



STATE OF WASHINGTON  
**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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Senator John Braun  
Washington State Senate  
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Re: Letter of February 21, 2017

Dear Senator Braun:

Thank you very much for your letter. I have repeated your questions and placed our answers below.

1. Does the Public Employment Relations Commission (PERC) have legal jurisdiction to process unfair labor practice (ULP) complaints brought by non-federal public employees against their collective bargaining representative? If so, under what causes of action may a non-federal public employee file a ULP complaint against their collective bargaining representative?

Yes, within the authority granted by the Legislature, PERC has jurisdiction over ULP complaints filed by non-federal public employees. PERC administers ten different collective bargaining statutes, and while the ULP sections in each are similar, they are not identical. All the statutes provide that it is a ULP for a union to restrain or coerce employees in the exercise of their rights under the various laws. Additionally, all of the statutes provide that it is a ULP for a union to refuse to engage in collective bargaining with a public employer.

Additionally, RCW 41.56 (public employees) and RCW 49.39 (symphony musicians) provide that a union may not interfere with protected employee rights and that it is a ULP for a union to induce an employer into committing an unfair labor practice. Also, RCW 28B.52 (community college faculty), RCW 41.59 (certificated teachers), RCW 41.76 (four-year institution faculty), and RCW 41.80 (state employees) all make it a ULP for a union to discriminate against an employee. Finally, RCW 28B.52 (community college faculty), RCW 41.56 (public employees), RCW 41.76 (four-year institution faculty), and RCW 41.80 (state employees) all specifically make it a ULP for a union to discriminate against an employee who has filed ULP charges against a union.

An individual bargaining unit employee does not have standing to file a refusal to bargain ULP complaint because only the employer and union are the parties to the collective bargaining relationship. *South Whidbey School District*, Decision 11134-A (EDUC, 2011).

PERC has jurisdiction over the duty of fair representation only if the union's conduct is arbitrary, discriminatory, or in bad faith. *City of Renton (WSCCCE)*, Decision 1825 (PECB, 1984). In most instances, PERC does not have jurisdiction over breach of duty of fair representation complaints arising exclusively out of the processing of grievances. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). Instead, employees must seek relief in court.

2. Does state law specify any cause of action that might permit a public employee under PERC's jurisdiction to bring a ULP charge against his or her bargaining representative for misleading or misinforming the employee about his or her constitutional rights regarding union membership, as recognized by *Abood v. Detroit Board of Education* (1977), and *Chicago Teachers Union v. Hudson* (1986), or *Harris v. Quinn* (2014)?

No specific statute authorizes PERC to resolve disputes over calculation and payment of dues. *Local 2916, IAFF v. PERC*, 128 Wn.2d 375 (1995) limits PERC's jurisdiction to only those unfair labor practices specifically identified by statute. Allegations concerning disputes over agency fee payer status will be dismissed. *Lake Washington Technical College (Washington Federation of Teachers)*, Decision 6742 (CCOL, 1999).

3. Are labor unions representing only non-federal public employees in Washington state subject to the requirements of the federal Labor Management Reporting and Disclosure Act of 1959 (LMRDA)?

No. However, labor unions that are affiliated with parent unions that represent private-sector employees do report under the LMRDA. For example, the various Teamster locals that represent public employees as well as private-sector employees file reports with the United States Department of Labor.

4. Other than the statements of chargeable and nonchargeable expenses that unions must provide to objecting agency fee payers in accordance with *Chicago Teachers Union v. Hudson* (1986), do labor unions representing only non-federal public employees in Washington state have any legal requirement, under state or federal law, to provide information regarding their finances, budget, or expenditures to the employees they represent?

No specific statute requires unions to provide this type of information.

5. If a public employee under PERC's jurisdiction requests their collective bargaining representative provide them with information about its finances, budget, or expenditures, and the bargaining representative denies or ignores the employee's request, does state law provide any cause of action that would allow the employee to file a ULP charge with PERC against the bargaining representative?

None of PERC's statutes require unions to provide financial information to their members. In *Mead School District (Mead Classified Public Employees Association)*, Decision 12208 (PECB, 2014), an employee's ULP complaint alleging the union failed to disclose internal officer election results and did not answer financial inquiries was dismissed because PERC lacks the authority to intervene in internal union affairs.

6. Do the financial reporting and disclosure requirements contained in SB 5371 for unions representing public employees in Washington mimic those in the federal LMRDA for unions representing private-sector employees? If not, in what respects does SB 5371 differ from the LMRDA?

