

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,		
	Employer.	
GREGORY SCHMIDT,		
	Complainant,	CASE 25660-U-13-6572
vs.		DECISION 12091-A - PECB
SEATTLE POLICE MANAGEMENT ASSOCIATION,		DECISION OF COMMISSION
	Respondent.	

Gregory Schmidt appeared *pro se*.

Snyder & Hoag, LLC, by *David A. Snyder*, Attorney at Law, for the union.

On April 24, 2013, Gregory Schmidt filed an unfair labor practice complaint against that the Seattle Police Management Association (union). Schmidt alleged that the union interfered with employee rights by breaching its duty of fair representation towards him and inducing the employer to commit an unfair labor practice. After the parties briefed the union's motion for summary judgment, the Examiner granted the union's motion.¹

The Examiner concluded the allegation that the union breached its duty of fair representation was untimely. The Examiner dismissed the allegation that the union removed Schmidt from the union e-mail list, concluding the allegation did not state a cause of action. Schmidt filed a timely appeal.

¹ *City of Seattle (Seattle Police Management Association)*, Decision 12091-A (PECB, 2014).

On August 8, 2014, Schmidt filed an appeal brief. Attached to the appeal brief were five exhibits. On August 21, 2014, the union moved to strike the exhibits attached to Schmidt's appeal brief. On September 2, 2014, Schmidt responded to the union's motion.

The Commission does not consider new evidence on appeal that was not presented to an examiner. *King County (Teamsters Local 117)*, Decision 12001-A (PECB, 2014); *King County*, Decision 11221-A (PECB, 2012); *King County*, Decision 8631-A (PECB, 2005); *see also Southwest Snohomish County Public Safety Communications Agency*, Decision 11149-A (PECB, 2011). The exhibits attached to Schmidt's appeal brief are stricken and have not been considered in reaching this decision.

The standard of review on summary judgment is *de novo*. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995). On review, the Commission performs the same inquiry as the examiner. *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694 (2013). Summary judgment is properly granted if there are no issues of material fact and the moving party is entitled to judgment as a matter of law. *Washington Federation of State Employees v. State*, 127 Wn.2d at 551; WAC 10-08-135. A material fact is one upon which the outcome of the litigation depends. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249 (1993). The trier of fact must consider the facts submitted and all reasonable inference from those facts in the light most favorable to the nonmoving party. *Id.* The motion should be granted only if, from all the evidence, a reasonable person could reach but one conclusion. *Id.*

We have thoroughly reviewed the record, including the briefing related to the summary judgment motion and the admissible evidence filed with those motions. As no issues of material fact exist, the Examiner properly granted the union's motion for summary judgment. We affirm the Examiner. The portions of the complaint alleging the union breached its duty of fair representation and that the allegation the union induced the employer to commit an unfair labor practice were not filed within the statute of limitations. The portion of the complaint alleging the union breached its duty of fair representation by removing Schmidt from an internal union e-mail list does not state a cause of action.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Jamie L. Siegel are AFFIRMED and Adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 22nd day of October, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

Commissioner Mark E. Brennan did not participate in the consideration or decision of this case.