

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SUZANNE DELACEY,)	CASE 13823-U-98-3385
)	
Complainant,)	DECISION 7073-A-EDUC
)	
vs.)	
)	
CLOVER PARK SCHOOL DISTRICT,)	DECISION OF COMMISSION
)	
Respondent.)	
_____)	

King and Gautschi, by *Larry King*, Attorney at Law, and *Frederick H. Gautschi, III*, Attorney at Law, represented the complainant.

Vandeberg, Johnson, and Gandara, by *William A. Coats*, Attorney at Law, represented the employer.

This case comes before the Commission on an appeal filed by Suzanne DeLacey, seeking to overturn the Findings of Fact, Conclusions of Law, and Order issued by Examiner Rex Lacy.¹ The Commission dismisses the appeal on procedural grounds.

BACKGROUND

On April 3, 1998, Suzanne DeLacey (complainant) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, alleging that Clover Park School District (employer) violated RCW 41.56.140(1) and (3). A hearing was held on June 10 and 11, and July 9, 12, and 13, 1999. On May 18, 2000, the Examiner issued the Findings of Fact, Conclusions of Law, and

¹ *Clover Park School District*, Decision 7073 (EDUC, 2000).

Order, dismissing the complaint on its merits. The deadline for receiving a notice of appeal was thus June 7, 2000.

On June 2, 2000, the complainant filed the employee's Notice of Appeal, which read in full:

Pursuant to WAC 391-45-350 comes now the complainant, Suzanne DeLacey in the above captioned matter, and notifies the Commission and parties of her intent to exercise her right to appeal the recent decision of Examiner Rex L. Lacy.

On June 9, 2000, the employer filed a Request for Dismissal (or in the alternative Notice of Cross-Appeal) arguing that the employee's notice of appeal was insufficient and should be dismissed.

Some documents concerning this case were mistakenly sent to the Personnel Appeals Board by the employee. There was a round of correspondence to straighten this out.

On June 16, 2000, the Commission received the employee's request for a one-month extension of the deadline of the employee's appeal brief. The employer agreed to the extension with the understanding that it was not waving any defenses.

The Commission did not receive the employee's Amended Notice of Appeal until June 22, 2000. The employee argued that the original notice of appeal was filed on-time with PERC, but admitted that the notice did not comply with the statutory requirements because it did not set out the claimed error.²

² The employee asserted that all parties knew there was only one issue on appeal *from DeLacey's viewpoint*. The employee's appeal brief argues three issues on appeal, however.

On June 22, 2000, the Commission received the employer's Brief Requesting Dismissal (or in the alternative Brief for Cross-Appeal). The employer argued the appeal notice violated WAC 391-45-350(3) because it failed to identify the specific rulings, Findings of Fact, Conclusions of Law, or Orders claimed to be in error and that this procedural defect warrants dismissal of the appeal.

DISCUSSION

Applicable Standards

Detailed Notice Requirements -

The Commission's rules require that a notice of appeal (formerly termed a "petition for review") identify the specific rulings, findings, and conclusions a party wishes to challenge. WAC 391-45-350(3) provides the following:

(3) A notice of appeal or notice of cross-appeal shall identify, in separate number paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(emphasis added).

Thus, a party must put the Commission and opposing party(s) on notice of the argument(s) it desires to advance. *City of Kirkland*, Decision 6377-A (PECB, 1998). The Commission expects the parties to closely monitor their compliance with the rules. If a party fails to do so, the Commission has an obligation to apply the rules in fairness to the other party. *City of Kirkland, supra*. Where the notice of appeal does not supply sufficient information on which to determine a specific basis for an appeal, the Commission

need not reach the substantive issues of the case. See *City of Kirkland, supra*.³

Comparison of Notices of Appeal and Election Objections -

A notice of appeal must be filed within twenty days and no extensions will be granted. WAC 391-45-350(1) provides the following:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. *The time for filing a notice of appeal cannot be extended.*

(emphasis added).

Similarly, an election objection must be filed within seven days and no extensions will be granted. WAC 391-25-590 provides the following:

The due date for objections is seven days after the tally has been served *The time period for objections cannot be extended.*

(emphasis added).

