

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNIVERSITY OF WASHINGTON,  
Employer.

MARQUES JOHNSON,  
Complainant,

vs.

SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL 925,  
Respondent.

CASE 132546-U-20

DECISION 13187 - PSRA

ORDER OF DISMISSAL

On February 14, 2020, Marques Johnson filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Service Employees International Union Local 925 as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice was issued on March 11, 2020, indicating that it was not possible to conclude a cause of action existed at that time. Johnson was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 31, 2020, Johnson 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 41.80.110(2)(a) within six months of the date the complaint was filed, by breaching its duty of fair representation in providing documentation on August 22, 2019, to Marques Johnson, which provided a summary of Johnson's grievance process.

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

Marques Johnson is a security employee at the University of Washington (employer) and is represented by the Service Employees International Union Local 925 (union). In December 2017 the union allegedly filed a grievance on behalf of Johnson. In June 2019 during a phone conversation, Johnson was notified by the union that it no longer intended to arbitrate Johnson's grievance.

On August 22, 2019, Johnson allegedly received an email from the union. The email provided a summary of the grievance, stated the alleged facts and reasoning that were considered by the union in processing Johnson's grievance. Johnson alleges that statements made in the email omitted details Johnson believed should have been included.

## ANALYSIS

### 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). 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. 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 arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union’s actions or inactions were discriminatory or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

There are three standards used 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. *Allen v. Seattle Police Officers’ Guild*, 100 Wn.2d 361 (1983).

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 amended complaint does not include facts alleging the union's actions or inactions were arbitrary, discriminatory, or in bad faith. The amended complaint alleges that Johnson is covered by the statute and is a member of the bargaining unit. The amended complaint alleges that the union processed and settled a grievance on Johnson's behalf. The union initially informed Johnson it would no longer proceed to arbitration on his grievance in June 2019.<sup>2</sup> The union provided an explanation of the union's process in an email on August 22.

The amended complaint alleges that Johnson disagreed with the August 22 email he received from the union and alleges that some of the email omitted facts. The email was a summary of the process the union completed to resolve Johnson's grievance. None of the facts alleged demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. Because the amended complaint lacks facts necessary to allege a duty of fair representation violation, the amended complaint must be dismissed.

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 16th day of April, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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.

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<sup>2</sup> June 2019 is outside the six-month statute of limitations and used for background purposes only.



# RECORD OF SERVICE

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ISSUED ON 04/16/2020

DECISION 13187 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in black ink, appearing to read "Debbie Bates", is written over a horizontal line.

BY: DEBBIE BATES

CASE 132546-U-20

EMPLOYER: UNIVERSITY OF WASHINGTON

REP BY: BANKS EVANS III  
UNIVERSITY OF WASHINGTON  
4300 ROOSEVELT WAY NE  
PO BOX 354960  
SEATTLE, WA 98195  
bankse@uw.edu

PARTY 2: MARQUES JOHNSON

REP BY: MARQUES JOHNSON  
32621 4TH PL S  
FEDERAL WAY, WA 98003  
marquesr.johnson@gmail.com

PARTY 3: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925

REP BY: KAREN HART  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925  
1914 N 34TH ST STE 100  
SEATTLE, WA 98103  
khart@seiu925.org