STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PATRICK D. GRAY, Complainant, vs. LEWIS COUNTY, Respondent.	CASE 127510-U-15 DECISION 12413 - PECB ORDER OF DISMISSAL

On July 27, 2015, Patrick D. Gray (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Lewis County (employer) as respondent. The complaint alleges that the employer discriminated against Gray by denying him a promotion to Lead Mechanic III because he does not have a Commercial Driver License (CDL) "A". The complaint further alleges that the employer should provide the CDL "A" training for Gray because it was not previously required for the Lead Mechanic III job classification.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on August 11, 2015, stated that it was not possible to conclude the complaint described a cause of action for further case processing. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On August 24, 2015, the complainant filed an amended complaint. The Unfair Labor Practice Manager reviewed the complaint and amended complaint. The complaints do not describe actions that would violate Chapter 41.56 RCW. The complaint and amended complaint are dismissed for being untimely and failing to state a cause of action for further case processing.

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[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.

BACKGROUND

The allegations of the complaint and amended complaint concern:

> Employer discrimination and derivative interference in violation of RCW 41.56.140(1) since December 10, 2014, by failing and refusing to pay for Patrick Gray to take a CDL "A" training class that is required to qualify for promotion into the Lead Mechanic III job classification.

Gray is employed as a Mechanic II. This position is part of a bargaining unit represented by the Washington State Council of County and City Employees, Local 1341 (union). According to the facts alleged in the complaint and amended complaint, Gray was previously employed as a Lead Mechanic III. In 2003 Gray voluntarily demoted out of the position due to cutbacks in staff. At that time the Lead Mechanic III position did not require having a CDL "A". The employer added this requirement for the position in 2007. Gray learned of the new requirement in 2009.

On December 10, 2014, Gray asked the employer to provide the CDL "A" training for him so that he would qualify to promote to the Lead Mechanic III position. The employer denied Gray's request. Gray applied for promotion into the Lead Mechanic III position and was told he did not have the necessary CDL "A" qualification. The employer informed Gray that he would have to seek and pay for his own CDL "A" training if he wanted to obtain it. Gray argues that the employer provided other public works employees with CDL "A" training, but there are no dates or specific details in the complaint or amended complaint with regard to that allegation. It is not clear whether the other employees already occupied job positions that required this training.

On December 17, 2014, Gray had a pre-grievance meeting with the employer. The employer reiterated that it would not provide CDL "A" training for Gray. On February 23, 2015, Gray filed a grievance over the employer's refusal to provide him with CDL "A" training. The union processed the grievance but ultimately declined to take it to arbitration.

ANALYSIS

Timeliness and Six-Month Statute of Limitations

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if an unfair labor practice complaint is filed within six months of the occurrence. "[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).

Complaint is Untimely Filed

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 initial complaint was filed on July 27, 2015, and therefore is timely with regard to triggering events that took place on or after January 27, 2015. The allegations in the complaint stem from the employer's December 10, 2014, decision not to provide CDL "A" training for Gray. The allegations from December 2014 took place more than six months before the filing of the complaint and are not timely filed.

Legal Standards for Discrimination Allegations

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a *prima facie* case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or

circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

Discrimination Must Be Related to Union Activity for Commission to Have Authority

The Commission doesn't have authority to address general allegations of unfair treatment. The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity. The complaint and amended complaint describe that having a CDL "A" is a requirement of the Lead Mechanic III job classification. Gray was denied a promotion into the classification because he does not have a CDL "A" and therefore did not meet the minimum qualifications for the position. Gray argues that the employer should be required to provide the CDL "A" training because it is a new requirement that was not in place when he worked in the classification in 2003. Gray also argues that it is not fair for the employer to require him to pay for his own CDL "A" training in order to return to the Lead Mechanic III classification.

The complaint and amended complaint do not allege that the employer's decision to require Gray to pay for his own CDL "A" training had a causal connection to protected union activities. The only union activity described in the complaints happened after the employer declined to provide CDL "A" training when Gray filed a grievance. The facts in the complaints do not state a cause of action under Chapter 41.56 RCW.

CONCLUSION

The Public Employment Relations Commission only has jurisdiction over certain employer-employee relationships. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions in the six months preceding the filing of the complaint. The complaint and amended complaint are dismissed because they were not timely filed. Additionally, the complaints do not describe discrimination for engaging in (or refraining from) protected union activity.

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 4th 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 09/04/2015

DECISION 12413 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 127510-U-15

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