

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LYSUMDRA ALAWIYE,

Plaintiff

v.

MEMORANDUM and ORDER
06-C-233-S

UNIVERSITY OF WISCONSIN-MADISON
and LOCAL 143,

Defendants

Plaintiff Lysumdra Alawiye was allowed to proceed in forma pauperis on her discrimination claim against the University and AFSCME Local 2412. On July 11, 2006 the motion to dismiss of defendant University of Wisconsin-Madison for lack of jurisdiction was granted. On June 20, 2006 defendant AFSCME Local 2412 moved to dismiss plaintiff's complaint. Plaintiff responded to this motion on July 12, 2006. No further briefing is required.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery

under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

MEMORANDUM

Defendant AFSCME Local 2412 argues that the Court lacks subject matter jurisdiction of plaintiff's claim. The Labor Management Relations Act, 29 U.S.C. § 185 et seq., governs representation claims by employees against unions. The Act, however, excludes representation claims against a union that represents employees of a political subdivision of a state. 29 U.S.C. §152(2); NLRB v. Parents and Friends of the Specialized Living Center, 879 F.2d 1442, 1448 (7th Cir. 1989).

Plaintiff was an employee of the University of Wisconsin-Madison which is a political subdivision of the State of Wisconsin. Therefore she can not pursue a representation claim against the union under the Act. Accordingly, the motion of defendant AFSCME Local 2412 to dismiss plaintiff's complaint will be granted.

ORDER

IT IS ORDERED that the motion of defendant AFSCME Local 2412 to dismiss plaintiff's complaint with prejudice is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING her complaint and all claims contained therein with prejudice and costs.

Entered this 25th day of July, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge