Tacoma School District (International Brotherhood of Electrical Workers Local 76), Decision 14057 (PECB, 2025)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT, Employer.	
ALEXANDER COZINE, Complainant, vs. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 76, Respondent.	CASE 141593-U-24 DECISION 14057 - PECB ORDER OF DISMISSAL

Alexander Cozine, the complainant.

Bryant Mullin, Business Representative, for the International Brotherhood of Electrical Workers Local 76.

On December 19, 2024, Alexander Cozine (employer) filed an unfair labor practice complaint against the International Brotherhood of Electrical Workers Local 76 (union). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on January 21, 2025, notified Cozine that a cause of action could not be found at that time. Cozine was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. On February 10, 2025, Cozine filed an amended complaint.

[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.

ISSUES

The amended complaint alleges the following:

> Union interference in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by
>
> 1. Breaching its duty of fair representation owed to Alexander Cozine by failing to advance grievances submitted by Cozine.
>
> 2. Discriminating against nondues paying members by failing to represent them during negotiations with the employer concerning employees pay.
>
> 3. Union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2) within six months of the date the complaint was filed, by not presenting language presented by bargaining unit employees to correct wage imbalance that the current contract creates for HVAC employees.

The amended complaint is dismissed because none of the facts support a breach of the duty of fair representation allegation, a discrimination allegation, or inducing an employer to commit an unfair labor practice allegation.

BACKGROUND

Cozine works as a Control Electrician at the Tacoma School District (employer) and is represented by the union for purposes of collective bargaining. Cozine is a nondues paying member of the bargaining unit. The employer and union were parties to a collective bargaining agreement that expired on August 31, 2024.

According to the amended complaint, on December 14, 2022, Cozine received an email that he had applied for the HVAC Controls position. On January 11, 2023, Cozine received an email notifying him that he was not selected for the HVAC Controls position even though he had more seniority, experience, and qualifications than the other candidates.

On or about November 11, 2023, a meeting was held to determine the scope of the Controls Electrician and HVAC Controls positions. Tom Chalk and Steve Graves were present on behalf of the employer and Jack Knottingham and Bryant Mullins were present on behalf of the union. Also in attendance were Plumbing/HVAC representative Mark Wells, Cozine's team lead Dan Russel, Controls Electricians Cozine and Garrett Muttart, and HVAC Controls David Martin. During the meeting, Muttart claimed there was a wage discrepancy between the two positions of Controls Electrician and HVAC Controls even though Controls Electrician had more responsibilities and requirements than the HVAC Controls position. Chalk allegedly responded by asking "What do you want me to do, dock [Davis's] wages?" Muttart responded to this statement by asserting that he wanted the Controls Electrician positions to be brought up to the HVAC Controls wages. Chalk allegedly responded to this request by stating "Well, maybe you should have your Union bargain that into the CBA".

On April 19, 2024, Cozine sent an email to the union to bring to its attention the pay discrepancy issue between the Control Technician and HVAC Controls positions that should be addressed at the upcoming negotiations. The union allegedly did not respond to this email.

On December 17, 2024, Cozine sent an email to employer supervisors Ian Ochoa and Steve Graves informing them of Cozine's intent to start the grievance process to resolve wage issues at the lowest level of the grievance process. No response was given from the employer.

On December 20, 2024, Cozine wrote an email to the union requesting that his grievance be moved to the next level because the employer had not responded. On January 6, 2025, Cozine contacted the union to verify Mullins's contact information because Mullins had not responded to Cozine's email. The union verified his contact information was correct. On that same day, Mullins met with Cozine and Muttart about the grievance regarding unfair wages and training/overtime opportunities. Mullins informed Cozine that the union would not be pursuing or elevating the grievance unless Cozine and Muttart could point out to them where the issue was in the contract. Cozine sent the union an email stating the HVAC and HVAC Controls positions had been sent to a training while Controls Electrician were not provided the same training and were not granted the overtime associated with attending that training.

Finally, Cozine points that the collective bargaining agreement included a provision requiring the employer and union "to comply with all State and Federal guidelines and/or regulations" and employees will not be discriminated against on the basis of union activities or affiliation.

ANALYSIS

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

Cozine's amended complaint fails to state a cause of action for a breach of the duty of fair representation. Corzine assertion concerns the union's failure to advance his grievance. This claims the processing of a contractual grievance and Cozine has not demonstrated that the union took action that was arbitrary, discriminatory, in bad faith or be based on considerations that are irrelevant, invidious, or unfair. For example, Corzine has not alleged facts demonstrating that the

union provided employees of a different race, gender, or sexual orientation a right or benefit that he asked for but did not receive. Cozine also has not included facts demonstrating that union processed similar grievances for employees who are full dues paying members and the union based such decisions on an employee's membership status. Absent such facts, the duty of fair representation allegation must be dismissed.

Similarly, Corzine's assertion that the discriminatorily refused to present language to correct the wage imbalance for the Controls Electricians also fails to state a cause of action because Corzine has not alleged any timely facts about the negotiations between the employer and union. There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). Corzine filed his complaint on December 19, 2024, and therefore only those allegations that occurred on or after June 19, 2024, are timely. The only facts in the amended complaint that concern Corzine's attempt to have the union negotiate higher pay for the Controls Technicians is the April 19, 2024, email and no other facts in the amended complaint concern negotiations between the employer and union.

Union Inducing an Employer to Commit a Violation

Applicable Legal Standard

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for nonpayment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic

scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

Application of Standard

The complaint does not allege that the union requested or demanded the employer commit an unfair labor practice. Rather, the complaint asserts that the union induced the employer to commit an unfair labor practice by not presenting language to correct the wage imbalance for the Controls Technicians in the current contract. Nothing in the amended complaint suggests the union asked the employer to suppress the Controls Technicians wages on the basis of union membership or protected activity. This allegation must be dismissed.

ORDER

The amended 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 26th day of February, 2025.

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

ISSUED ON 02/26/2025

DECISION 14057 - 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 141593-U-24

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