

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PACIFIC, Employer.	
JED SLAGTER, Complainant,	CASE 134248-U-21
vs.	DECISION 13387 - PECB
TEAMSTERS LOCAL 117, Respondent.	ORDER OF DISMISSAL

Jed Slagter, the complainant.

John Searcy, Secretary-Treasurer, for Teamsters Local 117.

On June 8, 2021, Jed Slagter (complainant) filed an unfair labor practice complaint against Teamsters Local 117 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on July 1, 2021, notified Slagter that a cause of action could not be found at that time. Slagter 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 Slagter. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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.

ISSUE

The complaint alleges the following:

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 in no longer pursuing arbitration on behalf of Jed Slagter.

The complaint is dismissed. The complaint does not describe facts that could constitute a duty of fair representation violation within the Commission's jurisdiction.

BACKGROUND

Jed Slagter was employed at the City of Pacific (employer) as a uniformed employee in the police department and was represented by Teamsters Local 117 (union). On January 5, 2020, Slagter was placed on administrative leave because of work performance. Following an investigation Slagter and the union were notified on March 5, 2020, that policy violations were sustained. On March 11, 2020, Slagter, the union, and employer met for a predisciplinary meeting. The union and employer attempted to negotiate a settlement agreement, but were unable to reach agreement.

On March 30, 2020, Slagter was demoted effective April 8, 2020, and placed on a one year performance improvement plan. On April 9, 2020, Slagter received a copy of the grievance the union filed on Slagter's behalf. The employer agreed to waive the first step of the grievance process and the union, Slagter, and the mayor met on May 4, 2020, for the second step. On May 26, 2020, the mayor denied the grievance and affirmed the discipline.

On June 11, 2020, the union notified the employer it was moving the grievance to arbitration.² On August 7, 2020, the union notified Slagter that the parties had mutually selected an arbitrator.

² In July 2020 Slagter filed an inquiry with the Washington State Human Rights Commission and the Commission assisted in drafting a complaint of discrimination and retaliation with the U.S. Equal Employment Opportunity Commission (EEOC). Slagter had separate settlement discussions with the employer regarding these claims.

On September 14, 2020, the employer informed Slagter that it was placing him on administrative leave again and an investigation would follow with the new policy violations. The arbitration for the original grievance was scheduled for November 12 and 13, 2020.

On November 1, 2020, the union informed Slagter that the employer asked to postpone the arbitration and believed the employer was interested in settlement discussions. Slagter did not want to postpone the arbitration.

On November 5, 2020, the union notified Slagter that the employer wanted to conduct another interview regarding the internal investigation.

On November 9, 2020, Slagter contacted the union requesting an updated on the arbitration. The union responded November 12, 2020, that the arbitration had been rescheduled for February 8 and 9, 2021.

On November 29, 2020, Slagter received a copy of the investigator's report regarding the second internal investigation. On December, 8, 2020, the employer provided its Loudermill notice and findings. The employer was considering imposing discipline up to and including termination. On December 17, 2020, the union submitted a written response, drafted by Slagter, to the employer.

Between December 30, 2020, and January 1, 2021, the employer and union engaged in additional settlement discussions. On January 4, 2021, the union met with Slagter to review the employer's proposed settlement offer. The agreement would include Slagter dropping all claims. Slagter did not agree to the offer. On January 14, 2021, the union notified Slagter it had received the employer's draft of the settlement documents. On January 15, 2021, the union met with Slagter and recommended Slagter accept the employer's offer.

On January 16, 2021, the union notified Slagter it had determined it would not take the second investigation to arbitration. The union again recommended Slagter accept the settlement offer and requested a response in two days. Slagter declined the employer's settlement offer and informed the union on January 17, 2021.

On January, 18, 2021, the union informed Slagter that the settlement offer had been modified and requested a response as to whether Slagter would agree to the offer. The union again confirmed the union would not take the case forward to arbitration if the settlement offer was not accepted. Slagter declined the employer's modified settlement offer and informed the union on January 19, 2021. Afterward the union notified Slagter that it would drop the grievance regarding the demotion and would not file a grievance over any discipline imposed for the second investigation.

On January 22, 2021, the union and Slagter received a notice of discipline from the employer for the second investigation. Slagter was terminated effective January 27, 2021. After the notice, Slagter contacted the union requesting a grievance be filed regarding the termination. On January 25, 2021, the union confirmed its previous position that it would not proceed to arbitration.

ANALYSIS

Duty of Fair Representation

Applicable 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 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)). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. 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 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).

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 v. Seattle Police Officers' Guild*, 100 Wn.2d 361 at 375 (1983). 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 Standard

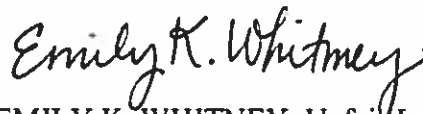
The complaint lacks facts alleging the union's actions were arbitrary, in bad faith, or invidious. The complaint alleges that Slagter was represented by the union, and the union filed a grievance on Slagter's behalf. The grievance process is one of the articles of the parties' collective bargaining agreement. The complaint alleges the union followed the grievance process, Slagter would not accept the employer's settlement offer, and the union made a determination that it would no longer pursue the case to arbitration. The facts alleged are based on a breach of the union not following the grievance process to Slagter's desired end. The Commission does not have jurisdiction over these types of duty of fair representation allegations. Slagter was provided an opportunity to correct the deficiencies in the complaint. Slagter did not file an amended complaint. Because the complaint lacks facts alleging a duty of fair representation violation, the complaint 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 3rd day of August, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink that reads "Emily K. Whitney". The signature is written in a cursive style with a large initial "E".

EMILY K. WHITNEY, 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.



RECORD OF SERVICE

ISSUED ON 08/03/2021

DECISION 13387 - 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 134248-U-21

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