

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

Jared C. Karstetter, Attorney at Law, appeared for the complainant.

Norm Maleng, Prosecuting Attorney, by Mary E. Roberts, Deputy Prosecuting Attorney, appeared for the employer.

This case comes before the Commission on a timely filed petition for review filed by the complainant, seeking reversal of the Executive Director's order dismissing the complaint charging unfair labor practices under WAC 391-45-110.

BACKGROUND

In his complaint filed on March 1, 1990, Gary Davis alleges that he engaged in certain activities protected by Chapter 41.56 RCW, which resulted in notifications from the employer on July 28 and August 17, 1989 that his assignment was being changed. Davis filed a grievance on the matter on August 21, 1989.

The complainant commenced work in his new job on September 1, 1989. The transfer of the complainant from work in the K-9 unit to other duties resulted in his loss thereafter of a wage premium paid for the K-9 assignment.

The complainant alleges that the employer responded to his grievance on October 30, 1989, when the employer took the position that the transfer would stand. He further alleges that the grievance challenging the transfer remained in active processing until February of 1990.

In making a "preliminary ruling" under WAC 391-45-110, the Executive Director assumed that the facts alleged in the complaint were true and provable. As a matter of law, the Executive Director found a timeliness fault in the filing of the complaint in this case, noting that RCW 41.56.160 provides for a six months statute of limitations. The Executive Director further noted that the limitations clock begins to run when the adverse employment decision is made and communicated to the employee, citing Port of Seattle, Decision 2796-A (PECB, 1988). The Executive Director dismissed the complaint.

POSITIONS OF THE PARTIES

The complainant maintains that the order of dismissal should be set aside, and that the complaint should be sent to hearing. Four arguments are actually advanced under three headings in his brief: (1) The violation was continuing in nature; (2) an unlawful act was committed within the six months period called for by the Executive Director; (3) the Commission should stay the running of the statute of limitations while the parties attempt to resolve the dispute; and (4) the Commission should encourage the parties to engage in settlement efforts prior to filing complaints, i.e., apply the six months period very liberally.

The employer requests that exhibits submitted with complainant's petition for review not be considered, and that the order of dismissal be upheld.

DISCUSSION

The complainant has the burden of persuading the Commission that the Executive Director's decision should be reversed, based on the statute and precedent. We address the arguments in the order stated.

Continuing Violation

The complainant cites the timing of the denial of his grievance on the issues in this case, and his ongoing loss of pay, as continuing effects of the employer action announced to him in July and August of 1989. While the outcome of another dispute may have caused the complainant to hope for a positive determination in this case, such anticipation does not excuse the late filing. Additionally, while the economic loss to the complainant from no longer being assigned to the K-9 Unit may continue for some time, the mere fact of such continuation does not form the basis for lengthening the statute of limitations period for filing complaints.

Unlawful Act Within Six Months Period

Apart from the loss of the premium pay associated with assignment to the K-9 unit since September 1, 1989, the complainant states:

The refusal of the employer to rescind the transfer of the petitioner in light of the affirmed findings in Decision 3558 constituted a separate and distinct violation of law.

The Commission is at a loss to understand the point being made. King County, Decision 3558 (PECB, 1990) is the Executive Director's order dismissing the complaint in this case. If an unlawful act is claimed after the filing of the initial complaint, it must be put before the Commission by filing an amended complaint. The claim of

a subsequent unlawful act cannot, however, extend the time for filing a complaint concerning a prior unlawful act.

Commission Should Stay Running of Time Limit

The complainant cites Galindo v. Stoodly Company, 793 F.2d 1502, 123 LRRM 2705 (9th Cir., 1986), as support for expanding the six month time limit set forth in the statute.

The Commission rejects the suggestion. Galindo involved the duty of fair representation, and had a very different factual basis. Time limits serve the very useful purpose of requiring parties to complain about actions in some proximity to the time the action takes place. The six month time period allowed by RCW 41.56.160 for the filing of unfair labor practice complaints parallels the time allowed for similar actions under the National Labor Relations Act, and should provide parties ample time to agree or disagree on the remedy for a dispute.

Time Limits Should Be Applied Liberally

Finally, the complainant argues that, in the spirit of encouraging settlement, the Commission should not strictly apply the six month time limit on filing of unfair labor practice cases. The argument continues that complaints charging unfair labor practices should otherwise be filed at the onset of each dispute.

The Commission rejects these arguments for the basic reason that six months is ample time to either resolve a dispute or recognize that no agreement on a resolution will be forthcoming. In this case, a grievance was timely filed within one week of the announcement of the transfer. As the issue was discussed between the two parties over the following months, the employer gave no indication of a willingness to agree with the complainant's position. The employer's position was firmly stated by October 30, 1989. As the

end of the six month period approached on February 17, 1990, the complainant should have taken steps to file a complaint, in order to keep his rights under the unfair labor practice procedure alive. The complainant may have miscalculated, or may simply have neglected his rights. As the complaint was not filed until March 1, 1990, the deadline was missed by less than two weeks.

NOW, THEREFORE, it is

ORDERED

The Commission AFFIRMS the Executive Director's decision.

Issued at Olympia, Washington, the 17th day of December, 1990.

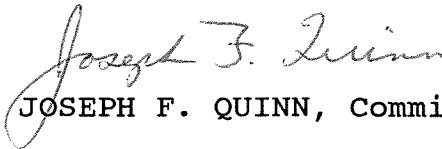
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner