The findings of fact, conclusions of law, and order issued by Examiner Michael Snyder are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 1st day of August, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner

KENNETH J. PEDERSEN, Commissioner

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 08/01/2019

DECISION 12967-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 130029-U-18

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