

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
ROBERT FEMIANO,)	CASE 20629-U-06-5253
)	
Complainant,)	DECISION 9700-A - EDUC
)	
vs.)	
)	
SEATTLE EDUCATION ASSOCIATION,)	DECISION OF COMMISSION
)	
Respondent.)	
_____)	

Robert Femiano, appeared pro se.

This case comes before the Commission on a timely appeal filed by complainant Robert Femiano (Femiano) seeking review and reversal of an order dismissing his unfair labor practice complaint against the Seattle Education Association issued by Field Services Manager Mark S. Downing.¹ The Seattle Education Association (union) has not filed a brief in opposition to this appeal.

On September 5, 2006, Femiano filed a complaint alleging that the Seattle School District (employer) and the union committed unfair labor practices when they conspired to transfer Femiano from one teaching position within the district to another. Femiano also alleged that the union breached its duty of fair representation when it failed to adequately represent him in the grievance that he filed over the administrative transfer. On October 24, 2006,

¹ Seattle School District, Decision 9700 (EDUC, 2007).

Downing issued a deficiency notice stating that Femiano's complaint failed to state a cause of action, and that he had twenty-one days to file an amended complaint. On November 9, 2006, Femiano filed an amended complaint arguing that, under Commission precedent, his original complaint against the union stated a cause of action. However, he conceded that his complaint against the employer, case 20630-U-06-5254, simply restated an earlier complaint being simultaneously processed in a separate proceeding.² Femiano cured this later-filed complaint by withdrawing it. On June 1, 2007, the Field Services Manager dismissed both of Femiano's complaints.

The only issue presented by this appeal is whether Femiano's complaint states a cause of action that the union breached its duty of fair representation when it conspired against him.³

ANALYSIS

It is well established that, while a union owes a duty of fair representation to the employees it represents, this 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). Employees alleging such claims must seek redress through the superior courts.

² Case 19945-U-05-5063. That case is still pending before this Commission.

³ Because we are reviewing an order of dismissal issued at the preliminary ruling stage of case processing under WAC 391-45-110, we are confined to the assumption uniformly applied in that process: All of the facts alleged in the complaint are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004).

The Field Services Manager found Femiano's claims to be strictly related to the processing of his contractual grievance. We agree.

All of Femiano's claims against the union concern actions, events and evidence that surrounded the processing of his grievance. For example, Femiano claims that the union provided faulty information regarding his right to have an attorney present at his grievance arbitration hearing. This allegation centers around union actions taken during the actual processing of his grievance. Additionally, the union's "settlement" offer, which dictated that Femiano would be provided the opportunity to select one of three assignments as settlement, also centered around the processing of the grievance. Finally, Femiano's claim that the union disclosed "privileged" information that ultimately lead to the arbitrator's decision to not grant a remedy was a strategic decision that falls directly within the processing of the grievance.

Femiano's reliance on *Dayton School District*, Decision 8042 (EDUC, 2003), is misplaced. In that case, the Unfair Labor Practice Manager dismissed a complaint alleging that a union misrepresented the terms of a settlement agreement. In affirming the Unfair Labor Practice Manager's order of dismissal, the Commission found that the settlement agreement was, in effect, an extension of the collective bargaining agreement. *Dayton School District*, Decision 8042-A (EDUC, 2004). Thus, the Commission would only exercise jurisdiction if the complaint alleged that the union aligned itself against the complainant on the basis of union membership or discriminated against her on some invidious basis. Because the complainant did not make such an allegation, the complaint was dismissed. Here, Femiano's allegation that the union misled him are similar to the allegations in *Dayton School District*.

Femiano also asserts that his complaint is similar to the factual situation in *Elma School District (Elma Teachers Organization)*, Decision 1349 (EDUC, 1982), and the Field Services Manager erred by not considering that precedent. We disagree. In *Elma School District*, an individual employee filed a claim with this Commission claiming the union failed to represent her because of her support for a different union. Although the complaint in that case was ultimately dismissed on its merits, this Commission accepted jurisdiction over that claim because the complainant alleged that the union's breach of its duty of fair representation was premised upon the fact that the complainant was not a full dues-paying union member. Here, Femiano failed to allege that the union's behavior was based upon union activity, and claimed that the union took action against him which he viewed as being adverse.

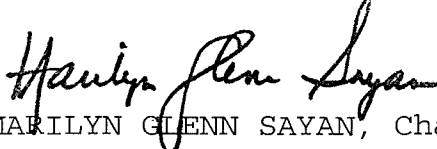
NOW, THEREFORE, it is

ORDERED

The Order of Dismissal issued by Field Services Manager Mark S. Downing in the above-entitled case is AFFIRMED and adopted and the Order of Dismissal of the Commission.

Issued at Olympia, Washington, the 16th day of November, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner