

Washington State Department of Corrections (Teamsters Local 117), Decision 13383 (PSRA, 2021)

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,  Employer.	
MICHAEL UNCK,  Complainant,  vs.  TEAMSTERS LOCAL 117,  Respondent.	CASE 134245-U-21 DECISION 13383 - PSRA  ORDER OF DISMISSAL

*Michael Unck*, the complainant.

*John Scearcy*, Secretary-Treasurer, for Teamsters Local 117.

On June 7, 2021, Michael Unck (complainant) filed an unfair labor practice complaint against Teamsters Local 117 (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on June 24, 2021, notified the complainant that a cause of action could

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<sup>1</sup> 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.

not be found at that time. Unck was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by the complainant. The complaint is dismissed for failing to state a cause of action.

### BACKGROUND

Michael Unck is employed by the Washington State Department of Corrections (employer) as a Corrections Officer 2. His position is represented by the union.

Unck alleges that on March 11, 2021, he was mailed an official notification of disciplinary action from the employer that stated he was to be suspended for 10 days without pay starting March 15, 2021. The letter also informed Unck that he had a right to appeal the suspension under article 9 of the collective bargaining agreement between the employer and the union.

According to the complaint, Unck emailed his union on March 18, 2021, and requested that the union grieve the disciplinary action. On March 19, 2021, Unck sent a second email to the union clarifying his grievance request, informed the union that the employer committed multiple violations of the collective bargaining agreement, and reminded the union that it was responsible for filing meritorious grievances submitted by employees. On March 26, 2021, Unck sent a third email to the union citing more violations. Unck alleges that all of his requests to file grievances were with the timeframe outlined in the collective bargaining agreement.

On April 1, 2021, the union notified Unck that it would not file a grievance because there were no violations of the collective bargaining agreement. Unck's complaint details numerous ways in which he believes the employer violated the collective bargaining agreement as well as Unck's due process rights during the employer's investigation.

The complaint also describes steps the union took to represent Unck during the employer's investigation. For example, on May 26, 2020, union representative Wesley Wilson attended a predisciplinary meeting. On October 9, 2020, union attorney Eamon McCleary sent the employer a letter requesting that the make a decision concerning any discipline and that the union "stands ready to review that determination and take any steps that may be necessary to protect Mr. Unck's just cause rights" under the collective bargaining agreement.

## 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 41.80.110(2)(a). The Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). 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*, Decision 3199-B (PECB, 1991)).

A union breaches its duty of fair representation when its conduct toward one of its members is arbitrary, discriminatory, or in bad faith. *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 and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984).

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. 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 and the commission will not substitute its judgment for the union.

While an exclusive bargaining representative has the obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d, 351, 375 (1983). The Commission will assert jurisdiction in duty of fair representation cases only where a union is accused of aligning itself in interest against employees it represents based on invidious discrimination. *Seattle School District (Seattle Education Association)*, Decision 4917-A (EDUC, 1995).

#### *Application of Standard*

Unck alleges the union breached its duty of fair representation in violation of RCW 41.80.110(2)(a) when it declined to submit his grievance to arbitration. This allegation must be dismissed because the allegation arises only out of the processing of the grievance. The facts as pled demonstrate that the employer investigated Unck and the union participated in that investigation on Unck's behalf. Following the investigation, the employer decided to discipline Unck. The union responded to Unck's request to arbitrate the grievance by notifying him that it had reviewed the situation and exercised its discretion to decline to pursue the grievance. While Unck asserts that the union colluded with the employer to deny Unck his collective bargaining rights based upon certain activity, such as communication with the Freedom Foundation, communicating an intent to file an unfair labor practice complaint against the union, or received help from a coworker who has an adversarial relationship with the union, Unck did not allege facts demonstrating when those activities occurred, how the union knew about those activities, or how those activities are causally connected the union's decision. Absent specific facts demonstrating the union declined to process Unck's grievance due to invidious discrimination, the conclusory statement in the complaint asserting the union colluded with the employer the complaint must be

dismissed.

*Discrimination for Filing an Unfair Labor Practice*

Unck alleges that the union violated RCW 41.80.110(2)(c) by retaliating against him for his threat to file an unfair labor practice complaint against the union. To prove a union has discrimination, the complainant must first set forth a prima facie case establishing the following:

1. The complainant filed an unfair labor practice complaint against the union or gave testimony during an unfair labor practice hearing before the agency;
2. The union deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the complainant's protected activity and the union's action.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Unck claims that the union discriminated against him in violation of RCW 41.80.110(2)(c) cannot stand because Unck has not alleged that he actually filed an unfair labor practice complaint or gave testimony during an unfair labor practice hearing before this agency prior to the union's action. Absent such facts, this allegation must be dismissed.

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.