

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOHN J. DIEL, JR.,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 24299-U-11-6225

DECISION 11221 - PECB

ORDER OF DISMISSAL

On September 30, 2011, John J. Diel, Jr. (Diel) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on October 7, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Diel was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On October 26, 2011, Diel filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The deficiency notice pointed out the defects to the complaint.

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), and employer discrimination for filing charges in violation of RCW

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<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.

41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its actions toward John J. Diel, Jr. (Diel).

WAC 391-45-050 requires complaints to contain numbered paragraphs, remedy requests [WAC 391-45-050(3)], and a copy of the current or most recent contract [WAC 391-45-050(5)(c)(ii)]. WAC 391-050(2) requires complaints to contain “Clear and concise statements of the facts constitution the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

The statement of facts does not have numbered paragraphs, there is no remedy request, and the attached collective bargaining agreement is from 2007-2009.

Diel alleges unfair labor practices occurring in 2011; however, his union activities apparently concluded in 2009, and he ceased serving as a union officer in April 2010. Diel states his belief that the employer’s alleged unfair labor practices are a result of his prior union activities. However, this belief alone is insufficient to state a cause of action. Diel should clarify the connection between his union activities and the allegations of employer unfair labor practices occurring in 2011.

The statement of facts indicates that Diel became a Functional Analyst in March 2010, requested a voluntary layoff from an Animal Control Sergeant position in April 2010, and in April 2011 was laid off from the Functional Analyst position. The complaint indicates that the bargaining unit involved is the Animal Control Officers Guild (ACOG), but it is not clear if the Functional Analyst position is a represented position, and if so, whether it is in the ACOG bargaining unit or another bargaining unit. In addition, it is not clear whether Diel remained an employee of King County following his layoff in April 2011, and if so, for how long.

The statement of facts contains information about Rebecca Diel, but it is not clear if this information is an attempt to allege a separate claim, or is included only as background to support Diel’s complaint. If alleged as a separate claim, then Rebecca Diel would need to file a separate unfair labor practice complaint.

Amended Complaint

The amended complaint is properly formatted with numbered paragraphs, includes a remedy request, and explains that the collective bargaining agreement is the most recent one between the union and employer. The amended complaint also clarifies that the information regarding Rebecca Diel is background information and not a separate claim, and that at the time he filed the complaint Diel was not employed by King County and was not a member of the Animal Control Officers Guild. Finally, the amended complaint makes clear that Diel's claim is limited to events occurring on or after April 7, 2011.

The amended complaint restates the allegations of employer interference with employee rights in violation of RCW 41.56.140(1), employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), and employer discrimination for filing charges in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)]. Diel cites numerous union activities, including his involvement in filing several unfair labor practice complaints between 1999 and the first few months of 2010, and provides facts alleging employer discrimination against him based upon his union activities. Diel alleges that he received a negative performance review in January 2010, and that he appealed the review based in part on his belief that it was a result of his union activities. In March 2010 Diel was the Animal Control Sergeant, a bargaining unit position, but at that time took an unrepresented position with the employer as a Functional Analyst. In April 2010, after being denied a request to take a voluntary layoff, he resigned from his Sergeant position and thus was no longer a bargaining unit member. Diel was laid off from the Functional Analyst position on April 29, 2011. Since that date, he has not been an employee of King County.

Diel alleges that the employer refused to interview or hire him for several positions (hereinafter, failure to hire), in reprisal for his union activities, and makes the following failure to hire claims:

- Between April 7 and 12, 2011, the employer declined to interview Diel for a Marketing and Licensing Manager position;

- Between April 28 and October 6, 2011, the employer failed to hire him for the Animal Control Sergeant position;
- On May 26, 2011, the employer declined to interview him for an Employee and Labor Relations Representative position;
- Between July 15 and August 3, 2011, the employer revised the position description for an Administrator II position allegedly in order to exclude him;
- On August 26, 2011, the employer declined to interview him for a Regional Animal Services Manager position.

WAC 391-45-010 provides that “A complaint charging that a person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.” Diel did not file the present amended complaint while an employee of King County or based upon a claim of unlawful termination by King County. Thus, Diel lacks standing to file this unfair labor practice claim, and the Commission does not have jurisdiction on that basis alone.

In addition, Diel must show that the employer’s actions were connected to his union activities in order to state a claim for relief within the Commission’s jurisdiction. Diel specifies in most of his allegations that his claims are based upon his belief that the employer’s actions were a result of his prior union activities. However, he does not state that belief regarding his taking the Functional Analyst position in March 2010, his voluntary resignation as Animal Control Sergeant in April 2010, or his layoff in April 2011. Diel’s present claims solely concern the employer’s alleged failures to hire him. Actions under Chapter 41.56 RCW are limited to six months from the time a complainant knew or should have known of the alleged violation (“triggering event”). RCW 41.56.160(1). *City of Bellingham*, Decision 10907 (PECB, 2010). Diel identifies the triggering event as the refusal to interview him for the Marketing and Licensing Manager’s position, beginning on April 7, 2011. Prior to the denial of that interview, Diel had not been active in the union, or even a union member, since April 2010. Diel’s claims after April 2011 do not indicate a reasonable relationship to union activities that ended about one year prior to the triggering event. Thus, even if Diel had standing to file this action, the facts provided by Diel do not indicate that the Commission has jurisdiction over his failure to hire claims.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 24299-U-11-6225 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", written in a cursive style.

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

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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

BY: *[Signature]* / ROBBIE DUFFIELD

CASE NUMBER: 24299-U-11-06225 FILED: 09/30/2011 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: ANIMAL CONTROL  
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COMMENTS:

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