

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,	
Employer.	
MICHAEL LEMOINE,	
Complainant,	CASE 143189-U-25
vs.	DECISION 14171 - PECB
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES,	ORDER OF DISMISSAL
Respondent.	

*Michael LeMoine*, the complainant.

*Suzette Dickerson*, Staff Representative, for the Washington State Council of County and City Employees.

On June 2, 2025, Michael LeMoine (complainant) filed an unfair labor practice complaint against the Washington State Council of County and City Employees (union). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on June 17, 2025, notified LeMoine that a cause of action could not be found at that time. LeMoine was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

---

<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.

LeMoine filed an amended complaint on June 23, 2025, and a “Supplemental Statement” on June 25, 2025. The amended complaints are dismissed for failure to state a cause of action.

### ISSUE

The amended complaints allege the following:

Union interference, restraint, or coercion in violation of RCW 41.56.150(1) within six months of the date the complaint was filed, by the union implementing the health reimbursement VEBA plan in the collective bargaining agreement when the complainant, as a non-dues paying bargaining unit member, did not authorize or get the opportunity to vote on the VEBA plan.

The amended complaints do not state a cause of action against the union and are dismissed.

### BACKGROUND

Michael LeMoine is employed by the City of Seattle at the Seattle Public Utilities and is in a bargaining unit represented by the union. LeMoine is not a union member and does not pay dues to the union.

On the paycheck dated April 18, 2025, LeMoine noticed an unfamiliar deduction for VEBA in the amount of \$25.00. Similar deductions have occurred in subsequent paychecks.

LeMoine inquired about the deduction to both the union and the employer, requesting that it be stopped and that any prior deductions be refunded. The employer responded that the VEBA deductions were for contributions to a health savings VEBA account that were taken pursuant to Article 9.16.2 of the collective bargaining agreement covering the bargaining unit.

That article states:

Contributions from Employee Wages (all regular employees who are part of the bargaining unit)

Each bargaining unit will conduct a vote for all regular employees, as defined in the City's employer personnel manual, to determine whether to participate in a Health Reimbursement Account (HRA) Voluntary Employee Benefits Association (VEBA) for active employees to participate in an Active VEBA. Once they begin participating in the VEBA, employees may file claims for eligible expenses as provided under the terms of the VEBA.

If the bargaining unit votes to require VEBA contributions from employee wages, then all members of the bargaining unit shall, as elected by the bargaining unit as to all of its members, make a mandatory employee contribution of one of the amounts listed below into the VEBA while employed by the City:

1. \$25 per month, or
2. \$50 per month

LeMoine asserts that he did not authorize the deduction or get the opportunity to vote on the VEBA plan.

## ANALYSIS

### Applicable Legal Standards

#### *Union Interference and Duty of Fair Representation*

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 has the 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.

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).

### *Constitutional Claims*

The Commission's jurisdiction is limited by the authority granted to it by the legislature. *Local 2916, International Association of Fire Fighters v. Public Employment Relations Commission*, 128 Wn.2d 375 (1995). PERC does not have jurisdiction to resolve alleged constitutional violations. *Id.*; *King County*, Decision 13874-A (PECB, 2025); *City of Orting*, Decision 7959-A (PECB, 2003).

### Application of Legal Standards

In his original complaint, LeMoine asserted that deduction for the VEBA program was for a union-administered program that violated the First Amendment to the Constitution as articulated in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) and *Bennett v. AFSCME, Council 31*, 991 F.3d 724 (7<sup>th</sup> Cir. 2021). A deficiency notice was issued on the grounds that PERC does not have jurisdiction to address constitutional claims.

LeMoine filed an amended complaint on June 23, 2025, and a "Supplemental Statement" on June 25, 2025.<sup>2</sup> LeMoine states that he is not asserting a violation of his First Amendment rights as delineated *Janus* and *Bennett*. Rather, LeMoine contends that the *Janus* and *Bennett* decisions provide context. While this agency does not have jurisdiction to address constitutional claims, it can enforce chapter 41.56 RCW when statutory rights arise in conjunction with constitutional rights. *King County*, Decision 13874-A (PECB, 2025).

