

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PACIFIC COUNTY,  Employer.	
JESSE EASTHAM,  Complainant,  vs.  TEAMSTERS LOCAL 252,  Respondent.	CASE 135715-U-22 DECISION 13586 - PECB  ORDER OF DISMISSAL

*Jesse Eastham*, the complainant.

*David W. Ballew*, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Pacific County.

On August 16, 2022, Jesse Eastham (complainant) filed an unfair labor practice complaint against Teamsters Local 252 (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on September 16, 2022, notified Eastham that a cause of action could not be found at that time. Eastham was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On September 26, 2022, Eastham filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for failure to state a cause of action.

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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.

ISSUE

The amended complaint alleges the following:

Union interference with employee rights in violation of RCW 41.56.150(1) on unidentified dates, by breaching its duty of fair representation during a Loudermill hearing, when not challenging Eastham being placed on light duty, and not providing an independent investigation on a union representative's job performance.

The amended complaint lacks facts necessary to allege a duty of fair representation violation within the Commission's jurisdiction.

BACKGROUND

Jesse Eastham was a Deputy in the Sheriff's Office of Pacific County (employer) and represented by Teamsters Local 252 (union). Eastham was terminated on April 4, 2022.

There are some events that occurred on unidentified dates in 2020. The complaint alleges that a union representative, Heather Slusher, failed to acquire a copy of an unidentified investigation. Slusher allegedly told Eastham that Slusher could not get a copy of the investigation and could not file a grievance on the investigation. The Undersheriff submitted an investigation to the prosecutor and Eastham was placed on the PID list. Eastham allegedly submitted a PDR of investigation. Eastham contacted Slusher on an unidentified date and alleged there were inaccuracies. Eastham also requested to file a grievance. Slusher allegedly told Eastham a grievance could not be filed.

On February 18, 2022, Eastham contacted Slusher to inform Slusher that Tony Kimball was caught talking about a case about Eastham. Slusher allegedly said the union to use the information if needed.

On an unidentified date Eastham was on administrative leave. During the administrative leave period, Eastham was severely injured and taken off administrative leave and placed on sick leave. The employer continued an investigation while Eastham was on sick leave and was mandated back

to “light duty.” On an unidentified date Eastham contacted Slusher and was allegedly told there was nothing the union could do about the placement on “light duty.”

On March 22, 2022, Eastham had a Loudermill hearing. Slusher allegedly told Eastham that Eastham was only allowed to answer additional questions from the administration and that Eastham could not provide additional information during the Loudermill hearing. Slusher also allegedly told Eastham that if Eastham could not recall details of the incident Eastham could state, “I do not remember.” In the termination letter Eastham received, the employer allegedly stated that when Eastham said “I do not remember” Eastman was being deceitful, and the deceitfulness was a condition of termination.

Eastman received a termination letter on April 4, 2022, and asked Slusher to complete an independent investigation of facts. Slusher allegedly did not follow up and quit responding to email and phone calls and may have left employment.

On May 10, 2022, Eastham received a letter from the union’s secretary, Brian Blaisdell, informing Eastham the union would no longer represent Eastham and the union had completed its own unidentified investigation. On an unidentified date Eastham allegedly requested a copy of the union’s investigation. The union told Eastham that a copy was sent to Eastham’s lawyer. Eastham’s lawyer allegedly never received a copy of the investigation. On an unidentified date Eastham contacted Blaisdell with concerns about Slusher’s representation. Blaisdell allegedly refused to provide a copy of an unidentified evaluation and had stopped responding to Eastham.<sup>2</sup>

## ANALYSIS

### *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

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<sup>2</sup> The amended complaint included the dates May 10, 2022, to August 16, 2022, but it is unclear which events apply to these dates.

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 deficiency notice provided notice that the complaint lacked facts alleging the union's conduct was arbitrary, discriminatory, or in bad faith. The amended complaint did include more dates or occurrence and a few additional facts. The amended complaint lacks facts alleging a duty of fair representation violation within the Commission's jurisdiction because it does not include facts alleging the union's conduct was arbitrary, discriminatory, or in bad faith.

The complaint alleges that on March 22, 2022, Eastham had a Loudermill hearing. Slusher allegedly told Eastham that Eastham was only allowed to answer additional questions from the administration and that Eastham could not provide additional information during the Loudermill hearing. Slusher also allegedly told Eastham that if Eastham could not recall details of the incident Eastham could state, "I do not remember." In the termination letter Eastham received, the employer allegedly stated that when Eastham said "I do not remember" Eastman was being deceitful, and the deceitfulness was a condition of termination.

April 4, 2022, Eastham contacted Slusher and asked for an independent investigation of facts. Slusher allegedly did not follow up and left employment.

On May 10, 2022, Eastham received a letter from the union's secretary, Brian Blaisdell, informing Eastham the union would no longer represent Eastham and the union had completed its own unidentified investigation. On an unidentified date Eastham allegedly requested a copy of the union's investigation. The union told Eastham that a copy was sent to Eastham's lawyer. Eastham's lawyer allegedly never received a copy of the investigation. On an unidentified date Eastham contacted Blaisdell with concerns about Slusher's representation. Blaisdell allegedly refused to provide a copy of an unidentified evaluation and had stopped responding to Eastham.

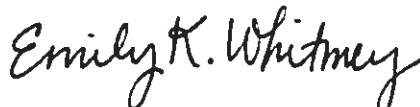
The facts alleged the union did not accomplish the goals of Eastham. Eastham's dissatisfaction with the level and skill of Slusher does not form the basis for a cause of action. Because the amended complaint lacks facts alleging a duty of fair representation violation within the Commission's jurisdiction, the 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 27th day of October, 2022.

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 10/27/2022

DECISION 13586 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 135715-U-22

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