

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP TRANSIT,	Employer.	
CHARLES ELY,	Complainant,	CASE 132045-U-19
vs.		DECISION 13077 - PECB
AMALGAMATED TRANSIT UNION, LOCAL 587,	Respondent.	PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On August 20, 2019, Charles Ely filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Amalgamated Transit Union Local 587 (union) as respondent. The complaint was docketed by the Commission as case 132045-U-19. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on September 5, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Ely was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On September 24, 2019, Ely filed a request to reconsider the complaint in light of the Supreme Court of the United States' decision in *Janus v. AFSCME*. Upon reconsideration, the allegations of the amended complaint concern:

Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation by negotiating a memorandum of understanding that altered Charles Ely's seniority.

¹ 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.

Union interference with employee rights in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by breaching its duty of fair representation when union president Ken Price refused to communicate with bargaining unit member Charles Ely.

The allegation that the union breached its duty of fair representation by refusing to communicate with bargaining unit member Charles Ely states a cause of action and will be subject to further proceedings under chapter 41.59 RCW and chapter 391-45-WAC. The union must file and serve an answer to the amended complaint within 21 days following the date of this Decision. The allegation breached its duty of fair representation by negotiating a memorandum of understanding that altered Charles Ely's seniority failed to state a cause of action and is dismissed.

BACKGROUND

Charles Ely works as a routed driver for Kitsap Transit. His position is represented by the Amalgamated Transit Union, Local 587 for purposes of collective bargaining. Prior to May 2018, Ely held religious objector status and his union security fees were forwarded to a non-religious charity. Following the Supreme Court of the United States' decision in *Janus v. American Federation of State, County and Municipal Employees, Council 31*, 585 U.S. _____ (2018), he cease paying any representational fees.

According to the complaint, the union negotiated a memorandum of understanding with the employer that altered the longstanding seniority order for bidding vacation slots to the benefit of a single employee who also serves as the union's shop steward. The complaint specifically alleges that eight different drivers (including the complainant) had their seniority reduced as a result of the agreement. The complaint also suggests that the union could have achieved the same goal without altering employees' seniority.

Finally, the complaint alleges that union president Ken Price failed to return the complainants phone calls and that Price will not call back nonmembers.

ANALYSIS*Duty of Fair Representation*

It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.76.050(2)(a). The duty of fair representation requires an exclusive bargaining representative 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 (Redmond Employees Association)*, 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 (Washington State Council of County and City Employees)*, 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.

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).

Application of Standards

Ely's dissatisfaction with the outcome of negotiations between the employer and union do not form the basis for a statutory violation. Often when collective bargaining decisions are being made that effect a large group of employees, not all employees in the group are going to agree with, or feel the same way, about the decision. Employees' dissatisfaction is not in itself enough to establish an interference cause of action or breach of duty of fair representation.

While the complainant has identified himself as an employee who previously enjoyed religious objector status and who now declines to pay any representational fees, the complaint does not allege that the union negotiated the memorandum of understanding with the intent to align itself again bargaining unit employees on an invidious basis.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the amended complaint in case 132045-U-19 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation when union president Ken Price refused to communicate with bargaining unit member Charles Ely.

The interference allegations of the amended complaint will be the subject of further proceedings under chapter 391-45 WAC.

The Amalgamated Transit Union, Local 587 shall:

File and serve their answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

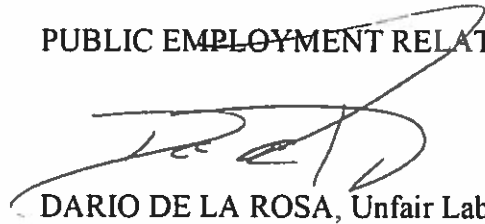
- a. Specifically admit, deny, or explain each fact alleged in the amended complaint, as set forth in paragraph 1 of this Order, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the amended complaint in case 132045-U-19 concerning union interference for breaching its duty of fair representation by negotiating a memorandum of understanding that altered Charles Ely's seniority are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 3rd day of October, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Dario De La Rosa', is written over the printed name below.

DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 10/03/2019

DECISION 13077 - 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 132045-U-19

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