

LABOR UPDATES

NOTABLE WASHINGTON PERC CASES & REGULATIONS

WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION (PERC) CASE SUMMARIES

DISCRIMINATION AND RETALIATION

Washington State Department of Children, Youth, and Families, Decision 13329-B (PSRA, 2023)

Employee termination upheld. Complainant alleged retaliation for engaging in the protected activity of joining a grievance. Complainant held position at the Washington State Department of Children, Youth, and Families (DCYF) as a social services specialist in the Child Welfare Field Office and had access to confidential databases concerning child welfare. Complainant was also a foster parent. Complainant was accused and had a “founded finding” of child abuse against her (meaning more likely than not) and was criminally charged. Complainant accessed confidential information as to the investigation against her, in violation of the rules. Arbitrator found that complainant had alleged prima facie evidence of retaliation, but employer had a legitimate non-discriminatory reason for taking the action it did and complainant could not show pretext.

PROCEDURAL RULES

City of Quincy, Decision 13643 (PECB, 2023)

Contract bar rule precluded Police Association from seeking to replace existing union as the exclusive bargaining representative.

Rule: Where a current collective bargaining agreement (CBA) is in effect, a petition involving any of the employees covered by the agreement will be timely only if it is filed during the “window” period of not more than ninety, nor less than sixty, days prior to the expiration date of the CBA. A petition to change or remove the bargaining representative may also be filed after the expiration date of a CBA, provided a new agreement has not been reached between the employer and incumbent bargaining representative.



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BREACH OF DUTY OF FAIR REPRESENTATION, APPEAL

King County (Amalgamated Transit Union Local 587), Decision 13535 (PECB, 2022)

The union did not breach its duty of fair representation through its communication with, and support of, employee Stroman in the grievance filed against the employer concerning alleged statements made about him by a coworker. The record did not support a conclusion that the union failed in any way to respond to Stroman's efforts to pursue his grievance, let alone acted in a manner that could reasonably constitute arbitrary, discriminatory, or bad faith conduct. Likewise, Stroman failed to carry his burden of proof that the union ever made any threats toward him related to his grievance, including his role as president of the Black Caucus, that might constitute unlawful interference.

King County (Amalgamated Transit Union Local 587), Decision 13535-A (PECB, 2023)

Complainant filed a grievance. The CBA had a three step grievance process. Grievance process progressed to step 2, where the employer denied grievance. Union, upon advice of counsel, refused to pursue grievance further. Complainant filed unfair labor practice (ULP) against Union. Hearing examiner found no breach of duty of fair representation. Union not compelled to pursue grievance. Complainant also failed to identify specific issues on appeal that were in error, but arbitrator's underlying finding was approved on the merits regardless.

Rule: To prove a union breached its duty of fair representation, the complainant must prove that the union's conduct is more than merely negligent. See *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (PSRA, 2021), *aff'd*, Decision 13333-A (PSRA, 2021). The conduct must be arbitrary, discriminatory, or in bad faith.

DUTY OF FAIR REPRESENTATION

King County (King County Corrections Guild), Decision 13622 (PECB, 2023)

Employee terminated for being unvaccinated. Employee sought religious accommodation, but was denied, along with approximately 14 other employees. Employee refused to participate in *Loudermill* hearing but was offered counsel by Union. Union and Employer had memorandum of understanding regarding vaccination exceptions, which was not violated. Employee wanted to grieve termination but was refused by union. Commissioner found no breach of duty of fair representation, as grievance would have failed, and Union has a duty to only pursue worthwhile grievances.

REFUSAL TO BARGAIN

City of Seattle, Decision 13595 (PECB, 2022)

Employer accused of failing to bargain over mandatory subjects of employees' access to vehicle information for parking officers and scheduling procedures. Arbitrator found that this was not a mandatory subject of bargaining, that the obligation to bargain over effects of a permissive subject of bargaining had been waived due to inaction, and the employer's needs to manage and address needs outweighed any concerns of the Union. Further, no past practice existed.

Spokane County, Decision 13510-B (PECB, 2022)

Employer passed resolution requiring bargaining to be done in public, audio recording of all public bargaining sessions, posting a notice of public negotiation meetings, and posting any proposals the employer provides or receives on the employer's website. The resolution prohibited members of the public from participating in negotiations. Union rejected ground rules consistent with the employer's resolution. Issue of whether the employer could condition negotiation of mandatory subjects on agreement on how the parties would conduct bargaining was a settled law as of April 7, 2021, when the WA Supreme Court denied review on *Lincoln County v. Public Employment Relations Commission* (15 Wn. App. 2d 143). Employer cannot condition bargaining on mandatory subjects based on the union's agreement to conduct negotiations in public.

UNILATERAL CHANGES, EMPLOYEE STANDING**City of Seattle, Decision 13532 (PECB, 2022)**

Employee alleged that the employer unilaterally changed the terms and conditions of employment when the employer and union negotiated a new overtime provision that provided shifts for lead and supervisory inspectors in certain instances. However, these types of allegations may only be raised by the exclusive bargaining representative or the public employer. Individual employees lack standing to raise these types of claims before the Public Employment Relations Commission (PERC).

UNILATERAL CHANGES**Washington State Language Access Providers, Decision 13355-B (PECB, 2022)**

WA Interpreters Union filed an unfair labor practice complaint alleging the employer interfered with employee rights by changing wages, hours, and other terms and conditions of employment during the pendency of a representation petition, in violation of WAC 391-25-140(2).

The decision to change the scheduling system was made before the union filed the representation petition, although implementation occurred after. Further, the employees expected the change, and implementation of the new scheduling system was part of the dynamic status quo. Thus, the employer did not violate RCW 41.56.140(1) when the employer implemented the new scheduling system while the representation petition was pending before the agency.

DUTY TO RESPOND TO REQUEST FOR INFORMATION**Western Washington University, Decision 13547 (PSRA, 2022)**

Union alleged it was not provided information relevant to the performance of its functions in contract administration. Union alleged the CBA implicitly required the employer to provide the information, but Union did not allege that it actually requested the information. Only a request would trigger the employer's duty to respond to the request.

Rule: Upon receiving a relevant information request, the receiving party must provide the requested information or engage in negotiations about the information request. See *City of Yakima*, Decision 10270-B; *Seattle School District*, Decision 9628-A; and *Port of Seattle*, Decision 7000-A. Although the complaint alleged a failure to provide the information, it did not allege that the Union actually requested the information.

Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.