

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,

Employer.

KEITH ALAN TURNER,

Complainant,

vs.

WASHINGTON FEDERATION OF STATE
EMPLOYEES,

Respondent.

CASE 134241-U-21

DECISION 13389 - PSRA

ORDER OF DISMISSAL

Vernon Ovington Hosannah, Attorney at Law, Hosannah Law Group PLLC, for
Keith Alan Turner.

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for
the Washington Federation of State Employees.

On June 4, 2021, Keith Alan Turner (complainant) filed an unfair labor practice complaint against the Washington Federation of State Employees (union) alleging the union committed unfair labor practices in violation of RCW 41.80.110(2)(1) by failing to advance his grievance to arbitration. The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on June 24, 2021, notified Turner that a cause of action could not be found at that time. Turner was given a

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.

period of 21 days in which to file and serve an amended complaint or face dismissal of the case. The amended complaint is dismissed for failure to state a cause of action.

BACKGROUND

Turner's original and amended complaints allege that he was employed as an Attendant Counselor 2 by the Washington State Department of Social and Health Services in the State Operated Living Alternatives program. Turner's position was represented by the Washington Federation of State Employees for purposes of collective bargaining.

According to the original complaint, on July 13, 2019, Turner alleged push an elderly client that was in his care. On July 17, 2019, it was discovered that the client had two broken ribs. On July 19, 2019, Turner was called to a meeting with his supervisor where he was informed that he pushed and injured a client and was being reassigned. Turner denied the misconduct but punched a file cabinet in frustration. Turner was escorted out of the building and left the property.

As a result of his reassignment, Turner was required to travel between Pierce and Kitsap Counties even though closer work assignments were available. On January 12, 2021, Tuner requested a more reasonable, cost-effective work assignment. He repeated the request on January 21, 2021.

On January 21, 2021, the employer notified Turner of its intent to discipline him for the July 13, and 19, 2019, incidents. On February 19, 2021, the employer terminated Turner's employment. Turner requested reinstatement and was denied.

On March 17, 2021, the union informed Turner that there was not sufficient merit for his grievance. Turner's grievance needed to be filed by March 19, 2021, 28 days after Turner's discharge. According to the amended complaint, the union did not want to entertain Turner's grievance but reluctantly acquiesced.

The union held a Local Grievance Committee meeting March 26, 2021, and a Local Grievance Committee appeal form was subsequently submitted to preserve Turner's appeal rights. On

April 30, 2021, the Local Grievance Committee notified Turner of its decision. Although the complaint and amended complaint do not describe the Local Grievance Committee's decision, it is readily apparent that the Local Grievance Committee declined to submit a grievance on Turner's behalf.

On May 3, 2021, Turner's attorney communicated with the union and asked for the rules concerning the union's Statewide Grievance Committee process. On May 4, 2021, the union notified Turner that the Statewide Grievance Committee would meet on May 7, 2021, to reconsider his case and to determine if the union would file a grievance on his behalf.

Turner's attorney sent the Statewide Grievance Committee a letter on May 10, 2021, requesting it to move Turner's grievance to the next step in the process. On May 11, 2021, the union sent Turner's attorney an email reminding Turner that the Statewide Grievance Committee declined to support his grievance and that this determination was final. The email also stated that Turner would be notified in writing.

ANALYSIS

Applicable Legal Standards

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 concern 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.

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 361, 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

The entirety of Turner's complaint against the union arises out of the union's failure to submit a grievance concerning his termination to arbitration. Turner has not alleged in either his complaint or amended complaint that the union failed to process his grievance based upon invidious discrimination, such as on the basis of his race. Rather, Turner submitted his grievance and the union followed up on the grievance by notifying Turner that it had reviewed his case and exercised its discretion and declined to pursue the grievance. Furthermore, it is not the Commission's place to comment on the likelihood of the union prevailing at the next step of the grievance procedure. *King County (Amalgamated Transit Union Local 587)*, Decision 12759-A (PECB, 2018). Absent facts demonstrating the union declined to process Turner's grievance due to invidious discrimination, this agency will not exercise jurisdiction over allegation that a union violated the

collective bargaining agreement by failing to submit a grievance to arbitration. Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004)

ORDER

The amended 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 10th day of August, 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.



RECORD OF SERVICE

ISSUED ON 08/10/2021

DECISION 13389 - 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 134241-U-21

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