

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
AHMED ABDULLAHI AHMED, Complainant, vs. KING COUNTY CORRECTIONS GUILD, Respondent.	CASE 134687-U-21 DECISION 13622 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Ahmed Abdullahi Ahmed, the complainant.

Ryan Lufkin, Attorney at Law, Public Safety Labor Group, LLP, for the King County Corrections Guild.

The complaint in this case was initially filed on December 13, 2021, a deficiency notice was issued on December 16, 2021, and an amended complaint was filed on January 13, 2022, by Ahmed Abdullahi Ahmed, a former employee of King County (employer). The complaint alleged that the King County Corrections Guild (union) interfered 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. The employer is not a party to the issues directly before the Commission in this case. However, the employer's name is used to identify the case because every case processed by the Commission must arise out of an employment relationship that is subject to the Commission's jurisdiction. A virtual hearing was held September 6 and September 8, 2022, before the undersigned Examiner. The parties filed post-hearing briefs by October 25, 2022, to complete the record.

ISSUE

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 refusing to process a grievance on behalf of Ahmed Abdullahi Ahmed because of his sincere religious beliefs.

The complainant has failed to meet his burden to prove that the union interfered with employee rights by breaching its duty of fair representation. The case is dismissed.

BACKGROUND

Ahmed was formerly employed by the King County Department of Adult and Juvenile Detention (DAJD) as a Correctional Officer. The King County Executive issued an Executive Order requiring that all Executive Branch employees (including Ahmed) be fully vaccinated against COVID-19 by October 18, 2021, or have received an accommodation based on a medical disability or sincerely held religious belief. In light of the Executive Order, on September 21, 2021, the union and the employer executed a Memorandum of Agreement (MOA) outlining the compliance process, payment for costs associated with the vaccine, leave and rehire benefits, and other associated matters. Ahmed submitted a request for a religious exemption to the vaccine requirement to King County as outlined in the MOA, section two, Exemption and Accommodation. This request was reviewed by the King County Department of Human Resources' Religious Accommodation Committee. On October 6, 2021, a letter from the employee notified Ahmed of the following: "Without deciding whether the information you provided meets the legal standard, the Committee is moving your request to the next step." This next step was determining whether a reasonable accommodation existed for Ahmed.

On October 14, 2021, Dennis Folk, the union's president, emailed DAJD Human Resources Manager Peter Hu and copied several other individuals including Ahmed, indicating that a death in Ahmed's family had resulted in a need to postpone a meeting scheduled between Ahmed and the employer concerning Ahmed's request of exemption and accommodation due to his sincerely held religious belief. Folk indicated that Ahmed was working on an email that would provide

further information about his request and had asked for the union to review the email prior to submitting the email to the employer. Folk requested that Ahmed be granted until October 18, 2021, to submit this information; Hu granted the request.

On October 15, 2021, Ahmed submitted his email and asked that the employer “please accept this written statement as a participation to the Interactive Process (IP) for religious exemption/accommodation request.” Ahmed copied several other individuals on his email including Folk and Ryan Lufkin, counsel for the union. The email included several suggestions by Ahmed about steps that could be taken to minimize risks in the workplace other than vaccination including schedule changes, wearing personal protective equipment, and limiting his interaction with other staff.

On November 29, 2021, at 3:34 p.m., Hu emailed Ahmed a letter, copying Folk and Lufkin, stating that Ahmed’s request for accommodation was denied and proposed an involuntary non-disciplinary separation. Ahmed responded at 5:59 p.m., copying Folk and Lufkin, indicating his strong objection to the employer’s decision and a completed Loudermill Response Form, wherein he chose option 5, which waived his right to attend a Loudermill meeting and instead to submit a written Loudermill response by December 9, 2021.

In a separate email thread, at 1:55 p.m. on November 29, 2021, Ahmed emailed Folk and Sundee Berg (union board member) indicating that he would like to grieve the employer’s decision regarding his accommodation denial and to begin the grievance process as soon as possible. Folk responded by email, indicating that the union had also received a copy of the letter from the employer, which stated, “There will be a loudermill scheduled here soon where we will address you [sic] concerns.”

