

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,)	
)	
Employer)	
-----)	
DEBORAH SOMMERS,)	CASE 10359-U-93-2380
)	
Complainant,)	DECISION 4556-A - PECB
)	
vs.)	
)	
INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	
ENGINEERS, LOCAL 17,)	
)	
Respondent.)	
-----)	
DEBORAH SOMMERS,)	CASE 10361-U-93-2381
)	
Complainant,)	DECISION 4557-A - PECB
)	
vs.)	
)	
CITY OF SEATTLE,)	DECISION OF COMMISSION
)	
Respondent.)	
-----)	

Deborah Sommers appeared pro se.

Richard Eadie, Attorney at Law, appeared on behalf of International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, respondent.

This case comes before the Commission on a petition for review filed by Deborah Sommers, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.

BACKGROUND

On March 19, 1993, Deborah Sommers filed two unfair labor practice complaints with the Commission, alleging that her employer, the

City of Seattle, and her union, International Federation of Professional and Technical Engineers, Local 17, had committed unfair labor practices under RCW 41.56.140 and 41.56.150, respectively. Sommers alleged that sexual harassment during her employment affected her health, eventually causing her to lose her employment, and that the union refused to help her during her period of disability.

On June 16, 1993, the Executive Director issued a preliminary ruling letter noting that there did not appear to be an employment relationship during the six months before the filing of the complaint, and that there was no allegation the termination of employment was due to activity protected by Chapter 41.56 RCW. The preliminary ruling letter stated that the complaints appeared to be barred by the six-month statute of limitations in RCW 41.56.160, and advised that the cases would be held open for 14 days to permit the filing of amended complaints.

On July 22, 1993, the complainant was granted an additional 14 days to amend her complaint. Sommers submitted a letter on August 9, 1993, alleging that her supervisor had expressed "anti-union feelings".

On December 15, 1993, the Executive Director dismissed the complaints as untimely, and as failing to state a cause of action.¹ The order of dismissal, issued pursuant to WAC 391-45-110, stated that it may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

The complainant filed a petition for review with the Commission on February 9, 1994, which was 56 days following the date of the Executive Director's order.

¹ City of Seattle, Decisions 4556 and 4557 (PECB, 1993).

POSITIONS OF THE PARTIES

The complainant takes the position that she received the order of dismissal on January 21, 1994, due to mail delays involving problems in working out of the office three days a week, a change of address, holding and forwarding of her mail, and illness for about 17 days. She urges review because women need to be able to work in an environment free of harassment and discrimination. She asks that the statute of limitations not apply, because the union's alleged refusal to represent her resulted in the loss of her employment, and because the union continued to refuse to represent her after she lost her job.

The City of Seattle did not file a brief in response to the petition for review.

The union takes the position that complainant's petition for review should be dismissed for untimeliness.

DISCUSSION

The order of dismissal was issued pursuant to WAC 391-45-110, and the Executive Director mentioned the availability of Commission review. The cited rule, WAC 391-45-350, requires that a petition for review be filed within 20 days following the date of the order. The order of dismissal in this case was dated December 15, 1993. The complainant filed her petition for review 56 days after the Executive Director's order, on February 9, 1994.

The petition for review is untimely, and must be dismissed. See City of Seattle, Decision 3199-A (PECB, 1989); Port of Seattle, Decision 2661-B (PECB, 1989); Lewis County, Decision 2957-A (PECB, 1988); City of Seattle, Decision 2230-A (PECB, 1985); Seattle Public Health Hospital (American Federation of Government Employ-

ees, Local 1170), Decision 1781-A (PECB, 1984); Port of Ilwaco, Decision 970-A (PECB, 1980); Spokane School District, Decision 310-A (EDUC, 1978).

It is incumbent upon all parties, in cases filed with the Commission, to keep the Commission and all other parties informed as to their current mailing addresses and any changes of address. Once before during these proceedings, the complainant failed to keep the Commission advised of her current address. When the complainant was given a deadline to file amended complaints, she reported that she had provided the agency with her new address by telephone, although no change of address was reflected in the Commission's file. On that occasion, the complainants address was corrected and she was given an additional 14 days to file amended complaints. No further address change was submitted.

Even if we were not to dismiss the petition for review as untimely, we would find that the Executive Director committed no error in his order of dismissal. We have reviewed the record, and find no basis to support the allegation that the complainant's discharge was an unfair labor practice. RCW 41.56.140 enumerates unfair labor practices for public employers:

It shall be an unfair labor practice for a public employer:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To control, dominate or interfere with a bargaining representative;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining.

In an August 9, 1993 letter which constituted Sommers' amended complaint, she stated her belief that the discharge was based on her sex and medical disability. Sommers also asserted that her

manager often expressed anti-union feelings, but there are no factual allegations which would support a finding that the manager's alleged animus was connected to the complainant's discharge. A vague allegation that there has been an expression of anti-union feelings is not sufficient to bring a case under the proscriptions of the statute. The complaint makes no other allegation which would bring her discharge under the scope of RCW 41.56.140.

There is likewise no factual basis to support the claim that the union's failure to represent Sommers constitutes an unfair labor practice. RCW 41.56.150 outlines the unfair labor practices for bargaining representatives:

It shall be an unfair labor practice for a bargaining representative:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To induce the public employer to commit an unfair labor practice;

(3) To discriminate against a public employee who has filed an unfair labor practice charge; and

(4) To refuse to engage in collective bargaining.

The complainant alleges, in essence, that the union breached its duty of fair representation. The Commission has drawn a distinction between two types of fair representation issues, asserting jurisdiction over one type and declining jurisdiction over the other.² Jurisdiction has been declined with respect to "breach of duty of fair representation" claims that arise from the processing (or failure to process) grievances under existing collective

² City of Seattle, Decision 3470-A (PECB, 1990); City of Pasco, Decision 2327 (PECB, 1985).

bargaining agreements.³ Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer and the underlying collective bargaining agreement. The complainant's assertions in this case fall within the class of claims over which we decline to assert jurisdiction.

We find nothing in the complaint in this case which states a cause of action. In addition, it is barred by the six-month statute of limitations.

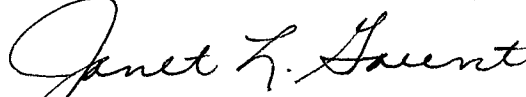
NOW, THEREFORE, it is

ORDERED

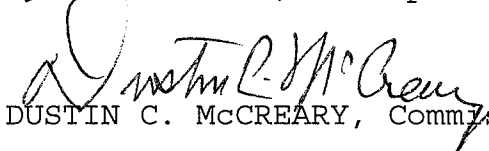
The petition for review is DISMISSED.

ISSUED at Olympia, Washington, this 31st day of March, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. McCREARY, Commissioner

Commissioner Sam Kinville did not take part in the consideration or decision of this case.

³ Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).