---

<sup>2</sup> In addition to this case, LeMoine filed a complaint against the employer regarding the deduction for the VEBA plan. Case 143190-U-25, *City of Seattle*. A deficiency notice was issued in that case on June 17, 2025, as well. LeMoine filed the June 23 amended complaint and the June 25 supplemental statement in that case. However, the amended complaint and the supplemental statement were also served upon the union. So, it will be assumed that LeMoine intended to also file those documents in this case, and it will be analyzed as though they were so filed.

LeMoine asserts that the union's act in implementing the VEBA plan and the deduction for the VEBA plan without his authorization or without giving him an opportunity to vote violates chapter 41.56 RCW and, specifically, RCW 41.56.140(1) and (2). RCW 41.56.140(1) and (2) describe unfair labor practices for employers, whereas RCW 41.56.150 describes unfair labor practices for unions. Since LeMoine generally asserts a violation of chapter 41.56 RCW in its entirety, his amended complaint will be analyzed as to whether it states a cause of action under RCW 41.56.150.

LeMoine alleges that he was deprived of the right to vote on the VEBA plan due to his status as a non-dues paying bargaining unit member. He asserts that, as a non-dues paying member, he cannot be compelled to make this deduction without having the opportunity to vote on the VEBA plan. LeMoine asserts that deduction is a violation of chapter 41.56 RCW because it is a contribution to a union-administered program and, relying on the *Janus* and *Bennett* decisions, that such a contribution cannot be implemented without a "clear, voluntary, or affirmative vote."

There are no provisions that specifically address or establish the rights articulated in *Janus*. The only statute administered by PERC that addresses union dues or other deductions is RCW 41.56.110. RCW 41.56.110 addresses how employees may authorize payroll deductions for union dues and other items set forth in a collective bargaining agreement. That statute does not address whether dues paying or non-dues paying bargaining members have the right to vote on contract provisions.

As the exclusive bargaining representative, the union owes a duty of fair representation to all bargaining unit members. LeMoine's assertions assume, without alleging facts or showing any legal basis in chapter 41.56 RCW that he was entitled to vote on the VEBA plan.

Contract ratification votes are generally regarded as a matter of internal union affairs and outside the Commission's jurisdiction. *Western Washington University (Washington Public Employees Association, Local 365)*, Decision 8849-B (PSRA, 2006); *King County*, Decision 4253 (PECB, 1992); *Lewis County*, Decision 464-A (PECB, 1978). When, however, the terms of the negotiated collective bargaining agreement or the union's internal constitution or bylaws require ratification

votes of all bargaining unit members, the union creates a right subject to the Commission's jurisdiction. *Western Washington University*, Decision 8849-B.

Nothing in Article 9.16.2 or in the facts alleged in the amended complaint indicate that LeMoine had a right to vote on the contract ratification or the VEBA plan set forth in Article 9.16.2. Absent any such facts, LeMoine fails to state a cause of action against the union, and the matter shall be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 25th day of July, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M. Sellars', is written over the printed name of Michael P. Sellars.

MICHAEL P. SELLARS, Executive Director

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 7/25/2025

---

DECISION 14171 - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: DEBBIE BATES

CASE 143189-U-25

EMPLOYER: CITY OF SEATTLE

REP BY: HEATHER DELANEY  
CITY OF SEATTLE  
PO BOX 34018  
SEATTLE, WA 98124-4018  
HEATHER.DELANEY@SEATTLE.GOV

ROBBI LIRA  
CITY OF SEATTLE  
PO BOX 34018  
SEATTLE, WA 98124-4018  
ROBBI.LIRA@SEATTLE.GOV

PARTY 2: MICHAEL LEMOINE

REP BY: MICHAEL LEMOINE#  
LEMOINEMICHAEL@HOTMAIL.COM

PARTY 3: WSCCCE

REP BY: SUZETTE DICKERSON  
WSCCCE  
PO BOX 750  
EVERETT, WA 98206  
SUZETTED@COUNCIL2.COM

INGRID WERTZ  
WSCCCE  
PO BOX 34018  
SEATTLE, WA 98124-4018  
INGRID.WERTZ@SEATTLE.GOV

MARTHA NEUMAN  
WSCCCE



PO BOX 34018  
SEATTLE, WA 98124-4018  
MARTHA.NEUMAN@SEATTLE.GOV