STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONALD J. WAKENIGHT, Complainant,	)	CASE NO. 5702-U-85-1052
vs.	)	DECISION NO. 2192-A PECB
CITY OF SEATTLE, Respondent.	)	ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-entitled matter on February 26, 1985. A preliminary ruling was issued on April 1, 1985, wherein it was noted that the facts alleged were insufficient to base a conclusion that a cause of action exists for unfair labor practice proceedings under Chapter 41.56 RCW. The nature of the original allegation was a claim by the complainant that he had been discriminated against by the employer in regards to a promotion, on account of his previous filing of unfair labor practice charges. In a letter filed on April 8, 1985, the complainant stated:

> I base my charge of violation of R.C.W. 41.56.140 Section 3 on the following:
>
> 1. The City of Seattle would have no reason to discriminate against me other than my past filing of U.L.P. or grievances.
>
> 2. In 1979 I applied for the same position and I came out in the top three in both the test and the interviews.
>
> 2.a. In December 1979 I became a full time line supervisor for the City. Supervision is a necessary element of the job I applied for and I now have over five years additional experience in supervision.
>
> 3. Since I placed third in 1979 I took a course on personnel interviewing through Edmonds Community College which I passed and earned college credit for.
>
> 4. On February 12, 1985 I testified before the State of Washington House of Representatives. Local Government Committee Chair Representative Margaret Haugen complimented me on my testimony. This was 8 days after my interview.
>
> 5. Mr. Everett Rosmith, the City of Seattle Director of Labor Relations, who has taken an interest in all my past U.L.P.'s and grievances was acting personnel director when this happened.

6. I have not interviewed for any position in my life without being in the top three.

I believe based on the above facts that I have reasonable ground to believe the City has discriminated against me. I further believe that all the City would have to do to clear up this is get sworn statements from the three panel members that my rating (not in the top six) was based upon the interview and not any other factor.

The amendatory material has been reviewed pursuant to WAC 391-45-110, and it is again concluded that the complaint alleges insufficient facts to warrant further proceedings.

Paragraph 1 of the April 8, 1985 amendment falls short of alleging that the city had discriminated against the complainant. Paragraph 5 names an employer official, but makes no specific tie of that official to the transaction complained of. Since a discrimination violation requires proof of an intentional act on the part of the employer, an absence of motivation or an absence of other reason is not sufficient to base a finding against the employer.

Paragraphs 2 and 6 are taken for the purposes of this preliminary ruling to be true and provable, but they fail to take account of the fact that the complainant may have faced new and different competition in the recruitment at issue. Similarly, the fact that the complainant has acquired additional qualifications and has done a good job in the past, as alleged in paragraphs 2.a., 3 and 4, does not preclude the possibility that other candidiates had even higher qualifications. The complainant must have been entitied to something, and must have been deprived of that entitlement by an action of the employer which was calculated in regards to the complainant's protected activity. The complaint now on file would require substantial leaps of logic or engaging in speculation, and so must be dismissed.

NOW, THEREFORE, it is

ORDERED

The complaint filed in the above-entitled matter is dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 16th day of April, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director