

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF SEATTLE,  Employer.	
HERBERT GONZALES,  Complainant,  vs.  TEAMSTERS LOCAL 117,  Respondent.	CASE 141478-U-24  DECISION 14064 - PORT  CAUSE OF ACTION STATEMENT AND ORDER OF PARTIAL DISMISSAL

*Herbert Gonzales*, the complainant.

*Mike Miskell*, DOC Representative, for Teamsters Local 117.

On November 14, 2024, Herbert Gonzales (complainant) filed an unfair labor practice complaint against Teamsters Local 117 (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on December 11, 2024, notified Gonzales that a cause of action could not be found at that time. Gonzales was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

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<sup>1</sup> 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.

On December 24, 2024, Gonzalez filed an amended complaint.<sup>2</sup> The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a cause of action statement for other allegations of the amended complaint.

### 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 breaching its duty of fair representation owed to Herbert Gonzales by failing to investigate and respond to allegations of discriminatory retaliation concerning the officer of the year award based upon invidious reasons.

Violations of the collective bargaining agreement.

Other unidentified unfair labor practices.

The breach of the duty of fair representation allegation of the amended complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The violations of the collective bargaining agreement and other unidentified unfair labor practice allegations of the complaint do not state a cause of action and are dismissed.

### BACKGROUND

Gonzales works for the Port of Seattle and is represented by the union for purposes of collective bargaining. His position is included in a nonsupervisory law enforcement bargaining unit. The

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<sup>2</sup> Gonzales did not include a statement of facts when he filed his original complaint. On November 19, 2024, Gonzales filed an amended complaint that included a statement of facts. Due to an agency oversight, a deficiency notice was issued on November 21, 2024, that was based upon Gonzales' original November 14, 2024, filing that lacked a statement of facts, and not the November 19, 2024, amended complaint that included a statement of facts. The agency reviewed the allegations in Gonzales' November 19, 2024, amended complaint for the first time. For purposes of this decision, Gonzales' November 19, 2024, filing shall be considered an original complaint and the December 24, 2024, filing shall be considered the amended complaint.

union also represents a supervisory law enforcement bargaining unit and the employees in the nonsupervisory bargaining unit report to the employees in the supervisory bargaining unit.

According to the amended complaint, in 2023 the union started negotiating officer rehire deals that did not comply with the existing collective bargaining agreement. Gonzales asserted that he brought this fact to union representative Mike Miskell but nothing was done to comply with the contract. The amended complaint generally asserted that these violations continued through 2023 but did not include any facts describing how these alleged violations impacted Gonzales.

The amended complaint also asserted that in mid-February 2024, dayshift 911 Communication Specialists failed to answer or respond to multiple radio transmissions from several patrol officers. For several minutes, the 911 Communication Specialists failed to respond to radio or phone. The amended complaint asserted that an unidentified officer priority self-dispatched to the 911 Communications Center to perform a welfare check due to the lack of response to multiple radio transmissions and to confirm there was no medical emergency or technology issue prohibiting the 911 dispatchers from acknowledging radio transmissions. According to Gonzales, these incidents created a substantial risk to safety officers and the public and that such incidents require a safety debrief and reporting of the incident to avoid reoccurrence.

On April 6, 2024, Gonzales informed Miskell of these incidents. Gonzales also asserts that he was not able to inquire internally “due to concerns for retaliation against my sergeant, A. Barros.” Gonzales allegedly referred Miskell to shop steward E. Longanecker to corroborate his report and to “officially confirm whether this problem had been reported to the Port of Seattle management.” The amended complaint appears to claim that Miskel did not report the alleged safety violations to the employer. On April 9, 2024, Gonzales met with Sergeant A. Doyle from the employer’s Office of Professional Accountability. Gonzales asserted Chief of Police Mike Villa would not accept Gonzales’ formal complaint about the incidents.

The amended complaint alleges on an unidentified date Miskell made an inquiry with the 911 Communications Center shop stewards about their knowledge of the incident. When discussing this incident with Miskell, Longanecker requested confidentiality and asked Miskell not to use his

name when discussing this issue due to concerns for retaliation from 911 Communications Supervisors.

