STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
LEONARD ORTH and GABRIEL VIGIL, Complainants, vs. KING COUNTY CORRECTIONS GUILD, Respondent.	CASES 130746-U-18, 130884-U-18 DECISION 13178 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Lauren H. Berkowitz, Attorney at Law, for the complainants.

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The instant matter involves two separate unfair labor practice complaints filed by Leonard Orth (L. Orth), and Gabriel Vigil (Vigil), (collectively "the complainants") against the King County Corrections Guild (union).[1] The preliminary ruling in each case included the same two causes of action. The first cause of action involves the allegation that the union violated its duty of fair representation when it ceased paying for the costs of legal representation incurred by the complainants in connection with their defense against a lawsuit filed by the union's former counsel, Jared Karstetter (referred to hereinafter as "the Karstetter lawsuit"). The second cause of action alleges that by requesting the employer take an adverse action against the complainants because they filed a bar complaint against the union's former counsel the union induced the

[1] L. Orth filed the complaint in case 130746-U-18 on July 10, 2018, while Vigil filed 130884-U-18 on August 24, 2018. The cases were subsequently placed in abeyance pending resolution of a related lawsuit by the Washington State Supreme Court.

employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The two complaints involve the same respondent and similar issues. They are therefore consolidated.[2]

The parties filed cross-motions for summary judgment and were afforded the opportunity to submit response and reply briefs.[3] The final written arguments were received on February 28, 2020, to complete the records.

ISSUES

The parties' respective motions for summary judgment raise the threshold issue of whether there are material issues of fact with respect to either or both allegations. In the event there are no material facts in dispute, the second issue involves whether either party is entitled to summary judgment as a matter of law.

With respect to the duty of fair representation allegations, there are no disputed material facts that would require a hearing. Summary judgment is thus appropriate. The union's decision to cease paying for the cost of legal representation to defend against the Karstetter lawsuit was purely an internal union issue that did not affect the complainants' terms and conditions of employment. The Public Employment Relations Commission has no jurisdiction over the matter. The allegations are dismissed.[4]

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[2] Garren Clark (Clark) filed a complaint against the union on September 10, 2018, in case 130934-U-18, and Katherine Orth (K. Orth) filed a complaint against the union on October 4, 2018, in case 131001-U-18. The preliminary rulings in those cases contain the same duty of fair representation claim addressed here. The preliminary rulings do not, however, contain the additional inducement allegations raised by L. Orth and Vigil. As a result, the Clark and K. Orth cases are addressed in a separate decision issued concurrently with the instant cases.

[3] In the final briefs filed by the complainants on February 28, 2020, the complainants reiterated an earlier motion, previously denied by the undersigned, to strike portions of the union's reply brief. No arguments presented in the final briefs require a different result. Denying the motion does not prejudice them in any manner as the decision in this case is based on the argument raised by the union in its initial motion for summary judgment, which they do not dispute is properly before the Examiner.

[4] The complainants' motions for summary judgment are denied as they are not entitled to summary judgment as a matter of law.

There are, however, disputed material facts concerning the inducement allegations. Summary judgment is not appropriate and the union's motion is denied.[5] In light of my decision to dismiss the duty of fair representation allegations, the remaining inducement allegations will be held in abeyance pending resolution of any appeal filed with the Commission.

BACKGROUND

The following is derived from the undisputed facts set forth in the complaints, answers, the parties' respective motions for summary judgment, and associated responses and replies.

King County (employer) operates an adult correctional facility in Seattle. The union represents a bargaining unit of corrections officers and sergeants employed at the facility. The union and the employer have been parties to a series of collective bargaining agreements.

The union's executive board serves as its governing body. The board is composed of the positions of president, vice president, secretary, and treasurer, plus eight shift representatives. L. Orth is an employee in the bargaining unit represented by the union. He has served periodically as a member of the union's executive board. Vigil, Clark, and K. Orth also are employed within the bargaining unit. At all times relevant to the instant complaints, Vigil, Clark, and K. Orth did not serve on the union's executive board.

