

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FEDERAL WAY SCHOOL DISTRICT, Employer.	
SANDRA COLBERT EVANS, Complainant,	CASE 136360-U-23
vs.	DECISION 13691 - PECB
PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Respondent.	ORDER OF DISMISSAL

Sandra Colbert Evans, the complainant.

Elyse B. Maffeo, General Counsel, for Public School Employees of Washington.

On March 30, 2023, Sandra Colbert Evans (complainant) filed an unfair labor practice complaint against Public School Employees of Washington (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on May 22, 2023, notified Colbert Evans that a cause of action could not be found at that time. Colbert Evans was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by Colber Evans. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

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.

ISSUE

The complaint alleges the following:

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 filing a grievance on behalf of the union, which impacted a bargaining unit employee.

The complaint is dismissed because it lacks facts necessary to allege a duty of fair representation violation within the Commission's jurisdiction.

BACKGROUND

Sandra Colbert Evans is a Bus Driver in the Federal Way School District (employer) and is represented by Public School Employees of Washington (union). On an unidentified date, the union filed a grievance alleging the employer had violated the collective bargaining agreement. The grievance alleged that unidentified employees had been improperly awarded a trip in violation of the collective bargaining agreement. Colbert Evans alleges the filed grievance was a form of harassment, bullying, and discrimination.

Colbert Evans alleges the employer's identified language was included in the ratified collective bargaining agreement but was not included in the union's summary of the tentative agreement provided to the bargaining unit on November 22, 2022. The complaint alleges that several sections of the ratified collective bargaining agreement were not included in the tentative agreement.

ANALYSIS

Numbered Paragraphs & Allegations Outside PERC's Jurisdiction

The complainant did not number the statement of facts. The requirements for filing a complaint charging unfair labor practices (ULP) are described in WAC 391-45-050. Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant did not

number each of the paragraphs in the statement of facts. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

The complaint should be written as a clear statement of facts. Many of the allegations in the complaint are written as generalizations and do not include names of persons involved or descriptions of specific statements and events. In order for these allegations to be evaluated for possible cause of action, the complaint should be amended to contain “clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places of occurrences and the names of the participants” as required by WAC 391-45-050(2)(a). Colbert Evans was provided an opportunity to file an amended complaint or withdraw the complaint. PERC did not receive any further filings.

An individual may only pursue an unfair labor practice that occurs to him or her. The complainant must be affected by the complained-of action in order to state a claim. In *Seattle School District (Seattle Education Association)*, Decision 5774 (EDUC, 1996), where an employee purported to file a complaint on behalf of herself and other employees, the Commission’s unfair labor practice manager dismissed the complaint stating that “individual employees have legal standing only to file and pursue complaints asserting their own rights.” Other complaints in this vein have likewise been dismissed at the preliminary ruling stage. *C-TRAN*, Decision 4005 (PECB, 1992); *Enumclaw School District (PSE of Washington)*, Decision 5979 (PECB, 1997); *Tacoma School District (Tacoma Education Association)*, Decision 6070 (EDUC, 1997); *City of Bellingham*, Decision 6950 (PECB, 2000).

The allegations related to the union’s collective bargaining agreement ratification process are outside the jurisdiction of the Public Employment Relations Commission. Chapter 41.56 RCW regulates relationships between employers and employees, and it regulates relationships between employers and the organizations representing their employees but does very little in the arena of regulating the internal affairs of labor organizations. How the union conducted its internal contract ratification vote appears to be a matter of internal union affairs. The Commission has declined to assert jurisdiction to regulate the internal affairs of unions in the absence of any specific authority to do so under chapter 41.56 RCW. *Lewis County*, Decision 464-A (PECB, 1978); *King County*,

Decision 4253 (PECB, 1992). The allegations related to what the union included in the summary of the tentative agreement versus what was in the tentative agreement are internal affairs of the union. The deficiency notice informed the complainant of this deficiency. The complainant did not file an amended complaint. The Commission does not have jurisdiction over these types of matters, and the allegations must be dismissed.

Duty of Fair Representation

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 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).

Application of Standard

The complaint does not allege the union violated its duty of fair representation. The complaint lacks facts alleging how the union enforcing the collective bargaining agreement was arbitrary, discriminatory, or in bad faith. The complaint states that Colbert Evans felt the union's action of filing a grievance and the grievance impacting Colbert Evans was a form of discrimination. There are not facts provided that describe the union's discriminatory actions. The union owns the


grievance procedure. *Pierce County*, Decision 2693 (PECB, 1987). The union has broad discretion to determine how to enforce the collective bargaining agreement, including what matters to pursue in the grievance and arbitration process. *Snohomish County (Teamsters Local 763)*, Decision 12614 (PECB, 2016). Unless there are allegations that the union is filing the grievance for arbitrary, discriminatory, or bad faith reasons, the union filing a grievance on behalf of the membership does not constitute a violation of any statute within the Commission's jurisdiction. The deficiency notice informed the complainant of this deficiency. The complainant did not file an amended complaint. Thus, the allegation must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 12th day of July, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, 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 07/12/2023

DECISION 13691 - 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 136360-U-23

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