

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YAKIMA COUNTY, Employer.	
ANDREW MARTIN, Complainant, vs. TEAMSTERS LOCAL 760, Respondent.	CASE 132949-U-20 DECISION 13338 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Andrew Martin, the complainant.

David Ballew, Attorney at Law, Reid, McCarthy, Ballew & Leahy, LLP, for Teamsters Local 760.

Andrew Martin filed an unfair labor practice complaint against Teamsters Local 760 (union) on August 3, 2020. Martin filed an amended complaint on August 24, 2020. A preliminary ruling was issued on August 26, 2020. The union filed its answer on September 10, 2020. A hearing via videoconference was held on December 2, 2020. The complainant did not file a brief; the union filed a brief on January 19, 2021, to close the record.

ISSUE

The issue as framed by the preliminary ruling involves:

Union interference with employee rights 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 by not filing a grievance on Andrew Martin's behalf.

Martin did not present sufficient evidence to meet his burden to prove that the union breached its duty of fair representation to him. The evidence presented establishes the union discussed Martin's concerns with him and declined to take action on them. Martin's complaint against the union is dismissed.

BACKGROUND¹

Teamsters Local 760 represents three bargaining units of employees with the Yakima County Department of Corrections (employer). One unit contains corrections chiefs and lieutenants; one unit contains corrections officers, corporals, and sergeants; and one unit contains clerical employees. Andrew Martin has been a Corrections Sergeant since June 1, 2010, and served as a union steward until July 31, 2020.

On June 4, 2020, the employer announced that it would be laying off and demoting Corrections Officers. The layoffs and demotions were in response to reductions in funding related to decreasing head-counts in the corrections facilities due to the COVID-19 pandemic.

Article 8.8 of the collective bargaining agreement (CBA) between the officers, corporals, and sergeants unit and the employer contains provisions for how lay-offs are to occur. That provision provides that in the event of lay-offs, less senior people would be laid off first. Those who are slated for lay-off revert to the next lowest classification and "bump" less senior employees. The provision provides that it also applies to chiefs and lieutenants, who are in a different bargaining unit from the officers, corporals, and sergeants. The union negotiated Article 8.8 in consultation with both bargaining units.

Articles 19.4 and 19.5 of the CBA contain provisions allowing individuals as well as the union to file grievances with the employer. Union Business Representative Carl Keller, testified that

¹ The facts in this section are taken from those portions of Martin's complaint that were admitted by the union in its answer as well as the limited evidence presented at hearing.

members have a “right” to have the union present grievances to the employer on behalf of members under the CBA.

During June 2020, Martin communicated to the union his interpretation of various provisions of the chiefs and lieutenants’ contract and the officers, corporals, and sergeants’ contract regarding layoffs and “bumping” rights. On June 19, 2020, Martin attended a union shop steward meeting where he asked Keller, whether Keller had “filed any grievances or PERC [Public Employment Relations Commission] complaints on the issues” Martin had raised in Martin’s earlier communications with the union. Keller told Martin that the union had not filed any grievances or complaints with PERC.

On June 28, 2020, Martin sent an email to Keller and others asking whether the union had received notice of layoffs and demotions, whether the union had demanded to bargain these and whether the union intended to file an unfair labor practice with PERC. On July 1, 2020, Keller responded to Martin, informing Martin that the union had received notice of the layoffs and demotions and had not demanded to bargain or filed a complaint with PERC. Keller told Martin that it was the union’s position that the employer was following the provisions of the contract, so there was no basis for an unfair labor practice complaint. Keller told Martin he would be happy to continue to discuss the matter with Martin.

On July 2, 2020, Martin participated in the filing of a representation petition to change the representation of the corrections officers, corporals, and sergeants’ unit from Teamsters Local 760 to the Guild of Yakima County Corrections. Martin is described on this petition as “President” of the Guild.² Case No. 132880-E-20.

On July 6, 2020, a Corrections Corporal submitted a grievance to the union which the corporal had drafted regarding the layoff and demotion procedure the employer was following. The union informed the corporal that the union did not think the grievance had merit. The corporal requested

² There was no evidence introduced at the hearing regarding the representation petition.

that the union pass along the grievance, as union members have a right to do under the CBA. The union presented the grievance to the employer, and the employer ultimately answered the grievance.

On July 8, 2020, Martin sent an email to Keller citing PERC cases to support Martin's interpretation that the employer's actions regarding layoff and demotions violated the CBA. The email did not request the union file grievances. Martin informed the union that the information was "going in my grievance."

On July 11, 2020, Martin filed two grievances directly with the employer. On July 13, 2020, Martin sent an email to Keller and others informing them that Martin had filed the grievances. The employer responded to Martin's grievances.³

On July 15, 2020, as part of the staff reductions mentioned above, Martin and other corrections staff were demoted. Martin was demoted to the rank of corporal. On July 31, 2020, the union informed Martin that it was removing him from his position as union steward.⁴

ANALYSIS

Applicable Legal Standard(s)

The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). A union commits an unfair labor practice if it interferes with, restrains, or coerces public employees in the exercise of their rights. RCW 41.56.150(1). One way unions can violate RCW 41.56.150(1) is by breaching the 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 statute. *Allen v. Seattle Police*

³ No evidence was presented at the hearing as to the content of the employer's response to either the corporal's grievance or Martin's grievances.