WAC 391-25-590 and WAC 391-45-350(1) contain almost identical language disallowing extensions. Although the Commission has not previously ruled on late filed amendments to appeal notices, it has disallowed amendments to election objections filed after the seven-

³ *But see, Auburn School District (PSE of Washington), Decision 6939-A (PECB, 2000) (finding the notice of appeal deficient, but nevertheless reviewing the whole record). This case is distinguishable from the present case because there was a pro se defendant, the petition was less deficient, and there were extenuating circumstances surrounding the case.*

day period. *West Valley School District*, Decision 2913-B (PECB, 1998).

Waiver -

The Commission has authority to waive Commission rules, when a party is not prejudiced. The subject is addressed in Chapter 391-08 WAC, which sets forth general rules of practice and the procedures applicable to all types of proceedings before the Commission. WAC 391-08-003. The exercise of that discretion should be based on whether such a waiver effectuates the purposes and provisions of the applicable collective bargaining statutes.

The collective bargaining statutes administered by the Commission embody a legislative policy requiring employers and unions to communicate to one another. *Mason County*, Decision 3108-B (PECB); RCW 41.56.030(4); RCW 41.56.100; RCW 41.58.040.

Strict Enforcement -

The Commission has been strict in its enforcement of the time limits for filing election objections and appeals and has dismissed untimely appeals in numerous cases. See *City of Spokane*, Decision 6748-B (PECB, 1999) (appeals and election objections); *Valley Communications Center*, Decision 6097-A (PECB, 1998) (appeals and election objections); *Clallam County Parks and Recreation*, Decision 6285 (PECB, 1998) (election objections); *Puget Sound Educational Services District*, Decision 5126-A (PECB, 1996) (appeals); *City of Tacoma*, Decision 5634-B (PECB, 1996) (appeals); *King County*, Decision 5720-A (PECB, 1987) (appeals).

The Washington State Supreme Court has similarly required strict compliance with time limits in a case arising out of Chapter 41.56 RCW. *City of Seattle v. PERC*, 116 Wn.2d 923 (1991). The Washington State Court of Appeals allows dismissal for not complying with

the Commission's higher pleading requirement for complaints. *Apostolis v. Seattle*, 101 Wn. App. 300 (2000).

Inadvertent Errors -

Inadvertent errors such as attorney error or lack of due diligence have been found insufficient justification for waivers in several past cases. See *Valley Communications Center, supra*, and the cases cited therein.

The Commission has only waived the time limit for appeal (i.e. election objections or notice of appeal) in instances where the agency staff or the rules contributed to the late filing. See *City of Tukwila*, Decision 2434-A (PECB, 1987) (election objections); *Island County*, Decision 5147-C (PECB, 1986) (notice of appeal).

Application of Standards/Conclusion

We dismiss this case based on the appellant's failure to comply with WAC 391-45-350. The notice of appeal was insufficient so an amendment was necessary; however, the amendment was outside the twenty-day time period.

Just as the Commission does not allow amendments to election objections after the close of the objections period, the Commission interprets the plain language of WAC 391-45-350(1) (which reads "The time for filing a notice of appeal cannot be extended") to mean that an amendment to the notice of appeal will not be accepted after the twenty-day deadline.⁴ We do not find sufficient justification for a waiver, because such a waiver would not further the statutory policies of communication and would be contrary to agency precedent. To not dismiss, would undermine WAC 391-45-350, which

⁴ Courts defer to agency interpretation of their own rules. *Clallam County v. PERC*, 43 Wn. App. 589 (1986).

has a time limit and requires specific pleadings, and cause it to serve no purpose. The responding party would have to wait for an undetermined amount of time to find out what the appeal is about. Parties would be allowed to file very general petitions and then get additional time to amend.

NOW, THEREFORE, it is

ORDERED

1. The employee's notice of appeal is DISMISSED on procedural grounds.
2. The Findings of Fact, Conclusions of Law, and Order issued in the above entitled matter on May 18, 2000, by Examiner Rex L. Lacy shall stand under WAC 391-45-350 as the final order of the agency on the merits of the case.

Issued at Olympia, Washington, on the 21st day of March, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner

Chairperson Marilyn Glenn Sayan
recused herself in this case.