

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMBERLAND REGIONAL LIBRARY,  Employer.	
SIRENA PAINTER,  Complainant,	CASE 136696-U-23
vs.	DECISION 13694 - PECB
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES,  Respondent.	ORDER OF DISMISSAL

*Sirena Painter*, the complainant.

*Carrie Caffrey*, Staff Representative, for the Washington State Council of County and City Employees.

On May 30, 2023, Sirena Painter (complainant) filed an unfair labor practice complaint against the Washington State Council of County and City Employees (union). Painter's complaint alleges the union breached its duty of fair representation by failing to submit a grievance on her behalf. The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on June 12, 2023, notified Painter that a cause of action could not be found at that time. Painter was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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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.

No further information has been filed by Painter. The complaint is dismissed for failure to state a cause of action.

### BACKGROUND

Painter works for the Timberland Regional Library as a Library Assistant. She is represented by the union for purposes of collective bargaining.

According to the complaint, on December 2, 2022, Painter received a letter of investigation from the employer. Painter asserts that the employer conducted an investigatory meeting on December 9, 2022. Union President Megan Hall represented Painter at the meeting. Painter also requested that Avery Savin attend to take notes. The employer issued Painter a letter of discipline on December 22, 2022.

Painter decided to file a grievance concerning the discipline and asked Hall to file it on her behalf. Hall stated that she did not feel that she had experience and would have to look into the matter but that she was also busy at that time. On December 29, 2022, Painter asked Chris Jordan for assistance. Jordan emailed Hall and Clifford Nguyen notifying them that Painter intended to file a grievance it contractually needed to be filed within a 14-day period. According to the complaint, the participants agreed the deadline was January 4, 2023.

On January 1, 2023, Hall send Painter an email notifying her the union declined to file a grievance on her behalf. Hall explained that in order for the union to do their duty of fair representation they would have to request personal notes, coaching notes, and teams notes based upon the January 4, 2023, deadline, not enough time remained for a proper investigation. Hall also explained that there was not enough evidence to show management violated the collective bargaining agreement by skipping the step discipline process, and that documentation of the employer's conversations with Painter would result in an arbitrator ruling in management's favor. Finally, Hall stated that the grievance was not winnable and that there were other ways to resolve this situation.

Painter claims that she had repeatedly asked for Nguyen's advice and help but he did not respond to her emails or text messages.

### ANALYSIS

It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.56.140(1). The Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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*, Decision 3199-B (PECB, 1991)).

A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *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 and must demonstrate 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 (PECB, 1984).

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. *State – Labor and Industries*, Decision 8263 (PSRA, 2003). If the union determines the concerns have merit, the union has the right to file a grievance under the parties' collective bargaining agreement. If the union determines that the concerns lack merit, the union has no obligation to file a grievance.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling

disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983). The Commission will assert jurisdiction in duty of fair representation cases only where a union is accused of aligning itself in interest against employees it represents based on invidious discrimination. *Seattle School District (Seattle Education Association)*, Decision 4917-A (EDUC, 1995).

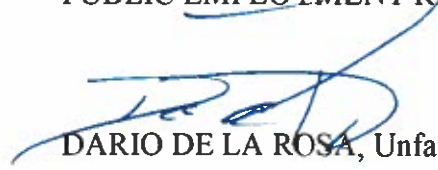
Here, Painter's complaint against the union arises out of the union's failure to submit a grievance concerning employee discipline. Painter has not alleged that the union failed to process her grievance based upon invidious discrimination. Rather, Painter submitted her grievance to the union, the union evaluated it and declined to pursue the matter. Absent facts demonstrating the union declined to process Painter's grievance due to invidious discrimination, 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 18th day of July, 2023.

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

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ISSUED ON 07/18/2023

DECISION 13694 - 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 136696-U-23

EMPLOYER: TIMBERLAND REGIONAL LIBRARY

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