Karstetter provided legal services to the union until 2016. The scope, nature, and duration of the services were set forth in an employment agreement. Pursuant to the agreement, Karstetter was responsible for, *inter alia*, assisting the union in negotiating and enforcing its collective bargaining agreement with King County and representing bargaining unit employees in internal investigatory matters. The union was signatory to an employment agreement with Karstetter as an individual from 2006 until 2011. The union was signatory to another agreement with the Law Offices of Jared C. Karstetter, Jr., P.S. from 2011 until 2016.

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[5] The complainants did not file a motion for summary judgement with respect to the inducement allegations.

On April 12, 2016, Karstetter was interviewed by the employer's internal investigations unit. The interview concerned a complaint submitted by Karstetter alleging he was harassed by one or more bargaining unit employees. At or around the same time as the internal investigations interview, several bargaining unit employees filed complaints against Karstetter with the Washington State Bar Association. Karstetter requested that the union provide him with legal representation in connection with the bar complaints. The union subsequently sought an opinion from a different law firm (Public Safety Labor Group) concerning a range of internal governance issues.

Public Safety Labor Group responded to the union's request for an opinion in a memorandum dated April 21, 2016. The firm concluded that the union was not obligated to provide legal defense for Karstetter against the bar complaints filed by members of the bargaining unit. The firm further determined that the union's contract with Karstetter included an unenforceable just cause provision and, even if the clause was enforceable, the union had "more than sufficient cause to terminate its attorney-client relationship" with him. In support of the firm's conclusion that the union had just cause to terminate its agreement with Karstetter, the firm argued that (1) by filing an internal investigations complaint against members of the union, Karstetter breached his obligation of loyalty; (2) he breached client confidences; (3) he was dishonest during a court appearance; and (4) he acted unprofessionally, harming the union and its members.

On April 28, 2016, the union's president sent an email to Karstetter and guild members explaining that the executive board had "voted to terminate its retainer agreement with Karstetter, and thereby end the attorney-client relationship, effective immediately."

On May 24, 2016, Karstetter and his spouse filed a lawsuit against the union; union members Randy Weaver, Sonya Weaver, L. Orth, K. Orth, Clark, and Vigil as individuals; and Public Safety Labor[6] Group and several of its attorneys. The Karstetter lawsuit contained a range of tort claims. With respect to the Weavers, the Orths, Clark, and Vigil (the "member-defendants"), it alleged that they wrongfully discharged Karstetter, retaliated against him for participating in a

[6] While the lawsuit named "Public Safety Law Group" as a defendant, the firm holds itself out as "Public Safety Labor Group" and is referred to here as such.

whistleblowing investigation, defamed and tarnished his reputation, and negligently inflicted emotional distress.

The union held a general membership meeting on June 1, 2016. During the meeting, the union voted to retain the services of a law firm to defend both itself as an organization as well as the named member-defendants against the Karstetter lawsuit. The firm contracted to defend the union later notified the member-defendants that it could no longer represent them due to potential conflicts of interest. On May 31, 2017, the union voted to hire a separate attorney to provide legal representation to the six member-defendants. Between June 2016 and April 1, 2018, the union paid for the legal costs incurred by the member-defendants in connection with their defense against the Karstetter lawsuit.

The union conducted officer elections in March and April 2018. The union held a meeting on April 25, 2018, following the elections. During the meeting, the union adopted a motion to cease payment of the personal attorney fees and costs for the member-defendants.[7] The union has not paid for the costs of legal representation for the member-defendants since it adopted the motion.

The union moved to dismiss the Karstetter suit for failure to state a claim. The trial court partially granted the motion but allowed the breach of contract and wrongful termination claims to proceed. On interlocutory review, the Court of Appeals reversed and remanded the case, directing the trial court to dismiss the remaining breach of contract and wrongful termination claims. *Karstetter v. King County Corrections Guild*, 1 Wn. App. 2d 822 (2017). Karstetter filed a petition for review with the Washington State Supreme Court. The court accepted review and reversed the Court of Appeals decision, remanding the case back to the trial court for further proceedings on the remaining claims. *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672 (2019).[8]

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[7] Randy and Sonya Weaver filed unfair labor practice complaints against the union in cases 130674-U-18 and 130997-U-18, respectively. These complaints were subsequently withdrawn.

[8] I take administrative notice that the case in the underlying litigation is, at the time of this decision, ongoing.

