

City of Kirkland, Decision 6377-A (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RICHARD A. SWEENEY,)	
)	
Complainant,)	CASE 13830-U-98-3388
)	
vs.)	DECISION 6377-A - PECB
)	
CITY OF KIRKLAND,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
_____)	

This case comes before the Commission on a petition for review filed by Richard A. Sweeney, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.¹

The complaint charging unfair labor practices filed with the Commission on April 6, 1998, named the City of Kirkland (employer) as respondent. Sweeney filed an amended complaint on June 1, 1998. Together, the complaints assert that the employer interfered with employee rights in violation of RCW 41.56.140(2), and discriminated against Sweeney in violation of RCW 41.56.140(1).

The complaint was considered by the Executive Director for purposes of making a preliminary ruling under WAC 391-45-110. At that stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. A respondent will be called upon to file an answer, and its defenses will be considered in processing of the case, only if the complaint is found (as a matter of law) to state a claim for relief available through unfair labor practice proceedings before the Commission.

¹ City of Kirkland, Decision 6377 (PECB, 1998).

In this case, Sweeney alleged, among other things, that he was singled out and discharged from employment by "incompetent" managers who engaged in a pattern of harassment, retaliation, and intimidation directed at him. The Commission does not have jurisdiction over the competency of public managers.

In addition, the complainant stated "[t]he management has constantly blamed their exposed incompetence on union harassment and then retaliated selectively," that he was terminated for his "involvement with other union employees", and that "disciplining me would send a message to other employees about union activity". Sweeney did not, however, provide detailed facts concerning his own union activity or suggest any reason he should be singled out for discrimination on the basis of union activity, as required by WAC 391-45-050.

The Executive Director issued a deficiency notice giving Sweeney 14 days in which to file and serve an amended complaint or face dismissal. Nothing was received from Sweeney, and the Executive Director dismissed the complaint on July 21, 1998, finding no violations of RCW 41.56.140 were stated.

The complainant petitioned for review on July 30, 1998, thus bringing the case before the Commission. Simultaneous with his petition for review, Sweeney requested an extension of the 20-day time period allowed for appeal, and stated that he had not received documents from the employer in response to the complainant. There was also a telephonic communication between Sweeney and a Commission staff member in which Sweeney was advised that there were no papers on file from the employer, and that Sweeney should contact the employer if he needed more time.

By letter dated August 25, 1998, the Clerk to the Commission acknowledged the filing of the petition for review and certain problems:

1. With regard to the request for documents from the employer, it was noted that the employer had not been called upon to answer the complaint, so that no such documents existed.
2. With regard to the request for additional time, it was noted that this could be interpreted as requesting an extension of time for filing a brief in support of the petition for review, but that Sweeney had not indicated he had made any effort to contact other parties to solicit their positions on the requested extension.

Sweeney was given a period of 14 days in which to contact the employer and report its concurrence or opposition on the extension. Nothing further has been heard or received from the complainant in this case.

This appeal is affected by several procedural problems. The filing and service of appeals in unfair labor practice cases are governed by WAC 391-45-350. At the time of the filing in this case, that rule provided as follows:²

WAC 391-45-350 Petition for review of examiner decision. The examiner's findings of fact, conclusions of law and order shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the examiner. **The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for**

² The rule changed on August 1, 1998, but still requires identification of specific rulings, findings of fact, conclusions of law, and orders claimed to be in error.

review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have fourteen days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. **The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument.** If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

[Emphasis by **bold** supplied.]

We expect the parties to closely monitor their compliance with the rules. If a party fails to do so, we have an obligation to apply the rule in fairness to the other party. City of Puyallup, Decision 5460-A (PECB, 1996). See, also, King County, Decision 5595-A (PECB, 1996).

The first procedural defect noted here is that Sweeney's letter petitioning for review does not supply sufficient information on which to determine the specific basis of his appeal. As we recently implied in King County, Decision 6291-A (PECB, 1998), a

party must put the Commission on notice of the arguments it desires to advance.

In addition, the document on its face does not show that a copy was provided to the employer, and no affidavits or other indicators of service were included. The Commission has dismissed petitions for review where the petition did not indicate, on their face, that copies were provided to either the union or the employer in accordance with the rules. See, Spokane School District, Decision 5151-A and 5152-A (PECB, 1995); and Tacoma School District, Decision 5337-B (PECB, 1996).

Finally, Sweeney sought an extension of time to file a brief supporting his petition for review, but did not report to the Commission on the employer's concurrence or opposition to the extension or attempt to file a brief, within the allotted time set by Commission staff.

Our rules do not require that parties appearing before the Commission be represented by legal counsel, but an individual proceeds at his peril. Leniency towards a pro se litigant is sometimes appropriate, but the Commission must consider the rights of other parties. King County, Decision 2704-A (PECB, 1987). See, also, Tacoma School District, Decision 5337-B (PECB, 1996), and King County, Decision 5595-A (PECB, 1996).

Turning to the substantive issues of the case, the Executive Director found that nothing among Sweeney's allegations details how the employer's actions were in reprisal for Sweeney's union activity. Such details would be needed to state a cause of action under Chapter 41.56 RCW.

Sweeney's submittals do not comply with the rules, and we agree that his complaint did not state a cause of action. The petition for review must be dismissed.

NOW, THEREFORE, it is

ORDERED

The Executive Director's order of dismissal issued on July 21, 1998, in the above-entitled matter is AFFIRMED, and the petition for review filed by Richard Sweeney is dismissed for failure to perfect an appeal pursuant to WAC 391-45-350.

Issued at Olympia, Washington, on the 28th day of October, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner