

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SPOKANE, Employer.	
ROBERT M. WEST, Complainant, vs.	CASE 131916-U-19 DECISION 13088-A - PECB
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	DECISION OF COMMISSION

Michael J. Beyer, Attorney at Law, for Robert M. West.

Ed Stemler, General Counsel, for the Washington State Council of County and City Employees.

On July 8, 2019, Robert M. West (complainant) filed an unfair labor practice complaint against the Washington State Council of County and City Employees (union). The Unfair Labor Practice Administrator issued a deficiency notice on August 8, 2019. The complainant filed a letter arguing why the complaint stated a cause of action. After reviewing the filings, the Unfair Labor Practice Administrator dismissed the complaint on October 18, 2019. *City of Spokane (Washington State Council of County and City Employees)*, Decision 13088 (PECB, 2019).

On November 1, 2019, the complainant filed a timely appeal. The complainant's notice of appeal contained argument as to why a cause of action should be found. Neither the complainant nor the union filed briefs on appeal.

ISSUE

The only issue this appeal presents is whether the complaint states a cause of action, or in other words, whether the complainant has alleged sufficient facts to proceed to hearing.

ANALYSIS

Applicable Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Officer of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. All facts are assumed to be true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

Duty of Fair Representation

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. *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3199-B (PECB, 1991). 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).¹ 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 inactions were discriminatory or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

The 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. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)).

¹ The applicable legal standard in the Unfair Labor Practice Administrator’s decision omitted a word. *City of Spokane (Washington State Council of County and City Employees)*, Decision 13088 at 4 (PECB, 2019). In this decision, we corrected the omission.

Application of Standards

After reviewing the complaint, we conclude, as the Unfair Labor Practice Administrator did, that the complaint did not state a cause of action. The complaint was not timely. The complainant's allegation that the union breached its duty of fair representation was based on the processing of a grievance. The complainant did not allege any facts that the manner in which the union processed his grievance was based upon invidious or arbitrary reasons.

CONCLUSION

The complaint does not state a cause of action.

ORDER


The Order of Dismissal issued by Unfair Labor Practice Administrator Dario de la Rosa is AFFIRMED.

ISSUED at Olympia, Washington, this 31st day of January, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAVAN, Chairperson


MARK BUSTO, Commissioner


KENNETH J. PEDERSEN, Commissioner



RECORD OF SERVICE

ISSUED ON 01/31/2020

DECISION 13088-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in blue ink, appearing to read "Amy Riggs", is positioned above the typed name.

BY: AMY RIGGS

CASE 131916-U-19

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