As a result of the union's decision to cease paying for legal representation in connection with the lawsuit, the complainants have been forced to pay for the cost of their own defense. The union's decision has not affected the wages paid to them by their employer, their working hours, or other working conditions. There is no evidence indicating that the complainants have been disciplined or have suffered any other adverse action at the hands of the employer as a result of the suit or the conduct addressed therein.

ANALYSIS

Issue 1: Is summary judgment appropriate?

Applicable Legal Standard

Motions for summary judgment are considered under WAC 10-08-135. An examiner may grant a motion for summary judgment if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. A material fact is one upon which the outcome of the litigation depends. *State – General Administration*, Decision 8087-B (PSRA, 2004) (citing *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243 (1993)). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (PECB, 2001) (citing *City of Seattle*, Decision 4687-A (PECB, 1996)). Because a motion for summary judgment calls upon the examiner to make a final determination without the benefit of a full evidentiary hearing and record, the granting of such a motion should not be taken lightly. *Port of Seattle*, Decision 7000 (PECB, 2000). Summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the moving party.

Application of Standard—Duty of Fair Representation

As explained in more detail below, the threshold issue in this case is whether the union's decision to cease underwriting the cost of the complainants' defense against the Karstetter lawsuit affects their terms and conditions of employment. In the event that it did have such an impact, the union's duty of fair representation applies, and the Commission examines whether the decision meets the

standard set forth in *Allen v. Seattle Police Officers' Guild (Allen)*, 100 Wn.2d 361 (1983). In contrast, if the decision did not affect their terms and conditions of employment, the inquiry ceases.

Assuming as true the facts construed in the light most favorable to the complainants, there is no genuine dispute as to the impact of the union's decision to cease paying for their legal defense. While they are now forced to pay for the cost of their own defense, their terms and conditions of employment have not changed. The complainants argue in their responses to the union's motion for summary judgment that the impact of the union's decision constitutes a disputed fact. They fail, however, to provide any further information as to what additional material facts they would offer at hearing to establish such an impact. When the moving party shows there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs v. Blume Dev. Co.*, 115 Wn.2d 506 (1990). The complainants' mere assertion that the union's actions have impacted their terms and conditions of employment are, without some evidentiary support, insufficient to establish that the facts are disputed. The complainants do not offer additional facts that would create a link between the union's action and their employment. Instead, they argue that the union's actions relate to their employment simply because they stem from a lawsuit filed by an agent of the union, who was charged with administering and enforcing the applicable collective bargaining agreement. They also argue that the union's decision to cease paying for their legal defense has a "silencing effect" on their ability to engage in internal union activity. These arguments involve legal conclusions and do not provide evidence of genuine disputed material facts. They are, therefore, insufficient to meet the complainants' burden to show a true factual dispute.

The complainants point to other disputed facts that they argue preclude summary judgment in favor of the union. These include, for instance, the existence of factions within the union and the rationale for the union's decision to cease paying for legal defense. A material fact is one on which the outcome of the litigation depends. *State – General Administration*, Decision 8087-B. Because I find that the union's decision was purely an internal matter over which the Commission does not

exercise jurisdiction, these facts argued by the complainants to be in dispute are not material. Summary judgement is appropriate.

Application of Standard—Union Inducement

The complaints allege that Karstetter and other officers and/or agents requested that the employer take disciplinary actions against the complainants because they filed bar complaints against Karstetter. In its motions for summary judgment, the union first argues that it did not authorize any individual to file a complaint against L. Orth or Vigil. The union then concludes that it cannot be liable for inducing the employer to commit an unfair labor practice. The Commission applies the common law principles of agency when determining whether acts of an individual can be imputed to a party. *Seattle School District*, Decision 9982-A (PECB, 2009). An agent's authority to bind his principal may be either actual or apparent. *Deers, Inc. v. DeRuyter*, 9 Wn. App. 240, 242 (1973) (citing 3 Am. Jur. 2d *Agency* § 71 (1962)) cited in *Community College District 13 – Lower Columbia*, Decision 8117-B (PSRA, 2005). The individuals alleged to have induced the employer to commit an unfair labor practice include employees and/or elected officers of the union. Whether these individuals acted with apparent authority while engaging in the alleged unlawful actions constitutes a disputed material fact. This is true even if they acted without the union's express authorization. Summary judgment on the allegations are not appropriate.

