

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GILBERTO GOMEZ,)	
)	
Complainant,)	CASE 16551-U-02-4299
)	
vs.)	DECISION 8105 - PSRA
)	
WASHINGTON STATE LOTTERY,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	

On February 2, 2001, Gilberto Gomez (Gomez) filed a complaint charging unfair labor practices with the Washington State Department of Personnel [ULP-476], naming the Washington State Lottery (employer) as respondent. On June 13, 2002, the Public Employment Relations Commission acquired jurisdiction over the complaint.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 26, 2002, indicated that it was not possible to conclude that a cause of action existed at that time. Gomez was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. In September of 2002, the Commission extended the deadline to file an amended complaint to December 16, 2002. Nothing further has been received from Gomez.

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.

The Director of Administration dismisses the complaint for failure to state a cause of action.

DISCUSSION

The complaint alleged that the employer committed unspecified unfair labor practices under Chapter 41.56 RCW, by retaliating against Gomez for filing ULP-442 and ULP-451 with the Department of Personnel. The deficiency notice stated that unlike the Department of Personnel or the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for the presentation of its case under WAC 391-45-270.

The deficiency notice indicated that the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT CHARGING UNFAIR LABOR PRACTICES. Each complaint shall contain, in separate numbered paragraphs:

. . . .
(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The deficiency notice informed Gomez that the complaint did not conform to the requirements of WAC 391-45-050.

The deficiency notice indicated that the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to

prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. . . .

The deficiency notice pointed out that while the complaint referred to various retaliatory actions, the complaint failed to indicate when these actions were taken by the employer. The deficiency notice stated that in order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after August 2, 2000. The deficiency notice indicated that although the complaint did not specify a particular statutory violation, it appeared that the complaint was alleging a violation of employer discrimination for filing an unfair labor practice charge under RCW 41.56.140(3).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 4th day of June, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

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.