

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD, Employer.	
MARK J. BAKER, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 132582-U-20 DECISION 13333 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
ROBERT M. LUCAS, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 132583-U-20 DECISION 13334 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Mark J. Baker, the complainant.

Robert M. Lucas, the complainant.

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for
the Washington Federation of State Employees.

The complaints in these cases were filed on February 25, 2020, by Mark Baker and Robert Lucas, former employees of the Washington State Liquor and Cannabis Board (employer). The complaints allege that the Washington Federation of State Employees (union) interfered with

employee rights in violation of RCW 41.80.110(2)(a) by breaching its duty of fair representation in failing to meet the deadline to file a Step 3 grievance for each complainant. The employer is not a party to the issues directly before the Commission in this case. However, the employer's name is used to identify the case because every case processed by the Commission must arise out of an employment relationship that is subject to the Commission's jurisdiction. The union filed a motion for summary judgment, and the parties submitted briefs and declarations, the last of which was filed on January 7, 2021.

ISSUES

1. Are there genuine issues of material fact in dispute preventing judgment?
2. Did the union breach the duty of fair representation by failing to meet the deadlines to file Step 3 grievances?

The motion is granted; there are no issues of material fact in dispute that would prevent judgment. The parties do not dispute that the union failed to file Step 3 grievances for Baker and Lucas by the requisite deadlines. The complainants did not meet their burden to prove that the union interfered with employee rights by breaching its duty of fair representation. The case is dismissed.

BACKGROUND

Baker and Lucas are former employees of the Washington State Liquor and Cannabis Board. Both were employed as Liquor and Cannabis Enforcement Officers and were members of a bargaining unit represented by the union. During the time period relevant to the complaint, the parties were governed by the union's General Government Collective Bargaining Agreement (CBA).

Baker's and Lucas's employment was terminated on September 13, 2019, for making fraudulent representations. On October 10, 2019, Kevin Hill, a Lead Council Representative for the union at the time, filed two separate grievances on behalf of Baker and Lucas. Hill argued that their dismissals were in violation of the "Just Cause" requirement in Article 27 of the CBA. On

November 14, 2019, Justin Nordhorn, the employer's Enforcement and Education Division Chief, issued two decisions denying the grievances at Step 2 in accordance with the CBA's grievance procedure. On November 26, 2019, Lucas sent Hill a text message to follow up on the grievance. On December 9, 2019, Baker left Hill a voicemail inquiring about the grievance.

On December 13, 2019, Hill contacted Baker and Lucas by phone in order to inform them that he (Hill) had failed to advance the grievance to Step 3 within the required timeline and apologized for this failure. Hill also informed Baker and Lucas that the union had sought an extension of the timeline from the employer, but the employer had denied this request and deemed the grievance as withdrawn.¹

ANALYSIS

Applicable Legal Standards

Summary Judgment

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." WAC 10-08-135. "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 Indemnity Co.*, 121 Wn.2d 243 (1993)).

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (PECB, 2001) (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). When the moving party shows that there

¹ The consequences of missing a grievance due date are addressed in CBA Article 29, Section D: Failure to Meet Timelines, which states, "Failure by the Union to comply with the timelines will result in the automatic withdrawal of the grievance."

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. *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014). The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *State – General Administration*, Decision 8087-B.

Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Id.*; *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003).

Duty of Fair Representation

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 agreement. *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. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

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 and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

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

Issue 1: Summary Judgement Is Appropriate

As defined by the preliminary rulings, the issue in each of the instant cases is limited to the question of whether the union violated its duty of fair representation for Baker and Lucas by "failing to meet the deadline to file a step three grievance." Any allegations concerning whether the complainants' terminations were appropriate, whether the grievances were meritorious, and mistaken references to violations of the National Labor Relations Act are not germane to the issue in this case and are beyond the scope of this decision.

The parties do not dispute that Hill failed to advance the grievances by the required timelines. The complainants do not allege that Hill failed to advance the grievances for any irrelevant, invidious, or unfair reason, and both the complainants and the union state that Hill's proffered reason for missing the deadline was due to a miscalculation of days of when the grievance advancement was due. Accordingly, there are no material facts in dispute and a granting of summary judgment is appropriate.

Issue 2: No Breach in Duty of Fair Representation

The complainants did not meet the required burden of proof to show that the union breached its duty of fair representation. As referenced above, the Commission has held that *merely negligent* actions by a union do not constitute a violation of the union's duties but instead the union must have taken actions or inactions that were arbitrary, discriminatory, or in bad faith. *City of Redmond (Redmond Employees Association)*, Decision 886. The complainants do not argue that Hill's failure to advance the grievances was due to anything other than a mistake, and by its very definition, a mistake is not discriminatory or made in bad faith. Accordingly, any violation must arise from the admonition against arbitrary conduct.

The standard for whether a union acted in an arbitrary manner is found in *Air Line Pilots Association v. O'Neill*, 499 U.S. 65 (1991). Here, the Court held that "a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), as to be irrational." *Id.* at 67. A simple mistake, while unfortunate, is not irrational. Therefore, the union's actions in the instant cases cannot be found to be arbitrary.

The Commission recently ruled on a similar case involving a union's unintentional failure to meet requisite timelines in advancing a grievance. While the facts are not identical, and the complainant also made an allegation concerning gender-based discrimination, the Examiner held that a union's mistaken failure to timely advance a grievance did not constitute arbitrary conduct that breached a union's duty of fair representation. *King County (King County Security Guild)*, Decision 12907 (PECB, 2018), *aff'd*, Decision 12907-A (PECB, 2018).

It is undisputed that the union failed to advance the complainants' grievances within the required timeline; however, the complainants did not prove that this failure was arbitrary, discriminatory, or in bad faith and thus a violation of the union's duty of fair representation.²

CONCLUSION

First, as there is no dispute over any genuine issues of material fact, summary judgment is appropriate. Second, Baker and Lucas were unable to prove that the union breached its duty of fair representation and interfered with their rights in violation of RCW 41.80.110(2)(a). The complainants did not present adequate evidence to show that union's failure to timely advance the complainants' grievances constituted arbitrary, discriminatory, or bad faith conduct. I grant the union's motion for summary judgment and dismiss the complaint.

FINDINGS OF FACT

1. The Washington State Liquor and Cannabis Board (employer) is a public employer within the meaning of RCW 41.80.005(8).
2. The Washington Federation of State Employees (union), a bargaining representative within the meaning of RCW 41.80.005(9) and represents a bargaining unit that includes employees employed by the employer.
3. Complainants Mark J. Baker and Robert M. Lucas are former public employees within the meaning of RCW 41.80.005(6). Each was employed with the employer as a Liquor and Cannabis Enforcement Officer, and they were members of the bargaining unit described in finding of fact 2.

² Both parties made reference to continued attempts to extend the grievance deadline and grievance settlement discussions. As these facts occurred after the date the complaint was filed, they do not impact the decision and are not discussed.

4. During the time period relevant to the complaint, the parties were governed by the Washington Federation of State Employees' General Government Collective Bargaining Agreement (CBA).
5. Baker's and Lucas's employment was terminated on September 13, 2019, for making fraudulent representations.
6. On October 10, 2019, Kevin Hill, who was a Lead Council Representative for the union at the time, filed two separate grievances on behalf of Baker and Lucas. Hill argued that their dismissals were in violation of the "Just Cause" requirement in Article 27 of the CBA.
7. On November 14, 2019, Justin Nordhorn, the employer's Enforcement and Education Division Chief issued two decisions denying the grievances at Step 2 in accordance with the CBA's grievance procedure.
8. On November 26, 2019, Lucas sent Hill a text message to follow up on the grievance.
9. On December 9, 2019, Baker left Hill a voicemail inquiring about the grievance.
10. On December 13, 2019, Hill contacted Baker and Lucas by phone in order to inform them that he (Hill) had failed to advance the grievance to Step 3 within the required timeline and apologized for this failure. Hill also informed Baker and Lucas that the union had sought an extension of the timeline from the employer, but the employer had denied this request and deemed the grievance as withdrawn.
11. On November 30, 2020, the union submitted a motion for summary judgment wherein the union admitted that Hill had mistakenly missed the grievance deadline.
12. The complainants did not present any evidence that Hill failed to advance the grievances for any arbitrary, discriminatory, or bad faith reason.

CONCLUSIONS OF LAW

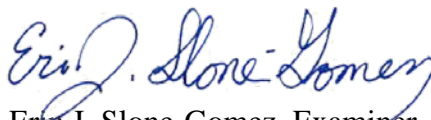
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-45 WAC.
2. According to findings of fact 3 through 10, no genuine issue of material fact exists under WAC 10-08-135, and the union is entitled to judgment as a matter of law.
3. According to findings of fact 3 through 12, Baker did not meet his burden of proof to show that the union's failure to advance his grievance to Step 3 resulted from interference with employee rights in violation of RCW 41.80.110(2)(a) by a breach of its duty of fair representation.
4. According to findings of fact 3 through 12, Lucas did not meet his burden of proof to show that the union's failure to advance his grievance to Step 3 resulted from interference with employee rights in violation of RCW 41.80.110(2)(a) by a breach of its duty of fair representation.

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED.

ISSUED at Olympia, Washington, this 8th day of April, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


Erin J. Slone-Gomez, 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 04/08/2021

DECISION 13333 - 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 132582-U-20

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RECORD OF SERVICE

ISSUED ON 04/08/2021

DECISION 13334 - 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 132583-U-20

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