

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMOTHY W. O'MAHONEY, Complainant, vs. SKAMANIA COUNTY, Respondent.	CASE 25874-U-13-6630 DECISION 11865 - PECB ORDER OF DISMISSAL
SKAMANIA COUNTY, Employer.	
TIMOTHY W. O'MAHONEY, Complainant, vs. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 11, Respondent.	CASE 25875-U-13-6631 DECISION 11866 - PECB ORDER OF DISMISSAL

On August 5, 2013, Timothy W. O'Mahoney (O'Mahoney) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Skamania County (employer) as respondent. The complaint was docketed as Case 25874-U-13-6630. On the same day O'Mahoney filed an unfair labor practices complaint naming Office and Professional Employees International Union, Local 11 (union) as respondent. The complaint was docketed as Case 25875-U-13-6631. The complaints were consolidated under WAC 10-08-085, reviewed under WAC 391-45-110,¹ and a combined deficiency notice issued on

¹ 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.

August 12, 2013, indicated that it was not possible to conclude that causes of action existed at that time. O' Mahoney was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

O'Mahoney has not filed any further information. The Unfair Labor Practice Manager dismisses the complaints for failures to state causes of action.

DISCUSSION

The allegations of the complaints concern employer discrimination (and derivative interference) in violation of RCW 41.56.140(1), by laying off O'Mahoney in reprisal for union activities protected by Chapter 41.56 RCW; and union interference with employee rights in violation of RCW 41.56.150(1), by breach of its duty of fair representation regarding O'Mahoney's lay off. The deficiency notice pointed out the defects to the complaints.

One, the statement of facts alleges that both the employer and union breached the terms of their collective bargaining agreement in laying O'Mahoney off. O'Mahoney states that he filed these complaints as grievances. The Public Employment Relations Commission does not process grievances under collective bargaining agreements and does not have jurisdiction to resolve contract disputes involving grievances.

Two, RCW 41.56.160(1) provides that complaints must be filed within six months of the alleged unfair labor practice violations. O'Mahoney states that he was laid off on December 31, 2011. O'Mahoney should have filed the complaints no later than June 30, 2012. The complaints are untimely. O'Mahoney states that on July 25, 2013, he learned that two other employees had filed grievances, but that is not a date relevant to the statute of limitations governing these complaints. O'Mahoney knew of his lay off on December 31, 2011; that he learned of others filing claims in July 2013 does not create a new violation date.

Three, regarding employers, the Commission has jurisdiction for unlawful termination only if the facts of a complaint indicate that the termination was in reprisal for union activities. O'Mahoney

does not allege that his lay off was for union activities, and does not identify any union activities unrelated to this complaint. Rather, as noted above, O'Mahoney's claim is that the employer did not follow the provisions of the collective bargaining agreement.

Four, regarding unions, the Commission does not have jurisdiction over a union refusing or failing to file a grievance under a collective bargaining agreement. The Commission has jurisdiction over complaints involving the breach of the duty of fair representation only if facts show that a union's actions were arbitrary, discriminatory, or done in bad faith. The statement of facts provides only a brief statement regarding the union's actions and does not indicate that the union's actions were unlawful.

Even if the complaints against the employer and union were timely, the Commission would not have jurisdiction. O'Mahoney must seek relief through internal employer or union procedures or the Courts.

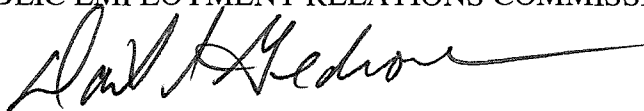
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in Cases 25874-U-13-6630 and 25875-U-13-6631 are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 5th day of September, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 09/05/2013

The attached document identified as: **DECISION 11865 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER: 25874-U-13-06630 FILED: 08/05/2013 FILED BY: PARTY 2
DISPUTE: ER DISCRIMINATE
BAR UNIT: CUSTOD/MAINT
DETAILS: Employer
COMMENTS:

EMPLOYER: SKAMANIA COUNTY
ATTN: SKAMANIA COUNTY COMMISSIONERS
240 NW VANCOUVER ST
PO BOX 790
STEVENSON, WA 98648-0790
Ph1: 509-427-3700

PARTY 2: TIMOTHY W O'MAHONEY
ATTN:
1012 KANAKA CREEK RD
STEVENSON, WA 98648
Ph1: 509-427-3445

PARTY 3: OPEIU LOCAL 11
ATTN: MICHAEL RICHARDS
3815 COLUMBIA ST
VANCOUVER, WA 98660-1967
Ph1: 503-257-6691 Ph2: 800-547-8902



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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 25875-U-13-06631 FILED: 08/05/2013 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: CUSTOD/MAINT
DETAILS: Union
COMMENTS:

EMPLOYER: SKAMANIA COUNTY
ATTN: SKAMANIA COUNTY COMMISSIONERS
240 NW VANCOUVER ST
PO BOX 790
STEVENSON, WA 98648-0790
Ph1: 509-427-3700

PARTY 2: TIMOTHY W O'MAHOONEY
ATTN:
1012 KANAKA CREEK RD
STEVENSON, WA 98648
Ph1: 509-427-3445

PARTY 3: OPEIU LOCAL 11
ATTN: MICHAEL RICHARDS
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