

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,  Employer.	
KIRK CALKINS,  Complainant,  vs.  PROTEC17,  Respondent.	CASES 135067-U-22 and 135068-U-22  DECISION 13533-A - PECB  DECISION OF COMMISSION

*Kirk Calkins*, the complainant.

*Paul Marvy*, Attorney at Law, for PROTEC17.

On May 2, 2022, Kirk Calkins (complainant) filed two unfair labor practice complaints against PROTEC17 (union). The first complaint alleged the union breached its duty of fair representation when the union negotiated a new overtime policy with the City of Seattle (employer). The second complainant alleged that the union interfered with employee rights when a union representative made a disparaging remark about the complainant in an email.

On July 19, 2022, the ULP Administrator issued *City of Seattle*, Decision 13533 (PECB, 2022) dismissing the complaints against the union. That same day, Calkins sent an email to the Unfair Labor Practice Administrator (ULP Administrator) requesting that the Commission review the decision and the complaint. The agency treated the July 19, 2022, email as an appeal.

The complainant did not include representatives for the union on the July 19, 2022, email. On July 21, 2022, the Appeals Administrator sent an email to all parties stating an appeal had been

filed and identifying the rules governing appeal briefs. Following the July 21, 2022, email, the complainant sent two additional emails. The union did not file a brief on appeal.

### ISSUES

There are two issues before the Commission. First, assuming all facts true and provable, does the complaint state a cause of action? Second, do the complaint and notice of appeal comply with WAC 391-08-120?

After reviewing the complaints, we affirm the ULP Administrator. The complaints do not state a cause of action. We dismiss the complaint because the complaint and appeal do not comply with WAC 391-08-120.

### ANALYSIS

#### Applicable Legal Standards

##### *Standard of Review*

In unfair labor practice proceedings, the ultimate burden of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. At the preliminary ruling stage, all facts are assumed true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

##### *Service Requirements*

WAC 391-08-120(3) requires documents filed with the agency “shall be served upon all parties on the same day the documents are filed. Service shall be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.”

The appealing party must contemporaneously serve all other parties with the notice of appeal. WAC 391-08-120(3); *King County*, Decision 7221-A (PECB, 2001). Failure to serve the opposing

party on the same day documents are filed with this agency is grounds for dismissal. *Clover Park School District*, Decision 377-A (EDUC, 1978); *Federal Way School District*, Decision 13010-A (PECB, 2019); *Washington State University*, Decision 12396 (PSRA, 2015).

### Application of Standards

We reviewed the complaints to determine whether they state a cause of action.

The complaints do not state a cause of action for union interference by breaching the duty of fair representation. As the ULP Administrator noted, the complaints do not allege that the union aligned itself against one faction of the bargaining unit on an improper or invidious basis. The union is not statutorily required to accomplish the goals of each member of the bargaining unit. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004); *City of Seattle*, Decision 3470-A (PECB, 1990). A union member's dissatisfaction with the representation does not form a basis for a cause of action unless the union member can prove the union violated rights guaranteed by chapter 41.56 RCW. *Dayton School District (Dayton Education Association)*, Decision 8042-A. The complaints did not allege sufficient facts to find a cause of action for union breach of the duty of fair representation.

Next, the complaints allege that an email a union representative inadvertently sent to the complainant interfered with employee rights when the email referred to the complainant as toxic. We agree with the ULP Administrator, the complaints do not allege facts that the email could reasonably be perceived as a threat of reprisal or force.

The Commission applies its rules equally to complainants represented by counsel and those appearing pro se. *City of Bellingham (Washington State Council of County and City Employees, Council 2)*, Decision 11422-A (PECB, 2013); *Port of Seattle (IBEW, Local 46)*, Decision 7604-A (PECB, 2002); *Seattle Public Health Hospital (American Federation of Government Employees, Local 1170)*, Decision 1781-B (PECB, 1984). We reviewed the emails the complainant sent when he filed documents with the agency. When the complainant filed his complaint in case 135067-U-22 on May 2, 2022, he served the union. However, he did not serve the union when he filed the May 2, 2022, complaint in case 135068-U-22; the June 13, 2022, amended complaint; or

the July 19, 2022, notice of appeal. The complainant did not include certificates of service with the filings. Therefore, we dismiss his complaints against the union.

CONCLUSION

The complaints do not state a cause of action. The May 2, 2022, complaint in case 135068-U; the June 13, 2022, amended complaint in case 135067-U; the June 14, 2022, amended complaint in case 135068-U; and the appeal did not comply with WAC 391-08-120(3). We affirm the Unfair Labor Practice Administrator.

ORDER

The Order of Dismissal issued by Unfair Labor Practice Administrator Dario de la Rosa is AFFIRMED.

ISSUED at Olympia, Washington, this 13th day of September, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



# RECORD OF SERVICE

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ISSUED ON 09/13/2022

DECISION 13533-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASES 135067-U-22 and 135068-U-22

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