

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SPOKANE,  Employer.	
NICHOLAS SPOLSKI,  Complainant,  vs.  SPOKANE POLICE GUILD,  Respondent.	CASE 133357-U-21  DECISION 13339 - PECB  ORDER OF DISMISSAL

*Sean F. Mangan, Attorney at Law, Mangan Law, for Nicholas Spolski, the complainant.*

*Kris Honaker, President, for the Spokane Police Guild.*

On February 26, 2021, Nicholas Spolski (complainant) filed an unfair labor practice complaint against the Spokane Police Guild (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on March 18, 2021, notified Spolski that a cause of action could not be found at that time. Spolski was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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<sup>1</sup> 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.

No further information has been filed by the complainant. Spolski's complaint is dismissed for failure to state a cause of action.<sup>2</sup>

### BACKGROUND

Nicholas Spolski worked as a Law Enforcement Officer with the City of Spokane up until his termination in June 2019. Spolski was represented by the Spokane Police Guild for purposes of collective bargaining.

According to the complaint, Spolski was terminated by the city after Spolski's then-girlfriend made allegations of abuse. The complaint alleges that despite being acquitted of the abuse charges, the city nevertheless decided to terminate Spolski's employment based upon a familial relationship between the Chief of Police and the girlfriend.

At the time of the termination, Spolski was offered the choice of appealing the termination directly through the city's civil-service channels or through grievance mechanism of the collective bargaining agreement that covered his employment. Spolski elected to have the union challenge his dismissal through the grievance provisions of the collective bargaining agreement.

The complaint alleges that the union did not forward Spolski's grievance to arbitration and never contacted Spolski about the status of the grievance. Instead, the complaint alleges that Spolski's counsel contacted the union's counsel to ascertain the status of the grievance. Spolski's counsel was informed that the union's president sent an email in July 2019 informing Spolski that the grievance would not be pursued. Spolski's counsel followed up this assertions with Hillary McClure, the union's legal counsel. McClure reiterated that the union president's assertion that Spolski was notified in July 2019 that it would not forward his grievance to arbitration.

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<sup>2</sup> In addition to being substantively defective, Spolski's complaint is also procedurally defective. The March 18, 2021, deficiency notice pointed out that Spolski failed to number paragraphs in the complaint as required by WAC 391-45-050 and Spolski failed to cure this defect in the 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. 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).

Furthermore, while a union owes a duty of fair representation to bargaining unit employees, the Commission asserts jurisdiction in duty of fair representation cases only 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)*, Decision 11291-A (PECB, 2012). 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)*, Decision 11291-A.

Spolski's allegations center solely on the guild's decision to not forward a grievance to arbitration. None of the facts alleged in the complaint demonstrate 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. Absent such facts, this Commission will not assert jurisdiction and Spolski's complaint must be dismissed.

ORDER

The 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 4th day of May, 2021.

PUBLIC EMPLOYMENT-RELATIONS COMMISSION



DARIO DE LA ROSA, 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.



# RECORD OF SERVICE

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ISSUED ON 05/04/2021

DECISION 13339 - 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 133357-U-21

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