

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUYALLUP SCHOOL DISTRICT, Employer.	
CHERLYN MERZ, Complainant,	CASE 138348-U-24
vs.	DECISION 13828 - PECB
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302, Respondent.	ORDER OF DISMISSAL

Cherlyn Merz, the complainant.

Jeff Frazier, Attorney at Law, for the International Union of Operating Engineers
Local 302.

Lorraine Wilson and *Sharan Singh*, Attorneys at Law, Porter Foster Rorick LLP, for the
Puyallup School District.

On February 13, 2024, Cherlyn Merz (complainant) filed an unfair labor practice complaint against the International Union of Operating Engineers Local 302 (union). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 13, 2024, notified Merz that a

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.

cause of action could not be found at that time. Merz 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 Merz. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

ISSUE

The complaint alleges the following:

Violation of the grievance procedure and collective bargaining agreement.

The complaint is dismissed. It does not allege facts related to the types of violations that can be raised before PERC.

BACKGROUND

Cherlyn Merz is a Custodian at Puyallup School District (employer) and is represented by the International Union of Operating Engineers Local 302 (union). The union and employer are parties to a collective bargaining agreement effective September 1, 2022, through August 31, 2025.

The union and employer had a training practice allegedly in effect for over 20 years. The training required the employees to take and pass three classes. The training was 90 hours held over five Saturdays. The training resulted in the employee being able to advance to the FOM position which included a \$0.75 raise. On an unidentified date the union and employer agreed to change the training. The training now requires 36 hours of training given on weekdays.

The union filed a grievance on January 8, 2024, alleging the employer had violated Article XVI, Section 16.03 of the collective bargaining agreement. Section 16.03 states a committee comprised of union and management members must be formed. The committee is tasked with developing ways for employees to maintain and improve their skills. The committee was not formed in relation

to the change in the training program. In addition to the filing of a grievance, on an unidentified date the union agreed to talk with the employer and get a committee formed.

On January 12, 2024, the Assistant Superintendent of Human Resources and Employee Relations replied to the grievance alleging the grievance was not a grievance and it was untimely.

On January 23, 2024, Merz responded to the employer that there was no time limit when the allegation was a violation of the collective bargaining agreement (CBA) and employer policies. Merz also cited additional policies as well as CBA articles.

On January 31, 2024, the Assistant Superintendent replied to the January 23 email stating that there was no violation, and the employer would be moving to level four of the grievance process.

On February 2, 2024, Merz had a phone call with union representative Jose Miranda, who allegedly stated the grievance was frivolous.

On February 4, 2024, Merz responded to the Assistant Superintendent's January 31 response and stated the CBA did not allow for jumping steps of the grievance process.

On February 6, 2024, the Assistant Superintendent dismissed the grievance at step two and step three. That same day, Merz sent an email to Miranda's supervisor alleging that Miranda had committed an unfair labor practice.

On February 8, 2024, Merz notified Miranda's supervisor that Merz no longer wanted to work with Miranda and requested a new union representative.

ANALYSIS

Violations of the Grievance Procedure and CBA

Applicable Legal Standard

The role of PERC is to resolve labor relations disputes between unions, employers, and on occasion individual employees. When a complaint is filed with the agency, PERC does not investigate the filing party's claim. Rather, agency staff will review the complaint and statement of facts to

determine if it states a cause of action. If it states a cause of action, the case will be forwarded to a PERC hearing examiner who serves as an administrative law judge. When an individual employee files a complaint with PERC, the individual takes on the responsibility for presenting their case before the agency (although the individual may hire an attorney to represent them).

A complaint must comply with the agency's filing rule, WAC 391-45-050. The complaint must contain a statement of facts with numbered paragraphs. The statement of facts should include:

- Specific allegations that constitute a violation of state law and required elements. For a list of types of violations that may be raised before PERC and the required elements please visit: <https://perc.wa.gov/ulp-employee-filing/>;
- Times, dates, and places of occurrences and the names of the participants in a chronological order that explains the alleged unfair labor practices;
- Whether a related grievance has been filed and its status. If you do not know if a grievance has been filed, please indicate so;
- A description of the remedies requested.

These requirements are necessary to put the respondent on notice of the alleged unfair labor practice and to allow the respondent to reference specific allegations within the complaint when filing an answer.

It is worth noting that PERC's jurisdiction is limited to labor relations disputes. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) (citing *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997)).

An unfair labor practice complaint is not the appropriate avenue to address alleged violations of the parties' CBA. The CBA can be enforced through the contractual grievance procedure or through the courts.

Unions are private organizations. The Commission generally does not get involved in internal union affairs. *Western Washington University (Washington Public Employees Association Local 365)*, Decision 8849-B (PSRA, 2006). The remaining allegations relate to internal union affairs which the Commission has no jurisdiction to remedy.

Just because the complaint does not state a cause of action for an unfair labor practice, it does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of PERC. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995).

Application of Standard

The statement of facts requests that the employer and union discontinue the use of the new training process until a committee is formed. The statement of facts appears to allege the union violated the parties collective bargaining agreement or did not support Merz's processing of a grievance. PERC does not have jurisdiction to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement. Additionally, asking for a different bargaining representative would be an internal union affair.

Merz was provided an opportunity to correct the deficiency and did not file an amended complaint. The original complaint continues to not allege facts related to the types of violations that may be raised before PERC.

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 6th day of May, 2024.

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 05/06/2024

DECISION 13828 - 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 138348-U-24

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