

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
ROBERT FEMIANO,	)	
	)	
Complainant,	)	CASE 20880-U-07-5321
	)	
vs.	)	DECISION 9717 - EDUC
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

On January 24, 2007, Robert Femiano (Femiano) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association as respondent. On January 31, 2007, Femiano filed an amended complaint. The amended complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on April 27, 2007, indicated that it was not possible to conclude that a cause of action existed at that time. Femiano was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the 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 May 1, 2007, Femiano filed a document entitled "Notice of Appeal" indicating that he wished to appeal the deficiency notice to the Commission. Commission rules do not provide for an appeal of a deficiency notice. Rather, as the deficiency notice made clear, Femiano had 21 days to file an amended complaint. The document filed by Femiano on May 1, 2007, is considered as an amended complaint responding to the deficiency notice. The May 1 document simply restates the allegations contained in the amended complaint of January 31 and does not provide new information.<sup>2</sup> The Unfair Labor Practice Manager dismisses Femiano's amended complaints for failure to state a cause of action.

#### DISCUSSION

The allegations of the amended complaints concern union interference with employee rights in violation of RCW 41.59.140(2)(a), by breach of its duty of fair representation in not filing an unfair labor practice complaint over alleged employer actions directed toward Femiano while he acted as a union representative; and discrimination in violation of RCW 41.59.140(2)(a) for filing an earlier unfair labor practice charge with the Commission.

It is not possible to conclude that a cause of action exists at this time for any of the allegations of the amended complaints. The amended complaints have two defects.

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<sup>2</sup> In the May 1 document Femiano states that he filed the original complaint on October 5, 2006. The Commission docketed that complaint as Case 20689-U-06-5272, and the case went to hearing on February 2, 2007. The amended complaint filed on January 31, 2007, pertains to the present case, originally filed on January 24, 2007.

One, regarding the interference claim, the Commission is bound by the following provisions of Chapter 41.59 RCW:

RCW 41.59.150-COMMISSION TO PREVENT UNFAIR LABOR PRACTICES-SCOPE (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That 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. This power not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

The amended complaints allege that the union notified Femiano on May 12, 2006, that it declined to file an unfair labor practice complaint over alleged employer actions against Femiano while he served as a shop steward. Femiano knew of the union's alleged unfair labor practice at that time and had until November 12, 2006, to file a timely complaint with the Commission.

Femiano argues that the complaint is timely because he only knew of the union's motive when the Commission issued a preliminary ruling finding a cause of action on the same facts (Case 20689-U-06-5272). This argument is groundless. Preliminary rulings review allegations on a "matter of law" basis. The finding of a cause of action neither intends nor implies that the allegations in the complaint are true and provable, but on the contrary, places the burden on the complainant to prove them at a hearing. The preliminary ruling in Case 20689-U-06-5272 neither negated the union's decision not to file the complaint, nor affirmed Femiano's charges.

Two, the claim regarding discrimination for filing a complaint is directly linked with Femiano's underlying interference claim. He alleges that the union failed to fairly represent him and so discriminated against him for filing an earlier complaint. The

discrimination claim should also have been filed on or before November 12, 2006.

NOW, THEREFORE, it is

ORDERED

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 6<sup>th</sup> day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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The attached document identified as: **DECISION 9717 - EDUC** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 20880-U-07-05321 FILED: 01/24/2007 FILED BY: PARTY 2  
DISPUTE: UN FAIR REP  
BAR UNIT: TEACHERS  
DETAILS: Non-Supervisory - Certificated  
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