

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| KING COUNTY, Employer. | |
| DESIREE FAIRCHILD, Complainant, vs. KING COUNTY SECURITY GUILD, Respondent. | CASE 138674-U-24 DECISION 13824 - PECB ORDER OF DISMISSAL |

Desiree Fairchild, the complainant.

Eric Pena, President, for the King County Security Group.

Wayne Brassard, Security Supervisor, for King County.

On February 28, 2024, Desiree Fairchild (complainant) filed an unfair labor practice complaint against the King County Security Guild (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 15, 2024, notified Fairchild that a cause of action could not be found at that time. Fairchild 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 Fairchild.

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.

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 Desiree Fairchild by aligning itself against and failing to represent Fairchild during an investigation into Fairchild's misconduct.

The complaint is dismissed because the complaint lacked adequate facts demonstrating the union breached its duty of fair representation.

BACKGROUND

Fairchild works for King County (employer) in an unidentified job class. Her position is represented by the King County Security Guild (union) for purposes of collective bargaining. The employer and union are parties to a collective bargaining agreement that expires on December 31, 2024.

According to the complaint, the employer started an investigation into allegations of misconduct between Fairchild and another bargaining unit employee in January 2024. Fairchild asserts that the union president pushed the investigation but never notified Fairchild that the investigation was occurring and never offered Fairchild support or representation during that process. Fairchild also asserts that she had to seek out her own representation by asking two other bargaining unit employees to assist her. The complaint did not provide specific facts including dates, times, and locations of events, individual participants, and examples of how the union's actions were arbitrary, discriminatory, or in bad faith, either in this specific instance or compared to other instances where a bargaining unit employee asked the union for assistance in an employment matter.

ANALYSIS

The role of the Public Employment Relations Commission (PERC) is to resolve labor relations disputes between unions, employers, and on occasion individual employees. When a complaint is filed with PERC, the agency does not investigate the filing party's claim. Rather, agency staff will review the complaint to determine if it states a cause of action. If the complaint states a cause of action, the case will be forwarded to a PERC hearing examiner who serves as an administrative law judge. Importantly, PERC does not investigate the merits of the complaint. Rather, the labor organization, public employer, or individual employees who filed the complaint bears the responsibility for presenting their case before the agency, either on their own or through a representative of their choosing.

A complaint that is filed with PERC must comply with the agency's rule filing rule, WAC 391-45-050. The complaint must contain a statement of facts with numbered paragraphs. The statement of facts should include:

- Specific allegations that constitute a violation of state law and required elements. For a list of types of violations that may be raised before PERC and the required elements please visit: <https://perc.wa.gov/ulp-employee-filing/>;
- Times, dates, and places of occurrences and the names of the participants in a chronological order that explains the alleged unfair labor practice;
- Whether a related grievance has been filed and its status. If you do not know if a grievance has been filed, please indicate so;
- A description of the remedies requested.

These requirements are necessary to put the respondent on notice of the alleged unfair labor practice and 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.

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

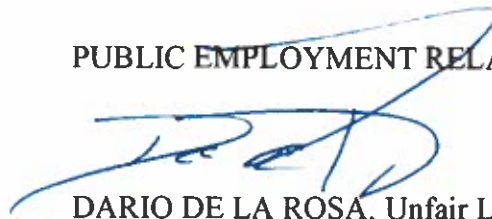
Fairchild's complaint failed to allege facts demonstrating the union's conduct was arbitrary, discriminatory, or in bad faith. The complaint generally alleges the union pushed for the investigation into Fairchild's misconduct and failed to represent her during those proceedings. However, the complaint failed to include specific facts detailing the alleged unfair labor practices, including dates, times, and locations of events, individual participants, and facts detailing how the union's actions were arbitrary, discriminatory, or in bad faith.

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 April, 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 04/24/2024

DECISION 13824 - 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 138674-U-24

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PARTY 2: DESIREE FAIRCHILD

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PARTY 3: KING COUNTY SECURITY GUILD

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