

King County, Decision 6592 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOMMY L. BROWN,	)	
	)	
Complainant,	)	CASE 14146-U-98-3508
	)	
vs.	)	DECISION 6592 - PECB
	)	
KING COUNTY,	)	
	)	
Respondent.	)	ORDER OF
	)	PARTIAL DISMISSAL
	)	
	)	

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On September 18, 1998, Tommy L. Brown filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County as respondent. Following review for the purpose of making a preliminary ruling under WAC 391-45-110,<sup>1</sup> a deficiency notice was issued as to one allegation on October 13, 1998. Brown was given 14 days to file and serve an amended complaint which stated a cause of action, or face dismissal of that allegation. Nothing further was heard or received from Brown, so partial dismissal is warranted.

DISCUSSION

Brown is identified as an employee of King County (employer) whose position was within a public transportation bargaining unit

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

represented by the Amalgamated Transit Union, Local 587 (union). The controversy concerns the employer's discipline of Brown, and its eventual discharge of Brown from that position in September of 1998.

Brown alleged that the employer acted in reprisal for his previous exercise of his right to file and process grievances under the collective bargaining agreement between the employer and union, and he marked boxes on the complaint form to indicate "interference" and "discrimination" claims. The deficiency notice acknowledged that those allegations were sufficient to state a cause of action under RCW 41.56.140(1). See, Valley General Hospital, Decision 1195-A (PECB, 1981).

The complainant also marked the box on the complaint form to indicate a claim of "discrimination for filing charges" under RCW 41.56.140(3), but the deficiency notice identified problems with respect to that theory. The reference to "filing charges" has been strictly enforced by the Commission as to the processing of unfair labor practice complaints filed with the Commission under the statute. See, Mansfield School District, Decision 5238-A, 5239-A (EDUC, 1996). That is not, however, a general reference that would include grievances filed with an employer or a union, or filing claims with other governmental agencies. None of the facts alleged suggested that Brown had filed any previous unfair labor practice charges with the Commission, or otherwise provided support for a claim under RCW 41.56.140(3). The proceedings must thus be limited to the "interference" and "discrimination" claims advanced under RCW 41.56.140(1).

NOW, THEREFORE, it is

ORDERED

1. The allegations concerning a violation of RCW 41.56.140(3) are DISMISSED as failing to state a cause of action.
2. The allegations of interference with employee rights and discrimination in violation of RCW 41.56.140(1) are found to state a cause of action for further proceedings under Chapter 391-45 WAC.

a. King County ("the respondent") shall:

**File and Serve its answer to the allegations listed in paragraph 2 of this Order, within 21 days following the date of this Order.**

An answer filed by a respondent shall:

- i. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial; and
  - ii. Assert any affirmative defenses that are claimed to exist in the matter.
- b. The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint, or on the complainant in the absence of a designated attorney.

- c. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted , WAC 391-45-210.
3. Examiner Frederick J. Rosenberry is designated to conduct further proceedings under Chapter 391-45 WAC, with respect to the causes of action identified in paragraph 2 of this Order.

Issued at Olympia, Washington this 8<sup>th</sup> of February, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on the matters covered thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.