

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,

Employer.

MICHELLE HEITMAN,

Complainant,

vs.

SEATTLE POLICE OFFICERS' GUILD,

Respondent.

CASE 24470-U-11-6267

DECISION 11291-A - PECB

DECISION OF COMMISSION

On December 30, 2011, Michelle Heitman (Heitman) filed an unfair labor practice complaint alleging union interference with employee rights. On January 6, 2012, Unfair Labor Practice Manager David I. Gedrose issued a deficiency notice. On January 27, 2012, Heitman filed an amended complaint. On February 8, 2012, the Unfair Labor Practice Manager dismissed the complaint.¹ Heitman filed a timely appeal.²

SUMMARY OF THE FACTS

Heitman works for the City of Seattle Police Department (employer) as a police officer. Heitman is a member of the Seattle Police Officers' Guild (union). Heitman married, and later divorced, a fellow police officer and union member. The marriage and subsequent divorce resulted in a working environment which posed challenges for Heitman.

According to the complaint and amended complaint, Heitman discussed with the union that she had been a victim of harassment in the workplace; the union took no action. Heitman discussed

¹ *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291 (PECB, 2012)

² At the preliminary ruling stage, Heitman was represented by an attorney. Heitman's attorney filed the appeal and withdrew from representation. Heitman did not file a brief in support of her appeal. The union also did not file an appellate brief.

with the union that she felt unsafe in the workplace; the union took no action. Heitman told the union that she thought the employer had discriminated against her, created a hostile work environment, and/or retaliated against her. The union took no action. Heitman sought guidance from the union about what she could do outside of the union to stop the actions of the employer and her ex-husband. The union took no action.

Heitman's complaint and amended complaint do not specifically allege that she requested the union to file a grievance on her behalf. Heitman alleges that in the six months prior to filing her complaint, the union told her it would not assist her in filing a grievance against the employer. The union's reason for not filing a grievance on Heitman's behalf was "a perceived conflict of interest" resulting from Heitman and her ex-husband both being members of the union.

As a remedy, Heitman requested that the union be ordered to file a grievance on her behalf. Heitman also sought an order that she be allowed to transfer to the precinct of her choice.

In dismissing the complaint, the Unfair Labor Practice Manager concluded Heitman was alleging that the union breached the collective bargaining agreement, but did not allege the refusal to file a grievance was based on her union activities or status, or was arbitrary, in bad faith, or because of race, gender, or other invidious reasons.

The Unfair Labor Practice Manager found that the amended complaint contained no facts to support Heitman's claim that the union's failure to file a grievance was arbitrary and in bad faith. Further, this agency did not have jurisdiction over Heitman's complaint because her claims involved processing a contractual grievance. Heitman appealed.

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*, 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*, Decision 7088-B (PECB, 2002), *citing City of Seattle*, 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*, 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 the 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*, Decision 1825 (PECB 1984).

This 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 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

Heitman alleges that the union violated the collective bargaining agreement by failing to take action when Heitman was harassed by another employee, felt unsafe in the workplace, and experienced retaliation, discrimination, and a hostile work environment, and the employer did nothing to help her.

According to the complaint and amended complaint, the union would not file a grievance against the employer due to a “perceived conflict of interest” arising from the union membership of both Heitman and her ex-husband. Heitman alleges the union ignored threats to her safety. According to Heitman, the union’s failure to act was arbitrary or bad faith and discriminated against her based on her marital status. Part of the remedy Heitman requested is that the union be ordered to exercise its grievance authority on her behalf.

In rare circumstances, this Commission has jurisdiction in duty of fair representation cases. It is instructive to examine the history of duty of fair representation cases before this agency.

When a union processes a grievance in a perfunctory manner, it exposes itself to an allegation that it has breached the duty of fair representation. *City of Redmond*, Decision 886 (PECB, 1980). In *City of Redmond*, the employer terminated an employee. The employee filed a grievance, which the employer denied at step 1. The union’s grievance committee voted 3-2 to move the grievance to step 2. The union president told the grievant that his grievance was “very good.” The employer denied the step 2 grievance. The grievance committee voted 2-1 not to move the grievance to step 3. One member of the committee was absent, and the union president, who viewed his role as the tie breaking vote, did not vote. The committee did not consider any new evidence. The committee members testified that they believed the grievance was meritorious. The Examiner found that the grievance committee did not have a valid reason for its decision not to process the grievance. The union breached its duty of fair representation.

An allegation that the union refused to process a grievance was insufficient to state a cause of action. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). In his decision, 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. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381. 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. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381.

Unfair labor practice complaints alleging failures to process grievances have consistently been dismissed at the preliminary ruling stage. See *Dayton School District*, Decision 8042 (EDUC, 2003), *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*, Decision 4917-A (EDUC, 1995).

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*, 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. *State – Labor and Industries*, Decision 8263.

Employees alleging that the union violated the duty of fair representation based on the employees’ 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 (IFPTE 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.

The complaint alleges that the union “would not assist her in filing any grievance against [the employer] due to a perceived conflict of interest arising from the [union] membership of both Officer Heitman” and her ex-husband. The complaint also alleges the union acted arbitrarily, discriminatorily, and in bad faith in refusing to file a grievance. We find that Heitman has

alleged sufficient facts to state a cause of action for union interference with employee rights, which should be processed according to Chapter 391-45 WAC. This decision should not be construed as a finding that Heitman established that the union violated its duty of fair representation.

NOW, THEREFORE, it is

ORDERED

1. The Order of Dismissal issued Unfair Labor Practice Manager David I. Gedrose is VACATED.
2. The complaint charging unfair labor practices filed in this matter has been reviewed under WAC 391-45-110. The allegations concern:

Union interference with employee rights in violation of RCW 41.56.150(1) for arbitrarily refusing to process a grievance which posed two union members against each other, based on Michelle Heitman's status as a union member.

3. The organization charged with an unfair labor practice in this matter shall: File and serve its answer to the complaint within 21 days following the date of this decision.

ISSUED at Olympia, Washington, this 11th day of July, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 24470-U-11-06267 FILED: 12/30/2011 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: LAW ENFORCE
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF SEATTLE
ATTN: DAVID BRACILANO
700 5TH AVE 55TH FL
PO BOX 34028
SEATTLE, WA 98124-4028
Ph1: 206-684-7874 Ph2: 206-684-7999

PARTY 2: MICHELLE HEITMAN
ATTN: C/O JOHN MACDONALD
1001 4TH AVE STE 3200
SEATTLE, WA 98154
Ph1: 206-894-9315

REP BY: JOHN MACDONALD
ATTORNEY AT LAW
1001 4TH AVE STE 3200
SEATTLE, WA 98154
Ph1: 206-684-9315

PARTY 3: SEATTLE POLICE OFFICERS GUILD
ATTN: RICHARD ONEILL
2949 4TH AVE S
SEATTLE, WA 98134
Ph1: 206-767-1150

REP BY: HILLARY MCCLURE
VICK JULIUS MCCLURE
5701 6TH AVE S STE 491A
SEATTLE, WA 98108-2568
Ph1: 206-957-0926