Yes, the financial reporting and disclosure requirements contained in SB 5371 mimic those found in the federal LMRDA. The only difference is in Section 2(1)(viii) of SB 5371. That provision requires unions to provide information regarding the "discipline or removal of officers or agents." However, 29 U.S.C. §431(a)(5)(H) of the LMRDA requires unions to provide information regarding the "discipline or removal of officers or agents for breaches of their trust."

7. In light of *IAFF Local 2916 v. PERC*, 128 Wn.2d 375 (1995), does state law provide public employees with any cause of action that would permit them to file a ULP charge against their collective bargaining representative with PERC for failure to properly observe their constitutional right to pay only for chargeable union expenditures germane to collective bargaining, contract administration, and grievance adjustment, as recognized by the U.S. Supreme Court's decisions in *Abood v. Detroit Board of Education* (1977) and *Chicago Teachers Union v. Hudson* (1986)?

No. *Local 2916, IAFF v. PERC*, 128 Wn.2d 375 limits PERC's authority to the causes of action specifically delineated in the collective bargaining statutes. PERC's authority in this area is limited to determining whether an employee may assert the right of nonassociation.

8. Other than public employees seeking nonassociation status on the basis of their religious views, are there any disputes regarding union membership and the payment of union dues or fees that PERC has legal authority to adjudicate? If so, what are they?

PERC does not have authority to adjudicate disputes over union membership or the payment of dues. A union security provision is considered to be a mandatory subject of bargaining, so a union or an employer could file a ULP complaint alleging the other party refused to bargain over the inclusion of a union security provision in a collective bargaining agreement.

9. In light of the Washington State Supreme Court's decision in *Grant v. Spellman*, 99 Wn.2d 815 (1983), may a public employee object to union membership and dues payment and assert a right of nonassociation on the basis of their bona fide personally held religious beliefs?

Yes. While none of the nonassociation statutes have been amended to reflect the Court's ruling in *Grant v. Spellman*, PERC applies the Court's standard when adjudicating nonassociation petitions. PERC adopted WAC 391-95-230(2)(b) to codify the Court's ruling in *Grant v. Spellman*.

10. Would SB 5339 alter PERC's interpretation of the circumstances under which a public employee may assert a right of nonassociation?

No.

11. Approximately how many nonassociation disputes has PERC adjudicated in the past five years?

Since 2012, six nonassociation petitions have been filed with the agency. One matter is still open and pending. In each of the other five, the petitioner withdrew his or her petition before the matter could be adjudicated.

12. RCW 41.80.100, governing state employees, provides:

“An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, *make payments to the employee organization*, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience.” (Emphasis added)

Under current law and practice, may a state employee who asserts a right of nonassociation be required, as a condition of employment, to continue paying dues to the employee organization, or does PERC recognize a right of the employee to direct his or her dues to a charity?

RCW 41.80.100(2) is different from the other nonassociation statutes administered by PERC. The other nonassociation statutes—RCW 41.56.122(1), RCW 41.59.100, RCW 41.76.045(3), RCW 47.64.160, RCW 49.39.090, and 28B.52.045(3)—do not contain similar provisions directing payment to a program of the union that may be in harmony with the employee's individual conscience. Rather, those statutes require payment to a nonreligious charity or another charitable organization mutually agreed to by the employee and union. Under these other nonassociation statutes, as long as the charity selected by the employee is nonreligious, then the employee will be allowed to make payments to that charity. *Vancouver School District (Vancouver Education Association)*, Decision 9959-A (EDUC, 2008).

13. Does state law currently permit, or has it ever permitted, an employee organization to be certified as the exclusive bargaining representative of a bargaining unit of public

employees without the members of the bargaining unit first voting to certify the employee organization in a secret-ballot election?

14. Does state law currently permit, or has it ever permitted, a public employer to voluntarily recognize and bargain with an exclusive bargaining representative without the members of the bargaining unit voting to certify the employee organization in a secret-ballot election?
15. Under a cross-check procedure, may an employee organization be certified as the exclusive bargaining representative of a bargaining unit of public employees without the members of the bargaining unit voting to certify the employee organization in a secretballot election?

These questions are all similar in nature and will be answered collectively.

RCW 41.56 (public employees), RCW 41.59 (certificated teachers), RCW 49.39 (symphony musicians) and RCW 53.18 (port districts) allow an employer to voluntarily recognize a union. Also, RCW 54.04 (public utility district employees) affords employees the same rights under the National Labor Relations Act, which allows voluntary recognition.

In contrast, RCW 41.80 (state employees), RCW 41.76 (four-year institution faculty), RCW 47.64 (ferry employees), and RCW 28B.52 (community college faculty) require PERC to certify the bargaining unit and do not allow voluntary recognition.

The voluntary recognition process generally starts with the union presenting the employer with evidence, such as interest cards, demonstrating that the union has the support of the majority of employees in the proposed bargaining unit. If the employer extends voluntary recognition based upon the evidence, then PERC does not certify the bargaining unit. Voluntary recognition was common in the 1970s and 1980s but is much less so now.

With respect to cross checks, RCW 41.56.060(1) (public employees) and RCW 41.76.020(6)(a) (four-year institution faculty) explicitly allow for the certification of a bargaining representative through the cross-check method. PERC has extended the cross check process to all other employee groups under its jurisdiction except for certificated teachers. RCW 41.59.070(2), which applies to certificated teachers, requires a secret-ballot election when the parties disagree about the selection of a bargaining representative.

PERC adopted rules allowing an exclusive bargaining representative to be certified after a cross check of the records. WAC 391-25-250, WAC 391-25-391, WAC 391-25-396, and WAC 391-25-410. If the cross check threshold is met, the employees are notified that the cross check method will be utilized and are given a stated period of time to withdraw their showing of interest cards for purposes of a cross check. WAC 391-25-410(2). Also, a cross check is only appropriate when only one union would appear on the ballot. WAC 391-25-391(1) and WAC 391-25-396(1).

16. May union-represented employees under the jurisdiction of the National Labor Relations Act petition for and, with a 30 percent showing of interest, initiate a deauthorization election administered by the National Labor Relations Board to determine whether to remove a union security provision from their collective bargaining agreement?

Yes. 29 U.S.C. §159(e) (Section 9(e) of the National Labor Relations Act) gives private-sector employees in a bargaining unit the right to petition the National Labor Relations Board to conduct a union security deauthorization election.

17. Is there any established process for union-represented public employees under PERC's jurisdiction to petition for or initiate a PERC-administered election about whether to remove a union security provision from their collective bargaining agreement?

No.

18. Does any provision of state law require labor unions representing public employees under PERC's jurisdiction to conduct, and honor the results of, regular elections for union officers? If so, which provision(s)?

No statutes that PERC administers address this issue.

19. Does any provision of state law require labor unions representing public employees under PERC's jurisdiction to conduct, and honor the results of, contract ratification votes? If so, which provisions(s)?

No. PERC's jurisdiction generally does not extend to internal union affairs. *Western Washington University (Washington Public Employees Association Local 365)*, Decision 8849-B (PSRA, 2006). Unions are generally free to limit their contract ratifications according to their own internal policies.

No statute compels employee ratification votes. *Naches Valley School District*, Decision 2516 (EDUC, 1987), and Decision 2516-A (EDUC, 1987). There is no statutory right of ratification. The union must reserve that right to its members through its constitution and bylaws.

20. Does any provision of state law require labor unions representing public employees under PERC's jurisdiction to permit nonmembers, religious objectors, or agency fee payers to participate in contract ratification votes? If so, which provision(s)?

No statutes under PERC's jurisdiction address which employees in a bargaining unit are allowed to vote in a ratification election. PERC has held that unions generally have the right to limit ratification votes to only union members. However, if a union says all bargaining unit employees may vote to ratify a collective bargaining agreement, then the union must allow all bargaining unit employees the opportunity to vote on ratification. *Western Washington University (Washington Public Employees Association Local 365)*, Decision 8849-B.

21. Does any provision of state law prevent labor unions representing public employees under PERC's jurisdiction from increasing dues without first obtaining the approval of its membership through a vote? If so, which provision(s)?

No statutes that PERC administers address this issue.

22. Does any provision of state law prevent labor unions representing public employees under PERC's jurisdiction from negotiating provisions of a collective bargaining agreement obligating a public employer to provide financial support to or purchase services from the union or its affiliates?

Unions do not have an independent right to use the public property of an employer. *King County*, Decision 6734-A (PECB, 2000). In *City of Seattle*, Decision 1355 (PECB, 1982), PERC ruled that an employer did not commit a ULP for enforcing rules prohibiting the use of its resources for union related matter provided the employer consistently applies rules prohibiting the use of its resources for other non-work related matters. However, if a public employer allows its property and resources to be used for non-work related matters, then the employer cannot preclude a union from enjoying similar access.

Thank you for the opportunity to answer these questions. If there are additional questions or answers that need clarification, please do not hesitate to ask.

Very truly yours,



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