

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EMELITA REYES MONIZ,

Complainant,

vs.

WASHINGTON STATE FERRIES,

Respondent.

CASE 24245-U-11-6212

DECISION 11220 - MRNE

ORDER OF DISMISSAL

On September 14, 2011, Emelita Reyes Moniz (Moniz) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Washington State Ferries (employer) as the respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on September 22, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Moniz was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

Moniz requested and was granted a ten day extension to file an answer; Moniz filed an amended complaint on October 24, 2011. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer discrimination in violation of RCW 47.64.130(1)(c) [and if so, derivative interference in violation of RCW 47.64.130(1)(a)], by actions concerning Moniz.

---

<sup>1</sup> 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.

The deficiency notice pointed out the defects to the complaint.

WAC 391-45-050 governs the filing of unfair labor practice complaints. Each complaint must contain, in separate numbered paragraphs, "Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." WAC 391-45-050(2). The complaint must contain a statement of the remedy sought by the complainant. WAC 391-45-050(3). Chapter 47.64 RCW does not presently include a limitations of action provision, but the Marine Employees Commission (MEC) limited the time for filing complaints to one hundred eighty calendar days (180) from the alleged violation, under WAC 316-45-020. In 2ESSB 5742, the Legislature directed a six month statute of limitations, effective July 1, 2013. In the interim, unfair labor practice complaints filed under Chapter 47.64 RCW will be evaluated for timeliness under the 180 day limit historically used by the MEC.

The complaint does not conform to either WAC 391-45-050(2) or WAC 391-45-050(3). The complaint was filed on September 14, 2011. It is not clear when the events occurred, although emails attached to complaint give dates in June 2010, well outside the 180 day limit. The materials submitted by Moniz do not constitute an unfair labor practice complaint under Chapter 391-45 WAC and do not state a cause of action.

#### Amended Complaint

The amended statement of facts does not contain numbered paragraphs and does not include a remedy request. However, those omissions alone do not render the amended complaint defective. The amended complaint is untimely, and the Commission lacks jurisdiction.

The amended complaint gives March 18, 2011, as the most recent date concerning Moniz' claims. Even if the amended complaint stated a cause of action, it would be untimely. Moniz filed the complaint on September 14, 2011, but the complaint should have been filed no later than September 14, 2010.

In any case, the amended complaint does not state a cause of action for allegations within the Commission's jurisdiction. The Public Employment Relations Commission has jurisdiction over

discrimination claims against employers only when those charges are directly related to union activities. The amended complaint explicitly identifies the allegations as concerning discrimination due to age, gender, and race. The Commission has no jurisdiction over those claims, and Moniz must seek relief through human rights agencies and/or the courts.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 24245-U-11-6212 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 4th day of November, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose". The signature is written in a cursive style with a large initial "D".

DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 11/04/2011

The attached document identified as: **DECISION 11220 - MRNE** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24245-U-11-06212 FILED: 09/14/2011 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: MARINE OFFICER  
DETAILS: -  
COMMENTS:

EMPLOYER: WASHINGTON STATE FERRIES  
ATTN: DIANE LEIGH  
210 11TH AVE SW STE 331  
PO BOX 43113  
OLYMPIA, WA 98504-3113  
Ph1: 360-725-5167

REP BY: DON ANDERSON  
OFFICE OF THE ATTORNEY GENERAL  
PO BOX 40145  
7141 CLEANWATER DRIVE SW  
OLYMPIA, WA 98504-0145  
Ph1: 360-586-2466 Ph2: 360-664-4167

PARTY 2: EMELITA REYES MONIZ  
ATTN:  
2140 E 21ST ST  
BREMERTON, WA 98310  
Ph1: 360-440-3322