

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,

Employer.

NEAL W. FIFI, SR.,

Complainant,

vs.

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 302,

Respondent.

CASE 138820-U-24

DECISION 13845 - PECB

ORDER OF DISMISSAL

Neal W. Fifi Sr., the complainant.

Jeff Frazier, Attorney at Law, for the International Union of Operating Engineers Local 302.

On March 25, 2024, Neal Fifi (complainant) filed an unfair labor practice complaint against the International Union of Operating Engineers Local 302 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on April 12, 2024, notified Fifi that a cause of action could not be found at that time. Fifi 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 Fifi. The complaint is dismissed for failure to state a cause of action.

ISSUE

The complaint alleges the following:

Unidentified violations
Unidentified duty of fair representation violation.

This complaint does not qualify for further processing at this time because the complaint does not include a statement of facts that identifies the alleged unfair labor practices that can be raised before PERC.

BACKGROUND

Neal W. Fifi Sr. (complainant) is a Custodian at the Seattle School District (employer) and is represented by the International Union of Operation Engineers Local 302 (union). The complainant filed a complaint that included a document titled “statement of facts” that identified an alleged violation as a failure of the duty to represent, the date, time, location, participants, the fact that no grievance has been filed, and a remedy requesting to “seek legal action.” The complaint also included an attachment that is identified as “Harassment, Intimidation, and Bullying Incident Reporting Form” for the Seattle School District. The statement of facts did not include an explanation of what occurred that led to a violation. The reporting form alleges the complainant attended a meeting on February 23, 2024. The February 23 meeting allegedly related to a false and fabricated incident filed against the complainant. The complainant alleges that privacy laws were violated when a union representative was contacted prior to the complainant being aware. During the meeting the complainant had a medical emergency and had to be transported to the hospital. The complainant alleges he feels that when he questions rules and regulations, unidentified people take some form of action against him.

ANALYSIS

Applicable Legal Standard

The role of PERC is to resolve labor relations disputes between unions, employers, and on occasion individual employees. When a complaint is filed with the agency, PERC does not investigate the filing party's claim. Rather, agency staff will review the complaint to determine if it states a cause of action and if it does the case will be forwarded to a PERC hearing examiner who serves as an administrative law judge. When an individual employee files a complaint with PERC, the individual takes on the responsibility for presenting their case before the agency (although the individual may hire an attorney to represent them).

A complaint must comply with the agency's 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.

Seattle Colleges, Decision 13762-A (CCOL, 2024).

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.

Finally, it is worth noting that PERC's jurisdiction is limited to labor relations disputes. The agency does not have authority to resolve all disputes that might arise in public employment, such as allegations that an employer discriminated against an employee because of a recognized disability. Just because the complaint does not state a cause of action for an unfair labor practice, it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of PERC. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995).

Application of Legal Standard

In this case, Fifi submitted the ULP complaint form, a document titled statement of facts, and a form from the employer. The statement of facts did not explain the events that occurred that related to violations that can be raised before PERC. The attached form did not identify the violations against the union that can be raised before PERC. Fifi was provided an opportunity to file and serve an amended complaint. Fifi did not file an amended complaint. Because the complaint does not state facts alleging a violation within the Commission's jurisdiction, 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 16th day of May, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

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 05/16/2024

DECISION 13845 - 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 138820-U-24

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PARTY 3: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302

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