

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 2829,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 23159-U-10-5896

DECISION 10803 - PECB

ORDER DENYING MOTION  
FOR DISCRETIONARY REVIEW

Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, by *Kathleen Phair Barnard*, Attorney at Law, and *Jennifer L. Robbins*, Attorney at Law, for the union.

Peter S. Holmes, Seattle City Attorney, by *Fritz E. Wollett*, Assistant City Attorney, for the employer.

On April 9, 2010, the International Association of Fire Fighters, Local 2829 (union) filed an unfair labor practice complaint alleging that the City of Seattle (employer) committed an unfair labor practice in violation of RCW 41.56.140(1) by discriminating against an employee who exercised protected employee rights. On April 15, 2010, Unfair Labor Practice Manager David I. Gedrose issued a preliminary ruling forwarding the union's allegations for hearing before Examiner Kenneth J. Latsch, and gave the employer 21 days to answer the complaint as provided for in WAC 391-45-110(2)(c). The employer's answer was due May 6, 2010.

During a May 10, 2010 conference call, the Examiner informed the employer that it had not filed an answer as directed by the preliminary ruling. On May 12, 2010, the employer filed its answer. The employer did not provide any supporting reasons as to why the answer should be accepted. The parties are scheduled to go to hearing on July 14 and 15, 2010.

On May 18, 2010, the union filed a motion for default judgment. In its motion, the union argued that the 21 day filing requirement is mandatory, that the employer failed to provide any supporting reasons as to why its answer should be accepted, and that Commission precedent supports granting the union's motion. On June 16, 2010, the Examiner denied the union's motion for default judgment, specifically noting that the union suffered no prejudice by the employer's late filing. The union now seeks discretionary review of the Examiner's ruling.

### DISCUSSION

Generally, a party seeking discretionary review of an examiner's interlocutory decision should follow the procedures outlined in WAC 391-45-310(b). That rule states that the Commission will only accept discretionary review if: (i) an examiner has committed obvious error which would render further proceedings useless; (ii) an examiner has substantially altered the status quo or limited the freedom of a party to act; or (iii) has so far departed from the usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the Commission.

Although the union has not technically complied with the rule by specifying how the Examiner committed error under the rule, the union's claims of error best fit under (iii) and (i), which can be analyzed together.

Under WAC 391-45-110(2)(c), the preliminary ruling issued in an unfair labor practice case shall establish the date that a respondent shall file an answer. "[A] motion for acceptance of an answer after its due date shall only be granted for good cause." WAC 391-25-210(4). In *Intercity Transit*, Decision 2580 (PECB, 1986), an employer filed its answer 3 days late. Relying upon WAC 10-08-200 and WAC 391-08-003, the examiner waived the filing requirement and allowed the respondent to file its answer because the complainant failed to demonstrate how it was prejudiced by the respondent's late answer. A similar result was reached in *Battle Ground School District*, Decision 2449 (PECB, 1986).

Based upon *Intercity Transit* and *Battle Ground School District*, it cannot be said that this Examiner committed obvious error or departed from the usual course of proceedings by waiving

the rules and accepting a late filed answer. Accordingly, we decline to accept discretionary review of the Examiner’s decision at this time. See WAC 391-45-310.

NOW, THEREFORE, it is

ORDERED


The union’s Motion for Discretionary Review of Examiner Kenneth J. Latsch’s June 16, 2010 ruling is denied.

ISSUED at Olympia, Washington, this 6<sup>th</sup> day of July, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
THOMAS W. McLANE, Commissioner