STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
HIM YEUNG, Complainant, vs. AMALGAMATED TRANSIT UNION LOCAL 587, Respondent.	CASE 132933-U-20 DECISION 13243 - PECB ORDER OF DISMISSAL

Him Yeung, the complainant.

Ken Price, President, for the Amalgamated Transit Union Local 587.

On July 24, 2020, Him Yeung (complainant) filed an unfair labor practice complaint against the Amalgamated Transit Union Local 587 (union). Yeung filed an amended complaint on July 29, 2020. The amended complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on August 13, 2020, notified Yeung that a cause of action could not be found at that time. Yeung was given a period of 21 days in which to file and serve a second amended complaint or face dismissal of the case.

[1] At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

On September 3, 2020, Yeung filed a second amended complaint. The Unfair Labor Practice Administrator dismisses the second amended complaint for failure to state a cause of action.

ISSUES

The second amended complaint alleges the following:

> Union interference with employee rights in violation of RCW 41.56.150(1), by breach of its duty of fair representation related to delaying a grievance and not moving the grievance forward after step one.
>
> Union discrimination of bargaining unit employees for treating temporary employees differently than full-time employees.
>
> Union restraint and coercion in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by treating temporary employees differently related to unidentified protected activity.

The second amended complaint lacks facts necessary to allege a duty of fair representation, discrimination, or interference violation. Thus the second amended complaint must be dismissed.

BACKGROUND

Yeung was a Customer Information Specialist at King County and was represented by Amalgamated Transit Union Local 587 (union). It is unclear whether Yeung's position was a temporary employee position. On January 17, 2020, Yeung was terminated. On January 28, 2020, Yeung requested a termination review under the collective bargaining agreement. Allegedly under the contract, temporary employees were considered at-will and only had the option of a termination review. Termination reviews were conducted for temporary employees. On February 13, 2020, the employer, union, and Yeung met for Yeung's termination review. The employer stated that Yeung had been terminated for issues related to performance and misconduct. Yeung requested the employer to provide these reasons in writing. The employer allegedly never provided the reasons in writing.

On March 9, 2020, Yeung filed a grievance related to discrimination regarding his termination. On March 24, 2020, the union and employer entered into an MOU suspending the processing of grievances until May 1, 2020, due to the coronavirus pandemic and the parties later extended the suspension through June 1, 2020.

On March 30, 2020, Yeung spoke with the union requesting an update on when his grievance would be processed. At that time the union allegedly stated the grievance would be scheduled around May 1, 2020. On May 4, 2020, Yeung spoke with the union again regarding the scheduling of his grievance and was informed the grievance hearing would be delayed. The grievance hearing was held on June 18, 2020. On June 18, 2020, Yeung also spoke with a union representative asking about temporary employees and why they were treated differently under the collective bargaining agreement. The union allegedly stated that temporary employees were not full bargaining unit members and that temporary employees were treated differently than full-time employees under the collective bargaining agreement.

Yeung believed the outcome of his grievance hearing may have been predetermined. On June 19, 2020, Yeung drafted an email regarding his concerns of his June 18 grievance hearing and requested the union forward it to the employer. The union allegedly did not forward it to the employer. On June 25, 2020, Yeung received the employer's decision, presumably affirming the termination. On July 7, 2020, the union informed Yeung that his grievance was non-meritorious and based on the plain language of the collective bargaining agreement the union had no discretion but to preclude him from grievance.

In addition to Yeung's termination, Yeung alleges the union misled employees when it changed collective bargaining agreement (CBA) language during negotiations. On April 12, 2020, Yeung notified the union that the table of contents on the tentative CBA was not correct. On May 15, 2020, the union stated it would correct the table of contents in the final draft. Yeung alleges the table of contents was never corrected. Allegedly the union had agreed to new language in Article 25 that temporary employees shall be considered at-will. The union allegedly did not inform the members diligently about this change. On an unidentified date, the union later published a summary of the changes to the CBA including the fact that under Article 25 the definition had

changed. The union membership voted on the CBA on May 27, 2020, and the agreement was ratified.

