

Tumwater School District (Tumwater Office Professionals Association), Decision 12409 (PECB, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TUMWATER SCHOOL DISTRICT,

Bystander.

GINA DOWNES,

Complainant,

vs.

TUMWATER OFFICE PROFESSIONALS
ASSOCIATION/WASHINGTON
EDUCATION ASSOCIATION,

Respondent.

CASE 127451-U-15 (against union)

DECISION 12409 - PECB

ORDER OF DISMISSAL

GINA DOWNES,

Complainant,

vs.

TUMWATER SCHOOL DISTRICT,

Respondent.

CASE 127452-U-15 (against employer)

DECISION 12410 - PECB

ORDER OF DISMISSAL

On July 1, 2015, Gina Downes (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Tumwater Office Professionals Association (union) and Tumwater School District (employer) as respondents. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

issued on July 16, 2015, indicated that it was not possible to conclude a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases. On August 6, 2015, the complainant requested a one-week extension to file amended complaints. The extension was granted.

On August 13, 2015, the complainant filed amended complaints. The Unfair Labor Practice Manager reviewed the complaints and amended complaints and dismisses them as untimely. The complaints were not filed within the six-month statute of limitations period.

DISCUSSION

The allegations of the complaints concern:

Union interference with employee rights in violation of RCW 41.56.150(1) by failing to investigate the New Market Skills Center's relationship with the Tumwater School District.

Employer interference with employee rights to union representation in violation of RCW 41.56.140(1) by refusing to include clerical employees working at the New Market Skills Center in the Tumwater Office Professionals Association bargaining unit.

Six-Month Statute of Limitations Period

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when "a potential complainant has actual or constructive notice of the complained-of action." *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

To determine timeliness the Commission looks at the dates of events in the complaint in relation to the filing date. The original complaints were filed on July 1, 2015. In order to be timely, the

complainant would have needed to describe events that took place on or after January 1, 2015. According to the amended complaints, Downes' employment was severed from the Tumwater School District on December 31, 2014. Documents submitted by the complainant show that Downes became aware her position was not included in any bargaining unit while she was employed by the employer. The allegations rising out of a lack of union representation and bargaining unit placement occurred more than six months before these complaints were filed with the Commission. The allegations that the union and employer interfered with Downes' representation rights as an employee of Tumwater School District were not timely filed.

CONCLUSION

Downes was not employed by the employer within the six-month statute of limitations period. Although the complainant only missed the filing deadline by one day, the statute of limitations period precludes the processing of these complaints because they were not timely filed.

NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in the above-captioned matters are DISMISSED for failure to state a cause of action.

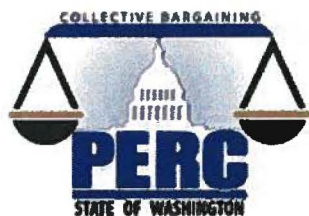
ISSUED at Olympia, Washington, this 1st day of September, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

This order 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

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OLYMPIA, WASHINGTON 98504-0919

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THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 09/01/2015

DECISION 12409 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



BY: VANESSA SMITH

CASE NUMBER: 127451-U-15

EMPLOYER: TUMWATER SCHOOL DISTRICT
ATTN: JOHN BASH
621 LINWOOD AVE SW
TUMWATER, WA 98512
john.bash@tumwater.k12.wa.us
(360) 709-7000

PARTY 2: GINA DOWNES
410 PERRY FALLS LN SW
OLYMPIA, WA 98512
tgdownes@q.com
(360) 866-8451

PARTY 3: TUMWATER OFFICE PROFESSIONAL ASSOCIATION/WEA
ATTN: HEATHER ALNES
1205 S 2ND AVE
TUMWATER, WA 98501
heather.alnes@tumwater.k12.wa.us
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REP BY: JAMES GASPER
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RECORD OF SERVICE - ISSUED 09/01/2015

DECISION 12410 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127452-U-15

EMPLOYER: TUMWATER SCHOOL DISTRICT
ATTN: JOHN BASH
621 LINWOOD AVE SW
TUMWATER, WA 98512
john.bash@tumwater.k12.wa.us
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