STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY, Employer.	
BRIAN E. CONUEL, Complainant, vs. PIERCE COUNTY CORRECTIONS GUILD, Respondent.	CASE 132253-U-19 DECISION 13138 - PECB ORDER OF DISMISSAL

On November 4, 2019, Brian E. Conuel filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming Pierce County Corrections Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on November 21, 2019, indicated that it was not possible to conclude that a cause of action existed at that time. Conuel was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. On December 11, 2019, Conuel filed an amended complaint.

The complaint and amended complaint are dismissed for failure to state a cause of action.

BACKGROUND

The Pierce County Corrections Guild (union) represents a bargaining unit of corrections deputies and sergeants employed by the Pierce County Corrections and Detention Center (employer). The

[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 and employer are parties to a collective bargaining agreement that expired on December 31, 2018.

Original Complaint

According to Conuel's original complaint, the Guild's executive board filed a grievance against the employer on July 10, 2019, claiming the corrections sergeants should now be subject to mandatory overtime. The executive board members apparently did not consult with bargaining unit members, including the corrections sergeants, before filing the grievance in violation of guild bylaws. The complaint asserts that corrections sergeants were not subject to mandatory overtime provisions under previous versions of the collective bargaining agreement or any memorandum of agreement.

On August 10, 2019, the employer denied the union's grievance and asserted that there had not been change to the existing overtime practices for corrections sergeants. On September 5, 2019, the employer reaffirmed its position that there had not been an agreement between the employer and union about changing overtime practices for corrections sergeants and that there had not been a contract violation. However, the employer did sustain the grievance on the basis that it wanted to hold further discussion with the union and sergeants to "attempt to develop a path forward for process." The employer specifically noted that its decision to continue the grievance did "not act as agreement to [union's] recommended solutions that differ from the current practice."

It appears from the complaint that overtime for sergeants had been an issue for the union's executive board as executive board meeting minutes reflect that corrections deputies had been required to work overtime due to vacancies or absences by the corrections sergeants. The minutes also reflect that the union would not seek bargaining to change the overtime rules at this time. The union's president also apparently wrote an e-mail to the sergeants stating that neither the union nor the employer would seek changes to the sergeants' overtime rules unless the sergeants sought such a result. Finally, the complaint asserts that the union president L. Shanahan "has previously made comments that she wants the Sergeants out of the [union]." The complainant did not state when those statements were made.

Amended Complaint

Conuel's amended complaint adds documentation that provides context to the events of the original complaint. The amended complaint also alleges that on August 2, 2019, the employer directed mandatory overtime for corrections sergeants but later rescinded that directive. The complaint asserts that at least one sergeant was required to perform a mandatory overtime shift before the order was rescinded.

The amended complaint also adds new allegations surrounding recent union elections. The amended complaint asserts that union Vice President Deborah Hopkins sent out campaign materials that talked poorly of her opponent but also allegedly talked poorly of the sergeants' job class as a whole.

Finally, the amended complaint asserts that none of the corrections sergeants were involved in resolving a recent unfair labor practice which could result in a significant workload increase for corrections sergeants. The complaint asserts that the employer and the union's agreement precluded the sergeants from having any say in the resolution of the complaint and as a result the sergeants had no recourse over a significant change in working conditions.

ANALYSIS

Original Complaint

The complainant asserts in his original complaint that the union committed an unfair labor practice in violation of RCW 41.56.150(2) by coercing the employer to moving forward with an invalid grievance. The complainant also asserts that the union's proposed solution to the sergeants' overtime issues runs counter to the exiting collective bargaining agreement. The alleged facts fail to state an "inducement" cause of action before this agency.

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee

or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). However, in *Municipality of Metropolitan Seattle* the union was seeking limitations on assignments that were made available to part-time drivers. At the bargaining table, the employer could legally agree to restrict part-time drivers' shifts. The Commission explained that the mere designation of "part-time" status does not bring an employee into a classification protected from invidious discrimination. Since the employer ultimately could have legally agreed to what the union was seeking, the union was not asking the employer to commit an illegal act.

