

Jefferson Transit Authority, Decision 5928 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JERRY DENEKE,)	
)	
Complainant,)	CASE 13004-U-97-3136
)	
vs.)	DECISION 5928 - PECB
)	
JEFFERSON TRANSIT AUTHORITY,)	
)	ORDER OF DISMISSAL
Respondent.)	
)	
)	

Frank & Rosen, by Clifford Freed, Attorney at Law,
appeared for the complainant.

Summit Law Group, by Bruce L. Schroeder, Attorney at Law,
appeared for the employer.

The complaint charging unfair labor practices filed in the above-captioned matter on February 26, 1997 concerns the refusal of the Jefferson Transit Authority to hire Jerry Deneke for vacant positions.

A response to the complaint volunteered by the employer (in the form of a four-page letter from its attorney dated April 8, 1997 and filed on April 16, 1997), was not considered when the complaint was reviewed under WAC 391-45-110. All of the facts alleged in a complaint must be assumed to be true and provable under the Commission's preliminary ruling process; the question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission. A respondent is called upon to respond by filing an answer under WAC 391-45-110(2), but

only "if the complaint is found to state a cause of action for unfair labor practice proceedings before the Commission.

Closely related to the "as a matter of law" review called for by WAC 391-45-110, the Commission does not "investigate" or "prosecute" unfair labor practice complaints in the manner familiar to those who practice before the National Labor Relations Board. WAC 391-45-050(2) requires a complainant to submit:

Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

A skeletal "charge" will not suffice, and will not be fleshed out by agency personnel. In making a preliminary ruling, the Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic.

In this case, a deficiency notice issued on April 24, 1997 ruled that the complaint failed to state a cause of action, as filed:

- Paragraphs 1 through 4 and paragraph 6 of the complaint, all of which recited Deneke's employment history with Paratransit Services, Inc. more than six months prior to the filing of this complaint, were found to be untimely under RCW 41.56.160. Those paragraphs were thus considered only as background information that did not state a cause for action for current proceedings before the Commission.

- Paragraph 2 was additionally found insufficient as to the basis for alleged discrimination. It was pointed out the

Public Employment Relations Commission does not have authority to determine or remedy claims of discrimination based upon filing of complaints with the Department of Labor and Industries.

- Paragraph 5 was found to be insufficiently detailed with respect to an assertion that Deneke was involved in some union organizing effort while employed with a private employer.
- Paragraph 7 was found to be insufficiently detailed with respect to a rejection of Deneke in September, 1996.
- Paragraph 8 concerns a merger of Jefferson Transit Authority and Paratransit Services, Inc., but the relevance of that fact was unclear.
- Paragraph 9, which alleges generally that Deneke was not hired because of his protected activities while he was an employee of Paratransit Services, Inc., was found insufficient to state a cause for action.

The complainant was given a period of 14 days in which to file and serve an amended complaint that provided additional information, or face dismissal of the complaint.

The only document received on this case subsequent to the April 24, 1997 deficiency notice was a letter from the complainant's attorney that was dated April 18, 1997 and was filed on April 29, 1997.¹

¹ The envelope containing that letter was postmarked on April 18, but used an incorrect zip code extension for the Commission; someone at the zip code used affixed a "Please Redirect" message; the envelope found its way to the Public Disclosure Commission on April 21, 1997.

That letter was clearly a response to the response which had been volunteered by the employer, as follows:

I am in receipt of the April 8, 1997 letter provided to you by Jefferson Transit regarding this matter. As you are aware, I represent complainant Jerry Deneke. Mr. Deneke's response will be brief.

Jefferson Transit requests dismissal because "Mr. Deneke's factual allegations fail to support a claim." However, that is not accurate. Mr. Deneke's facts, as stated in his Complaint, do state a cause of action. In his letter, Jefferson Transit attempts to elevate its own version of events to the level of verity, notwithstanding the fact that it is wholly unsupported by affidavit. If Mr. Deneke is successful in proving his facts, as is his right, those facts support the finding of an unfair labor practice. Mr. Deneke notes only the strong similarity between his claim and the claim of the complainant in Clallam Transit System, Decision 4597 (PECEB, 1994).

For these reasons, Mr. Deneke respectfully requests that Jefferson Transit's seeking of a dismissal be denied, and that this case be heard on its merits.

The Clallam Transit case cited in that letter involved a refusal to rehire an employee who had been a known union leader during an earlier period of employment with the employer, so there was clear indication of how the employer had knowledge of his protected union activity. That case is clearly distinguished from this case, where the deficiency notice requested further details about the union activity allegations of the complaint.

If anything, counsel for the complainant here should have assumed that his letter was received by the Commission before the deficiency notice was issued, and that his arguments in that letter had not been persuasive. In the absence of any direct response to the

defects pointed out in the deficiency notice, the complaint must be dismissed as failing to state a cause of action.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 30th day of May, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.