

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT FEMIANO,)	
)	
Complainant,)	CASE 20629-U-06-5253
)	
vs.)	DECISION 9700 - EDUC
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
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ROBERT FEMIANO,)	
)	
Complainant,)	CASE 20630-U-06-5254
)	
vs.)	DECISION 9701 - EDUC
)	
SEATTLE SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
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On September 5, 2006, Robert Femiano (Femiano) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. Femiano is a certificated employee of the Seattle School District (employer). The first complaint concerns allegations against the Washington Education Association (union) and was docketed as Case 20629-U-06-5253. The second complaint concerns allegations against the employer and was docketed as Case 20630-U-06-5254. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

on October 24, 2006, 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 amended complaints, or face dismissal of the cases.

On November 9, 2006, Femiano filed amended complaints. The Field Services Manager dismisses the amended complaints for failure to state a cause of action.

DISCUSSION

Complaint against Union

The allegations of the complaint in Case 20629-U-06-5253 concern union interference with employee rights in violation of RCW 41.59.140(2)(a) and an "other unfair labor practice" through breach of its duty to provide fair representation, by failing to represent the best interests of Robert Femiano in the processing of a grievance concerning his transfer.

The deficiency notice pointed out several defects with the complaint. One, RCW 41.59.140(2)(a) prohibits union interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by union officials, are unlawful. However, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit, in violation of RCW 41.59.140(2)(a).

Two, the complaint refers to various union conduct related to an arbitration proceeding arising out of a grievance filed by the

union on behalf of Femiano. If bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. While a union owes a duty of fair representation to bargaining unit employees, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation. Femiano is seeking to secure rights he claims under the parties' collective bargaining agreement. Any remedies for his claims must be pursued before a court.

Three, alleged violations of a union's duty of fair representation are processed under the interference provisions of RCW 41.59.140(2)(a). A union's duty of fair representation obligations do not constitute a separate "other unfair labor practice" violation under Chapter 41.59 RCW.

Complaint against Employer

The allegations of the complaint in Case 20630-U-06-5254 concern employer discrimination in violation of RCW 41.59.140(1)(c), by its transfer of Robert Femiano in reprisal for union activities protected by Chapter 41.59 RCW. The deficiency notice indicated that the complaint was defective for the following reason:

The factual allegations of the new complaint in Case 20630-U-06-5254 concern additional evidence related to the employer's conduct involving the transfer of Femiano. No cause of action can be found for the new complaint, as it involves a second assertion of the same claim or cause of action that was already found to state a cause of action in Case 19945-U-05-5063.

See Seattle School District, Decision 9356 (EDUC, 2006) for the preliminary ruling finding a cause of action in Case 19945-U-05-5063.

Amended Complaints

Union

The amended complaint fails to cure the defects noted concerning the complaint against the union. In relation to defect one concerning allegations of union interference, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit, in violation of RCW 41.59.140(2)(a).

In relation to defect two concerning an alleged breach of the union's duty of fair representation, the amended complaint provides no additional factual allegations but continues to claim "union failure to provide fair representation . . ." Femiano's "claim concerns the interpretation of the collective bargaining agreement and the union decision on processing the grievance, and is not within the Commission's jurisdiction and must be pursued through the courts." *Seattle School District*, Decision 9359-A (EDUC, 2007).

In relation to defect three concerning an alleged "other unfair labor practice" violation, the amended complaint withdraws those allegations.

Employer

The amended complaint fails to cure the defects noted concerning the complaint against the employer, stating that "I accept your ruling" that the new complaint involves a second assertion of the cause of action in Case 19945-U-05-5063.

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 1st day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Field Services 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.