

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORTH THURSTON SCHOOL DISTRICT, Employer.	
FRANK GREGORY BURLESON, Complainant,	CASE 131937-U-19
vs.	DECISION 13065 - EDUC
NORTH THURSTON EDUCATION ASSOCIATION, Respondent.	CORRECTED ORDER OF DISMISSAL

On July 18, 2019, Frank Gregory Burleson (Burleson or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the North Thurston Education Association (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on August 7, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Burleson was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On August 28, 2019, Burleson filed an amended complaint. The allegations of the amended complaint concern:

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 41.59.140(2)(a) within six months of the date the complaint was filed, by breaching its duty of fair representation in refusing to take Frank Gregory Burleson's grievance to arbitration.

Union breach of constitution or bylaws.

The amended complaint fails to state a cause of action under the statutes this agency administers. The amended complaint is dismissed.

BACKGROUND

Frank Gregory Burleson works as a certificated teacher at the North Thurston School District (employer). He is represented for purposes of collective bargaining by the North Thurston Education Association (union). The employer and union are parties to a collective bargaining agreement with a term of September 1, 2018, through August 31, 2019.

The amended complaint alleges that in July 2009, the employer transferred Burleson from Woodland Elementary. Burleson opposed the transfer. At the time of this transfer, Conni Van Hoose served as the union's president. In October 2009, Burleson filed a complaint with the employer alleging he had been "subjected to working in an unhealthy environment." In November 2009, the employer transferred Burleson to Seven Oaks Elementary. Burleson also opposed this transfer.

In December 2009, Burleson allegedly attended a hearing concerning his October 2009 complaint. Burleson alleges that he invoked his contractual grievance rights. During that meeting, the employer presented him with a cease and desist letter pertaining to any matter surrounding his work assignment and transfers. Van Hoose allegedly told Burleson that he could be terminated for insubordination if he did not comply with the cease and desist letter.

In May 2010, Burleson was transferred to Evergreen Forest Elementary. Between 2013 and 2015, Burleson allegedly experienced air quality and breathing issues due to construction. He claims

that he felt he could not express concerns about those issues due to the December 2009 cease and desist letter.

In September 2017, Burlson claims he was moved to a new room at Evergreen Forest Elementary. The complaint alleges that the building was damaged and overflow water from the gutter resulted in moisture on the wall and an unrecognizable smell. Burlson allegedly took 81 days of sick leave due to the unhealthy working conditions.

On October 2, 2018, a step 2 grievance was filed where Burlson requested 81 days of sick leave be returned to him due to unhealthy working conditions. On October 11, 2018, the union and employer conducted a step 2 grievance hearing where Burlson discussed his health condition. The complaint also alleges that Burlson was unable to express concerns regarding the building environmental issues due to December 9, 2009, cease and desist directive. The amended complaint does not explain why the cease and desist directive precluded him from expressing concerns regarding the building environmental issues. During the October 22, 2018, meeting, Burlson requested copies of the “signed contracts for Mr. John Wood from 1997-1998 to 2001-2002; and for Ms. Conni Van Hoose from 2002-2003 to 2014-2015.” It appears that the information that Burlson requested concerns release time for the union’s president.

On January 23, 2019, the employer conducted a step 3 grievance hearing where Burlson allegedly presented 123 pages of documentation regarding his working conditions and medical situation. On January 30, the employer responded to the step 3 grievance by allegedly stating that Burlson “[was] afforded the opportunity to communicate [his] concerns and the District did not respond to the issues.” Because the grievance was not resolved to Burlson’s satisfaction, he asked the union to submit the matter to arbitration. On February 7, 2019, the union denied to submit Burlson’s grievance to arbitration.

On February 8, 2019, Burlson learned through his October 22, 2018, information request that “no [employment] contracts were issued to Ms. Van Hoose from September 2003 through 2013.” The amended complaint alleges that Van Hoose did not have the legitimate right to represent Burlson because the union’s bylaws require members to be contracted employees.

On May 21, 2019, Burleson asked the union to submit a different grievance to arbitration. The union declined to forward this new grievance to arbitration claiming the deadline for submitting the grievance had passed.

ANALYSIS

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 41.59.140(2)(a). The duty of fair representation requires an exclusive bargaining representative 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 complaint lacks facts alleging that the union breached its duty of fair representation. The complaint alleges Burlson is an employee under chapter 41.59 RCW and is an employee represented by the union. The complaint also alleges that Burlson requested that the grievance proceed forward to mediation and/or arbitration, and the union rejected the requests to proceed to arbitration on February 7, 2019, and May 21, 2019.

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. If a bargaining unit employee raises an issue or concerns with a union, the bargaining representative has an obligation to fairly investigate such concerns to determine whether it believes that the parties' collective bargaining agreement has been violated. *State – Labor and Industries, Decision 8261 (PSRA, 2003)*. If the bargaining representative determines that the concerns lack merit, the bargaining representative has no obligation to file a grievance. Even if the bargaining representative determines the concerns have merit, the bargaining representative has the right to file or not file a grievance under the parties' collective bargaining agreement.

Here, Burleson's complaint lacks facts alleging how the union's conduct was arbitrary, discriminatory, or in bad faith as described above. Burleson's dissatisfaction with the level of representation does not, by itself, form the basis for a cause of action unless Burleson can prove the union violated rights guaranteed in statutes administered by the Commission.

Finally, the fact that Van Hoose was a union president without a "contract" does not, by itself, form the basis for an unfair labor practice. The constitutions and bylaws of unions are the contracts among their members, controlling how their private organizations are to be operated. Because the Commission generally lacks jurisdiction over disputes concerning violations of union constitutions and bylaws, those claims must be adjudicated under procedures internal to those organizations or through the courts. *Lake Washington School District Lake Washington School District Bargaining Council*, Decision 6891 (PECB, 1999).

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 13th day of September, 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

ISSUED ON 09/13/2019

CORRECTED DECISION 13065 - EDUC 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 131937-U-19

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