STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| DEBRA TOOMBS,<br>Complainant,<br>vs.<br>UNIVERSITY OF WASHINGTON,<br>Respondent. | CASE 133118-U-20<br>DECISION 13294 - PSRA<br>ORDER OF DISMISSAL |
| DEBRA TOOMBS,<br>Complainant,<br>vs.<br>SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 925,<br>Respondent. | CASE 133119-U-20<br>DECISION 13295 - PSRA<br>PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL |

*Karen Hart*, President, for the Service Employees International Union Local 925.

*Megan K. Gibbons*, Assistant Attorney General, Attorney General Robert W Ferguson for the University of Washington.

On October 29, 2020, Debra Toombs (complainant) filed an unfair labor practice complaint against the University of Washington (employer) and the Service Employees International Union Local 925 (union). The complaints were reviewed under WAC 391-45-110.[1] On December 1, 2020, a partial deficiency notice issued notifying Toombs the allegation against the employer failed to

[1] At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

state a cause of action because the complaint lacked any facts demonstrating the employer committed an unfair labor practice. With respect to the allegations against the union, the partial deficiency notice informed Toombs that although her claim of union interfered with employee rights stated a cause of action, the claim that the union breached its duty of fair representation by failing to process a grievance on the complainants behalf failed to state a cause of action. Toombs was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations. On December 23, 2020, Toombs filed an amended complaint.[2]

The amended complaint failed to cure any of the defects in the original complaint and therefore the deficient allegations are dismissed. A preliminary ruling is issued for the allegation claiming the union interfered with protected rights by failing to respond to the complainant's inquiries. The union is directed to answer that specific allegation as required by WAC 391-45-190.

## BACKGROUND

Deborah Toombs works as a Patient Service Specialist at the University of Washington Medical Center (employer). Her position is represented by the Service Employees International Union Local 925 (union). Damien Kent is a staff representative for the union. The employer and union are parties to a collective bargaining agreement that apparently contains a grievance procedure to resolve labor management disputes.

### *Original Complaint*

According to the original complaint, Toombs contacted Kent to ask if there was an organization outside of the University of Washington to hear her issues and was informed to contact the University of Washington's Office of Complaint Investigation and Resolution (UCIRO). Toombs

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[2] The amended complaint was due on December 22, 2020. Toombs filed her amended complaint by email and the metadata associated with that email demonstrates that the agency received the amended complaint at 11:13 PM on Tuesday, December 22, 2020. Under WAC 391-08-120(4)(e), if an electronic filing is received after office hours, the papers will be deemed filed the next business day the office is open. In this instance, Toombs filed her amended complaint one day date.

allegedly was informed by the UCIRO staff that Kent would not represent her during her UCIRO meeting.

On October 16, 2020, Toombs and a group of employees contacted the union in an attempt to have the union file a grievance on their behalf. The union allegedly did not file the grievance on the employees' behalf but responded to Toombs's inquiries.

On October 23, 2020, the union was made aware that Toombs desired to file a grievance and she emailed the union reminding them that the deadline to file the grievance was October 28, 2020. Toombs did not receive any response from the union regarding her inquiries.

On October 26, 2020, Toombs emailed the union asking it to reach out to the Public Employment Relations Commission (PERC) for mediation assistance. According to the complaint, the union did not contact PERC and the complainant received no response from the union.

*Amended Complaint*

Toombs's amended complaint did not include an amended statement of facts that included times, dates, places, and participants in occurrences. Rather, Toombs's amended her complaint to include a series of emails between her and union and employer officials.

## ANALYSIS

*Case 133118-U-20 – Complaint against Employer*

Tombs's complaint and amended complaint against the employer contain procedural and substantive deficiencies that warrant dismissal. Both her original and amended complaints lack any specific facts demonstrating how the employer committed an unfair labor practice. Rather, Toombs's original complaint cites to several provisions of the collective bargaining agreement and alleges, without facts, that the cited provisions have been violated. The amended complaint adds no additional facts.

WAC 391-45-050(2) requires the complainant to identify alleged participants. The identity of the employer officials is information that the respondent needs in order to respond to the complaint. In order to attribute an action to the employer the complainant needs to identify who was acting on behalf of the employer. The statement of facts needed to include the times, dates, places, and participants in occurrences. Adding email as documentation of an unfair labor practice without creating a corresponding statement of facts does not satisfy the requirements of the rule. Toombs failed to cure this defect through her amended complaint. The allegations against the employer are dismissed.

*Case 133119-U-20 – Complaint Against Union*

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)).

*Duty of Fair Representation*

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 for 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 – Duty of Fair Representation.*

The original complaint lacks facts alleging that the union breached its duty of fair representation and the amended complaint did not cure these facts. The original complaint alleges Toombs is an

employee under chapter 41.80 RCW and is an employee represented by the union. The complaint also alleges that Toombs requested that the union file a grievance on her behalf and the union failed to do so. The complaint and amended complaint lack facts alleging how the union's failure to file the grievance was arbitrary, discriminatory, or in bad faith. Toombs's dissatisfaction with the level of representation does not form the basis for a cause of action. The Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances.

*Contract Violations*

With respect to Toombs's allegation that certain provisions of the collective bargaining agreement have been breached, 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 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. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)).

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' collective bargaining agreement. Provisions of the collective bargaining agreement can be enforced through the contractual grievance procedure or through the courts.

## ORDER

1. Case 133118-U-20. The allegations against the University of Washington are DISMISSED for a failure to state a cause of action.

2. Case 133119-U-20. Assuming all of the facts alleged to be true and provable, the interference allegation concerning of the complaint state a cause of action, summarized as follows:

> Union interference in violation of RCW 41.80.110(2)(a) within six months of the date the complaint was filed, by failing to respond to the complainant's inquiries concerning employment matters made between October 23, 2020, and October 26, 2020.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

3. Case 133119-U-20. The respondent shall file and serve an answer to the allegation listed in paragraph 2 of this order within 21 days following the date of this order. The answer shall

   (a) specifically admit, deny, or explain each fact alleged in the original complaint, except if the 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 and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

4. Case 133119-U-20. The allegation of the original complaint concerning the union's breach of its duty of fair representation is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 25th day of January, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 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 01/25/2021

DECISION 13294 - PSRA 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 133118-U-20

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| EMPLOYER: | UNIVERSITY OF WASHINGTON |
| REP BY: | BANKS EVANS III<br>UNIVERSITY OF WASHINGTON<br>4300 ROOSEVELT WAY NE<br>PO BOX 354960<br>SEATTLE, WA 98195-4960<br>bankse@uw.edu |
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| PARTY 2: | DEBRA TOOMBS |
| REP BY: | DEBRA TOOMBS<br>720 N 10TH ST A310<br>RENTON, WA 98057<br>debra.toombs1@gmail.com |

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