STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| KIRK CALKINS,<br><br>Complainant,<br><br>vs.<br><br>CITY OF SEATTLE,<br><br>Respondent. | CASE 135066-U-22<br><br>DECISION 13532 - PECB<br><br>ORDER OF DISMISSAL |

*Kirk Calkins*, the complainant.

*Sarah Tilstra*, Assistant City Attorney, for the City of Seattle.

On May 2, 2022, Kirk Calkins (complainant) filed an unfair labor practice complaint against the City of Seattle (employer). Calkins alleged the employer unilaterally changed the overtime policies that applied to Street Use Inspectors without input or consent from the employees in the Street Use Inspector job class. The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on May 31, 2022, notified Calkins that a cause of action could not be found at that time. Calkins was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On June 21, 2022, Calkins filed an amended complaint. The amended complaint is dismissed for failure to state a cause of action.

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[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.

## BACKGROUND

Kirk Calkins works as a Street Use Inspector for the Seattle Department of Transportation (employer). His position is represented by PROTEC17 (union) for purposes of collective bargaining.

According to Calkins's original and amended complaints, the employer and union negotiated a new overtime shift policy that required a supervisory inspector or lead inspector to be assigned overtime shifts in instances where the overtime shift has enough work for at least three inspectors. In the event a lead inspector is not available, a supervisor would be assigned as the third employee to the overtime shift. This new policy allows lead and supervisory employees the opportunity to perform street inspections during off hours so those employees would have overtime opportunities. It appears from the complaint that only the Street Use Inspectors were previously assigned to overtime shifts.

Calkins alleges that the Street Use Inspectors were not consulted about this change and the employer, union, leads, and supervisors negotiated this agreement without the rank-and-file Street Use Inspectors involvement. Calkins' amended complaint questions why this change was made, requests that the change in policy be rescinded, and asks that the rank-and-file Street Use Inspectors be consulted on any future changes to overtime policies.

## ANALYSIS

Calkins' complaint against the employer must be dismissed because it fails to state a cause of action.[2]

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[2] The deficiency notice also informed Calkins that his complaint was procedurally defective because he failed to number the paragraphs in the attached statement of facts as required by WAC 391-45-050.

*Unilateral Changes*

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it: gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

However, the union is the only party that has standing to file and pursue refusal to bargain claims against an employer. *Spokane Transit Authority*, Decision 5742 (PECB, 1996); *City of Renton*, Decision 11046 (PECB, 2011). An employee cannot file a refusal to bargain complaint as an individual. *King County (Washington State Council of County and City Employees)*, Decision 7139 (PECB, 2000) (citing *Clark County*, Decision 3200 (PECB, 1989); *Enumclaw School District*, Decision 5979 (PECB, 1997)). Rather, the union representing the bargaining unit that contains the complainant's job position would have to be the party filing a complaint alleging that the employer bargained in bad faith.

Here, Calkin alleges that the employer unilaterally changed the terms and conditions of employment when the employer and union negotiated a new overtime provision that provided shifts for lead and supervisory inspectors in certain instances. As noted above, these kinds of

allegations may only be raised by the exclusive bargaining representative or the public employer and an individual employee lacks standing to raise such claims before this agency.

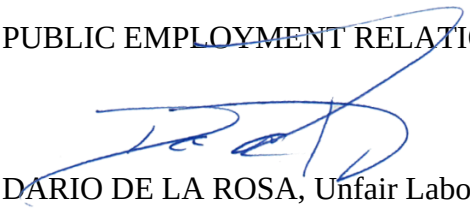
Finally, the fact that the *employer* did not involve the rank-and-file Street Use Inspectors in its discussions with the union does not constitute an unfair labor practice. Unions and employers both have the right to designate representatives for collective bargaining purposes. *City of Tacoma*, Decision 11064-A (PECB, 2012); *Sultan School District*, Decision 1930-A (PECB, 1984). Where a party designates a particular representative for collective bargaining, the other party is generally not free to refuse the designation. *See, e.g., Kiona Benton School District (Kiona Benton Education Association)*, Decision 11862-A (EDUC, 2014). Here, when the employer and union decided to engage in discussions concerning the overtime policy for lead and supervisory inspectors, the employer had no say as to whom the union invited to the table to assist it with negotiations.

## ORDER

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

ISSUED at Olympia, Washington, this 19th day of July, 2022.

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 07/19/2022

DECISION 13532 - 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 135066-U-22

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| EMPLOYER: | CITY OF SEATTLE |
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| | SARAH TILSTRA<br>CITY OF SEATTLE<br>701 5TH AVE STE 2050<br>SEATTLE, WA 98104-7097<br>sarah.tilstra@seattle.gov |
| PARTY 2: | KIRK CALKINS |
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