STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOHN H. NEWMAN, Complainant,	)	CASE 9589-U-92-2151
vs.	)	DECISION 4106 - PECB
PORT OF SEATTLE, Respondent.	)	ORDER OF DISMISSAL

On January 21, 1992, John H. Newman filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Port of Seattle had committed "employer interference with employee rights" and "other unfair labor practices". An amended complaint filed on January 24, 1992 added an allegation that the Port of Seattle had engaged in "employer discrimination". The statement of facts in this case consists of some 70 numbered paragraphs covering a variety of subjects relating to the complainant's employment as a crane electrician with the Port of Seattle, and the termination of that employment.

The matter came before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.[1] A preliminary ruling letter issued on May 8, 1992 pointed out a number of problems with the complaint, as filed. The complainant was given 14 days in which to file and serve an amended complaint, or face dismissal of the cases

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[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.

for failure to state a cause of action. The complainant submitted supplemental materials which were filed with the Commission on May 20, 1992 and May 27, 1992.

Procedural Defects

The preliminary ruling letter called attention to certain procedural defects which appeared from the face of the complaint, or had been called to the attention of the Commission:

Service of the Complaint on the Employer -
The Commission's rules require the party filing an unfair labor practice complaint to serve a copy on the other party. See, WAC 391-08-120 and WAC 391-45-030. On January 30, 1992, the Commission received a letter from the Port of Seattle, indicating that it had no notice of the complaint in this case.

This proceeding is covered by the Administrative Procedures Act (APA), Chapter 34.05 RCW, which defines the "service" of papers, as follows:

> RCW 34.05.010 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.
> ...
> (18) **"Service"**, except as otherwise provided in this chapter, **means posting in the United States mail, properly addressed, postage prepaid**, or personal service. Service by mail is complete upon deposit in the United States mail. ... [Emphasis by **bold** supplied.]

The implementing rule adopted by the Chief Administrative Law Judge of the State of Washington, pursuant to the APA, as part of the Model Rules of Procedure, Chapter 10-08 WAC, states:

> WAC 10-08-110 ADJUDICATIVE PROCEEDINGS--FILING AND SERVICE OF PAPERS. (1) All notices,

> pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.
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> (2) **Service shall be made** personally or, unless otherwise provided by law, **by first-class, registered, or certified mail**; by telegraph; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company.
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> (3) **Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.** ...
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> ...
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> (5) **Where proof of service is required** by statute or rule, filing the papers with the presiding officer, together with one of the following, shall constitute proof of service:
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> (a) An acknowledgement of service.
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> ...
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> (c) **A certificate that the person** signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by
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> (i) **Mailing a copy thereof, properly addressed with postage prepaid**, to each party to the proceeding or his or her attorney or authorized agent; ...

The Public Employment Relations Commission has adopted identical provisions as WAC 391-08-120(1), (2) and (3). The complainant was thus advised that the complaint would be subject to dismissal if it had not been served on the employer.

The complainant's May 20, 1992 response enclosed a photocopy of a "Receipt for Certified Mail" (PS Form 3800), numbered "P 543 140 777", showing that $3.90 had been paid to mail an item to the Port of Seattle on January 18, 1992. The complainant's May 27, 1992 response indicated that he had made six copies of a document on the day before the item was mailed to the Port of Seattle, and he enclosed a copy of a receipt for such copies. It thus appears to

be arguable that the complainant satisfied the "service" requirements of the APA and implementing rules.[2]

Statute of Limitations -
RCW 41.56.140 limits the processing of unfair labor practice cases to allegations **filed** within six months of the alleged misconduct. The complaint filed in this case on January 21, 1992 is timely only with respect to matters which occurred on or after July 21, 1991.

The preliminary ruling letter pointed out some inconsistencies as to the operative dates. Paragraph 1 of the statement of facts identifies the complainant as having been an employee of the Port of Seattle "from February 1988 to July 1991". Paragraphs 15 and 16 appear to establish July 19, 1991 as the date of the complainant's layoff. Paragraphs 46 through 49 (which generally describe the complainant's pursuit of a "safety" concern about a "trolley maintenance switch") suggest that the layoff occurred on "8/19/91". The complainant was notified that the entire complaint was subject to dismissal unless some complained of conduct was established after July 21, 1991.