⁴ There was no evidence presented at the hearing regarding Martin's demotion or his removal as union steward.

Officers' Guild, 100 Wn.2d 361, 67 (1983); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

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 Spokane (Washington State Council of County and City Employees)*, Decision 13088-A (PECB, 2020) (citing *Vaca v. Sipes*, 386 U.S. 171 (1967)). The employee claiming a breach of the duty of fair representation has the burden of proof. *Id.*

In *Allen v. Seattle Police Officers' Guild*, the Washington State Supreme Court adopted three standards to determine 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 standards represents a distinct and separate obligation. *Id.*

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. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). 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. *Id.*

Application of Standard(s)

Martin failed to prove that the union's actions were arbitrary, discriminatory, or in bad faith as required by this agency's case law. *See City of Spokane (Washington State Council of County and City Employees)*, Decision 13088-A. The evidence presented did not show a violation of any of the standards outlined in *Allen*.

First, there was insufficient evidence presented to prove that the union treated Martin with hostility or discrimination.⁵ The evidence presented suggests that the union treated Martin the same as other bargaining unit members. Shortly before Martin submitted his grievances, another union member expressed to the union contractual interpretation concerns similar to those made by Martin. That member presented the union with a grievance the member had drafted and requested that the union file it. The union informed the member that it felt the grievance lacked merit and declined to file it. The member then asked the union to pass his grievance along to the employer under the provision of the contract that allows members to file grievances directly with the employer. The union sent the member-drafted grievance to the employer. With regard to Martin's grievances, Martin had conversations and correspondence with the union about his concerns. Martin did not ask the union to file the grievances on his behalf, rather he filed his grievances directly with the employer and informed the union after the fact. For both Martin and the other union member, the

⁵ Martin made allegations in his opening statement at the hearing about why he suspected the union did not file the grievances he requested. Martin did not present evidence at the hearing regarding these allegations. *See State – Labor and Industries (Washington Federation of State Employees)*, Decision 9348 (PSRA, 2006) (explaining that statements of parties not made under oath and subject to cross examination are not evidence to be considered at hearing) (citing RCW 34.05.452).

union took the position that the grievances were without merit. This evidence of similar treatment was un rebutted by Martin.

The timing of Martin's filing of the representation petition and the union's later removal of Martin from his union steward position are not sufficient evidence to support a finding that the union's failure to file Martin's grievances was discriminatory or hostile. There is no evidence in the record regarding the union's response to the representation petition or the reasons Martin was removed as a union steward. Following the July 2, 2020, petition and before Martin's filing of the grievances with the employer on July 11, 2020, the only evidence in the record regarding communications between Martin and the union was an email from Martin to Keller on July 8, 2020. Martin's email cited PERC cases to support Martin's interpretation that the employer's actions regarding layoff and demotions were violations of the CBA. The email did not request that the union file grievances. Martin informed the union that the information was "going in my grievance," presumably referring to the grievance Martin drafted on his own. The union removed Martin as a union steward several weeks after Martin filed his grievances with the employer. Weighing the evidence presented as a whole, there was insufficient evidence presented to meet Martin's burden to prove that the union interfered with Martin's right to fair representation when it did not file grievances on his behalf.

Turning to the second *Allen* standard: Martin failed to prove that the union's failure to file a grievance on his behalf was dishonest or in bad faith. A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *King County (King County Security Guild)*, Decision 12907-A (PECB, 2018); *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. If a bargaining unit employee raises an issue or concerns with a union, the bargaining representative has an obligation to fairly investigate such concerns to determine whether it believes that the parties' collective bargaining agreement has been violated. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. If the union determines that the concerns lack merit, it has no obligation to file a grievance. *See Id.*; *King County (King County Security Guild)*, Decision 12907-A. Here, Martin and the union had a disagreement about whether the CBA's layoff and "bumping" language was being interpreted correctly by the employer. In response to Martin's questions at a meeting of shop stewards, the union told Martin it had not filed

grievances or a complaint with PERC on the issue. The union later gave Martin its opinion in an email that the employer was following the contract and that there was no basis for additional action. The union indicated it was open to further discussions on the issue. In the absence of any other evidence, the union's communications with Martin were sufficient to fulfill its duty of honesty and good faith to Martin.

