

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
LYNN MORSE, Complainant, vs. KING COUNTY SECURITY GUILD, Respondent.	CASE 134824-U-22 DECISION 13494 - PECB ORDER OF DISMISSAL

Lynn Morse, the complainant.

Scott Smith, President, for the King County Security Guild.

On February 10, 2022, Lynn Morse filed an unfair labor practice complaint against the King County Security Guild (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on February 17, 2022, notified Morse that a cause of action could not be found at that time. Morse 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 Morse. 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 not filing a grievance on Lynn Morse's behalf.

The complaint lacks facts alleging a duty of fair representation violation and must be dismissed.

BACKGROUND

Lynn Morse was a Security Officer at King County (employer) and was represented by the union. On December 20, 2021, Morse was separated from employment. Morse was allegedly denied a religious accommodation. On an unidentified date, Morse asked the union for representation to contest Morse's separation. Allegedly on February 8, 2022, the union president notified Morse that the union would not represent Morse. The president allegedly stated, "Sorry, very busy. Not ignoring you. As for a grievance, there is nothing to grieve. No language in contract, S.O.P. and/personnel guidelines."

ANALYSISDuty 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 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)).

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 of 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 v. Seattle Police Officers’ Guild*, 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 Standard

The complaint lacks facts alleging the union breached its duty of fair representation when its conduct was arbitrary, discriminatory, or in bad faith. The complaint alleges that Morse asked the union to file a grievance to contest Morse's separation. The union allegedly notified Morse that it would not file a grievance because there was no contract language, S.O.P., and personnel guidelines to challenge. The complaint alleges the union's action arose exclusively out of the processing of a contractual grievance. 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. Morse was provided an opportunity to file an amended complaint. Morse 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 31st day of March, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 03/31/2022

DECISION 13494 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: TERRI IVERSON

CASE 134824-U-22

EMPLOYER: KING COUNTY

REP BY: ROBERT S. RAILTON
KING COUNTY
500 4TH AVE RM 450
SEATTLE, WA 98104
bob.railton@kingcounty.gov

PARTY 2: LYNN MORSE

REP BY: LYNN MORSE
37434 38TH AVE S
AUBURN, WA 98001
lynnmmorse@icloud.com

PARTY 3: KING COUNTY SECURITY GUILD

REP BY: SCOTT SMITH
KING COUNTY SECURITY GUILD
PO BOX 4491
SEATTLE, WA 98104
scott.smith@kingcounty.gov