At 4:43 p.m., Ahmed responded to Folk stating,

I don’t wish to have a hearing. Nothing I say or do will change the county’s position. I don’t have the necessary stress to attend a fruitless meeting. I strongly believe that this is a blatant discrimination. The bottom line is get vaccinated or lose your livelihood. However, I want the guild to grieve this issue immediately. I will file an

official complaint with the EEOC and other government agencies. It is imperative that the guild objects to these job separations for no cause.

Folk replied to Ahmed at 5:10 p.m. stating,

Our collective bargaining agreement specifically outlines how the grievance process works, and details when we can file a grievance. In you [sic] case the department hasn't moved to separate you from employment at this point. The process they must follow is to offer you a loudermill. You have the choice to participate with this loudermill or not, but my advice is that you participate.

Once the loudermill decision is rendered, and if they do move to separate you from employment that's when we would have the ability to file a grievance. As with all grievances regardless if they are for COVID, contract violations, or discipline or termination the Guild Executive Board must review the potential grievance and they are the ones who determine which grievances get submitted or not.

Folk further addressed Ahmed's mention of an EEOC complaint and indicated that his email was intended to explain the grievance process and Ahmed should contact him with any questions.

On December 1, 2021, the employer issued Ahmed a letter, copying Folk and Lufkin, informing him that it was imposing an involuntary non-disciplinary separation effective that day. The letter, signed by John Diaz, director of DAJD, stated that Ahmed had "elected not to participate in a Loudermill hearing." The letter further stated that should Ahmed become fully vaccinated in the future, he may request to be reinstated to his prior position within two years of the letter.

The following day, Ahmed emailed Hu to complain that the letter's statement about Ahmed's not participating in the Loudermill hearing was incorrect. Hu responded promptly informing Ahmed that while Ahmed did submit a written statement, he did waive his right to attend a Loudermill meeting and that the letter was correct. Ahmed acknowledged receipt of Hu's response.

On December 3, 2021, Ahmed emailed Folk, Lufkin, and Berg, stating that he would like to grieve his separation. In his email Ahmed stated, "It will be unprecedented for the guild not to represent members that were fired for no cause. These members are people of faith, medical disability and mostly people of color." Ahmed followed this with a second email approximately 12 hours later

in which he stated, “As a guild member I have a right to be represented fairly, in good faith, and without discrimination. I have moved forward filing a complaint with PERC.” Folk responded the morning of December 4, 2021, reminding Ahmed of the union’s grievance review process and informing Ahmed that he will be invited to attend the union’s executive board meeting the following week, when the union would also be considering two other potential grievances.

The union meeting was held on December 8, 2021. The grievance review committee is made up of the 12 members of the union board and the president of the union; the president will only vote on whether to file a grievance if the other members’ votes have resulted in a tie. At the meeting, the union decided not to file a grievance regarding Ahmed’s involuntary separation.

The next day, Ahmed sent an email to Folk, Berg, and the union’s executive board wherein he summarized his understanding of the meeting, objected to the union’s decision not to file a grievance, and argued the union was discriminating against him due to his religious beliefs. Specifically, Ahmed stated that the union would not file a grievance because (1) “guild leadership were confused about [his] sincere religious belief (Islam), and (2) [“He] didn’t attend the Loudermill hearing.” Ahmed argued that the union was not required to validate his religious beliefs and that he participated in the Loudermill hearing by submitting a written response.

ANALYSIS

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 United States Supreme Court decisions, holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville & 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 Union, Local 589)*, Decision 6433-B (PECB, 2000).

A union breaches its duty of fair representation when its conduct is more than merely negligent; its actions 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).

Application of Standard

In his complaint, Ahmed argues that the union failed to meet its duty of fair representation—by discriminating against him due to his Muslim religious beliefs—when it failed to file a grievance about Ahmed's involuntary separation from King County. In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). The complainant has failed to meet the requisite burden of proof that the union treated him in a hostile or discriminatory manner, or that the union failed to act in complete good faith and honesty or engaged in arbitrary conduct.

In presenting evidence at hearing, Ahmed spent considerable time attempting to advance an argument that the vaccine mandate was unfair or illegal and that the employer failed to adequately consider his sincere religious beliefs and reasonable accommodation. Under the facts of this case, however, neither consideration is germane to the sole question presented in the cause of action statement: whether the union failed to meet its duty of fair representation when it failed to process a grievance on his behalf.

