

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,  Employer.	
MATT OWENS,  Complainant,  vs.  KING COUNTY CORRECTIONS GUILD,  Respondent.	CASE 131918-U-19  DECISION 13064 - PECB  ORDER OF DISMISSAL

On July 12, 2019, Matt Owens filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the King County Corrections Guild as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice was issued on July 26, 2019, indicating that it was not possible to conclude a cause of action existed at that time. Owens was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On August 8, 2019, Owens filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

ISSUE

The amended complaint alleges:

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<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.

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 its duty of fair representation in providing union business leave to an employee.

The amended complaint lacks facts necessary to allege a duty of fair representation violation. Thus, the amended complaint is dismissed for failure to state a cause of action.

### BACKGROUND

Matt Owens (complainant) is a corrections sergeant for King County (employer) and is represented by the King County Corrections Guild (union). While in the bargaining unit, at times he has held elective office and has sat on the negotiating committee.

Between 2016 and 2018 Owens was allegedly involved in an investigation related to internal union affairs; he was later exonerated and returned to work.

In December 2018 Owens was served with a lawsuit filed by the union. On January 17, 2019, he sent a letter to the executive board stating that the union had breached its duty of fair representation by suing him. In March 2019 Owens was allegedly informed the union did not have a case against him. In June 2019 Owens learned that another employee, who allegedly does not hold office in the union, was granted access to union business leave and was given an entire shift off to work with the attorney that was suing Owens.

### ANALYSIS

#### Timeliness

The rules for the 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.”

There is a six-month statute of limitations for unfair labor practice complaints. A complaint must not be processed for any unfair labor practice occurring more than six months before the filing of

the complaint with the Commission. RCW 28B.52.065. The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month statute of limitations begins to run when an adverse employment action is communicated to employees. *State – Corrections*, Decision 11025, *citing City of Chehalis*, Decision 5040 (PECB, 1995).

As the amended complaint points out, many of the alleged facts are untimely filed. The complaint was filed on July 12, 2019. For the complaint and amended complaint to be timely filed, the alleged facts must have occurred on or after January 12, 2019. As stated in the deficiency notice, the alleged facts that occurred prior to January 12, 2019, are untimely and will be considered for background information only.

#### Union Interference—Duty of Fair Representation

##### *Applicable Legal Standard*

The amended complaint lacks facts necessary to allege a duty of fair representation violation. 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 & 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 requirement 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). 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.

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.

#### *Application of Standard*

The elements necessary to allege a duty of fair representation violation include alleging the employee is covered by the statute, the employee is involved in a bargaining unit represented by the union, and the union or its agent(s) took some action aligning itself against unit employees on an arbitrary, bad faith, or invidious basis. The amended complaint alleges that Owens is covered by the statute and a member of the bargaining unit. The amended complaint does not include facts alleging the union took an action aligning itself against unit employees on an arbitrary, bad faith, or invidious basis.

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 Commission does not assert jurisdiction over internal union affairs. *Shoreline Community College (Community College District 7) (Washington Federation of State Employees)*, Decision 9094-A (PSRA, 2006). The amended complaint alleges that the union violated its duty of fair representation by granting another employee access to guild business leave and providing an entire shift off to work with an attorney who was allegedly suing the complainant. This allegation describes facts regarding how the union decided to use an internal union leave bank. It does not identify representation provided or lack thereof, nor does it state a cause of action for a violation of duty of fair representation. Because the amended complaint lacks facts necessary to allege a duty of fair representation violation, the amended complaint must be dismissed.

ORDER

The amended 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 6th day of September, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink that reads "Emily K. Whitney". The signature is written in a cursive style with a large initial "E".

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

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ISSUED ON 09/06/2019

DECISION 13064 - PECB 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 131918-U-19

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