STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLOVER PARK TECHNICAL COLLEGE, Employer.	
MARY BOTHWELL, Complainant, vs. AFT PROFESSIONAL STAFF, LOCAL 6431, Respondent.	CASE 137773-U-23 DECISION 13756 - PECB ORDER OF DISMISSAL

Mary Bothwell, the complainant.

Lisa Fortson, President, for the AFT Professional Staff, Local 6431.

On October 6, 2023, Mary Bothwell (complainant) filed an unfair labor practice complaint against AFT Professional Staff, Local 6431 (union). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on November 8, 2023, notified Bothwell that a cause of action could not be found at that time. Bothwell was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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

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[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.

ISSUES

The complaint alleges the following:

> Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation during a Board of Trustees meeting or in an email on August 25, 2023.
>
> Union restraint and coercion in violation of RCW 41.56. 150(1) within six months of the date the complaint was filed, by threats made in connection with unidentified protected activity.
>
> Union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2) within six months of the date the complaint was filed, by unidentified employer violations.

The complaint is dismissed because it lacks facts necessary to allege a violation within the Commission's jurisdiction.

BACKGROUND

Mary Bothwell (complainant) works in Human Resources and Payroll at Clover Park Technical College (employer) and is represented by the union.

On August 9, 2023, at a Board of Trustees meeting, the union president endorsed statements made by another union. The statements were allegedly false and slanderous to Bothwell. Bothwell allegedly believed the statements were in retaliation for Bothwell filing an ethics violation against three union presidents. Bothwell also believed the statements were made based on the nature of Bothwell's job. The union allegedly endorsed a call for action of "extreme personnel changes" in the Human Resources and Payroll department. The union also allegedly stated that Human Resources and Payroll had "lack of proper training and experience." Bothwell allegedly found this statement threatening and is concerned that the employer is rewriting the job descriptions so Bothwell and others are no longer qualified.

On August 25, 2023, another employee emailed the union president for assistance in filing a grievance. The union allegedly provided the following response, "I know that the college has many challenges including ctcLink related issues and high turnover and vacancies. I'm sure these challenges are impacting everyone negatively and our perspective is that we are stronger together – I encourage you to speak to Lisa and the board directly to share concerns and seek solutions."

ANALYSIS

Numbered Paragraphs

Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant only numbered the three sections in the statement of facts. It appears there are approximately eight paragraphs. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

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 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 complaint does not allege the union violated its duty of fair representation because the complaint lacks facts alleging how the union's actions were more than merely negligent and arbitrary, discriminatory, or in bad faith. The complaint alleges that when another employee asked for assistance in filing a grievance, the union provided a response and suggested the employee work with another union representative and the board to handle the matter. 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.

The complaint did not include facts detailing how the union's actions are arbitrary, discriminatory, or in bad faith. The deficiency notice explained the deficiency and provided an opportunity to correct the deficiency. No amended complaint was filed, and the complaint continues to be deficient. Thus, the complaint must be dismissed.

Union Interference

Applicable Legal Standard

Employees covered by chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. *Tumwater School District (Tumwater Office Professionals Association)*, Decision 12409-A (PECB, 2016). It is an unfair labor practice for a bargaining representative to interfere with, restrain, or coerce public employees in the exercise of rights guaranteed by chapter 41.56 RCW. RCW 41.56.150(1).

The right to be free from interference, restraint, coercion, or discrimination does not extend to every workplace complaint or dispute. *King County (Teamsters Local 117)*, Decision 12000-A (PECB, 2014). Similar to the National Labor Relations Act, chapter 41.56 RCW does not extend

to employees the right to engage in protected concerted activities. *See City of Seattle*, Decision 489 (PECB, 1978), *aff'd*, Decision 489-A (PECB, 1979). The ability to participate in union affairs is a political right incident to union membership but not a civil or property right. *Seattle School District (Washington Education Association)*, Decision 9359-A (EDUC, 2007) (citing *Lewis County*, Decision 464 (PECB, 1978), *aff'd*, Decision 464-A (PECB, 1978)). Complaints concerning internal union policies do not directly affect the employment relationship covered by chapter 41.56 RCW, and are, therefore, not actionable. *Seattle School District Washington Education Association)*, Decision 9359-A; *Seattle School District (International Union of Operating Engineers, Local 609)*, Decision 9135-B (PECB, 2007).

To establish union interference and coercion in violation of RCW 41.56.150(1), a complainant must establish the existence of "union tactics involving violence, intimidation and reprisals." *Community College District 13 (Lower Columbia College)*, Decision 8117-B (PSRA, 2005) (citing *National Labor Relations Board v. Drivers Local 639*, 362 U.S. 274 (1960)). The standard for establishing an interference violation is whether the typical employee in similar circumstances reasonably could perceive the conduct as a threat of reprisal or force, or a promise of benefit, related to the pursuit of rights protected by the statute. *Community College 13 (Lower Columbia College)*, Decision 8117-B. A showing of intent is not required to prove an interference violation under RCW 41.56.150(1). *King County (Public Safety Employees Union)*, Decision 10183-A (PECB, 2008).

Application of Standard

The complaint lacks facts alleging a union interference violation within the Commission's jurisdiction. The complaint alleges that Bothwell believed some of the statements made were threatening. The complaint does not allege facts related to how the statements made by the union were a threat of reprisal or force, or a promise of benefit, related to the pursuit of rights or activity protected by the statute. The deficiency notice explained the deficiency and provided an opportunity to correct the deficiency. No amended complaint was filed, and the complaint continues to be deficient. Thus, the complaint must be dismissed.

Union Inducing an Employer to Commit a Violation

Applicable Legal Standard

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. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

Application of Standard

The complaint does not allege that the union requested or demanded the employer commit an unfair labor practice. The complaint alleges the union made statements related to Human Resources and Payroll not having proper training or experience, but there are no facts related to how the union requested the employer commit an unfair labor practice. The deficiency notice explained the deficiency and provided an opportunity to correct the deficiency. No amended complaint was filed, and the complaint continues to be deficient. Thus, the complaint 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 15th day of December, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

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 12/15/2023

DECISION 13756 - 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 137773-U-23

EMPLOYER:	CLOVER PARK TECHNICAL COLLEGE
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