

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT FEMIANO,

Complainant,

vs.

SEATTLE SCHOOL DISTRICT,

Respondent.

CASE 25243-U-12-6464

DECISION 11584 - EDUC

ORDER OF DISMISSAL

On October 23, 2012, Robert Femiano (Femiano) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 2, 2012, 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 an amended complaint or face dismissal of the case.

Femiano has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), and employer domination or assistance of a union by unlawful interference with internal union affairs in violation of RCW 41.59.140(1)(b) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by its actions concerning the addition of a memorandum of understanding to a collective bargaining agreement.

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

The deficiency notice pointed out the defects to the complaint.

Femiano filed the complaint alleging that the employer passed a resolution to approve a memorandum of understanding (MOU) concerning terms of the collective bargaining agreement between the employer and the Seattle Education Association (union). Femiano apparently filed the complaint as an individual employee and not as a union representative. The statement of facts is not entirely clear; however, the union apparently agreed to, accepted, or did not contest the MOU. Femiano is an employee of the employer and a member of the bargaining unit represented by the union. Femiano appears to allege that the union agreed to, accepted, or did not contest the MOU without a vote of the bargaining unit.

The Commission does not have jurisdiction over internal union business. The manner by which a union amends collective bargaining agreements is generally within a union's purview. Based upon the facts presented, the Commission does not appear to have jurisdiction in this case. Femiano must seek a remedy through internal union procedures or the courts.

Femiano alleges a cause of action for interference in violation of RCW 41.59.140(1)(a), by claiming that the MOU unlawfully promises him a benefit. An unlawful promise of benefit claim alleges that an employer has wrongfully promised a benefit in exchange for an employee relinquishing the employee's collective bargaining rights. The union apparently accepted the MOU on behalf of the bargaining unit, whether by affirmation or waiver. The union represents Femiano and other bargaining unit members in contract negotiations with the employer. Femiano does not show that he was singled out by the employer relative to the MOU or how his bargaining rights were restricted; further, he does not have standing to assert that the union's agreement with the employer affected his individual bargaining rights apart from those of the entire bargaining unit.

Femiano alleges a cause of action for unlawful interference with internal union affairs through the adoption of the MOU. The complaint does not indicate that the employer's actions regarding the MOU violated Chapter 41.59 RCW. There are no facts indicating that the employer interfered with the internal affairs or finances of the union or attempted to create, fund, or control a company

union in violation of RCW 41.59.140(1)(b) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)].

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 25243-U-12-6464 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written in a cursive style.

DAVID I. GEDROSE, Unfair Labor Practice 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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The attached document identified as: **DECISION 11584 - 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: 25243-U-12-06464 FILED: 10/23/2012 FILED BY: PARTY 2
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BAR UNIT: TEACHERS
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