

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD, Employer.	
KELVIN DAISE, Complainant, vs.	CASE 131904-U-19 DECISION 13191-A - PSRA
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	DECISION OF COMMISSION

Kelvin Daise, the complainant.

Lane Hatfield, Attorney at Law, for the Washington Public Employees Association.

On July 8, 2019, Kelvin Daise (complainant) filed an unfair labor practice complaint against the Washington Public Employees Association (union). The complainant alleged the union breached its duty of fair representation. An Unfair Labor Practice Administrator issued a preliminary ruling. The union filed an answer.

After a hearing, Examiner Christopher J. Casillas dismissed the unfair labor practice complaint. *Washington State Liquor and Cannabis Board (Washington Public Employees Association)*, Decision 13191 (PSRA, 2020). The Examiner concluded that the Commission's jurisdiction in duty of fair representation cases is limited, and the facts before him did not come within that limited jurisdiction. The Examiner concluded that the union represented the complainant. While the complainant may have believed the union should have done more, the union's actions were not arbitrary or discriminatory toward the complainant.

The complainant filed a timely notice of appeal. In his combined notice of appeal and appeal brief, the complainant argued that the union participated in arbitrary conduct. According to the complainant, probationary employees are a faction of the bargaining unit that the union treated differently. The complainant argued that the union failed to provide representation and he represented himself. The complainant argued that the union failed to file a meritorious grievance.

In response, the union argued that substantial evidence does not support finding that the union discriminated against the complainant or treated him with hostility because he was a probationary employee. The union further argued that the complainant's status as a non-dues-paying member of the bargaining unit did not impact the union's representation.

ISSUE

The issue before the Commission is whether the union breached its duty of fair representation by refusing to represent the complainant or respond to the complainant's requests for representation. We affirm the Examiner. The findings of fact are verities on appeal. The findings of fact support the Examiner's conclusion that the union did not breach its duty of fair representation. The union represented the complainant. The Commission does not exercise jurisdiction over breach of the duty of fair representation claims arising out of grievance processing.

ANALYSIS

Applicable Legal Standards

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

Decisions issued by examiners include numbered findings of fact and conclusions of law and an order. *Puyallup School District*, Decision 12814-A (PECB, 2018). When appealing an examiner's decision, the appellant "shall identify, in separate numbered paragraphs, the specific rulings,

findings of fact, conclusions of law, or orders claimed to be in error.” WAC 391-45-350(3). Unchallenged findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A (PECB, 2001).

Application of Standards

Compliance with WAC 391-45-350(3) is necessary to put the Commission and the opposing party on notice of the arguments that the appealing party intends to advance. *City of Kirkland*, Decision 6377-A (PECB, 1998). Failure to comply with WAC 391-45-350 is a basis for dismissing an appeal. *DeLacey v. Clover Park School District*, 117 Wn. App. 291, 296 (2003) (affirming the Commission’s decision to dismiss a complaint for failure to comply with WAC 391-45-350). Parties who ignore the requirements of WAC 391-45-350(3) do so at their peril.

The complainant failed to identify specific findings of fact alleged to be in error in his notice of appeal. Therefore, the Examiner’s findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 347; *Brinnon School District*, Decision 7210-A. We review the application of the law to those facts de novo. *Wapato School District*, Decision 12894-A (PECB, 2019).

We have reviewed the transcript, the exhibits, and the parties’ briefs. The Examiner correctly identified and applied the legal standard. The union owes employees it represents a duty of fair representation. The Examiner correctly stated that there is no requirement or expectation that collective bargaining agreements treat all employees equally. For example, a union may, without violating the duty of fair representation, agree to an employer’s request to require new hire employees serve a probationary period during which they have no access to the “just cause” protections enjoyed by permanent employees.

Much of the complainant’s arguments on appeal contain factual assertions regarding the quality of representation at the complainant’s April 2 meeting with the employer. The union actively

represented the complainant, including at the April 2 meeting.¹ While the representation may not have been to the complainant's satisfaction, the level of satisfaction is not the standard by which we determine if a union fairly represented its members. We agree with the Examiner that the union's actions were neither arbitrary nor discriminatory.

The complainant also challenges the union's decision not to grieve the complainant's separation from employment during his probationary period. There was no evidence the union did not file the grievance for arbitrary, bad faith, or discriminatory reasons. The collective bargaining agreement specifically provides that a separation from employment during an employee's probationary period is not "subject to the grievance procedure."² The Commission has consistently declined to exercise its jurisdiction over duty of fair representation cases alleging failure to file a grievance, including on behalf of probationary employees. *Bremerton School District*, Decision 5722-A (PECB, 1997) (citing *Mukilteo School District (PSE of Washington)*, Decision 1381 (PECB, 1982)). The union was exercising its discretion in conformity with the collective bargaining agreement and its obligations under the collective bargaining laws.

CONCLUSION

The Examiner's unchallenged findings of fact are verities on appeal. On appeal, the Commissioner reviews conclusions of law de novo. We conclude that the findings of fact support the Examiner's conclusions of law. We accordingly affirm the Examiner's findings of fact, conclusions of law, and order.

¹ *Washington State Liquor and Cannabis Board*, Decision 13191, finding of fact 14.

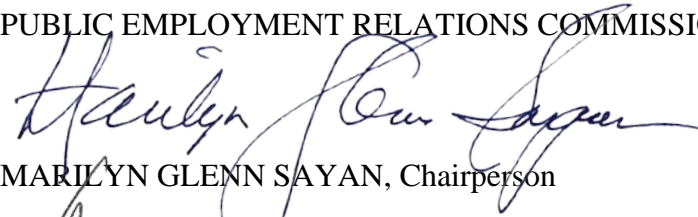
² Union Ex. U-2, Collective Bargaining Agreement art. 4.5.A.2.

ORDER

The findings of fact, conclusions of law, and order issued by Examiner Christopher Casillas are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 25th day of June, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner



RECORD OF SERVICE

ISSUED ON 06/25/2020

DECISION 13191-A - PSRA 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 131904-U-19

EMPLOYER: WASHINGTON STATE LIQUOR AND CANNABIS BOARD

REP BY: FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

PARTY 2: KELVIN DAISE

REP BY: KELVIN DAISE
425 S TACOMA WAY
TACOMA, WA 98402
kkd9113@gmail.com

PARTY 3: WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

REP BY: KENT STANFORD
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION
140 PERCIVAL ST NW
OLYMPIA, WA 98502-5438
kent@wpea.org

LANE HATFIELD
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION
140 PERCIVAL ST NW
OLYMPIA, WA 98502-5438
lane@wpea.org