

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
GRADY M. STROMAN, Complainant, vs. AMALGAMATED TRANSIT UNION LOCAL 587, Respondent.	CASE 134355-U-21 DECISION 13535-A - PECB DECISION OF COMMISSION

Grady M. Stroman, the complainant.

Munia Jabbar, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 587.

Grady M. Stroman (complainant) filed an unfair labor practice complaint against Amalgamated Transit Union Local 587 (union or ATU). Unfair Labor Practice Administrator Emily K. Whitney reviewed the complaint and found the complaint alleged sufficient facts to issue a cause of action for union interference with employee rights by breach of the duty of fair representation. After a hearing, Examiner Christopher J. Casillas concluded that the evidence did not prove the union breached its duty of fair representation and did not interfere with employee rights. *King County (Amalgamated Transit Union Local 587)*, Decision 13535 (PECB, 2022).

The complainant filed a timely notice of appeal. The complainant did not identify specific findings of fact to be in error. On brief, the complainant asserted the union's actions were intentional and in bad faith. In its responsive brief, the union pointed out that the complainant

did not challenge specific findings of fact and did not appeal the Examiner's conclusion that the union did not threaten or interfere with Stroman regarding Stroman's work on the ATU Black Caucus. Finally, the union contended that Stroman did not prove the union's decision to not advance the grievance was arbitrary, discriminatory, or in bad faith.

ISSUE

The issue before the Commission is whether the union breached its duty of fair representation by not responding to Stroman when he requested the union advance the grievance to the third step of the grievance procedure. We affirm the Examiner. The Examiner's findings of fact, unchallenged by the complainant, support the conclusion that the union did not breach its duty of fair representation. The complainant has not proven that the union discriminated against him or acted in an arbitrary manner in processing the grievance.

BACKGROUND

On April 9, 2020, Stroman filed a grievance disputing the adequacy of the employer's investigation into a complaint Stroman filed with human resources. Chief Shop Steward William Clifford assisted Stroman at Step 1 of the grievance procedure. The employer denied the grievance.

The union advanced Stroman's grievance to Step 2. At Step 2, union First Vice President Ronald Anderson represented the union and Stroman. Anderson requested information related to the grievance from the employer. The union requested the employer schedule the Step 2 grievance hearing after the employer provided the information.

Stroman obtained the information the union requested on March 26, 2021. At that time, the employer had not provided the information to the union. Stroman requested the union schedule the Step 2 grievance hearing. Anderson scheduled the hearing with the employer. The Step 2

hearing was scheduled for a second day to allow Stroman to bring supporting documents to the hearing. The employer denied the grievance at Step 2.

On June 17, 2021, Stroman requested the union advance the grievance to Step 3. That day, Anderson responded to Stroman explaining the union's processes before advancing a grievance to Step 3. Anderson explained that the union would send the grievance file to its lawyer for a legal opinion on the grievance. Stroman responded with questions and commented that the legal opinion was not in the collective bargaining agreement. The union obtained a legal opinion on the grievance. Based on the advice of counsel, the union chose not to advance Stroman's grievance to Step 3. On August 16, 2021, Anderson emailed Stroman explaining that the attorney did not recommend advancing the grievance to Step 3, and, based on this advice, the union would not advance the grievance to Step 3. On August 19, 2021, Anderson sent a letter to Stroman communicating the union's decision not to advance the grievance and the reason for the decision.

Applicable Legal Standard

When appealing an examiner's decision, the appellant "must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error." WAC 391-45-350(3). Compliance with this rule is not merely a technical issue; it is necessary to put the Commission and the opposing party on notice of the arguments that the appealing party intends to advance. *City of Kirkland*, Decision 6377-A (PECB, 1998). In particular, unchallenged findings of fact are considered true on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A (PECB, 2001). The Commission applies these rules equally to complainants represented by counsel and those appearing pro se. *City of Bellingham (Washington State Council of County and City Employees, Council 2)* Decision 11422-A (PECB, 2013); see *Washington State Liquor and Cannabis Board (Washington Public Employees Association)*, Decision 13191-A (PSRA, 2020) (treating findings of fact as verities when the pro se complainant did not identify specific findings of fact to be in error); *Island County*, Decision 13182-A (PECB, 2020) (treating findings of fact as verities when the employer did not identify specific findings of fact to be in error); *Wapato School District*, Decision 12894-A (PECB, 2019)

(treating findings of fact as verities when the union did not identify specific findings of fact to be in error).

To prove a union breached its duty of fair representation, the complainant must prove that the union's conduct is more than merely negligent. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (PSRA, 2021), *aff'd*, Decision 13333-A (PSRA, 2021). The conduct must be arbitrary, discriminatory, or in bad faith. *Id.*

CONCLUSION

The complainant failed to identify specific findings of fact alleged to be in error. Therefore, the Examiner's findings of fact are verities on appeal.

The Examiner identified the correct legal standard. The Examiner's findings of fact support the conclusions of law. The Examiner concluded Stroman did not prove the union acted arbitrarily, discriminatorily, or in bad faith. We agree with the Examiner. The union met with the complainant, communicated regularly with him, advocated for him, and requested information to represent him in the grievance process. The union later sought a legal opinion on whether to advance the grievance to the third step. The union accepted its counsel's recommendation not to advance the grievance and communicated its decision to the complainant.

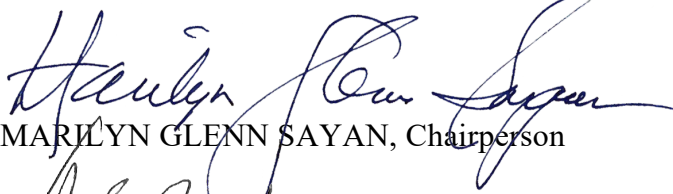
In this case, the complainant did not meet his burden to prove the union acted arbitrarily, discriminatorily, or in bad faith. The findings of fact support the conclusion that the union communicated its decision not to advance the complainant's grievance to Step 3 of the grievance and arbitration procedure.

ORDER

The findings of fact, conclusions of law, and order issued by Examiner Christopher J. Casillas are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 27th day of January, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



ELIZABETH FORD, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



RECORD OF SERVICE

ISSUED ON 01/27/2023

DECISION 13535-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 134355-U-21

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