

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 137842-U-23

DECISION 13776 - PECB

ORDER OF DISMISSAL

Tiffany Diggins, the complainant.

Valarie Peaphon, Representative, for the Office and Professional Employees
International Union Local 8.

On November 7, 2023, Tiffany Diggins (complainant) filed an unfair labor practice complaint against the Office and Professional Employees International Union Local 8 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on December 6, 2023, notified the complainant that a cause of action could not be found at that time. Diggins 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 Diggins.

ISSUE

The complaint alleges the following:

Union interference 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 owed to Tiffany Diggins by failing to adequately process a grievance on her behalf.

Violations of the collective bargaining agreement.

The complaint is dismissed for timeliness and failure to state a cause of action. The complaint fails to allege timely facts that the union breached its duty of fair representation owed to Diggins. Additionally, 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. Any remedy for contract violations must come through the grievance and arbitration machinery of the contract or through the superior courts.

BACKGROUND

Tiffany Diggins worked for the Seattle Housing Authority. Her position was represented by the Office and Professional Employees International Union Local 8 for purposes of collective bargaining.

In order to place Diggins’ complaints in their proper context, it is necessary to revisit the litigation history between Diggins and the employer. On July 15, 2022, Diggins filed an unfair labor practice complaint against the union for breaching its duty of fair representation for failing to process a grievance on Diggins’ behalf. Case 135319-U-22. Diggins’ complaint received a deficiency notice and Diggins filed an amended complaint. That complaint was dismissed for failure to state a cause of action. *Seattle Housing Authority (Office and Professional Employees International Union Local 8)*, Decision 13562 (PECB, 2022).

Turning to the instant complaint, Diggins asserts that on February 7, 2023, she advised the employer that it was intentionally violating the unidentified provisions of the Code of Federal Regulations and the Fair Housing Act. The complaint asserts that 17 days later, or February 24, 2023, the employer terminated her employment. Diggins claims that in terminating her employment, the employer violated numerous provisions of the collective bargaining agreement between the employer and union.

On February 28, 2023, the union filed a grievance concerning Diggins' termination. Diggins asserts that the union failed to adequately represent her both before and after she filed her initial July 15, 2022, unfair labor practice complaint. While it appears from the complaint that the union filed a grievance concerning her February 24, 2023, termination, Diggins asserts that the union failed to address each of the employer's alleged contract violations during the grievance meetings. Diggins also asserts that the union failed to adequately request and review documents that could be germane to her grievance and improperly granted the employer an extension prior to the step 3 grievance meeting that was ultimately held on June 14, 2023. Diggins asserts that the union's decision to grant the extension violated the collective bargaining agreement.

ANALYSIS

Applicable Legal Standard

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).

Violations of the Collective Bargaining Agreement

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 has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134-A (EDUC, 2011) (citing *Tacoma School District*, Decision 5722-E (EDUC, 1997)).

Application of Standards

Duty of Fair Representation

Diggins argues that the union should have addressed each contract violation the employer allegedly committed and failed to adequately request and review documents and information that could have been germane to her grievance. These allegations do not form the basis because Diggins did not allege any specific arbitrary, discriminatory, or bad faith conduct by the union. 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 alleges the union violated rights guaranteed in chapter 41.56 RCW. None of the facts alleged in the complaint demonstrate that the union aligned itself against Diggins' interests on an improper or invidious basis, such as union membership, race, sex, national origin, etc. Rather, the facts indicate that the union exercised its discretionary decision making authority concerning the handling of the grievance and this agency generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association*

Local 365), Decision 8849-B (PSRA, 2006). The complainant can seek relief on this issue through internal union procedures or the courts.

Violations of the Collective Bargaining Agreement

Diggins' allegation that the union breached numerous provisions of the collective bargaining agreement also fails to state a cause of action before this agency. This agency has consistently refused to resolve assertions that a party has breached a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. Similarly, this agency also declines to enforce a provision of a collective bargaining agreement through those same unfair labor practice provisions. The proper forum for Diggins to have sought redress for these allegations was either through the grievance procedure contained within the collective bargaining agreement or through the superior courts.

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 24th day of January, 2024.

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 01/24/2024

DECISION 13776 - 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 137842-U-23

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