

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,

Employer.

CHUCK LARE,

Complainant,

vs.

AMALGAMATED TRANSIT UNION
LOCAL 587,

Respondent.

CASE 134523-U-21

DECISION 13453 - PECB

ORDER OF DISMISSAL

Chuck Lare, the complainant.

Jon Rosen, Attorney at Law, The Rosen Law Firm, for the Amalgamated Transit Union Local 587.

On October 6, 2021, Chuck Lare (complainant) filed an unfair labor practice complaint against the Amalgamated Transit Union Local 587 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on November 9, 2021, notified Lare that a cause of action could not be found at that time. Lare was given a period of 21 days in which to file and serve an 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 November 30, 2021, Lare filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

ISSUES

The amended complaint alleges the following:

Violations of ATU's constitution, US constitution, and federal law.

Union restraint or coercion in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, for unidentified threats made to Chuck Lare related to unidentified protected activity.

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 when Chuck Lare was denied the ability to campaign in uniform in an internal union election.

Union discrimination in violation of RCW 41.56.150(3) [and if so derivative interference in violation of RCW 41.56.150(1)] within six months of the date the complaint was filed, by unidentified action after Chuck Lare filed the present unfair labor practice with the Commission

The amended complaint does not describe facts that could constitute an interference, duty of fair representation, or discrimination violation within the Commission's jurisdiction.

BACKGROUND

Chuck Lare is a part-time transit operator employed by King County (employer) and represented by the Amalgamated Transit Union Local 587 (union). The union was holding officer elections. Lare was campaigning for one of the fulltime officer positions. On April 6, 2021, Christine Kautzman, a union election committee member, allegedly overheard Lare criticizing the performance of the union presidential candidate, Price. Kautzman approached Lare and stated that Lare could not campaign in uniform. Lare complied.

Kautzman contacted the election committee chair and notified the chair that Lare had been campaigning in uniform. Later on April 6, Lare received an email from the Election Chair stating that a complaint had been received about Lare campaigning in uniform, and that was allegedly a violation. Lare asked the union to contact the Public Employment Relations Commission.

On April 13, 2021, the union election committee posted a bulletin covering campaign rights and restrictions, citing federal law prohibitions. The bulletin allegedly did not include a restriction on campaigning in uniform. Lare continued to curtail campaigning. The union allegedly never responded to Lare's question of campaigning in uniform.

The election occurred on April 20, 2021. On April 30, 2021, Lare filed a challenge of the conduct and results of the election. Lare alleged that not being able to campaign in uniform had a severe negative impact on receiving votes. On May 27, 2021, the union informed Lare that the Executive Board decided to not sustain Lare's allegations. The Board allegedly found no causal correlation between the impact on Lare's campaign and denying Lare the ability to campaign in uniform.

On August 20, 2021, Lare appealed to the union's International President and Executive Board to overturn the union's Executive Board decision. On September 19, 2021, the International President provided a response. The International President did not overturn the union's decision.

ANALYSIS

Violations Outside PERC's Jurisdiction

The amended complaint alleges violations of the union's constitution, US constitution, and federal law. The complaint does not describe allegations that fit within the jurisdiction of the Commission. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaint does not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A.

Additionally, unions are private organizations. The Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association Local 365)*, Decision 8849-B (PSRA, 2006). The Commission does not have jurisdiction over internal union matters including votes, polls, or internal elections of its members. The allegations of violations of the union's constitution, US constitution, and federal law are not within the Commission's jurisdiction. The complainant was provided an opportunity to remove the allegations outside of the Commission's jurisdiction. The complainant maintained all the allegations from the initial complaint. The allegations outside of the Commission's jurisdiction 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).

Both unions and employers can commit interference violations. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). The legal determination is similar and is relatively simple: Interference is based not upon the reaction of the particular employee involved, but rather on whether a typical employee in similar circumstances reasonably could perceive the conduct as a threat of reprisal or force or promise of benefit related to the pursuit of rights protected by the chapter. *Community College District 19 (Columbia Basin) (Washington Public Employees Association)*, Decision 9210 (PSRA, 2006); *King County*, Decision 6994-B (PECB, 2002);

Brinnon School District, Decision 7210-A (PECB, 2001); *City of Port Townsend (Teamsters Local 589)*, Decision 6433-A (PECB, 1999) and Decision 6433-B (PECB, 2000). Intent or motivation is not a factor or defense. *King County*, Decision 6994-B. Nor is it necessary to show that the employees involved were actually interfered with or restrained for an interference charge to prevail. *King County*, Decision 6994-B.

