

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LARRY DALY,)	
)	
Complainant,)	CASE 7525-U-88-1575
)	
vs.)	DECISION 3318-A - PECB
)	
KING COUNTY,)	ORDER VACATING
)	REVIEW PROCEEDINGS
Respondent.)	
)	
)	
)	

Dustin N. Frederick, Business Representative, appeared on behalf of the complainant.

Norm Maleng, Prosecuting Attorney, by Mary E. Roberts, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On August 18, 1988, Larry Daly filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that King County had violated RCW 41.56.140(1) and (3) by a series of personnel actions taken concerning him. A hearing was held and, on October 16, 1989, Examiner Frederick J. Rosenberry ruled that King County had violated RCW 41.56.140(1) by transferring Daly from the Criminal Investigation Division, Missing Persons Unit to patrol duties in the Field Operations Division, in reprisal for Daly's pursuit of a grievance protesting his removal from the Special Assault Unit. The Examiner directed King County, inter alia, to:

Offer its employee, Larry Daly, immediate and full reinstatement to his former position in the Missing Persons Unit or a substantially equivalent position in the Criminal Investigation Division, without prejudice to his rights or seniority.

King County, Decision 3318 (PECB, 1989).

Neither side petitioned for review of the Examiner's decision. While indicating that it would comply with the Examiner's decision, the employer requested that it not be required to offer Daly reinstatement, in light of his resignation from the department effective May 31, 1989.

Upon receipt of the information concerning Daly's resignation, the Commission exercised its authority under WAC 391-45-350 to review the Examiner's decision on its own motion, limiting that review to the Examiner's reinstatement order. By letter from the Executive Director dated November 15, 1989, the employer was directed to submit a full statement of its position on the remedial order, including an offer of proof setting forth the intervening facts which it would have the Commission consider.

No statement of position or offer of proof has been submitted by the employer.¹ The union has objected to any modification of the Examiner's remedial order, alleging that the circumstances surrounding Daly's decision to resign related directly to the substance of his unfair labor practice charge.

DISCUSSION

Although Mr. Daly may have resigned from his employment with King County during the period between the close of the hearing and the issuance of the Examiner's decision, the employer never sought to raise the issue of his resignation or its effect on any potential remedial order while the case was still under consideration by the Examiner. The parties have access to information concerning changes of circumstances, and are expected to come forth with a

¹ The employer did request, and was granted, an extension of the time for submission of such a statement. That deadline has also now passed.

motion to re-open the hearing if they desire to have new facts considered. While this Commission was tolerant at an early point in its history of a party's failure to move for reopening of the hearing in City of Seattle, Decision 689-A (PECB, 1979), it said there:

This decision should not be construed to suggest that hereafter parties may take their chances on the outcome and then plead a change of circumstances they knew all about before the original decision.

The Commission refused to consider new evidence put forth for the first time on appeal in Municipality of Metropolitan Seattle, Decision 2358-A (PECB, 1986), aff. ___ Wn.2d ___ (Division I, 1989).

Neither did the employer raise the issue by filing a timely petition for review of the Examiner's decision. Even after the Commission "lifted" the case for review, the employer failed to submit the required offer of proof upon which any modification of the Examiner's remedial order might be based.

In light of the foregoing facts, we find no basis upon which to modify the Examiner's order.

NOW, THEREFORE, it is

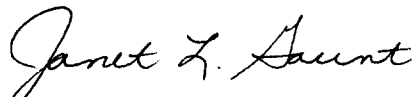
ORDERED

1. The action of the Public Employment Relations Commission to take up the above-entitled case for review pursuant to WAC 391-45-350 is VACATED.

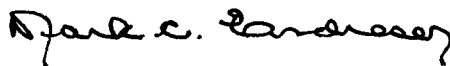
2. King County, its officers and agents, shall immediately:
 - a. Notify the complainant, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply with the order issued by Examiner Frederick J. Rosenberry and, at the same time, provide the complainant with a signed copy of the notice required by that Order.
 - b. Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply with the order issued by Examiner Frederick J. Rosenberry and, at the same time, provide the Executive Director with a signed copy of the notice required by that Order.

ISSUED at Olympia, Washington, this 11th day of April, 1989.

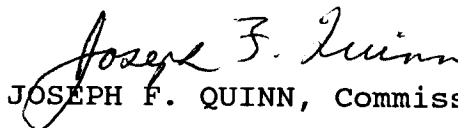
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson

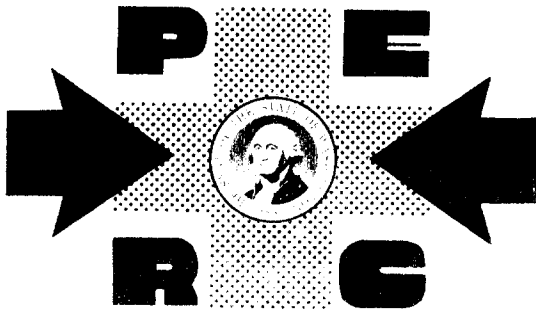


MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner

This order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discriminate against or interfere with, restrain, or coerce employees for engaging in activities protected by Chapter 41.56 RCW, including the pursuit of grievances under a collective bargaining agreement.

WE WILL offer Larry Daly immediate and full reinstatement to his former position as detective in the Missing Persons Unit or a substantially equivalent position in the Criminal Investigation Division.

DATED: _____

KING COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.