

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,)	
)	
Employer.)	
-----)	
TERRY HAMMOND,)	
)	
Complainant,)	CASE 12649-U-96-3019
vs.)	DECISION 5720-A - PECB
KING COUNTY,)	
)	
Respondent.)	DECISION OF COMMISSION
-----)	
TERRY HAMMOND,)	
)	
Complainant,)	CASE 12654-U-96-3021
vs.)	DECISION 5721-A - PECB
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,)	
)	
Respondent.)	DECISION OF COMMISSION
-----)	

These cases come before the Commission on petitions for review filed by individuals Kerry Gallo and Jim Huntsberry, seeking to overturn a dismissal order by Marvin L. Schurke.¹

BACKGROUND

On August 15, 1996, Terry Hammond, Shop Steward for International Federation of Professional and Technical Engineers, Local 17

¹ King County, Decisions 5720 and 5721 (PECB, 1996).

(union) filed two unfair labor practice complaints with the Public Employment Relations Commission on behalf of Kerry Gallo and Jim Huntsberry. One complaint, which alleged that the union refused to bargain and failed to provide representation, was docketed as Case 12654-U-96-3021. The other complaint, which alleged interference with employee rights, domination or assistance of union, and discrimination on the part of King County (employer), was docketed as Case 12649-U-96-3019.

The complaints were reviewed for the purpose of making preliminary rulings under WAC 391-45-110.² A deficiency notice was sent to the union, the employer, and Hammond on September 20, 1996, pointing out certain inadequacies in the complaints, as filed. A period of 14 days was allowed for the filing and service of amended complaints, and the parties were advised that the complaints would be dismissed in the absence of timely amendments. Having received no amended complaint within the allotted time period, Executive Director Marvin L. Schurke dismissed the complaints on October 31, 1996.

Twenty-five days later, on November 25, 1996, Kerry Gallo and Jim Huntsberry filed petitions for review, thus bringing the cases before the Commission.

DISCUSSION

Chapter 391-45 WAC regulates the processing of unfair labor practice cases and provides for the filing of a petition for review in WAC 391-45-350, which states in part:

² At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. 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.

The examiner's findings of fact, conclusions of law and order shall be subject to review by the commission on its own motion, or **at the request of any party made within twenty days following the date of the order issued by the examiner.** ... In the event no timely petition for review is filed, and no action is taken by the Commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

[Emphasis by bold supplied.]

Under WAC 10-08-080, the deadline for filing a petition for review in these cases was November 20, 1996. The petitions for review were five days late.

The Commission has previously dismissed petitions for review filed as little as one day late.³ In dismissing late petitions for review, the Commission has not discriminated between those filed by attorneys and those filed by pro se parties.⁴

WAC 391-08-003 allows the Commission to waive rules unless a party would be prejudiced by such a waiver. Waiver is discretionary,

³ See, Seattle Public Health Hospital (American Federation of Government Employees, Local 1170), Decision 1781-B (PECB, 1984); Inchelium School District, Decision 2395-C (PECB, 1987); City of Seattle, Decision 2230-A (PECB, 1985); Lewis County, Decision 2957-A (PECB, 1988), City of Tacoma, Decision 5634-A and 5634-B (PECB, 1996).

⁴ See, Spokane School District, Decision 310-A (EDUC, 1978); Port of Ilwaco, Decision 970-A (PECB, 1980); Port of Seattle, Decision 2661-B (PORT, 1988); Othello School District, Decision 3037-A (PECB, 1988); Kennewick School District, Decision 3330-A (PECB, 1989); City of Seattle, Decision 3199-A (PECB, 1989); City of Seattle, Decision 4556-A (PECB, 1994).

however, and is based on whether a waiver will effectuate the purposes of the applicable collective bargaining statute. Mason County, Decision 3108-B (PECB, 1991). The Commission has excused parties from strict compliance with time limits, where there was a basis to conclude the agency contributed to the party's error. City of Tukwila, Decision 2434-A (PECB, 1987). The only instance found where the Commission has waived the time limit for filing a petition for review was in Island County, Decision 5147-C (PECB, 1996). There, a majority of the Commission reasoned that then-existing rules concerning the unacceptability of filing by "fax" were not clear on their face, so it excused the late filing.⁵ In that case, the party substantially complied with the purpose of the 20-day filing requirement so the other party was not prejudiced by the delay.⁶

The case at hand comes to us with different facts. The individuals named in complaints filed by another (i.e., a union steward) argue that "the personal responsibilities of home, family, job and other contingencies have arisen that have made this reply late in coming" and that "[i]n one instance a medical emergency in the family of Mr. Huntsberry called him back to Virginia for a time". While we can empathize with those responsibilities, we find the reasons for the late filing an insufficient basis to justify a waiver of the rules. We particularly note that the union official who actually filed the complaints neither replied to the deficiency notice nor petitioned for review.

⁵ After Island County, *supra*, the Commission adopted amendments to WAC 391-08-120 which explicitly preclude filing by "fax" in adjudicative proceedings under the APA.

⁶ The party had transmitted its petition for review to the Commission by telefacsimile on the date it was due, had mailed it to the Commission on the same day, and had effected timely service on the other party.

Where the only cause of untimeliness is inadvertent error or lack of due diligence, and there is no erroneous agency advice or substantial compliance, waiver is not justified. City of Puyallup, Decision 5460-A (PECB, 1996).

NOW, THEREFORE, it is

ORDERED

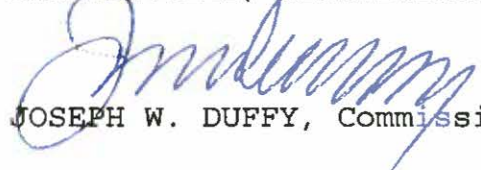
The complaints charging unfair labor practices filed in the above-entitled matters are hereby DISMISSED.

Issued at Olympia, Washington, the 22nd day of April, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner