

City of Seattle, Decision 9439 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VICKI LYNN JOY,)	
)	
Complainant,)	CASE 20344-U-06-5182
)	
vs.)	DECISION 9439 - PECB
)	
CITY OF SEATTLE,)	ORDER DENYING MOTION FOR
)	SUMMARY JUDGEMENT
Respondent.)	
_____)	

Action Employment Law, by *John Scannell*, Attorney at Law,
for the employee.

Seattle City Attorney Tom Carr, by *Amy Lowen*, Assistant
City Attorney, for the employer.

On April 18, 2006, Vicki Lynn Joy filed an unfair labor practice complaint with the Public Employment Relations Commission against the City of Seattle, charging employer interference with employee rights in violation of RCW 41.56.140(1). On June 1, 2006, an amended complaint was filed charging employer interference and discrimination in violation of RCW 41.56.140(1). A Preliminary Ruling was issued on June 2, 2006, finding a cause of action to exist. Subsequently, the employer filed an answer to the amended complaint on June 23, 2006.

A pre-hearing conference was held on July 20, 2006, to establish dates for hearing, discuss any preliminary motions and inquire if the parties were willing to explore settlement. Subsequently, the employer filed a motion for summary judgement on August 11, 2006, and the complainant filed an answer to the motion on September 5, 2006.

In its motion for summary judgement, the employer claims there are no disputed facts at issue and therefore a summary judgement ruling is appropriate in this case. Motions for summary judgment are processed under WAC 391-08-230, which states in pertinent part:

A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law.

A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. *Monroe School District*, Decision 5283 (PECB, 1985). Where the parties agree to the appropriateness of summary judgement, it is normally granted unless the record reveals factual disputes. *Snohomish County*, Decision 8733 (PECB, 2004). The Commission held in *State - General Administration*, Decision 8087-B (PSRA, 2004) that a "material fact" is one upon which the outcome of litigation depends.

A motion for summary judgment calls upon the examiner to make final determinations on a number of critical issues, without the benefit of a full evidentiary hearing and record. For this reason, the Commission has consistently noted that granting a motion for summary judgement cannot be taken lightly.

The complainant claims there remain facts in dispute which are relevant to the complaint before the Commission. After reviewing the motion, its exhibits and the response to the motion, I find sufficient questions of material fact exist. For this reason, the motion for summary judgement is denied

In its motion for summary judgement, the employer also requests dismissal of the complaint arguing res judicata and collateral estoppel. The employer claims that because this case was heard and

dismissed by the Office of the Hearing Examiner sitting in delegation for the City of Seattle Civil Service Commission, Joy cannot proceed with her complaint through the Public Employment Relations Commission.

The jurisdiction of the Public Employment Relations Commission in this matter flows from 41.56 RCW. RCW 41.56.140 prohibits employers and unions from interfering with or discriminating with respect to the exercise of employee rights secured by the Public Employees' Collective Bargaining Act. The jurisdiction of the City of Seattle Civil Service Commission under Seattle Municipal Code 4.04.250 is to hear appeals involving the administration of the personnel system. Two entirely separate sources of employee rights are provided under 41.56 RCW and 4.04 SMC. See *Clallam County*, Decision 4011 (PECB, 1992). Therefore, allegations that the discharge was unlawful discrimination, in violation of Chapter 41.56 RCW, are properly brought before the Public Employment Relations Commission.


NOW, THEREFORE, it is

ORDERED

The motion for summary judgement in this matter is denied. The hearing scheduled for November 10, 2006, will proceed.

ISSUED at Olympia, Washington, this 27th day of September, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


CHRISTY YOSHITOMI, Examiner

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.