ANALYSIS

Duty of Fair Representation

Applicable Legal Standard

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 second amended complaint lacks facts alleging a duty of fair representation violation. The second amended complaint alleges that Yeung was represented by the union and that the union filed a grievance related to Yeung's termination. The complaint also alleges the union notified Yeung that it would not move forward with Yeung's grievance because the CBA would not allow them to move it forward. Allegedly temporary employees were only provided the ability to request

a termination review, but were unable to file a grievance for termination. There are no facts alleging the union's actions were arbitrary, in bad faith or invidious. The facts allege the union was following the CBA language.

Additionally, Yeung alleges that the union delayed his grievance processing. The facts alleged state that the employer and union reached an agreement to delay the processing of grievances due to the coronavirus pandemic. There is no allegation of the union's action being arbitrary, invidious, or in bad faith.

Finally, Yeung alleges the union misled bargaining unit employees. The second amended complaint alleges after Yeung's termination, the union notified the bargaining unit about the changes that were made, the bargaining unit employees were provided the opportunity to vote on the CBA and the bargaining unit ratified the CBA. There are no facts alleging the union's actions were in bad faith, invidious, or arbitrary.

Because there are no facts related to the union taking any action aligning itself against unit employees on an invidious, arbitrary, or bad faith basis, the second amended complaint must be dismissed.

Union Discrimination

Generally, there are two types of union discrimination violations that this agency will process. The first is where a union induces the public employer to take a negative action against a bargaining unit employee. RCW 41.56.150(2). To induce an employer to commit an unfair labor practice, a union must request that an employer do something unlawful under the collective bargaining statutes. For example, a union cannot demand that an employer discharge an employee for nonpayment 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). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

To demonstrate that a union discriminated against an employee by inducing an employer to commit an unfair labor practice, a complainant must establish the following:

1. The employee involved is covered by a collective bargaining statute administered by this agency, and

2. The union requested the employer to commit an act that is an unfair labor practice under the act.

The second type of union discrimination is where a union discriminates against an employee for filing an unfair labor practice complaint with this agency or providing testimony at an agency conducted hearing. RCW 41.56.150(3). To prove that a union discriminated against an employee for filing an unfair labor practice complaint or providing testimony at an agency conducted hearing, the complainant must demonstrate:

1. The employee involved filed charges or provided testimony at an agency conducted hearing involving the union;

2. The union deprived the employee of some ascertainable right, benefit, or status;

3. A causal connection exists between the employee's charges or testimony and the union's action.

A violation concerning discrimination for filing unfair labor practice charges cannot stand absent allegations that the discriminate has previously filed an unfair labor practice complaint with PERC. *Pierce Transit*, Decision 9074 (PECB, 2005).

For both kinds of discrimination, an employee may use circumstantial evidence to establish the prima facie case of discrimination because respondents do not typically announce a discriminatory motive for their actions. *Washington State University*, Decision 11749-A (PSRA, 2013) (citing *Clark County*, Decision 9127-A (PECB, 2007)). Circumstantial evidence consists of proof of facts

or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual or that union animus was a substantial motivating factor behind the employer's actions. *Id.*

Application of Standards

The second amended complaint lacks facts alleging union discrimination. The complaint does not allege that the union asked the employer to commit an act that is an unfair labor practice. Additionally, the second amended complaint does not allege that the union discriminated against Yeung for filing an unfair labor practice with the Public Employment Relations Commission. Thus the complaint must be dismissed.

Union Interference

Applicable Legal Standard

Employees covered by chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by chapter 41.56 RCW. RCW 41.56.150(1). The Commission explained the test for union interference: "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).

Application of Standard

The second amended complaint lacks facts alleging union interference. It does not include facts that an employee could reasonably perceive the union's action as a threat of reprisal or force or promise of benefit associated with union activity. Because the second amended complaint lacks fact necessary to allege an interference violation, the complaint must be dismissed.

ORDER

The second amended 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 24th day of September, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 09/24/2020

DECISION 13243 – PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 132933-U-20

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