Application of Standard

The complainant was notified that the original complaint lacked facts alleging union interference. The internal union election process is outside the Public Employment Relations Commission's (PERC) jurisdiction as stated above. The amended complaint alleges that Lare was not allowed to wear a uniform while campaigning for an internal union election. Unions are private organizations. The Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association)*, Decision 8849-B. The amended complaint lacks facts identifying any protected activity. The amended complaint also lacks facts alleging what protected activity Lare was engaged in. The amended complaint alleges that Lare was involved in an internal union election. The amended complaint also alleges the union did not allow any of the employees to campaign in uniform during the internal election because it was allegedly a violation of federal law. Finally, the amended complaint lacks facts alleging how one or more employees reasonably perceived the union's internal action as a threat of reprisal or force, or a promise of benefit, associated with their exercise of rights protected by the applicable collective bargaining laws.

The complainant was provided an opportunity to correct the deficiencies in the original complaint. The amended complaint did not include any additional facts that meet the elements to allege a union interference violation. Thus, the amended complaint must be dismissed.

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). 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. 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).

Application of Standard

The complaint lacked facts alleging the union was asserting rights of individual members. Similarly, the amended complaint continues to lack fact the union was asserting rights of individual members. The amended complaint alleges that during an internal union campaign, the union would not allow Lare to campaign in uniform. The amended complaint also alleges that this policy of not allowing employees to campaign in uniform was applied to all bargaining unit members. There are no facts alleging that Lare had asked the union to represent him or assert his rights outside of internal union affairs, the internal union election. Because the amended complaint lacks facts alleging a duty of fair representation allegation, it must be dismissed.

Discrimination for filing Unfair Labor Practice

Applicable Legal Standard

Under RCW 41.56.150 (3) it is an unfair labor practices for a union "[t]o discriminate against a public employee who has filed an unfair labor practice charge."

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 the Commission. *Pierce County Public Transportation Benefit Area*, Decision 9074 (PECB, 2005). The elements necessary for a union discrimination violation are the same for other discrimination allegations. A union unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by chapter 41.56 RCW. The complainant maintains

the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a prima facie case establishing the following:

1. The employee(s) filed an unfair labor practice with the Public Employment Relations Commission;
2. The union deprived the employee(s) of some ascertainable right, benefit, or status; and,
3. A causal connection exists between the employee's exercise of a protected activity and the union's action.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *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 (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

Application of Standard

There are two types of union discrimination violations within the Commission's jurisdiction: (1) union discrimination for filing a complaint/testimony before PERC or (2) the union inducing the employer to commit a violation or union discrimination. The complaint lacked facts alleging any union action after the filing of the present unfair labor practice complaint. The amended complaint clearly states that the union did not discriminate against Lare for filing the complaint. The amended complaint also lacks facts alleging the union induced the employer to commit a violation. Because the complaint lacks facts alleging a union discrimination violation, the amended complaint must be dismissed.

ORDER

The 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 21st day of December, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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.



RECORD OF SERVICE

ISSUED ON 12/21/2021

DECISION 13453 - 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 134523-U-21

EMPLOYER: KING COUNTY

REP BY: ROBERT S. RAILTON
KING COUNTY
500 4TH AVE RM 450
SEATTLE, WA 98104
bob.railton@kingcounty.gov

PARTY 2: CHUCK LARE

REP BY: CHUCK LARE
3522 BURKE AVE N
SEATTLE, WA 98103
chuck@lareassoc.com

PARTY 3: AMALGAMATED TRANSIT UNION LOCAL 587

REP BY: KEN PRICE
AMALGAMATED TRANSIT UNION LOCAL 587
2815 2ND AVE STE 230
SEATTLE, WA 98121
kprice.president@atu587.org

JON ROSEN
THE ROSEN LAW FIRM
705 2ND AVE STE 1200
SEATTLE, WA 98104-1798
jhr@jonrosenlaw.com