The union next argues that the alleged unlawful inducement took place outside of the six-month statute of limitations period contained in RCW 41.56.160(1). The complainants responded that the conduct occurred during internal investigation interviews conducted by the employer. They argue that they only became aware of the facts giving rise to the allegation after they received transcripts of various investigatory interviews as a result of a public records act request, which they claim occurred within the six months preceding the filing of the complaints.

The six-month statute of limitations period 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 occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). For a notice to trigger the statute of limitations, the notice

must be clear and unequivocal. *Municipality of Metropolitan Seattle (METRO)*, Decision 1356-A (PECB, 1982) (citing *Peerless Roofing Co. v. National Labor Relations Board*, 641 F.2d 734 (9th Cir. 1981)). An exception to the strict enforcement of the six-month statute of limitations may exist where the complainant had no actual or constructive notice of the acts or events that are the basis of the charges. *City of Bremerton*, Decision 7739-A (citing *City of Seattle*, Decision 5930 (PECB, 1997)); *City of Pasco*, Decision 4197-A (PECB, 1994). Whether a respondent has engaged in concealment sufficient to toll the statute of limitations period is a fact-intensive inquiry. *See City of Kirkland (International Association of Fire Fighters Local 2545)*, Decision 12546-A (PECB, 2016).

The complainants have alleged that the union attempted to induce the employer to discipline them because they filed bar complaints against Karstetter. Although the union argues that any actions occurred outside of the six-month statute of limitations, the complainants have asserted that the period should be tolled because the conduct was concealed from them. The extent to which there was any concealment constitutes a material disputed fact that precludes summary judgement.

Finally, the union argues that the unfair labor practice manager erred in finding a cause of action for inducement. It is well established, however, that summary judgement does not provide respondents with an opportunity to relitigate preliminary rulings issued by the Executive Director or designee. *City of Orting*, Decision 7959-A (PECB, 2003). Rather, in responding to a motion for summary judgment, I am required to operate within the context of a preliminary ruling and am confined to ruling on admissions or defects that have become evident since it was issued. *Port of Seattle*, Decision 7603-A (PECB, 2003).

Based on the foregoing, the union's motions for summary judgment concerning the inducement allegations are denied.

In light of my denial of the union's motions for summary judgment, an evidentiary hearing on the inducement allegations is required. The Commission does not treat such interlocutory orders as initial or final agency decisions under the Administrative Procedures Act. *See Seattle School District (Seattle Education Association)*, Decision 10073 (EDUC, 2008) (noting Executive

Director rejected appeal of an examiner's denial of a motion for summary judgment because it did not represent a final order). The courts have adopted a similar approach. *Maybury v. Seattle*, 53 Wn.2d 716 (1959); *Roth v. Bell*, 24 Wn. App. 92, 104 (1979); *In re Estates of Jones*, 170 Wn. App. 594, 615 (2012) ("An order denying summary judgment is essentially interlocutory. It does not end proceedings, but rather permits them to proceed. The denial of a summary judgment motion is not a final order that can be appealed."). Because my decision on this issue does not constitute an initial or final agency order under chapter 34.05 RCW, I make no findings of fact with respect to the claims herein.

Issue 2: Did the union violate its duty of fair representation?

Applicable Legal Standard

An exclusive bargaining representative has the statutory duty to fairly represent all employees in a given bargaining unit. *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The duty of fair representation includes an obligation to "serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) (citing *Humphrey v. Moore*, 375 U.S. 335, 342 (1964)). Employees have the "right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment." *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962). While originally developed in the private sector, the doctrine extends to employees covered by chapter 41.56 RCW. *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980); *Allen*, 100 Wn.2d 361. A union violates RCW 41.56.150(1) when it breaches its duty of fair representation.[9]

[9] A union may also violate RCW 41.56.150(1) by engaging in conduct that is reasonably perceived by employees as a threat of reprisal or force associated with their exercise of rights protected by the statute. Determining whether a union engaged in conduct that would constitute such an independent interference violation involves the application of a legal standard separate and distinct from that related to the duty of fair representation and is not addressed here. *See King County (Amalgamated Transit Union Local 587)*, Decision 8630 (PECB, 2004), *aff'd*, Decision 8630-A (PECB, 2005).

