

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION  
LOCAL 1576,

Complainant,

vs.

COMMUNITY TRANSIT,

Respondent.

CASE 135135-U-22

DECISION 13687 - PECB

ORDER OF DISMISSAL

*Anne Silver*, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 1576.

*Shannon E. Phillips*, Attorney at Law, Summit Law Group PLLC for the Community Transit.

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the Amalgamated Transit Union Local 1576 (union) on June 1, 2022. The complaint alleged that Community Transit (employer) refused to bargain in violation of RCW 41.56.140(4), by contracting out and skimming work previously performed by bargaining unit members, without providing an opportunity for bargaining.

The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A preliminary ruling and deferral inquiry was issued on June 14, 2022, finding a cause of action to exist and providing the employer with an opportunity to file an answer to the complaint. The employer was asked to specify in its answer whether deferral to arbitration was requested. In an answer filed on July 5, 2022, the employer requested that the complaint be deferred to arbitration.

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the 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

The complaint and answer were reviewed under WAC 391-45-110(3). On July 7, 2022, the complaint was deferred to arbitration in a ruling that stated, in pertinent part:

4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:
  - a. If the arbitrator finds the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union's right to bargain the matter will have been waived by the language of the collective bargaining agreement, and the union should anticipate dismissal of the unfair labor practice allegation based on the "waiver" conclusion.

On June 27, 2023, the Commission received a copy of an arbitration award of Arbitrator Michael Cavanaugh regarding the dispute. The award denied the union's grievance, finding that the employer's actions were protected by the collective bargaining agreement.

The award has been reviewed under WAC 391-45-110(3). Based upon Arbitrator Cavanaugh's ruling, the union's right to bargain on the contested issues was waived by the collective bargaining agreement. *City of Spokane*, Decision 2398 (PECB, 1986). The complaint must be dismissed.

#### ORDER

The complaint charging unfair labor practices in case 135135-U-22 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of July, 2023.

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

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ISSUED ON 07/07/2023

DECISION 13687 - 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 135135-U-22

EMPLOYER: COMMUNITY TRANSIT

REP BY: CARLA FREEMAN  
COMMUNITY TRANSIT  
2312 W CASINO RD  
EVERETT, WA 98204  
carla.freeman@commtrans.org

SHANNON E. PHILLIPS  
SUMMIT LAW GROUP PLLC  
315 5TH AVE S STE 1000  
SEATTLE, WA 98104-2682  
shannonp@summitlaw.com

PARTY 2: AMALGAMATED TRANSIT UNION LOCAL 1576

REP BY: KATHLEEN CUSTER  
AMALGAMATED TRANSIT UNION LOCAL 1576  
2810 LOMBARD AVE STE 203  
EVERETT, WA 98201  
kcusterpres@atu1576.org

ANNE SILVER  
FRANK FREED SUBIT & THOMAS LLP  
705 2ND AVE STE 1200  
SEATTLE, WA 98104  
asilver@frankfreed.com