

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARIANO ROMULO,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 128929-U-17

DECISION 12747 - PECB

ORDER OF DISMISSAL

MARIANO ROMULO,

Respondent,

vs.

PLUMBERS AND PIPEFITTERS, LOCAL
32,

Respondent.

CASE 128930-U-17

DECISION 12748 - PECB

ORDER OF DISMISSAL

On April 17, 2017, Mariano Romulo (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The case naming City of Seattle (employer) as respondent was docketed as case 128929-U-17. The case naming Plumbers and Pipefitters, Local 32 (union) as respondent was docketed as case 128930-U-17. The complaints were reviewed under WAC 391-45-110 and a deficiency notice issued on May 23, 2017, 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 amended complaints, or face dismissal of these cases.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

The allegations of the complaints concern:

Denial of due process, union refusal to file grievances, union failure to support grievance request in response to written disciplinary actions, lack of union support, working conditions violating authorities of compliance, unsafe working conditions, and abuse of authorities.

The complaints are extremely vague and do not contain a clear statement of facts. Mr. Romulo filed another set of documents with the Commission on May 1, 2017, which appear to be a copy of a complaint filed with the Washington Department of Labor & Industries, Division of Occupational Safety and Health, with attachments of the original Commission complaint filed on April 17, 2017. The filing on May 1, 2017, does not amend the original April 17, 2017, unfair labor practice complaints.

Complaint Does Not Specify Which RCW Provisions Are Alleged to be Violated

The complainant checked the boxes on the Unfair Labor Practice Complaint Form for alleged violations by the union and the employer but does not indicate what type of unfair labor practices are alleged under 41.56 RCW.

Complaint Does Not Identify Participants in the Alleged Violations

The complaint makes general statements about the employer's actions and union's lack of action, but does not fully identify the first and last names of individuals who acted on behalf of the employer or failed to act on behalf of the union. The failure to identify employer and union officials who are alleged to have committed the unfair labor practice violations is problematic. WAC 391-45-050(2) requires the complainant to identify alleged participants. The identity of the employer and union officials is information that the respondents need in order to respond to the complaints.

Complaint Does Not Specify Allegations Within PERC's Jurisdiction

The complaints do not describe allegations that fit within the jurisdiction of the Commission. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes

that might arise in public employment. *Tacoma School District*, Decision 5086-A (EDUC, 1995). Just because the complaints do 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 the Commission. *Tacoma School District*, Decision 5086-A.

Complaint Should Specify the Remedy/Remedies Requested

The complaints suggest that the Commission could discuss appropriate remedies with Mr. Romulo's attorney. First, a Notice of Appearance has not been filed by any attorney on behalf of Mr. Romulo. Second, requested remedies should be identified in a statement of remedy sought by the complainant as described in WAC-391-45-050(3).

Civil Rights Laws

The complaints also make references to violations of the complainant's civil rights. The Commission does not have jurisdiction to enforce civil rights laws. Washington State Human Rights Commission has jurisdiction over employment discrimination in the state of Washington. The Equal Employment Opportunity Commission (EEOC) is a federal agency that also has jurisdiction over discrimination. Lastly, civil rights cases can be pursued in the courts.

Hostile Work Environment

The Commission only has jurisdiction over hostile work environment allegations alleged to be in retaliation for protected union activity. It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). In this case, the complaints do not include facts describing a connection between the alleged hostile work environment and protected union activity.

Whistleblower Complaints

While not specifically alleged, the complaint identifies unsafe working conditions and abuse of authorities. The Public Employment Relations Commission does not have authority over

Whistleblower Protection laws. The Washington State Human Rights Commission has jurisdiction over whistleblower workplace reprisal or retaliatory action.

Allegations against the Union--Duty of Fair Representation

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*, 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*, 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.

Each of these requirements represents a distinct and separate obligation.

Analysis

The complaint alleges that the union failed to file grievances, failed to support a grievance request in response to written disciplinary actions, failed to provide its support.

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).

Complaints Should Not Rely on Attachments

The statement of facts attached to the complaint should describe all relevant documents. The complainant does not need to submit copies of supporting documents, letters, and emails at this preliminary stage of case processing. Attachments are not evaluated or considered at this stage of case processing.

Need to Number Paragraphs in the Statement of Facts


Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant did not number each of the paragraphs in the statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

ORDER

The complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of July, 2017.

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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DECISIONS 12747 – PECB and 12748 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

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