

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TECHNICAL EMPLOYEES' ASSOCIATION,)	
)	
Complainant,)	CASE 12646-U-96-03017
)	
vs.)	DECISION 6064-C - PECB
)	
KING COUNTY,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	
)	

Cline and Emmal, by James M. Cline and Sydney D. Vinnedge, Attorneys at Law, appeared on behalf of the complainant.

Norm Maleng, Prosecuting Attorney, by Kerry H. Delaney, Special Deputy Prosecuting Attorney, appeared on behalf of the employer.

This case comes before the Commission on a notice of appeal filed by King County, seeking to overturn an order by which Examiner Walter M. Stuteville denied a motion to dismiss.¹ We grant the motion to dismiss.

BACKGROUND

King County (employer) and Technical Employees' Association (union) are the parties to this dispute. The union filed the complaint charging unfair labor practices on August 16, 1996, alleging a unilateral change while representation petitions were pending

¹ See, King County, Decision 6064-B (PECB, 1999).

involving the affected employees.² The union alleged the practice of contracting engineering services changed after METRO became part of King County government, that King County engineering employees had not handled major projects, and that the dollar value of projects was limited by county ordinance.

The Executive Director dismissed the complaints in this and two other unfair labor practice cases on October 2, 1997, based on the impropriety of the units sought in the representation cases.³ The union appealed those dismissals to the Commission.

The Commission vacated the dismissal in this case,⁴ although we found the union's allegations insufficiently detailed to determine whether there was actionable change within the six-month period for which the complaint could be considered timely. The case was remanded for further processing, "including consideration of any amended complaint filed within 14 days following the date of this order". We stated: "In the absence of a timely amendment which states a cause of action, the case will be dismissed." Based on the April 21, 1998 issuance of our order, any amended complaint was to be filed and served on or before May 5, 1998.

² The union sought certification as exclusive bargaining representative of certain King County employees formerly employed by the Municipality of Metropolitan Seattle (METRO). In King County, Decisions 5910 and 5911 (PECB, 1997), the Executive Director dismissed both representation petitions, based upon a determination that the petitioned-for bargaining units were not appropriate units under RCW 41.56.060. The union appealed those dismissals, but the Commission affirmed them on September 17, 1997. King County, Decisions 5910-A and 5911-A (PECB, 1997).

³ King County, Decision 6064 (PECB, 1997).

⁴ King County, Decision 6064-A (PECB, 1998). We affirmed the dismissals in the other two cases.

The union did not file an amended complaint with the Commission until May 6, 1998. The employer filed a motion for dismissal on December 10, 1998, claiming the amended complaint was untimely and claiming the case was moot because the Commission had dismissed the underlying representation petitions.⁵

On February 9, 1999, Examiner Walter M. Stuteville denied the employer's motion for dismissal.⁶ The employer appealed that order on March 1, 1999.

POSITIONS OF THE PARTIES

The employer asks the Commission to vacate the Examiner's order and to dismiss the case, based on untimeliness of the amended complaint.⁷ It claims that the union did not request an extension, under WAC 391-08-180, of time to file an amended complaint, nor show good cause for the untimely service and filing.

The union argues that the employer's appeal should be rejected, because an interlocutory procedural ruling is unappealable until the Examiner has issued an order under WAC 391-45-310, and because the employer does not raise a jurisdictional issue. In the

⁵ A hearing was scheduled for January 12 and 13, 1999, but was canceled, awaiting a ruling by the Examiner on the employer's motion for dismissal.

⁶ The Examiner ruled that the Commission's jurisdiction is not affected by time limitations imposed by agency rule, order, or written directive after the filing of an unfair labor practice complaint, and the filing and service of ordered documents is not a jurisdictional requirement.

⁷ Because we are dismissing the complaint on the basis of this argument, we do not address the employer's claim that the complaint is moot.

alternative, the union urges the Commission to allow a liberal application of the rules in regard to its late filing of the amended complaint. It contends the Commission has consistently allowed amended complaints, and that a hearing on the merits is required in the interests of justice.⁸

DISCUSSION

The right to appeal generally is premised, in WAC 391-45-350, upon the issuance of an order of dismissal by the Executive Director under WAC 391-45-110(1) (i.e., a potential final order issued at the preliminary ruling stage), or the issuance of an order by an Examiner under WAC 391-45-310 (i.e., a potential final order "containing findings of fact and conclusions of law"). In City of Yakima, Decision 3880 (PECB, 1991), the Commission considered an interlocutory matter which raised a question of "jurisdiction", but pointed out that the rules for processing of unfair labor practice cases make no provision for appeals to the Commission from interlocutory procedural rulings.

The union goes too far in suggesting that Yakima compels a requirement in this case that the employer wait until an order has been issued under WAC 391-45-310. We accept the employer's appeal in this case for the circumscribed reason that the appeal concerns compliance with our order of April 21, 1998.

The union's original complaint was inadequate to pass scrutiny under WAC 391-45-110. The Commission clearly gave the union a

⁸ Because we are dismissing the complaint on the basis of the timeliness argument, we do not address the union's argument that the complaint is not moot.

specific time in which to amend. Rather than calling for interpretation of any statute or rule, the "late amendment" issue in this case involves whether the Commission's order was followed sufficiently to warrant further processing of the case. We deem it was not. As the employer states, the union did not request an extension, under WAC 391-08-180, of the time allowed for it to file an amended complaint. The union also gave no reason for the late filing. The Executive Director and Examiner should not have accepted the late-filed amended complaint in this case.

NOW, THEREFORE, it is


ORDERED

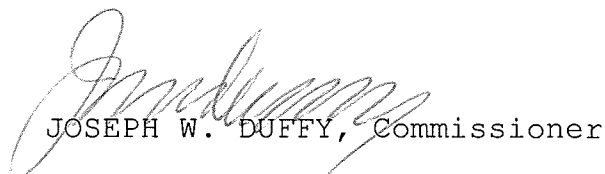
The complaint charging unfair labor practices in this case is DISMISSED.

Issued at Olympia, Washington, on the 23rd day of April, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner