

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF TUKWILA,)	
)	
Employer)	
-----)	
DOUGLAS MC NEARY,)	CASE 11394-U-94-2673
)	
Complainant,)	DECISION 5113-A - PECB
)	
vs.)	
)	
TEAMSTERS UNION, LOCAL 763,)	
)	
Respondent.)	
-----)	
DOUGLAS MC NEARY,)	CASE 11395-U-94-22674
)	
Complainant,)	DECISION 5114-A - PECB
)	
vs.)	
)	
CITY OF TUKWILA,)	DECISION OF COMMISSION
)	
Respondent.)	
-----)	

This case comes before the Commission on a petition for review filed by Douglas McNeary, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.

BACKGROUND

On October 21, 1994, Douglas McNeary filed two unfair labor practice complaints with the Commission, alleging that his employer, the City of Tukwila, and his union, Teamsters Union, Local 763, had committed refusal to bargain unfair labor practices under RCW 41.56.140(4) and 41.56.150(4), respectively. The complaint lists an address for McNeary that appears to have been his residence in the Tukwila area. The Commission's docket records match the address listed on the complaint form. A "notice of case

filing" issued on October 21, 1994 and a "record of appearances" issued on November 1, 1994 each showed that address.

The only facts alleged in the complaint were: (1) McNeary was told by his immediate supervisor that, due to a misunderstanding and/or miscommunication at Tukwila city hall, he was accidentally worked over a 1040 hour limit; and (2) he was laid off. On March 9, 1995, the Executive Director issued a preliminary ruling letter under WAC 391-45-110,¹ noting that analysis must be based on what is contained within the four corners of the statement of facts. The Executive Director noted that he is not at liberty to fill in gaps or make leaps of logic, that "refusal to bargain" charges can only be filed by the employer or union, and that the Commission does not enforce labor agreements through unfair labor practice proceedings. McNeary was informed that employees can file charges alleging employer or union interference with employee rights, or alleging employer or union discrimination based on union activity. The preliminary ruling letter advised that the cases would be held open for 14 days to permit the filing of amended complaints.

The preliminary ruling letter was addressed to McNeary at the address listed in the complaint. Nothing further was heard or received from McNeary at that time. A search of the Commission's case files failed to disclose an envelope returned by postal authorities as undeliverable.

An order issued by the Executive Director on May 12, 1995, dismissed the complaints as failing to state a cause of action and notified the parties of their right to appeal by filing a petition

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 review with the Commission pursuant to WAC 391-45-350.² That order was mailed to the address listed in the Commission's docket records. Nothing further was heard or received from McNeary during the 20-day period allowed for filing of a petition for review. The cases were closed as of June 2, 1995.

McNeary filed a three-sentence petition for review with the Commission on June 8, 1995. Writing from an address in Oregon, he stated "I was never sent or never received any preliminary ruling letter in which no cause of action was stated."

DISCUSSION

The "notice of case filing" and "record of appearances" issued under the Commission's docketing procedures invite parties to keep the Commission informed of any changes of address. Moreover, those formats notify parties that notices and orders will be issued per the addresses contained in the Commission's computerized docket records. The Commission cannot take responsibility for a failure by parties to keep their addresses current.

The order of dismissal issued by the Executive Director eventually reached McNeary at his current Oregon address. From that fact, there is every reason to infer that the preliminary ruling letter mailed earlier would also have been forwarded if he had moved by that time.

The order of dismissal mentioned the availability of Commission review. The cited rule, WAC 391-45-350, requires that a petition for review be filed within 20 days following the date of the order. The order of dismissal in this case was dated May 12, 1995, thus June 1, 1995 was the last day for filing a petition for review.

² City of Tukwila, Decisions 5113 and 5114 (PECB, 1995).

The complainant filed his petition for review June 8, 1995. The petition for review is untimely, and must be dismissed. See, City of Seattle, Decision 4556-A (PECB, 1994); City of Seattle, Decision 3199-A (PECB, 1989); Port of Seattle, Decision 2661-B (PECB, 1989); Lewis County, Decision 2957-A (PECB, 1988); City of Seattle, Decision 2230-A (PECB, 1985); Seattle Public Health Hospital (American Federation of Government Employees, Local 1170), Decision 1781-A (PECB, 1984); Port of Ilwaco, Decision 970-A (PECB, 1980); Spokane School District, Decision 310-A (EDUC, 1978).

NOW, THEREFORE, it is


ORDERED

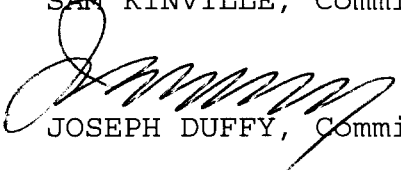
The petition for review is DISMISSED.

ISSUED at Olympia, Washington, this 21st day of June, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANET L. GAUNT, Chairperson


SAM KINVILLE, Commissioner


JOSEPH DUFFY, Commissioner