

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NAOMI LEE, Complainant, vs. KITSAP TRANSIT, Respondent.	CASE 127759-U-15 DECISION 12540 - PECB ORDER OF DISMISSAL
NAOMI LEE, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 1384, Respondent.	CASE 127760-U-15 DECISION 12541 - PECB ORDER OF DISMISSAL

On December 7, 2015, Naomi Lee (complainant) filed two interrelated unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC. The complaint against Kitsap Transit (employer) was assigned case number 127759-U-15, and the complaint against the Amalgamated Transit Union, Local 1384 (union) was assigned case number 127760-U-15. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 22, 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.

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.

No further information was filed by the complainant. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

ISSUES

The allegations of the complaints concern:

Unfair termination of Naomi Lee's employment on December 9, 2014, and discrimination by the employer based on religion.

Union violation of duty of fair representation by failing to investigate the employer's December 9, 2014, decision to terminate the employment of Naomi Lee and provide Lee with representation.

The complaints are untimely filed, raise religious discrimination issues that are not within the jurisdiction of the Commission, and have procedural and substantive defects.

The complaints are dismissed for untimely filing and failing to state a cause of action for further case processing.

BACKGROUND

According to the facts stated in the complaint, Lee was employed by the employer as a transit operator for 29 years. On December 9, 2014, the employer terminated Lee's employment. Lee alleges that the disciplinary incidents for which she was terminated were not properly investigated by the employer. The complaint contains details of why Lee does not think she deserved to be disciplined for several workplace incidents. Lee believes she was "targeted because of [her] faith in 'Jesus Christ' [her] Lord and Savior." Lee alleges that she did not get a fair chance to defend herself against the disciplinary allegations and received no help from the union.

ANALYSIS

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 “the party adversely affected has received actual or constructive notice of the conduct constituting the alleged unfair labor practice.” *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990); see also *Lake Washington School District*, Decision 11913-A (PECB, 2014).

Complaints Are Untimely Filed

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaints were filed on December 7, 2015. In order to be timely, the complainant needed to describe events that took place on or after June 7, 2015. According to the documents attached to the complaints, Lee’s employment was severed from Kitsap Transit on December 9, 2014. The allegations pertaining to the employer’s termination decision and lack of union representation occurred more than six months before these complaints were filed with the Commission. The allegations that the union and employer interfered with Lee’s representation rights as an employee of Kitsap Transit were not timely filed.

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

Lee alleges that the employer’s decision to terminate her employment was based in part on the fact that she spoke up about her faith in Jesus Christ and called out activities in the workplace that she felt were wrong. The Public Employment Relations Commission does not have jurisdiction over laws that protect employees from religious discrimination. The Commission does not 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 does not allege that Lee was discriminated against for engaging in protected union activity. The complainant can file complaints of religious discrimination with the U.S. Equal Employment Opportunity Commission or the Washington State Human Rights Commission.

Additional Procedural Defects

The deficiency notice also pointed out several procedural defects with the complaints. The requirements for filing a complaint charging unfair labor practices are described in WAC 391-45-050. Although those defects are not the primary reasons for dismissal of these cases, they are relevant to note.

Need to Identify Participants in Alleged Violations

The complaints make general statements about the employer's actions and union's lack of action, but they did not identify the names of individuals who acted on behalf of the employer or failed to act on behalf of the union. WAC 391-45-050(2) requires the complainant to identify alleged participants. The identities of the employer and union officials are needed by the respondents in order to respond to the complaints.

Numbered Paragraphs

Complaints must contain numbered paragraphs. In this case the complainant submitted a hand written statement of facts without any numbering.

CONCLUSION

The complaints were untimely filed. There is a six-month statute of limitations period for filing unfair labor practice complaints. The complaints filed by Lee concern events that took place nearly a year prior to the filing of the complaints. The Commission does not have jurisdiction to address events that took place outside of the six-month statute of limitations period. The complaint also alleges religious discrimination by the employer. Even if the complaints had been timely filed, the Public Employment Relations Commission does not have jurisdiction over laws that protect employees from religious discrimination. The only type of discrimination that the Commission can address is discrimination for engaging in (or refraining from) protected union activity. The complaints do not allege that Lee was discriminated against for engaging in protected union activity. Lastly, the complaints have procedural defects and do not comply with the content requirements described in WAC 391-45-050. The complaints are dismissed for untimely filing and failure to state a cause of action within the jurisdiction of the Commission.

ORDER

The complaints charging unfair labor practices in the above-captioned matters are DISMISSED for untimely filing and failure to state a cause of action under the jurisdiction of the Commission.

ISSUED at Olympia, Washington, this 26th day of January, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "J. Bradley", is written over the printed name.

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

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

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/26/2016

DECISION 12540 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


BY: VANESSA SMITH

CASE NUMBER: 127759-U-15

EMPLOYER: KITSAP TRANSIT
ATTN: JOHN CLAUSON
60 WASHINGTON AVE STE 200
BREMERTON, WA 98337
ktexecutive@kitsaptransit.com
(360) 479-6962

PARTY 2: NAOMI LEE
PO BOX 2563
BREMERTON, WA 98310
trinity7777@yahoo.com
(360) 471-3965



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKESELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/26/2016

DECISION 12541 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


BY: VANESSA SMITH

CASE NUMBER: 127760-U-15

EMPLOYER: KITSAP TRANSIT
ATTN: JOHN CLAUSON
60 WASHINGTON AVE STE 200
BREMERTON, WA 98337
ktexecutive@kitsaptransit.com
(360) 479-6962

PARTY 2: NAOMI LEE
PO BOX 2563
BREMERTON, WA 98310
trinity7777@yahoo.com
(360) 471-3965

PARTY 3: ATU LOCAL 1384
ATTN: GREGORY SANDERS
1014 BAY ST
PORT ORCHARD, WA 98366
president@atu1384.org
(360) 710-9077