Ahmed called two witnesses, Lufkin and Folk, who were present at the meeting where Ahmed asked the union board to file a grievance on his behalf. Ahmed himself chose not to testify at the hearing. Neither Lufkin nor Folk testified that the union board members questioned the sincerity of Ahmed's religious faith or that Ahmed's religious faith impacted the union's decision not to advance a grievance. In fact, Lufkin and Folk testified that approximately 12 union members were

involuntarily separated for failing to be vaccinated. Those members identified themselves as believing in several different religious faiths. In each instance the union chose not to file a grievance. Folk testified that the employer did not violate the terms of the parties' collective bargaining agreement or the parties' MOA when it denied accommodation to Ahmed or to the other involuntarily separated employees. Thus there would have been no violation on which to base a grievance. Additionally, Folk highlighted that the union board has a fiduciary duty to wisely use the dues it collects and that he believed filing grievances that were unlikely to be successful would be a violation of this duty.

It is clear from the record that Folk provided Ahmed with assistance prior to his involuntary separation by asking for an extension on Ahmed's behalf and providing prompt counsel about attending a Loudermill hearing. Folk clearly communicated the grievance review process to Ahmed, and Ahmed had an opportunity to advocate for the filing of a grievance in accordance with that process. The record shows no evidence that Ahmed's religious beliefs were the reason the grievance was not advanced. In stark counterpoint to Ahmed's complaint, the fact that the union chose not to file any grievances for any involuntarily separated employee is a clear illustration that Ahmed was treated no differently than other similarly situated union members.

CONCLUSION

The complainant was unable to prove that the union breached its duty of fair representation and interfered with rights in violation of RCW 41.56.150(1). The complainant did not present adequate evidence to show that the union's decision not to file a grievance concerning Ahmed's involuntary separation constituted arbitrary, discriminatory, or bad faith conduct. The case is dismissed.

FINDINGS OF FACT

1. King County is a public employer as defined by RCW 41.56.030(13).
2. The King County Corrections Guild is a bargaining representative within the meaning of RCW 41.56.030(2).

3. Ahmed Abdullahi Ahmed, the complainant, was employed as a Corrections Officer by King County and employed within a bargaining unit that was represented by the union.
4. The King County Executive issued an Executive Order requiring that all Executive Branch employees (including Ahmed) be fully vaccinated against COVID-19 by October 18, 2021, or have received an accommodation based on a medical disability or sincerely held religious belief.
5. In light of the Executive Order, on September 21, 2021, the union and the employer executed a Memorandum of Agreement (MOA) outlining the compliance process, payment for costs associated with the vaccine, leave and rehire benefits, and other associated matters.
6. Ahmed submitted a request for a religious exemption to the vaccine requirement to King County as outlined in the MOA, section two, Exemption and Accommodation. This request was reviewed by the King County Department of Human Resources' Religious Accommodation Committee. On October 6, 2021, a letter from the employee notified Ahmed of the following: "Without deciding whether the information you provided meets the legal standard, the Committee is moving your request to the next step." This next step was determining whether a reasonable accommodation existed for Ahmed.
7. On October 14, 2021, Dennis Folk, the union's president, emailed DAJD Human Resources Manager Peter Hu and copied several other individuals including Ahmed, indicating that a death in Ahmed's family had resulted in a need to postpone a meeting scheduled between Ahmed and the employer concerning Ahmed's request of exemption and accommodation due to his sincerely held religious belief. Folk indicated that Ahmed was working on an email that would provide further information about his request and had asked for the union to review the email prior to submitting the email to the employer. Folk requested that Ahmed be granted until October 18, 2021, to submit this information; Hu granted the request.