The complainant's May 20, 1992 response indicates that the date reference in Paragraph 49 should be "7-19-91", but it continued:

> I have enclosed with this letter, a copy of the certified receipts dated January 18th 1992. I understood (at that time) I had 6 months to file my complaint. My layoff was

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[2] Beyond showing proof of deposit in the mail, the May 27, 1992 response also enclosed a photocopy of a "Request for Return Receipt (After Mailing)" (PS Form 3811-A) endorsed as of May 20, 1992, showing delivery of certified parcel "P 543 140 777" addressed to the Port of Seattle on January 21, 1992. The person accepting delivery is listed as "illegible". The APA does not hold the complainant responsible if the parcel was lost in the mail, and certainly does not hold the complainant responsible if it was lost in the employer's offices.

> June [sic] 19th 1991 and that would have made my deadline January 19th 1992. I mailed my complaints on January 18th 1992 with the understanding that the date that I mailed the complaint determined the filing date and not the date you received the complaint.

The latest inconsistency aside, the date of the complainant's layoff is taken to be no later than July 19, 1992.

The complainant's "understanding" about the deadline for filing is in error under the APA, which defines the "filing", as follows:

> RCW 34.05.010 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.
> ...
> (6) "Filing" of a document that is required to be filed with an agency means **delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.** [Emphasis by **bold** supplied.]

The implementing rule adopted by the Chief Administrative Law Judge of the State of Washington, pursuant to the APA, as part of the Model Rules of Procedure, Chapter 10-08 WAC, states:

> WAC 10-08-110 ADJUDICATIVE PROCEEDINGS--FILING AND SERVICE OF PAPERS.
> ...
> (4) Papers required to be filed with the agency **shall be deemed filed upon actual receipt during office hours at any office of the agency.** Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

The Public Employment Relations Commission has adopted identical provisions as WAC 391-08-120(4). Further, the Commission's rules

for the filing of unfair labor practice complaints require, at WAC 391-45-030, that such complaints be filed in the Olympia office of the Commission. Deposit in the mail is not sufficient to effect a "filing" with the Commission.

The Commission has enforced the "statute of limitations" in numerous past cases, including previous cases involving employees of this employer. Port of Seattle, Decision 2796-A (PECB, 1988). The complaint must be dismissed as untimely.

Contract Violations

The Legislature has set forth the "rules" of the collective bargaining process by statute, and has empowered the Public Employment Relations Commission to prevent "process" violations through the unfair labor practice provisions of the statute. The Commission is not thereby empowered to rule on each and every "substantive" dispute arising in public employment. In particular, collective bargaining agreements are enforceable through arbitration procedures or the courts, and the 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).

The preliminary ruling letter pointed out, in detail, that many of the allegations of this complaint appear to relate solely to disputes about the interpretation or application of the collective bargaining agreement. The responses filed by the complainant do not overcome that lack of jurisdiction. Thus, even if the complaint were found to be timely filed, it is clear that paragraphs 3, 4, 5, 6, 17, 18, 19 through 33, 35 through 39 and 50 through 66 do not state a cause of action for further proceedings before the Commission.

"Refusal to Bargain" Allegations

The Public Employment Relations Commission regulates the duty to bargain under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, but that duty exists only between an employer and the exclusive bargaining representative of its employees. An individual employee lacks legal "standing" to file or pursue a "refusal to bargain" unfair labor practice claim. Grant County, Decision 2703 (PECB, 1987).

The preliminary ruling letter pointed out that certain of the allegations appear to relate to "refusal to bargain" type of conduct. The responses filed by the complainant do not overcome that lack of standing. Thus, even if the complaint were found to be timely filed, it is clear that paragraphs 7 through 14 and 43 through 45 do not state a cause of action for further proceedings before the Commission.[3]

"Discrimination" Allegations

The "process" rules established by the Legislature do prohibit employers from discriminating against employees in reprisal for their lawful union activities. The Commission's rules require, at WAC 391-45-050, the filing of detailed factual allegations.

While this complainant submitted a large volume of material, the preliminary ruling letter pointed out that several of the factual allegations were not sufficiently detailed to form an opinion that

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[3] The preliminary ruling letter noted that the union would have to file any "refusal to bargain" charges, and that the Commission's docket records disclose that IBEW Local 46 filed unfair labor practice charges against the Port of Seattle in connection with the expiration of the contract and the employer's desire to adopt the NECA contract. Those unfair labor practice charges have since been withdrawn, on the basis of a settlement having been reached by the parties in bargaining.

an unfair labor practice violation could be found. The responses filed by the complainant do not provide any additional details. Thus, even if the complaint were to be regarded as timely filed, paragraphs 2, 34, 40 through 49, and 67 through 70 do not state facts sufficient to state a cause of action under Valley General Hospital, Decision 1195-A (PECB, 1981).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Entered at Olympia, Washington, on the 15th day of June, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.