The Washington State Supreme Court described the nature of the duty of fair representation under the Public Employees Collective Bargaining Act in *Allen.* As the court explained, for those union activities that fall within the scope of the duty,

> a union must conform its behavior to each of three separate standards. First, it must treat all factions and segments of its membership without hostility or discrimination. Next, the broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty. Finally, the union must avoid arbitrary conduct. Each of these requirements represents a distinct and separate obligation, the breach of which may constitute the basis for civil action.

Allen, 100 Wn.2d at 375. The complainant bears the burden of proof and must establish that the union took some action aligning itself against the bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, or other reasons. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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,* 100 Wn.2d at 366–67.

Application of Standard

Although it is well established that a union owes a duty of fair representation to the employees it represents, it is equally well established that the duty only applies to actions that impact employees' terms and conditions of employment. *United Food Commercial Workers Local 222 (Iowa Beef Processors)*, 245 NLRB 1035, 1039 (1979) ("The touchstone for determining whether a union's action violated the duty of fair representation is whether that action adversely impacted on 'matters affecting employment.'"). Union conduct that does not impact the employee-employer relationship falls outside of the scope of the duty of fair representation as it is purely an internal union matter over which the Commission has traditionally declined to exercise jurisdiction. *See Western Washington University (Washington Public Employees Association, UFCW Local 365)*, Decision 8849-B (PSRA, 2006) ("When asked to regulate the internal workings of unions, this Commission has taken a 'hands-off' approach except where complainants have asserted that union conduct affected the wages, hours, or working conditions of individual employees."); *Pierce Transit (Amalgamated Transit Union)*, Decision 4094 (PECB, 1992) at 3 n.2.

Mirroring the approach adopted by the courts and the National Labor Relations Board (NLRB), the Commission has routinely dismissed complaints filed against unions where the conduct at issue has only an attenuated relationship to employee working conditions. Internal matters into which the Commission will not interject itself (and declines to exercise jurisdiction) include most union discipline and fines,[10] union officer elections,[11] the conduct of union meetings,[12] and the amount of dues charged to members.[13]

The Commission's treatment of contract ratification votes is illustrative of this approach. The conduct of nearly all ratification votes falls outside of the Commission's jurisdiction to regulate internal union affairs. *Lake Washington School District (Lake Washington School District Bargaining Council)*, Decision 6891 (PECB, 1999). Where, however, a union invites the employer into the ratification process by making an agreement with the employer that all employees, regardless of membership, may vote, it "thus exposes itself to scrutiny regarding any allegation that it restrained employees from the right to vote granted to them by the agreement." *Western Washington University (Washington Public Employees Association, UFCW Local 365)*, Decision 8849-B. This is consistent with NLRB case law holding that a duty of fair representation analysis is only applied to union ratification votes when the union makes an explicit agreement with the employer that ratification is a condition precedent to the execution of a valid agreement. *See Western Conference of Teamsters (California Cartage Co.)*, 251 NLRB 331 (1980).

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[10] *King County (Washington State Nurses Association)*, Decision 10389-A (PECB, 2011); *Seattle School District (International Union of Operating Engineers Local 609)*, Decision 9135-B (PECB, 2007).

The NLRB has taken a similar "hands off" approach to internal union discipline. *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000) (finding no violation of the National Labor Relations Act where intra-union discipline of officers for misuse of funds had only a speculative impact on the employer-employee relationship).

[11] *Mead School District (Mead Classified Public Employees Association)*, Decision 12208 (PECB, 2014); *City of Moses Lake (Washington State Council of County and City Employees)*, Decision 12996 (PECB, 2019).

[12] *King County (Washington State Council of County and City Employees)*, Decision 12400 (PECB, 2015); *City of Bellingham (Washington State Council of County and City Employees)*, Decision 6950 (PECB, 2000).

[13] *Spokane County (Washington State Council of County and City Employees Local 1553)*, Decision 4882-A (PECB, 1995).

Citing *Retana v. Apartment, Motel, Hotel & Elevator Operators Union (Retana),* 453 F.2d 1018 (9th Cir. 1972), the complainants argue that internal union decisions "made with hostility, discrimination, asserting one faction of the union in opposition to another faction, arbitrarily, and/or in bad faith, constitute a breach of the duty of fair representation." This overstates the scope of a union's duty. *Retana* involved a lawsuit by a group of Spanish-speaking employees against a union concerning its failure to provide any translation services. The court found this failure, if true, could effectively deprive the employees of the opportunity to participate in the negotiation or administration of the collective bargaining agreement. It thus required a link between the union's actions and the employees' employment relationship. In fact, in dismissing the union's motion for summary judgment, the court recognized that "[t]hough the duty of fair representation is broad, not all union practices have a substantial impact upon members' rights in relation to the negotiation and administration of the collective bargaining agreement." *Retana* at 1024–25. In *Allen,* the Washington State Supreme Court endorsed the approach taken in *Retana*. When evaluating the duty of fair representation claim, the court noted it first must determine whether the activity in question fell within the scope of the duty of fair representation. Consistent with federal precedent, the court looked to the relationship between the union's conduct and the employment relationship. It was only after determining that the conduct related to the day-to-day administration of the collective bargaining agreement that the court proceeded to evaluate whether the union's actions violated the standards it set forth.

In contrast to *Retana* and *Allen*, here, the union's decision to stop underwriting the cost of the complainants' defense in the Karstetter lawsuit did not materially impact their terms and conditions of employment. The union points out in its motions for summary judgment that the complainants continued to be employed by their employer under the same terms and conditions of employment that existed prior to the union's decision. The union's action did not result in any workplace discipline. There is no evidence of any provision of the collective bargaining agreement that would be implicated by the complainants' involvement in the Karstetter lawsuit. None of these facts are disputed.

Instead, the complainants argue that because Karstetter, while employed pursuant to a contract as the union's counsel, was responsible for the negotiation and enforcement of the collective bargaining agreement, "[his] lawsuit, alleging breach of this contract, relates to [the complainants'] employment with the County as a matter of law." This argument is unpersuasive. The allegations addressed in the preliminary rulings relate only to the failure of the union to continue subsidizing the cost of defending against the Karstetter lawsuit. There are no allegations before me that the Karstetter lawsuit itself somehow constitutes an unfair labor practice. The complainants also argue that the union's failure to continue paying for their legal defense relates to their terms and conditions of employment as it has a "silencing effect" on their ability to freely debate the issue of who would serve as the union's legal advisor. While I am sympathetic to the hardship imposed on the complainants by being required to pay for the cost of their own legal defense, it is insufficient to demonstrate the requisite link between the employer-employee relationship that is necessary to invoke the union's duty of fair representation. In fact, it is hard to conceive of an issue that would involve a more purely internal matter than whom to select as a union spokesperson. Finally, to the extent that there is some tangential relationship between the Karstetter lawsuit and the complainants' employment by their employer, the threshold test for whether a union's action violates its duty of fair representation involves whether the conduct materially affects the employee's employment. Any link between the union's decision to stop paying for the complainants' defense and their work at King County is too attenuated to meet this threshold.[14]

CONCLUSION

The undisputed facts establish that the actions taken by the union that are alleged to violate its duty of fair representation do not substantially affect the complainants' terms and conditions of employment. The actions relate to an internal union matter over which the Commission does not

[14] Both parties exhaustively address the extent to which the union's decision to cease underwriting the cost of the complainants' legal defense hinged on reasons that were arbitrary, discriminatory, or otherwise violated the standard set forth in *Allen*. Because I find that the decision was beyond the scope of the duty of fair representation, those arguments are not addressed here. While there appears to be a substantial factual dispute concerning the underlying reasons for the decision, as noted above, the facts relevant to this dispute are not material as they would not affect the outcome of the case.

exercise jurisdiction. Summary judgment in favor of the union is appropriate, and the duty of fair representation allegations are dismissed.

In contrast, there are genuine material facts in dispute regarding the allegations that the union induced the employer to commit an unfair labor practice. Summary judgement on those issues is not appropriate.

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The King County Corrections Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer operates an adult correctional facility in Seattle. The union represents a bargaining unit of corrections officers and sergeants employed at the facility. The union and the employer have been parties to a series of collective bargaining agreements.

4. Leonard Orth (L. Orth), Garren Clark (Clark), Katherine Orth (K. Orth), and Gabriel Vigil (Vigil) are employed by the employer in the bargaining unit represented by the union.

