

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PASCO, Employer.	
RANA WILKINSON, Complainant, vs. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 280, Respondent.	CASE 135794-U-22 DECISION 13596 - PECB ORDER OF DISMISSAL

Rana Wilkinson, the complainant.

Steve Davidson, Business Representative, for the International Union of Operating Engineers Local 280.

On September 8, 2022, Rana Wilkinson (complainant) filed an unfair labor practice complaint against the International Union of Operating Engineers Local 280 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on October 19, 2022, notified Wilkinson that a cause of action could not be found at that time. Wilkinson 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.

No further information has been filed by Wilkinson. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

BACKGROUND

Rana Wilkinson worked for the City of Pasco (employer) in an unidentified position. The International Union of Operating Engineers Local 280 (union) represented her position for purposes of collective bargaining. The employer and union are parties to a collective bargaining agreement that expires on December 31, 2025.

According to the complaint, the employer terminated Wilkinson's employment on August 24, 2022, due to her disability. Wilkinson alleges the employer's actions violated the existing collective bargaining agreement because she was terminated without cause or notice. Wilkinson also alleges she was denied union representation by Business Representative Steve Davidson who informed Wilkinson that "because of [her] disability, the union is not allowed to participate in anything that has to do [with Wilkinson's] medical termination."

Although Wilkinson's complaint is against the union, she asserted the employer violated the collective bargaining agreement when it conducted a follow-up meeting that was a termination appointment. Wilkinson alleged that during this meeting the employer precluded her from responding to questions, denied her the right to union representation, and failed to conduct a pre-discharge meeting. The complaint appeared to argue that the union should have precluded the employer from taking these actions.

Finally, Wilkinson alleged the union breached its duty of fair representation by violating numerous provisions of the collective bargaining. Wilkinson claimed the collective bargaining agreement allows the union to access an employee's file and the union can access any employee document provided the employee submits written authorization granting the union access. The complaint asserted that Davidson claimed he was not allowed access to certain documents in Wilkinson's employee file because the documents concerned a medical disability. Wilkinson also alleged the union violated the collective bargaining agreement by failing to follow the grievance procedure,

by failing to allow her the contractual option of going on unpaid leave, failing to follow the wage scale, by and unknowingly allowing Wilkinson to attend the August 24, 2022, termination meeting without union representation.

ANALYSIS

Contract Violations

Wilkinson's complaint alleges the union violated the collective bargaining agreement by failing to enforce numerous provisions of that document. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)).

Wilkinson's allegation that the union and employer violated the collective bargaining agreement is not appropriately before this agency because an unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' collective bargaining agreement. The collective bargaining agreement can be enforced through the contractual grievance procedure or through the courts.

Inducing the Employer to Commit an Unfair Labor Practice

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful under the statutes that this agency administers. For example, it is an unfair labor practice for an employer to discriminate against a public employee in retaliation for that employee's exercise of protected activity. RCW 41.56.140(1); *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational*

Service District 114, Decision 4361-A (PECB, 1994). Therefore, a union commits an unfair labor practice in violation of RCW 41.56.150(2) if it asks an employer to discriminate against an employee based upon that employee's protected activity, such supporting a rival bargaining representative. *See State – Natural Resources*, Decision 8458-B (PSRA, 2005).

Wilkinson's complaint lacks facts demonstrating the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). Wilkinson's complaint only alleges that the union allowed the employer to violate the collective bargaining agreement by failing to enforce its provisions. As explained above, contract violations are not statutory unfair labor practices and therefore Wilkinson has not alleged the union induced the employer to commit a statutory unfair labor practice. This allegation must be dismissed.

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).

Wilkinson claims the union declined to represent her because of her disability. However, the quote attributed to Davidson states that the union could not represent her for the “medical termination.”

The complaint lacked any other facts concerning the union's actions. The deficiency notice asked Wilkinson to clarify whether Davidson informed Wilkinson that the union could not represent her because she was disabled or if the union could not represent her in a medical separation situation and Wilkinson failed to clarify or cure the defect in the complaint. Because Wilkinson failed to specifically describe instances of arbitrary, discriminatory, or bad faith conduct by the union within the statute of limitations period, this allegation 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 17th day of November, 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 11/17/2022

DECISION 13596 - 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 135794-U-22

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