Finally, Martin failed to prove a violation of the third *Allen* standard. There was no evidence presented to suggest the union's failure to file grievances requested by Martin was in any way arbitrary. The union responded promptly to Martin's inquiries, and it gave Martin a reasoned explanation for its lack of action. In addition, as discussed above, the union handled a related grievance offered by a different member shortly before Martin filed his grievances with the employer in a similar way. The union told the other member that the grievance drafted by the member was meritless in the union's opinion. While the union did ultimately pass the member's grievance on to the employer, it did not bring it as a union grievance. Martin did not ask the union to submit the grievances he had drafted; he simply filed them directly with the employer. In both cases, the union was clear that, in its opinion, the grievances did not have merit. Thus, it had no obligation to file them. *See King County (King County Security Guild), Decision 12907-A.*

CONCLUSION

Martin did not meet his burden to prove that the union violated its duty of fair representation to him when it did not file grievances on his behalf. The complaint is dismissed.

FINDINGS OF FACT

1. Yakima County is a public employer as defined in RCW 41.56.030(13).
2. Teamster Local 760 is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of Corrections Officers at Yakima County.

3. The collective bargaining agreement that was in effect at the time giving rise to the events at-issue in this proceeding was for a period from April 1, 2019, through December 31, 2020.
4. Teamsters Local 760 represents three bargaining units of employees with the Yakima County Department of Corrections (employer). One unit contains corrections chiefs and lieutenants; one unit contains corrections officers, corporals, and sergeants; and one unit contains clerical employees.
5. Andrew Martin has been a Corrections Sergeant since June 1, 2010, and served as a union steward until July 31, 2020.
6. On June 4, 2020, the employer announced that it would be laying off and demoting Corrections Officers. The layoffs and demotions were in response to reductions in funding related to decreasing head-counts in the corrections facilities due to the COVID-19 pandemic.
7. Article 8.8 of the collective bargaining agreement (CBA) between the officers, corporals, and sergeants unit and the employer contains provisions for how layoffs are to occur. That provision provides that in the event of layoffs, less senior people would be laid off first. Those who are slated for layoff revert to the next lowest classification and “bump” less senior employees. The provision provides that it also applies to chiefs and lieutenants, who are in a different bargaining unit from the officers, corporals, and sergeants. The union negotiated Article 8.8 in consultation with both bargaining units.
8. Articles 19.4 and 19.5 of the CBA contain provisions allowing individuals as well as the union to file grievances with the employer. Union Business Representative Carl Keller, testified that members have a “right” to have the union present grievances to the employer on behalf of members under the CBA.

9. During June 2020, Martin communicated to the union his interpretation of various provisions of the chiefs and lieutenants' contract and the officers, corporals, and sergeants' contract regarding layoffs and "bumping" rights. On June 19, 2020, Martin attended a union shop steward meeting where he asked Keller, whether Keller had "filed any grievances or PERC [Public Employment Relations Commission] complaints on the issues" Martin had raised in Martin's earlier communications with the union. Keller told Martin that the union had not filed any grievances or complaints with PERC.
10. On June 28, 2020, Martin sent an email to Keller and others asking whether the union had received notice of layoffs and demotions, whether the union had demanded to bargain these and whether the union intended to file an unfair labor practice with PERC.
11. On July 1, 2020, Keller responded to Martin, informing Martin that the representative had received notice of the layoffs and demotions and had not demanded to bargain or filed a complaint with PERC. Keller told Martin that it was the union's position that the employer was following the provisions of the contract, so there was no basis for an unfair labor practice complaint. Keller told Martin he would be happy to continue to discuss the matter with Martin.
12. On July 2, 2020, Martin participated in the filing of a representation petition to change the representation of the corrections officers, corporals, and sergeants' unit from Teamsters Local 760 to the Guild of Yakima County Corrections. Martin is described on this petition as "President" of the Guild. Case No. 132880-E-20.
13. On July 6, 2020, a Corrections Corporal submitted a grievance to the union which the corporal had drafted regarding the layoff and demotion procedure the employer was following. The union informed the corporal that the union did not think the grievance had merit. The corporal requested that the union pass along the grievance, as union members have a right to do under the CBA. The union presented the grievance to the employer, and the employer ultimately answered the grievance.

14. On July 8, 2020, Martin sent an email to Keller citing PERC cases to support Martin's interpretation that the employer's actions regarding layoff and demotions violated the CBA. The email did not request the union file grievances. Martin informed the union that the information was "going in my grievance."
15. On July 11, 2020, Martin filed two grievances directly with the employer. On July 13, 2020, Martin sent an email to Keller and others informing them that Martin had filed the grievances. The employer responded to Martin's grievances.
16. On July 15, 2020, as part of the staff reductions mentioned above, Martin and other corrections staff were demoted. Martin was demoted to the rank of corporal. On July 31, 2020, the union informed Martin that it was removing him from his position as union steward.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. As described in findings of fact 6 through 16, Teamsters Local 760 did not interfere with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation when it failed to file grievances on Andrew Martin's behalf.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 22nd day of April, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Loyd J. Willaford". The signature is written in a cursive style with a large initial "L".

LOYD J. WILLAFORD, 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 04/22/2021

DECISION 13338 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 132949-U-20

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