

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SCOTT SYVERSON,	)	
	)	CASE 16541-U-02-4289
Complainant,	)	DECISION 8098 - PSRA
	)	
vs.	)	CASE 16544-U-02-4292
	)	DECISION 8099 - PSRA
WASHINGTON STATE LOTTERY,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

On January 2, 2001, Scott Syverson (Syverson) filed a complaint charging unfair labor practices with the Washington State Department of Personnel [ULP-471], naming the Washington State Lottery (employer) as respondent. The Commission docketed the complaint as Case 16541-U-02-4289.

On February 2, 2001, Syverson filed a second complaint charging unfair labor practices with the Washington State Department of Personnel [ULP-476], naming the employer as respondent. The Commission docketed the second complaint as Case 16544-U-02-4292.

On June 13, 2002, the Public Employment Relations Commission acquired jurisdiction over the complaints. The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and deficiency notices issued on August 26, 2002, indicated that it was not possible to conclude that a cause of action existed at that time. Syverson was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases. In September of 2002, the Commission extended the deadline to file amended complaints to December 16, 2002. Nothing further has been received from Syverson.

---

<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

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

### DISCUSSION

The complaint in Case 16541-U-02-4289 alleged that the employer committed unspecified unfair labor practices under Chapter 41.56 RCW, by retaliating against Syverson for filing ULP-442 with the Department of Personnel. The second complaint in Case 16544-U-02-4292 alleged that the employer committed unspecified unfair labor practices under Chapter 41.56 RCW, by retaliating against Syverson for filing ULP-442 and ULP-451 with the Department of Personnel.

The deficiency notices found similar problems in the complaints, stating 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 notices 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 notices informed Syverson that the complaints did not conform to the requirements of WAC 391-45-050.

The deficiency notices 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 notices pointed out that while the complaints referred to various retaliatory actions, the complaints failed to indicate when these actions were taken by the employer. The deficiency notices stated that in order for the complaints to be timely under RCW 41.56.160, the complaint in Case 16541-U-02-4289 must contain allegations of employer misconduct occurring on or after July 2, 2000, and the complaint in Case 16544-U-02-4292 must contain allegations of employer misconduct occurring on or after August 2, 2000. The deficiency notices indicated that although the complaints did not specify a particular statutory violation, it appeared that the complaints were 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 complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5<sup>th</sup> 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.