8. On October 15, 2021, Ahmed submitted his email and asked that the employer “please accept this written statement as a participation to the Interactive Process (IP) for religious exemption/accommodation request.” Ahmed copied several other individuals on his email including Folk and Ryan Lufkin, counsel for the union. The email included several suggestions by Ahmed about steps that could be taken to minimize risks in the workplace other than vaccination including schedule changes, wearing personal protective equipment, and limiting his interaction with other staff.
9. On November 29, 2021, at 3:34 p.m., Hu emailed Ahmed a letter, copying Folk and Lufkin, stating that Ahmed’s request for accommodation was denied and proposed an involuntary non-disciplinary separation. Ahmed responded at 5:59 p.m., copying Folk and Lufkin, indicating his strong objection to the employer’s decision and a completed Loudermill Response Form, wherein he chose option 5, which waived his right to attend a Loudermill meeting and instead to submit a written Loudermill response by December 9, 2021.
10. In a separate email thread, at 1:55 p.m. on November 29, Ahmed emailed Folk and Sundee Berg (union board member) indicating that he would like to grieve the employer’s decision regarding his accommodation denial and to begin the grievance process as soon as possible. Folk responded by email, indicating that the union had also received a copy of the letter from the employer, which stated, “There will be a loudermill scheduled here soon where we will address you [sic] concerns.”
11. At 4:43 p.m., Ahmed responded to Folk stating,

I don’t wish to have a hearing. Nothing I say or do will change the county’s position. I don’t have the necessary stress to attend a fruitless meeting. I strongly believe that this is a blatant discrimination. The bottom line is get vaccinated or lose your livelihood. However, I want the guild to grieve this issue immediately. I will file an official complaint with the EEOC and other government agencies. It is imperative that the guild objects to these job separations for no cause.

12. Folk replied to Ahmed at 5:10 p.m. stating,

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13. Folk further addressed Ahmed's mention of an EEOC complaint and indicated that his email was intended to explain the grievance process and Ahmed should contact him with any questions.
14. On December 1, 2021, the employer issued Ahmed a letter, copying Folk and Lufkin, informing him that it was imposing an involuntary non-disciplinary separation effective that day. The letter, signed by John Diaz, director of DAJD, stated that Ahmed had "elected not to participate in a Loudermill hearing." The letter further stated that should Ahmed become fully vaccinated in the future, he may request to be reinstated to his prior position within two years of the letter.
15. The following day, Ahmed emailed Hu to complain that the letter's statement about Ahmed's not participating in the Loudermill hearing was incorrect. Hu responded promptly informing Ahmed that while Ahmed did submit a written statement, he did waive his right to attend a Loudermill meeting and that the letter was correct. Ahmed acknowledged receipt of Hu's response.
16. On December 3, 2021, Ahmed emailed Folk, Lufkin, and Berg, stating that he would like to grieve his separation. In his email Ahmed stated, "It will be unprecedented for the guild not to represent members that were fired for no cause. These members are people of faith,

medical disability and mostly people of color.” Ahmed followed this with a second email approximately 12 hours later in which he stated, “As a guild member I have a right to be represented fairly, in good faith, and without discrimination. I have moved forward filing a complaint with PERC.” Folk responded the morning of December 4, 2021, reminding Ahmed of the union’s grievance review process and informing Ahmed that he will be invited to attend the union’s executive board meeting the following week, when the union would also be considering two other potential grievances.

17. The union meeting was held on December 8, 2021. The grievance review committee is made up of the 12 members of the union board and the president of the union; the president will only vote on whether to file a grievance if the other members’ votes have resulted in a tie. At the meeting, the union decided not to file a grievance regarding Ahmed’s involuntary separation.
18. The next day, Ahmed sent an email to Folk, Berg, and the union’s executive board wherein he summarized his understanding of the meeting, objected to the union’s decision not to file a grievance, and argued the union was discriminating against him due to his religious beliefs. Specifically, Ahmed stated that the union would not file a grievance because (1) “guild leadership were confused about [his] sincere religious belief (Islam), and (2) [“He] didn’t attend the Loudermill hearing.” Ahmed argued that the union was not required to validate his religious beliefs and that he participated in the Loudermill hearing by submitting a written response.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. As described in findings of fact 3–18, the union did not interfere with employee rights in violation of RCW 41.56.150(1) by breaching its duty of fair representation by not filing a grievance on behalf of the complainant.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 23rd day of January, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ERIN J. SLONE-GOMEZ, Examiner

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 01/23/2023

DECISION 13622 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 134687-U-21

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