Here, the complainant's inducement allegation centers on the executive board's decision to file a grievance without following the union's bylaws and internal policies. Chapter 41.56 RCW regulates relationships between employers and employees and between employers and the organizations representing their employees, but does very little in the arena of regulating the internal affairs of labor organizations. This includes regulating how unions approve grievances for submission. The mere fact that the employer considered a grievance that was submitted contrary to the union's bylaws and internal policies does not constitute an inducement violation.

Furthermore, the complaint failed to allege that the union actually attempted to induce the employer to take action that constituted an illegal act. Chapter 41.56 RCW requires an employer to collectively bargain with the exclusive bargaining representative of its employees. The union's grievance asked the employer to reinterpret the contact. Nothing in the alleged facts demonstrates the union asked the employer to contemplate a statutory unfair labor practice and nothing in the complaint suggest that the corrections sergeants are a classification protected from invidious discrimination.

Finally, the complaint alleges that the union's president "has previously made comments that she wants the Sergeants out of the [union]." A union interference violation exists when an employee could reasonably perceive actions as a threat of reprisal or force, or promise of benefit, associated with union activity of the employee or other employees. Employee is not required to show intention or motivation to interfere . . . ." *King County (Amalgamated Transit Union, Local 587)*, Decision 8630-A (PECB, 2005). Nothing in the complaint alleges that the union president's

statement could reasonably be perceived a threat of reprisal or force, or promise of benefit, associated with the complainant's protected activity.

Amended Complaint

Conuel's amended complaint alleges that at least one corrections sergeant was subject to mandatory overtime following the employer's August 2, 2019, decision. This unilateral change violation fails to state a cause of action before this agency. Unilateral change and bad faith bargaining are types of refusal to bargain allegations. An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000), *citing Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District (PSE of Washington)*, Decision 5979 (PECB, 1997). Only the parties to the collective bargaining relationship (the union or the employer) can file a refusal to bargain unfair labor practice case.

The amended complaint also alleges that the union committed unfair labor practices during the campaign for internal union officers. Chapter 41.56 RCW regulates relationships between employers and employees and between employers and the organizations representing their employees, but does very little in the arena of regulating the internal affairs of labor organizations.

Although unions can acquire the statutory status of exclusive bargaining representative of public employees under chapter 41.56 RCW, and then have a statutory duty of fair representation toward the employees in the bargaining unit(s) they represent under that statute, unions are fundamentally private organizations. The constitutions and bylaws of unions are the contracts among their members, controlling how their private organizations are to be operated. Because the agency 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).

As filed, the complainant fails to address a subject matter within the jurisdiction of this agency. The agency lacks authority to intervene in internal union affairs. The union's administration of

its internal elections or records is a matter of the union's own creation. Matters related to a union's constitution or bylaws are contracts between the union and its members. Disputes concerning alleged violations of such contracts are beyond the jurisdiction of the agency and must be resolved through internal union procedures or the courts. *Community College District 8 - Bellevue (Bellevue Community College Association of Higher Education)*, Decision 10032 (CCOL, 2008); *citing Seattle School District (Washington Education Association)*, Decision 9359-A (EDUC, 2007).

Finally, allegation that the union settled an unfair labor practice without the participation of the corrections sergeants fails to state a cause of action. While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 375 (1983). 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 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. Absent an allegation 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, this agency lacks jurisdiction over such complaint. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012).

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 10th day of January, 2020.

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 01/10/2020

DECISION 13138 - PECB 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 132253-U-19

EMPLOYER: PIERCE COUNTY

REP BY:
JOE CARRILLO
PIERCE COUNTY
BUDGET AND FINANCE
950 FAWCETT AVE STE 100
TACOMA, WA 98402-5603
joe.carrillo@piercecountywa.gov

PARTY 2: BRIAN E. CONUEL

REP BY:
BRIAN E. CONUEL
910 TACOMA AVE S
TACOMA, WA 98402
brian.conuel@piercecountywa.gov

ALVIN RUSS ALLEN
INDEPENDENT REPRESENTATIVE
910 TACOMA AVE S
TACOMA, WA 98402
russ.allen@piercecountywa.gov

PARTY 3: PIERCE COUNTY CORRECTIONS GUILD

REP BY:
LISA SHANAHAN
PIERCE COUNTY CORRECTIONS GUILD
1001 YAKIMA AVE S STE 11B
TACOMA, WA 98405
lshanah@co.pierce.wa.us