

Southwest Washington Agency on Aging and Disabilities (Office and Professional Employees International Union, Local 11), Decision 12323 (PECB, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SOUTHWEST WASHINGTON AGENCY
ON AGING AND DISABILITIES,

Employer.

OLGA GOYZMAN,

Complainant,

vs.

OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL
UNION, LOCAL 11

Respondent.

CASE 27013-U-15-6891

DECISION 12323 - PECB

ORDER OF DISMISSAL

On February 11, 2015, Olga Goyzman (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Office and Professional Employees International Union, Local 11 (union) as respondent. The complaint was reviewed under WAC 391-45-110, and a deficiency notice issued on March 6, 2015, indicated that it was not possible to conclude that a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 30 the complainant filed an amended complaint. The Unfair Labor Practice Manager reviewed the case documents and dismisses the amended complaint for failure to state a cause of action under the statutes administered by the Commission.

ISSUE

The amended complaint alleges that the union breached its duty of fair representation. Specifically, the allegations concern union interference with employee rights in violation of RCW 41.56.150(1) by failing to investigate and/or pursue grievances on behalf of Olga Goyzman.

APPLICABLE LEGAL PRINCIPLES

When determining whether a complaint states a cause of action, all facts alleged are assumed to be true and provable, and the question is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission. *Dayton School District (Washington Education Association)*, Decision 8042 (EDUC, 2003), *aff'd*, Decision 8042-A (EDUC, 2004). 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 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 7088-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. 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). The duty of fair representation is breached if the union’s conduct toward one of its members is arbitrary. *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980). A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). The employee claiming a breach of duty of fair representation has the burden of proof and must demonstrate that the union’s actions (or inaction) were discriminatory or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

This Commission does not have jurisdiction over “violation of contract” allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice statutes it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective

bargaining agreements. *Washington State – Corrections*, Decision 8581, citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

ANALYSIS

Goyzman alleges that the union failed to fairly represent her when the employer allegedly violated the collective bargaining agreement by issuing discipline to her for arriving to work a few minutes late. Goyzman argues that the employer was holding her to a higher attendance standard than it applied to her coworkers. According to the amended complaint, starting in November 2014 the union would not file or pursue contractual grievances against the employer on Goyzman's behalf. The amended complaint claims that the union, after conducting a very brief investigation which consisted primarily of talking with the employer's human resources department, decided not to pursue her grievances. To remedy the alleged unfair labor practices, Goyzman requested that the union be ordered to exercise its grievance authority on her behalf, investigate the circumstances preceding her discipline and, in case of termination, obtain reinstatement, back pay, and benefits.

It is only in rare circumstances that this Commission has jurisdiction in duty of fair representation cases. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). An allegation that a union refused to process a grievance is insufficient to state a cause of action. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). In *Mukilteo School District*, the executive director drew a line as to which types of duty of fair representation cases this agency would assert jurisdiction over and which it would not. If the allegations arose exclusively from the processing of claims under an existing collective bargaining agreement, the agency would not assert jurisdiction. *Id.* However, this agency would assert jurisdiction if an employee alleged arbitrary, discriminatory, or bad faith conduct by the union in negotiating a collective bargaining agreement or in the representation of the complainant or others in collective bargaining. *Id.*

Unfair labor practice complaints alleging failures to process grievances have consistently been dismissed at the preliminary ruling stage. *See Dayton School District (Washington Education*

Association), Decision 8042, *aff'd*, Decision 8042-A; *Bremerton Housing Authority*, Decision 2762 (PECB, 1987). The Commission does not assert jurisdiction in “duty of fair representation” cases arising exclusively out of the processing of grievances because it lacks jurisdiction to remedy any underlying contract violation. *Seattle School District (Seattle Education Association)*, Decision 4917-A (EDUC, 1995). The allegations contained in Goyzman’s amended complaint all concern the union’s grievance processing or lack thereof.

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties’ collective bargaining agreement has been violated. *State – Labor and Industries (Washington Federation of State Employees)*, Decision 8263 (PSRA, 2003). If the union determines the concerns have merit, the union has the right to file a grievance under the parties’ collective bargaining agreement. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes this duty of fair representation to bargaining unit members, claims must be pursued before a court which can assert jurisdiction to determine, and remedy, any underlying contractual violation. *Id.*

Employees alleging that a union violated its duty of fair representation based on an employee’s status as a union member have established a cause of action sufficient to proceed to hearing. *See Elma School District*, Decision 1349 (PECB, 1982); *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3763 (PECB, 1991). The Commission will assert jurisdiction in duty of fair representation cases where a union is accused of aligning itself in interest against employees it represents based on invidious discrimination. *Seattle School District*, Decision 4917-A. In this case, the facts do not allege discrimination based on union membership or invidious discrimination.

CONCLUSION

The allegations of union interference and breach of duty of fair representation do not state a claim that is actionable before the Commission. Goyzman’s complaint stems entirely from the union’s

lack of action in the investigation and grievance processing. In order to effectuate the remedies that Goyzman is seeking, this case would need to be pursued before a court which has jurisdiction to determine, and remedy, any underlying contractual violation.

The Public Employment Relations Commission does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the allegations do not rise to the level of an unfair labor practice does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Id.*

NOW, THEREFORE, it is

ORDERED

The amended 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 28th day of April, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, 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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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:/S/ VANESSA SMITH

CASE NUMBER: 27013-U-15-06891 FILED: 02/11/2015 FILED BY: PARTY 2
DISPUTE: UN MISC ULP
BAR UNIT: MISCELLANEOUS
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