

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANACORTES POLICE SERVICES GUILD,)	
)	
Complainant,)	CASE 14551-U-99-3634
)	
vs.)	DECISION 7768-A - PECB
)	
CITY OF ANACORTES,)	DECISION OF COMMISSION
)	
Respondent.)	
)	
)	

Cline & Associates, by *James M. Cline*, Attorney at Law,
for the union.

Keating, Bucklin & McCormack, by *Deborah D. Brookings*,
Attorney at Law, for the employer.

This case comes before the Commission on an appeal filed by the Anacortes Police Services Guild, seeking to overturn Findings of Fact, Conclusions of Law, and Order issued by Examiner Kathleen O. Erskine.¹ The Commission dismisses the appeal as untimely or, in the alternative, for failure of prosecution.

BACKGROUND

On April 27, 1999, the Anacortes Police Services Guild (union) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC. The union alleged that the City of Anacortes (employer) refused to bargain by delaying or refusing to provide information requested by the union. After a

¹ *City of Anacortes*, Decision 7768 (PECB, 2002).

hearing, Examiner Erskine concluded that the employer did not commit an unfair labor practice, and she dismissed the complaint on June 14, 2002.

The union filed a notice of appeal 25 days later, on July 9, 2002.² There was no mention of an extension of the deadline for briefs in the notice of appeal or the letter covering its transmittal.

On July 17, 2002, the union used e-mail to file a motion for delay of the deadline for its appeal brief to August 9, 2002. In a letter filed by fax on the same day, counsel for the employer acknowledged having been contacted by the union about the request for a continuance, but indicated that she opposed any delay because of her trial schedule in coming months.

On July 19, 2002, the union filed what should have been the conforming copy of the motion filed on July 17, 2002, but it did not conform to (and so failed to perfect) the earlier filing. Instead, counsel for the union hand-wrote: "The Complainant is not opposed to granting [counsel for the employer] a like extension, however" followed by the attorney's initials.

August 9, 2002, passed without the union filing an appeal brief. A request for a further extension filed by fax on that day did not indicate that contact had been made with the employer as required by WAC 391-08-180 and was rejected in light of the employer's previous opposition. The union never filed an appeal brief.

² The notice of appeal and cover letter were dated July 2, 2002, and counsel for the union asserted in a later document that the notice of appeal was filed on July 5, 2002, but the agency date stamp on the notice of appeal and the cover letter are consistent with an "appeal time calculator" form in the file, all of which list "July 9, 2002" as the date the notice of appeal was filed.

DISCUSSIONUntimely Appeal

The notice of appeal in this case was filed late and must be dismissed on that basis. WAC 391-45-350(1) states:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. *The time for filing a notice of appeal cannot be extended.*

(emphasis added). The Commission has been strict in its enforcement of the time limits for filing notices of appeal and has dismissed untimely appeals in numerous cases. *Port of Seattle*, Decision 7604-A (PECB, 2002) (where notice of appeal was one day late); *City of Spokane*, Decision 6748-B (where notice of appeal was two days late); *Valley Communications Center*, Decision 6097-A (PECB, 1998) (where the notice of appeal arrived 10 minutes after the end of business hours on the day that it was due) (citations omitted). The Supreme Court of the State of Washington has similarly required strict compliance with time limits in a case arising out of Chapter 41.56 RCW. *City of Seattle v. PERC*, 116 Wn.2d 923 (1991).

The Commission has only waived the time limits for appeals where the agency's staff or rules contributed to the late filing. *Port of Seattle, supra* (citations omitted). Here, there is no claim or evidence of any agency error or ambiguous rule.

Lack of Prosecution

Even if the union's notice of appeal had been timely, its failure to file an appeal brief requires dismissal of the appeal. A party

assigning error has the burden of showing a challenged finding is in error and not supported by substantial evidence; otherwise the challenged finding is presumed correct. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364 (1990) (citations omitted); *Renton Technical College*, Decision 7441-A (CCOL, 2002). In the absence of an appeal brief, the union has not supported its challenges to the findings of fact and conclusions of law.

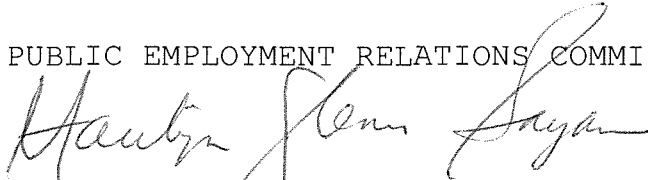
NOW, THEREFORE, it is

ORDERED


1. The union's notice of appeal is DISMISSED on procedural grounds.
2. The Findings of Fact, Conclusions of Law, and Order issued in the above entitled matter on June 14, 2002, by Examiner Erskine shall stand under WAC 391-45-350 as the final order of the agency.

Issued at Olympia, Washington, the 10th day of December, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFEE, Commissioner