On April 19, 2024, Mike Miskell allegedly participated in an unrelated meeting with the 911 Communications Supervisors as their union representative and disclosed that Longanecker had provided information to Miskell and Communications Supervisor Jenny Murry about the communications incidents.

On June 6, 2024, Gonzalez received a counseling/administrative documentation for failing to take a case report from a crime victim. According to the amended complaint, the counseling took place despite a directive from Deputy Chief S. Gillebo, that precluded officers assigned to airport drives from being dispatched to non-priority calls. Gonzales asserted in his amended complaint that he directed the citizen to call in to police dispatch in compliance with this directive. The amended complaint asserts that Barros would not rescind the counseling due to previous retaliation against him in a promotion process from 911 Communications Supervisors/Manager.

On June 7, 2024, Gonzales allegedly sent an email to the 911 Communications Manager Stacy Wassall and Supervisors Murry, Ashley Schultz, and April Calabrese that he was forwarding the counseling incident to the “Workplace Responsibility for retaliation.” Miskell, the union’s Director of Law Enforcement and Corrections Sarena Davis, Deputy Chief Mark Thomas, Barros, Workplace Responsibility Supervisor Tony Ramos, and Workplace Responsibility Investigator Martin Doyal were included in this email. The email also noted that [former] Sergeant A. Depolo has intervened on Gonzales behalf in previous instances of retaliation involving Murry and that Gonzales had previously reported the Communications Center for “substantiated racial profiling, multiple other safety violations, which has led to many attempts at retaliatory counseling that were rebutted by Commander H. Minnehan.”

## ANALYSIS

### Applicable Legal Standards

#### *Statute of Limitations*

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).

#### *PERC’s Role and Violations of a Collective Bargaining Agreement*

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 to determine if it states a cause of action and if it does 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, that individual takes on the responsibility for presenting their case before the agency (although the individual may hire an attorney to represent them).

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' collective bargaining agreement or a union's constitution or bylaws. The collective bargaining agreement or a union's constitution or bylaws can be enforced through the contractual grievance procedure or through the courts.

### *Application of Standards*

The amended complaint asserts the union failed to adhere to the collective bargaining agreement when it started negotiating officer rehire deals that did not comply with the existing collective bargaining agreement. This allegation is not timely because it fails to state facts demonstrating the alleged violations occurred within six months of the date the complaint was filed. Gonzales did raise this allegation for the first time in his December 24, 2024, amended complaint, meaning the only facts that are timely were those that occurred on or after June 24, 2024. None of the facts associated with this allegation are timely. This allegation must also be dismissed because this agency has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts, *South Whidbey School District*, Decision 11134-A (EDUC, 2011).

The amended complaint also asserts that Gonzales was retaliated against for raising concerns about dayshift 911 Communication Specialists failing to answer or respond to multiple radio transmissions. The above-entitled action was filed against the union and the facts of the amended complaint fail to demonstrate that the union retaliated against Gonzales in such a manner that would constitute an unfair labor practice within the Commission's jurisdiction.

For example, 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).

At best, the amended complaint asserts Miskel did not report the alleged safety violations to the employer. But these facts do not describe an unfair labor practice. Gonzales has not alleged 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, while Gonzales alleged that [former] Sergeant A. Depolo had intervened on his behalf in previous instances of retaliation involving the Communication Center, Gonzales has not alleged facts demonstrating that the union currently provided employees of a different race, gender, or sexual orientation with a right or benefit that he asked for but did not receive. Absent such facts, the duty of fair representation allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the breach of the duty of fair representation allegation of the second amended complaint state a cause of action, summarized as follows:

Union interference 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 owed to Herbert Gonzales by failing to investigate and respond to allegations of discriminatory retaliation concerning the officer of the year award based upon invidious reasons.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
  - (a) specifically admit, deny, or explain each fact alleged in the amended complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and
  - (b) assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.



3. The allegations of the amended complaint concerning violations of the collective bargaining agreement and other unidentified unfair labor practices are DISMISSED for timeliness and failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of March, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



# RECORD OF SERVICE

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ISSUED ON 03/10/2025

DECISION 14064 - PORT 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 141478-U-24

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