

State - Social and Health Services (Washington Federation of State Employees), Decision 9548-A (PSRA, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE - SOCIAL AND HEALTH)	
SERVICES,)	
)	
Employer.)	
-----)	
JOHN M. SMITH,)	CASE 20028-U-05-5084
)	
Complainant,)	DECISION 9548-A - PSRA
)	
vs.)	
)	
WASHINGTON FEDERATION)	
OF STATE EMPLOYEES,)	DECISION OF COMMISSION
)	
Respondent.)	
)	
_____)	

John M. Smith, appeared pro se.

This case comes before the Commission on a timely appeal filed by John M. Smith (Smith) seeking review of an Order of Dismissal issued by Unfair Labor Practice Manager Mark S. Downing.¹ The Washington Federation of State Employees (union) did not file a brief in response to Smith's appeal.

ISSUES PRESENTED

The only issue before the Commission is whether Smith's amended complaint alleging union interference and discrimination with employee rights states a cause of action that could be remedied by this Commission under RCW 41.80.140.

¹ State - Social and Health Services (Washington Federation of State Employees), Decision 9548 (PSRA, 2007).

We have reviewed Smith's original and amended complaints.² With respect to all allegations in the complaints, we find that the Unfair Labor Practice Manager correctly concluded that Smith's amended complaint failed to state a cause of action.

ANALYSIS

The Deficient Allegations

Several allegations in the complaint and amended complaint fail to state causes of action:

- Smith's claim that the union failed to inform him of the contract ratification election was filed on December 20, 2005, at least one-year after the union conducted the ratification election in late-September 2004, and well beyond the six-month statute of limitations found in RCW 41.80.120.
- Smith's allegation that the union failed to represent him because he associates himself with the Republican party failed to state a cause of action that this Commission can redress.³
- Smith's assertion in his amended complaint that the union failed to provide him with the results of the ratification

² 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).

³ RCW 42.17.680(2) prohibits labor organizations from discriminating against employees for political activities. The Public Disclosure Commission, and not this Commission, administers that statute, and has jurisdiction over allegations that a labor organization is discriminating against an employee for political beliefs.

elections is an internal union matter and outside the jurisdiction of this Commission.⁴

- Smith's claim that the union failed to process his grievance is beyond the jurisdiction of this Commission. This Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). A closely-related principle is that the Commission does not assert jurisdiction over breach of the duty of fair representation claims arising out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). Such disputes must be processed through the grievance and arbitration machinery within the contract, or through the courts, which can assert jurisdiction to determine and remedy any underlying contract violations.
- Smith lacks standing to challenge the appropriateness of the bargaining unit. Unit clarification petitions may only be filed by employers, exclusive bargaining representatives or their agents, or the parties jointly. WAC 391-35-010.

NOW, THEREFORE, it is

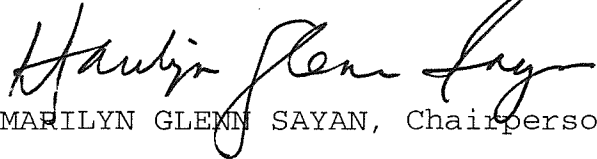
⁴ This Commission asserted limited jurisdiction over contract ratification elections where a union and employer agreed through collective bargaining that all bargaining unit employees, and not just union members, were permitted to vote on contract ratification. *Community College District 7 (Shoreline)*, Decision 9034-A (PSRA, 2006). Absent such an agreement made through collective bargaining, this commission lacks jurisdiction over claims arising from contract ratification elections.


ORDERED

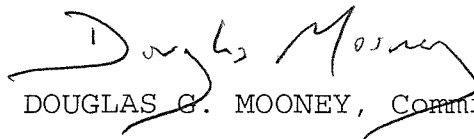
The Order of Dismissal issued by Unfair Labor Practice Manager Mark S. Downing is AFFIRMED.

Issued at Olympia, Washington, the 9th day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner