

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
ROBERT FEMIANO)	
)	
Complainant,)	CASE 21048-U-07-5371
)	
vs.)	DECISION 10073 - EDUC
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

Robert Femiano appeared pro se.

Michael J. Gawley, Attorney at Law, for the union.

On May 1, 2007, Robert Femiano filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the Seattle Education Association (union) as respondent. On June 5, 2007, the Commission issued a preliminary ruling under WAC 391-45-110 finding that a cause of action existed on allegations of union interference with employee rights and union discrimination.

The union filed a timely response to the complaint on June 25, 2007. On December 10, 2007, the union filed a motion for summary judgment.¹ The Examiner issued a letter denying the motion on December 21, 2007, which the union appealed on January 3, 2008. The Executive Director responded with a letter advising the union

¹ Femiano had other complaints pending with the Commission during the elapsed time period, and requested a delay in scheduling this hearing until resolution of the other matters.

that its appeal could not be accepted until a final order was issued. A hearing date was set for May 8, 2008.²

On the date of the hearing, the parties were to convene at 10:00 A.M. at the Commission's Kirkland office. The union sent its counsel, Michael Gawley. Three witnesses for the union were also in attendance.³ At 11:00 A.M., Femiano still had not arrived. At that point, the Examiner opened the hearing on the record and called for appearances for each party.

Hearings conducted by the Commission and its examiners in unfair labor practice cases are adjudicative proceedings subject to the Administrative Procedure Act (APA), Chapter 34.05 RCW. The APA states:

RCW 34.05.440--DEFAULT.

. . . .
(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

According to unfair labor practice case rules, the complaining party is responsible for the presentation of its case, and has the burden of proof. The examiner is not authorized to undertake the responsibilities for the complainant's case if that burden is not met. WAC 391-45-270.

² Hearing dates were previously set for April 4, 2008 and April 18, 2008, but were continued at the request of the parties.

³ The employer did not attend because they were not a direct party to the complaint.

Femiano failed to appear at the hearing with no explanation. The union moved for dismissal of the complaint for lack of prosecution, and the Examiner granted the motion.⁴

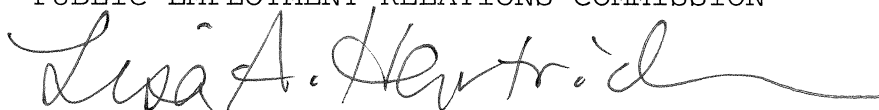
NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above matter is DISMISSED for lack of prosecution.

ISSUED at Olympia, Washington, this 14th day of May, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Lisa A. Hartrich". The signature is written in black ink and extends across the width of the text area.

LISA A. HARTRICH, Examiner

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.

⁴

The union also requested that some type of sanction be included with the final order. However, the Examiner cannot authorize a sanction or remedy in this situation.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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The attached document identified as: **DECISION 10073 - 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: 21048-U-07-05371 FILED: 05/01/2007 FILED BY: PARTY 2
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BAR UNIT: TEACHERS
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