

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	
KIRK CALKINS, Complainant, vs. PROTEC17, Respondent.	CASES 135067-U-22 and 135068-U-22 DECISION 13533 - PECB ORDER OF DISMISSAL

Kirk Calkins, the complainant.

Karen Estevenin, Executive Director, for PROTEC17.

On May 2, 2022, Kirk Calkins (complainant) filed two separate complaints against PROTEC17 (union). The cases were numbered 135067-U-22 and 135068-U-22. The complaints alleged that the union breached its duty of fair representation by negotiating a new overtime shift policy with the City of Seattle (employer) that required a lead and supervisory inspector to be assigned to an overtime shift in certain instances. The complaints also alleged that the union interfered with protected employee rights by making disparaging statements about Calkins in an internal email.

The complaints were reviewed under WAC 391-45-110 and on June 1, 2022, deficiency notices were issued notifying Calkins that a cause of action could not be found for either complaint at that time. Calkins was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

On June 13, 2022, Calkins filed amended complaints.¹ The amended complaints are dismissed for failure to state a cause of action.

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 complaints that only the rank-and-file Street Use Inspectors were previously assigned to overtime shifts.

Calkins alleges that the rank-and-file 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 also alleges that the lead and supervisory inspectors did not share the information with the rank-and-file Street Use Inspectors and the negotiating process was not transparent.

Following the announcement of the new policy, Calkins reached out to the union representative Mark Watson to request a meeting about the new policy. It appears from the complaints that this

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.

meeting occurred on April 26, 2022. During that meeting, Calkins alleges the rank-and-file Street Use Inspectors asked questions about the lack of communication and the reasons for the change in policy and the union was not able to answer questions regarding the need for the change or the lack of transparency during the negotiating process. Calkins also asserts that the employees asked the union to delay implementing the new policy to allow the rank-and-file Street Use Inspectors the opportunity to be involved in the process. According to the complaints, the union has not taken any steps to negotiate with the interests of the rank-and-file Street Use Inspectors in mind.

During the April 26, 2022, meeting, Watson asked Calkins to provide written examples of issues that Calkins had been experiencing with the employer. Calkins then sent Watson an email with examples. Calkins eventually reached out to Watson on an unidentified date to set up a follow-up meeting. Calkins also sent this email to the union's Executive Director Karen Estevenin. On the same unidentified date that Watson inadvertently sent an email to Calkins that was intended for Estevenin. In that email, Watson stated that Calkins was unhappy with the results of the negotiations about the overtime shift policy and also included a statement calling Calkins "toxic" to the group.

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 complaints against the union must be dismissed because it fails to state a cause of action.²

Union Interference

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

² The deficiency notices 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.

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*, 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).

Here, Calkin alleges that the union negotiated a new overtime provision that provided shifts for leads and supervisors in certain instances to the detriment of the other inspectors. Often when collective bargaining decisions are being made that effect a large group of employees, not all employees in the group are going to agree with, or feel the same way, about the decision. Employees' dissatisfaction is not in itself enough to establish an interference cause of action or breach of duty of fair representation. If the complainant has evidence that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. the complainant should amend its complaint to include this information.

Finally, Calkins' complaints allege the union made disparaging statements about him in an email communication. In *King County Public Hospital District 2 (SEIU, Local 6)*, Decision 9112-A (PECB, 2005), the executive director explained that "[b]eing placed on somebody's 'we won't like you anymore list' falls far short of being placed on a list for reprisal or force." Here, Watson's email disparaging Calkins by itself does not state a cause of action for union interference because there are no facts alleging Watson's statements could reasonably be perceived as a threat of reprisal or force.

ORDER

The complaints and amended complaints charging unfair labor practices in the above-captioned matters 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 13533 - 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

CASES 135067-U-22 and 135068-U-22

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