

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,  
LOCAL 587,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 23202-U-10-5914

DECISION 10780 - PECB

ORDER OF DISMISSAL

On May 3, 2010, Amalgamated Transit Union, Local 587 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on May 12, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

The union has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The deficiency notice pointed out the defects to the complaint.

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the 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.

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative “interference” in violation of RCW 41.56.140(1)], by its unilateral change to use of leave for John Nesbitt (Nesbitt), without providing an opportunity for bargaining; and employer independent interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to Nesbitt in connection with his use of leave.

Refusal to Bargain

The complaint alleges employer violations of the collective bargaining agreement concerning Nesbitt’s use of leave. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. The union should pursue this matter through the grievance and arbitration provisions of the collective bargaining agreement.

Independent Interference

The complaint alleges that the employer has interfered with Nesbitt’s collective bargaining rights by giving him a letter of expectations and a work assignment memorandum related to his job performance and alleges that Nesbitt reasonably perceived this as a threat of reprisal or force or promise of benefit related to his use of leave. However, the statement of facts indicates that the employer issued the letter of expectations and work assignment memorandum to address Nesbitt’s job performance and attendance at classes, not his use of leave. The union appears to base its interference claim on Nesbitt’s perception that the employer would discipline him for taking leave the employer had allegedly refused to grant him. However, the union must first establish through the grievance and arbitration process that Nesbitt’s contractual right to take leave overrides the employer’s job performance and class attendance requirements. This contractual dispute is not ripe for an unfair labor practice proceeding.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 23202-U-10-5914 is DISMISSED for failure to state a cause of action.

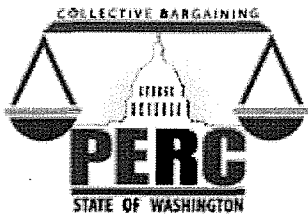
ISSUED at Olympia, Washington, this 10th day of June, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "David I. Gedrose".

DAVID I. GEDROSE, Unfair Labor Practice Manager

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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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### RECORD OF SERVICE - ISSUED 06/10/2010

The attached document identified as: DECISION 10780 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23202-U-10-05914 FILED: 05/03/2010 FILED BY: PARTY 2  
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BAR UNIT: TRANSIT BUS  
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Paul Smail  
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