

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GARY DAVIS,	)	
	)	CASE 8460-U-90-1830
Complainant,	)	
	)	DECISION 3558 - PECB
vs.	)	
	)	
KING COUNTY,	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
	)	

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On March 1, 1990, Gary Davis filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that King County unlawfully transferred him from his assignment as a K-9 police officer in retaliation for his having criticized his supervisor's handling of a particular incident.

On July 3, 1990, the Executive Director issued a preliminary ruling in the matter pursuant to WAC 391-45-110. The complainant was notified that, while discrimination in retaliation for an employee's participation in protected activities would state a cause of action under Chapter 41.56 RCW, it appeared that his complaint was untimely under the provisions of RCW 41.56.160. That statute provides, inter alia:

[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the Commission.

While the specific date of the complainant's transfer was not noted in the complaint, it appeared from statements in the complaint that it had been more than six months prior to the filing of the complaint. Further, a grievance concerning that transfer had been

filed more than six months before the filing of the complaint. The complainant was given a period of 14 days in which to file an amended complaint which stated a timely cause of action, or face dismissal of his complaint.

On July 10, 1990, the complainant filed an amended complaint, stating that the effective date of the transfer was September 1, 1989. The complainant argues that the six month statute of limitations does not begin to run until the date of the injury. The complainant further asserts that the injury can come either at the time of the threat made by the employer, or at the time of the implementation of the act which constitutes the interference. He claims that he chose to file this complaint based upon the time of the implementation of his transfer.<sup>1</sup>

On July 17, 1990, the employer moved for dismissal of the matter as untimely under Port of Seattle, Decision 2796-A (PECB, 1988).<sup>2</sup>

The Commission has ruled that the statute of limitations clock begins to run when the adverse employment decision is made and communicated to the employee. Port of Seattle, supra. It is clear from the documents accompanying the original complaint in the instant matter that the complainant knew of his pending transfer at least by August 21, 1989, the date on which his union filed a grievance on his behalf. That grievance document stated, in part, "Officer Gary Davis has been notified that he will be involuntarily

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<sup>1</sup> The original complaint was filed on the last day of the time period which would make the matter timely under the complainant's theory.

<sup>2</sup> At the preliminary ruling stage of the proceedings, the Executive Director determines whether the facts as alleged may, as a matter of law, constitute a violation of the applicable statute. WAC 391-45-110. Any argument or motion by a respondent at this point in the proceedings will be considered only as it relates to the legal issues involved in the case. No rulings concerning disputes of fact will be made at this juncture.

transferred from the K-9 Unit to Patrol." The instant complaint charging unfair labor practices is untimely filed.

ORDER

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

DATED at Olympia, Washington, this 14th day of August, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marvin L. Schurke", is written over the typed name below.

MARVIN L. SCHURKE, Executive Director

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