City of Spokane (Washington State Council of County and City Employees), Decision 13088 (PECB, 2019)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SPOKANE, Employer.	
ROBERT WEST, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	CASE 131916-U-19 DECISION 13088 - PECB ORDER OF DISMISSAL

On July 8, 2019, Robert West (West or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Washington State Council of County and City Employees (union) as respondent. West alleged that the union breached its duty of fair representation by failing to represent him during an employer investigation and by failing to act on a grievance, by violating the existing collective bargaining agreement between the union and the City of Spokane, and other statutory violations.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on August 8, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. West was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On August 19, 2019, West filed a letter asking for reconsideration of his claims. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action at this time.

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[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.

BACKGROUND

Robert West worked as a probation clerk for the City of Spokane (employer). While employed, he was represented by the union for purposes of collective bargaining. The employer and union are parties to a collective bargaining agreement with a term of January 1, 2016, through December 31, 2020.

According to the complaint, West was involved in several employment incidents that led to him being targeted by the union and ultimately resulted in him leaving employment with the city on January 3, 2018. For example, the complaint alleges that the employer commenced an investigation on May 23, 2017, about a May 19, 2017, incident between the complainant and another coworker. The complaint alleges that the union failed to object when a supervisor acted as the other employees "person of comfort" during the investigation. The complaint also points to an October 2017 incident where the union failed to object to a different investigation of West's conduct. In December 2017, the employer placed West on administrative leave and informed him that he would be terminated January 2, 2018. On January 8, 2018, West filed a grievance contesting his termination. West officially retired from employment with the city on January 3, 2018.[2]

On January 15, 2018, the union sent a letter to the employer informing it of the grievance. On February 14, 2018, the employer denied the grievance. The union then asked to employer to waive the contractual arbitration time frames to allow the union to send the matter to a grievance committee. The employer agreed to waive the contractual time frames.

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[2] Many of dates in West's complaint are inconsistent. For example, paragraph C of West's complaint alleges he retired from employment with the employer on January 2, 2018. Paragraph F of West's complaint alleges he retired from employment with the employer on January 2, 2019. Paragraph F of the complaint also claims that West was terminated in December 2018. However, the grievance form indicates that he was terminated January 2, 2018, but officially retired January 3, 2018. When examining a complaint under WAC 391-45-110 to determine if a cause of action exists, only the "four corners of the complaint" are examined. *Bethel School District (Public School Employees of Washington)*, Decision 6847-A (PECB, 2000). The dates referenced in the decision are derived from documentary evidence accompanying the complaint. *Id.* (holding that staff charged with reviewing complaints cannot ignore obvious conflicts between the alleged facts and the materials filed in support of the complaint).

West alleged that he received a letter informing him that the union's grievance committee met on March 15, 2018, and declined to submit the matter to arbitration. West appealed that decision to the union's general counsel. On April 26, 2018, the union's general counsel informed West that the union would not move his grievance to arbitration. West appealed that decision to the union's executive director. According to the complaint, the union's executive director has yet to rule upon West's appeal.

ANALYSIS

Applicable Legal Standard – Timeliness

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Applicable Legal Standard – Interference – Duty of Fair Representation

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 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 agency is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. The agency does exercise 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

West filed his complaint on July 8, 2019. To be timely filed, the facts alleged must have occurred on or after January 8, 2019. Most of the allegations in the complaint occurred before January 8, 2019, and are not timely. This includes allegations that the union breached its duty of fair representation by allegedly providing West with no representation during the employer's 2017 investigations as well as the claims that the union violated the existing collective bargaining agreement and other statutes and laws.

The only allegation that is arguably timely is the claim that union breached its duty of fair representation by failing to submit West's grievance to arbitration. This claim fails for two reasons. First, West has not alleged any timely facts demonstrating that the union's March 15, 2018, and April 26, 2018, decisions were based upon invidious or arbitrary reasons. Second, the union's executive director has yet to decide West's appeal of the March 15, 2018, and April 26, 2018, decisions. Because the union's executive director has not rendered a final decision, any allegation that the union breached its duty of fair representation when ruling on West's appeal is not ripe.

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 18th day of October, 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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 10/18/2019

DECISION 13088 - 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 131916-U-19

EMPLOYER: CITY OF SPOKANE

REP BY:
DAVID CONDON
CITY OF SPOKANE
808 W SPOKANE FALLS BLVD
SPOKANE, WA 99201
mayor@spokanecity.org

PARTY 2: ROBERT M. WEST

REP BY:
ROBERT M. WEST
19117 E INDIANA AVE
SPOKANE VALLEY, WA 99016
refman50@comcast.net

MICHAEL J. BEYER
ATTORNEY AT LAW
5010 W PROSPERITY LN
SPOKANE, WA 99208
mjbeyer@sisna.com

PARTY 3: WSCCCE

REP BY:
CHRIS DUGOVICH
WSCCCE
PO BOX 750
EVERETT, WA 98206-0750
c2everett@council2.com

ED STEMLER
WSCCCE
PO BOX 750
EVERETT, WA 98206
ed@council2.com