

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE HOUSING AUTHORITY, Employer.	
TIFFIANY DIGGINS, Complainant, vs. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 8, Respondent.	CASE 135319-U-22 DECISION 13562 - PECB ORDER OF DISMISSAL

Tiffany Diggins, the complainant.

Suzanne Mode, Business Manager, for the Office and Professional Employees International Union Local 8.

On July 15, 2022, Tiffany Diggins (complainant) filed an unfair labor practice complaint against the Office and Professional Employees International Union Local 8 (union). The complaint alleged that the union interference with Diggins in violation of RCW 41.56.150(1) by breaching its duty of fair representation when it failed to process a grievance on Diggins' behalf. The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on August 2, 2022, notified

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.

Diggins that a cause of action could not be found and she was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On August 15, 2022, Diggins filed an amended complaint. The complaint and amended complaint are dismissed for failure to state a cause of action.

BACKGROUND

Tiffany Diggins works for the employer as a Certification Specialist I. The union represents her position for purposes of collective bargaining.

Original Complaint

Diggins' original complaint alleged that on unspecified dates District Supervisor Matthew Middleton and other unidentified individuals harassed and retaliated against Diggins for unspecified activity. Diggins' original complaint also alleged that she was given a negative performance evaluation in response to an unidentified whistleblower complaint.

Diggins asserted that on January 23, 2022, she filed a grievance with the union concerning the situation with the employer. Diggins alleged that after she filed the grievance, union representative Valarie Peaphon called Diggins. During that call, Peaphon allegedly told Diggins that she would follow up on the matter. Diggins claimed that during the time that the union failed to represent her, Diggins experienced whistleblower retaliation and harassment.

Amended Complaint

Diggins' amended complaint includes additional facts detailing the ways in which the employer harassed and retaliated against her. The amended complaint does not include any additional facts describing how the union breached its duty of fair representation except to once again allege that she filed a grievance on January 23, 2022, and that the union took no action on her grievance until Diggins filed her original complaint.

ANALYSIS*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 (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).

Application of Standard

The facts alleged in the complaint and amended complaint do not describe discriminatory, bad faith, or arbitrary conduct by the union. Although the amended complaint claims that the union failed to respond to Diggins' request for support until the filing of her unfair labor practice complaint, these allegations continue to be vague and the possibility of arbitrary or discriminatory conduct are not adequate to move a case past the preliminary review process. The complainant failed to describe specific facts demonstrating 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.

Finally, Diggins' original complaint asked the Commission to "investigate" her allegations. This agency does not investigate complaints in a manner similar to other labor relations agencies. Rather, the Public Employment Relations Commission and its staff maintain an impartial posture in all proceedings before the agency. A complaining party must discover and assemble the facts and evidence into a coherent presentation, must file a complete and sufficient complaint, and must investigate and prosecute its own case.

ORDER

The complaint and amended complaint charging unfair labor practices in the above-captioned matter are DISMISSED for failure to state a cause of action.

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

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

ISSUED ON 09/13/2022

DECISION 13562 - 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 135319-U-22

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