5. Jared Karstetter (Karstetter) provided legal services to the union until 2016. The scope, nature, and duration of the services were set forth in an employment agreement. Pursuant to the agreement, Karstetter was responsible for, *inter alia*, assisting the union in negotiating and enforcing its collective bargaining agreement with King County and representing bargaining unit employees in internal investigatory matters.

6. On April 12, 2016, Karstetter was interviewed by the employer's internal investigations unit. The interview concerned a complaint submitted by Karstetter alleging he was harassed by one or more bargaining unit employees.

7. At or around the same time as the internal investigations interview, several bargaining unit employees filed complaints against Karstetter with the Washington State Bar Association. Karstetter requested that the union provide him with legal representation in connection with the bar complaints. The union subsequently sought an opinion from a different law firm (Public Safety Labor Group) concerning a range of internal governance issues.

8. Public Safety Labor Group responded to the union's request for an opinion in a memorandum dated April 21, 2016. The firm concluded that the union was not obligated to provide legal defense for Karstetter against the bar complaints filed by members of the bargaining unit. The firm further determined that the union's contract with Karstetter included an unenforceable just cause provision and, even if the clause was enforceable, the union had "more than sufficient cause to terminate its attorney-client relationship" with him. In support of the firm's conclusion that the union had just cause to terminate its agreement with Karstetter, the firm argued that (1) by filing an internal investigations complaint against members of the union, Karstetter breached his obligation of loyalty; (2) he breached client confidences; (3) he was dishonest during a court appearance; and (4) he acted unprofessionally, harming the union and its members.

9. On April 28, 2016, the union's president sent an email to Karstetter and guild members explaining that the executive board had "voted to terminate its retainer agreement with Karstetter, and thereby end the attorney-client relationship, effective immediately."

10. On May 24, 2016, Karstetter and his spouse filed a lawsuit against the union; union members Randy Weaver, Sonya Weaver, L. Orth, K. Orth, Clark, and Vigil as individuals; and Public Safety Labor Group and several of its attorneys.

11. The union held a general membership meeting on June 1, 2016. During the meeting, the union voted to retain the services of a law firm to defend both itself as an organization as well as the Weavers, the Orths, Clark, and Vigil against the Karstetter lawsuit.

12. Between June 2016, and April 1, 2018, the union paid for the legal costs incurred by the complainants in connection with their defense against the Karstetter lawsuit.

13. The union conducted officer elections in March and April 2018. The union held a meeting on April 25, 2018, following the elections. During the meeting, the union adopted a motion to cease payment of the personal attorney fees and costs for the complainants. The union has not paid for the costs of legal representation for the complainants since it adopted the motion.

14. As a result of the union's decision to cease paying for legal representation in connection with the lawsuit, the complainants have been forced to pay for the cost of their own defense.

15. The union's decision has not affected the wages paid to them by their employer, their working hours, or other working conditions.

16. There is no evidence indicating that the complainants have been disciplined or have suffered any other adverse action at the hands of the employer as a result of the Karstetter lawsuit or the conduct addressed therein.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has statutory jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.

2. By its actions described in findings of fact 13–14, the union did not interfere with employee rights in violation of RCW 41.56.150(1) when it ceased paying for the cost of legal representation for the complainants in connection with their defense against the Karstetter lawsuit.

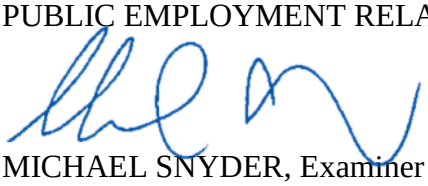
ORDER

The allegations contained in the complaints charging that the union committed an unfair labor practice by violating its duty of fair representation filed in the above-captioned matters are DISMISSED.

The union's motions for summary judgment concerning the allegations that the union induced the employer to commit an unfair labor practice are DENIED.

ISSUED at Olympia, Washington, this 31st day of March, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL SNYDER, Examiner

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 03/31/2020

DECISION 13178 - 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 130746-U-18

EMPLOYER: KING COUNTY

REP BY:
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RECORD OF SERVICE

ISSUED ON 03/31/2020

DECISION 13178 - 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 130884-U-18

EMPLOYER: KING COUNTY

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