

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,		
	Employer.	
MATTHEW REESE,		
	Complainant,	CASE 135095-U-22
vs.		DECISION 13602 - PECB
PROTEC17,		
	Respondent.	DECISION OF COMMISSION

Matthew Reese, the complainant.

Paul Marvy, General Counsel, for PROTEC17.

BACKGROUND

On May 12, 2022, Matthew Reese (Reese/complainant) filed an unfair labor practice complaint against PROTEC17 (union). Unfair Labor Practice Administrator Dario de la Rosa issued a preliminary ruling finding the complaint stated a cause of action for union interference in violation of RCW 41.56.150(1) by PROTEC17 breaching its duty of fair representation by failing to process a grievance. The case was assigned to Examiner Katelyn Sypher.

On September 15, 2022, the union filed a motion for summary judgment. On October 19, 2022, the Examiner denied the union's motion for summary judgment. On November 8, 2022, the union appealed the Examiner's ruling denying summary judgment.

ISSUE

The issue before the Commission is whether the union's appeal is timely. The Examiner's denial of summary judgment was an interlocutory decision. Interlocutory decisions are appealable under WAC 391-45-310(1). We dismiss the appeal as untimely. The case is remanded to the Examiner for further processing.

ANALYSIS

Two rules address appeals to the Commission in unfair labor practice cases, WAC 391-45-310(1) and WAC 391-45-350. WAC 391-45-350 applies generally to "any rulings in the proceedings up to the issuance of the order" and allows appeals within 20 days of the decision. WAC 391-45-310(1) specifically limits the time to file a motion for discretionary review of an interlocutory decision to seven days.

Before the adoption of WAC 391-45-310(1), a party could not seek review of an interlocutory decision. *See City of Yakima*, Decision 3880 (PECB, 1991); *Washington State – Ecology*, Decision 9034-B (PSRA, 2005) (finding the Executive Director's decision not to invoke the blocking charge rule was interlocutory and not the type of order that may be appealed to the Commission). The Commission adopted WAC 391-45-310(1) to provide a procedure for interlocutory review and allow "interlocutory appeals to ensure that those appeals do not delay the administrative process." *Pierce County (Teamsters Local 117)*, Decision 10636 (PECB, 2010).

WAC 391-45-350 is a general rule governing appeals while WAC 391-45-310(1) is a specific rule applying to interlocutory decisions. When a general rule conflicts with a specific rule covering the same subject in a more minute and definite way, the specific rule prevails. *Puget Sound Medical Supply v. Dep't of Social and Health Services*, 156 Wn. App. 364, 377 (2010) (citing *State ex. rel. Phillips v. Washington State Liquor Control Board*, 59 Wn.2d 565 567 (1962)).

Therefore, we conclude the seven-day time to file a motion for discretionary review of an interlocutory decision in WAC 391-45-310(1) applies in this case. Finding otherwise would void

WAC 391-45-310(1) and be inconsistent with previous decisions. *See City of Mill Creek*, Decision 13402 (PECB, 2021); *Prosser Memorial Hospital*, Decision 12485 (PECB, 2015) (dismissing as untimely an appeal under WAC 391-25-660 that sought review of an interlocutory ruling).

CONCLUSION

The Examiner's ruling denying the union's motion for summary judgment was an interlocutory decision. Motions for discretionary review of interlocutory decisions must be filed within seven days of the decision. The union did not file its appeal within seven days of the Examiner's decision. Therefore, we dismiss the appeal as untimely.

ORDER

PROTEC17's interlocutory appeal is DENIED. The case is remanded to the Examiner for further processing.

ISSUED at Olympia, Washington, this 8th day of December, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



ELIZABETH FORD, Commissioner



RECORD OF SERVICE

ISSUED ON 12/08/2022

DECISION 13602 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 135095-U-22

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