

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF REDMOND, Employer.	
PAUL RICHARDS, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 2829, Respondent.	CASE 133219-U-20 DECISION 13311 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

Paul Richards, the complainant.

Alex J. Skalbania, Attorney at Law, Skalbania & Vinnedge, PSC, for the City of Redmond.

On December 7, 2020, Paul Richards (complainant) filed an unfair labor practice complaint against the International Association of Fire Fighters Local 2829 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on January 5, 2021, notified Richards that a cause of action could not be found at that time due to substantive and procedural defects within the complaint. Richards was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

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 January 21, 2021, Richards filed an amended complaint. The allegation that the union breached its duty of fair representation by providing the employer with privileged information during an employee investigation² and by aligning itself against members by settling grievances in exchange for the removal of the Fire Chief and Deputy Fire Chief³ state causes of action that are subject to further proceedings before this agency. All other allegations of the amended complaint are dismissed.

BACKGROUND

Paul Richards (Richards or complainant) was employed as a firefighter with the City of Redmond (employer) and was represented by the International Association of Fire Fighters Local 2829 (Local 2829) for purposes of collective bargaining.

According to his amended complaint, the employer terminated Richards' employment with the City of Redmond on June 10, 2019. As part of the investigation into his conduct, Richards' asserts that in February 2019 an unidentified Local 2829 executive board member shared privileged information with the employer about Richards' discipline.

Following his termination, Local 2829 filed a grievance on Richards' behalf contesting the termination. On September 15, 2020, the union ultimately settled the grievance with the employer instead of taking the matter to arbitration. Richards claims the Local 2829 bartered away his employment in return for the city removing a Fire Chief that Local 2829 did not like. Richards' complaint makes a total of 30 separate claims alleging Local 2829 breached its duty of fair representation owed to Richards.

² Claim "A" of the amended complaint.

³ Claim "N" of the amended complaint.

ANALYSIS*Duty of Fair Representation*

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). The duty of fair representation originated with decisions of the Supreme Court of the United States holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and 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. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute and does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. *Bremerton School District*, Decision 5722-A (PECB, 1997). 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 more than merely negligent; it must be arbitrary, discriminatory, or in bad faith; or be based on considerations that are irrelevant, invidious, or unfair. *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of the duty of fair representation has the burden of proof. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington State Supreme Court adopted three standards 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 of these requirements represents a distinct and separate obligation.

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. Furthermore, the Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances.

Only in rare circumstances will the Commission assert jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). The Commission asserts jurisdiction when an employee alleges its union aligned itself in interest against employees it represents based on invidious discrimination. *City of Seattle (Seattle Police Officers' Guild)*. In such cases, the employee bears the burden of establishing 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, etc. *City of Seattle (Seattle Police Officers' Guild)*. 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).

Application of Standards

Richards claim that Local 2829 breached its duty of fair representation by settling his grievance does not state a cause of action before this agency. For example, the claims alleging his discipline was precluded by double jeopardy, that the union defended other employees against double jeopardy, that the union failed to enforce progressive discipline standards, failing to enforce legally established disciplinary standards all arise from the processing and settlement of the grievance. However, the settlement of the grievance concerning Richards' employment was, in effect, an extension of the collective bargaining agreement and therefore is not actionable before this agency. *See Dayton School District, 8042-A.*

Numerous claims also assert that Local 2829 breached its duty of fair representation by processing Richards' grievance in a manner different from other employees to Richards' detriment. None of these claims allege facts that constitute an unfair labor practice before this agency because Richards has not alleged that the union's actions were based upon invidious reasons such as union membership, race, sex, national origin, etc. Rather, the amended complaint simply alleges that the union processed the complainant's grievance in a manner that differed from other bargaining unit employees. As referenced above, this state's collective bargaining laws recognize that unions possess a wide range of discretion in settling disputes. While Richards may be dissatisfied with the outcome Local 2829 secured for him, including the fact that Local 2829 and other union's allegedly secured settlements of a greater monetary value than Richards' settlement, these differences alone do not constitute an unfair labor practice and the complaint lacks specific facts demonstrating the union aligned itself against Richards in an invidious manner.

Finally, Richards' claims that Local 2829 violated the collective bargaining agreement and department rules and regulations are not claims that can be redressed through the unfair labor practice statutes. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the

unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134-A (EDUC, 2011) (citing *Tacoma School District*, Decision 5722-E (EDUC, 1997)). This agency possesses no statutory authority to redress claims that a party violated other department rules and regulations. These legal violations need to be addressed in a different forum, such as the superior courts.

ORDER

1. Assuming all of the facts alleged to be true and provable, the duty of fair representation allegation of the amended complaint state a cause of action, summarized as follows:

Union interference in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty of fair representation owed to Paul Richards by:

1. providing the employer with privileged information during and employee investigation; and
2. aligning itself against members by settling grievances in exchange for the removal of the fire chief and deputy fire chief.

These allegations will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order.⁴ The answer shall

⁴ Specifically, the respondent need only respond to paragraphs 1 through 14, paragraphs 16 through 18 (claim A), paragraphs 46 through 50 (claim N), and paragraphs 102 through 117.

- (a) specifically admit, deny, or explain each fact alleged in the amended complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- (b) assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

- 3. All other allegations of the amended complaint concerning duty of fair representation and contract violations are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of February, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 02/18/2021

DECISION 13311 - 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 133219-U-20

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