

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AUDRA L. WILSON,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 22562-U-09-5768

DECISION 10500-A - PECB

DECISION OF COMMISSION

*Audra L. Wilson*, appeared pro se.

Daniel T. Satterberg, King County Prosecuting Attorney, by *Susan N. Slonecker*, Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal filed by Audra L. Wilson (Wilson) seeking review and reversal of an order issued by Unfair Labor Practice Manager David I. Gedrose, and reinstatement of her complaint.<sup>1</sup> King County (employer) supports the Unfair Labor Practice Manager's decision. We affirm, although on a different basis.

Wilson worked for the King County Facilities and Management Division, and was in a bargaining unit represented by Teamsters Local 117 (union). Wilson's original complaint, which was filed on June 29, 2009, alleged that the employer: terminated her employment on the basis of racial and gender discrimination in violation of RCW 41.56.140(1); attempted to dominate the union in violation of RCW 41.56.140(2); discriminated against her for filing a contractual grievance in violation of RCW 41.56.140(3); violated the non-discrimination provisions of the collective bargaining agreement between the employer and union; and refused to bargain in violation of RCW 41.56.140(4).

<sup>1</sup> *King County*, Decision 10500 (PECB, 2009).

On July 6, 2009, the Unfair Labor Practice Manager issued a deficiency notice informing Wilson that her complaint failed to state a cause of action because this agency does not have the statutory authority to redress discriminatory acts based upon race or gender. Additionally, the deficiency notice stated that Wilson's domination allegations were not supported by the alleged facts and her allegation that the employer discriminated against her failed to state a cause of action. The deficiency notice pointed out that this Commission does not redress contract violations through the unfair labor practice statutes. Finally, the deficiency notice pointed out that Wilson, as an individual employee, lacked standing to raise a refusal to bargain allegation.<sup>2</sup> Wilson was granted 21 days to cure the defects of her complaint.

On July 23, 2009, Wilson filed an amended complaint. Wilson reasserted the allegations contained within her original complaint and she amended her complaint to reemphasize that her termination was based upon her filing a work schedule grievance in April 2008.

The Unfair Labor Practice Manager reviewed the amended complaint and found Wilson failed to cure the defects found in her original complaint. Specifically, the Unfair Labor Practice Manager held that Wilson's amended complaint failed to allege facts demonstrating how the employer attempted to dominate the union or how it discriminated against Wilson for filing an unfair labor practice complaint. The Unfair Labor Practice Manager again held that Wilson lacked standing to file a refusal to bargain allegation. Finally, the Unfair Labor Practice Manager held that Wilson's allegation that she was terminated based upon her filing of a grievance also failed to state a cause of action. Wilson now appeals that decision.

## DISCUSSION

The statute of limitations for filing an unfair labor practice complaint under the Public Employees' Collective Bargaining Act (PECB) is six months from the date of occurrence. RCW

---

<sup>2</sup> The Unfair Labor Practice Manager's deficiency notice noted that Wilson failed to include a statement of the remedy sought by the complainant on a separate sheet of paper as required by the form. Wilson's original complaint form demonstrates that she did write "reinstatement, back pay, and all costs" underneath the section entitled "Remedy Requested." Although we strongly urge complainants to follow the instructions on the complaint form, including writing on a separate sheet of paper the requested remedy should the complaint be successful, Wilson nevertheless satisfied the intent of WAC 391-45-050(3) by actually including her requested remedy as part of the complaint.

41.56.160(1); *City of Bellevue*, Decision 9343-A (PECB, 2007). The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *City of Bremerton*, Decision 7739-A (PECB, 2003). This Commission has previously held that the only exception to the strict enforcement of the six-month statute of limitations is where the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994). A complaint may be dismissed by an examiner as untimely even where the employer has not raised timeliness as a defense. *City of Bellevue*, Decision 9343-A.

While the Unfair Labor Practice Manager cited valid reasons<sup>3</sup> for the dismissal of Wilson's complaint, the overriding factor in this case is timeliness. Wilson filed her original complaint on June 29, 2009. Thus, the only events that can be considered are those events that occurred after December 29, 2008. The record before us demonstrates that all pertinent events included in Wilson's original and amended complaints occurred prior to December 29, 2008, and are therefore outside the six-month statute of limitations. Those events include:

- Wilson's allegation that the employer committed discriminatory practices in the hiring process was based upon events that occurred in 2007. Additionally, because Wilson was not employed by the employer, and therefore not a public employee during the time this alleged event occurred, Chapter 41.56 RCW does not provide redress for this allegation.
- Wilson's allegation that the employer allegedly discriminated against her for filing a grievance was based upon events that occurred on March 19, 2008.
- Wilson's allegations that the employer failed to protect her by allowing workplace threats and intimidation was based upon events that occurred on April 28, 2008.
- Wilson's allegation that the employer targeted her for filing a grievance by investigating her for falsifying her background occurred on May 8, 2008.

---

<sup>3</sup> For example, Wilson claimed that the employer discriminated against her based upon her race and gender. As the Unfair Labor Practice Manager correctly pointed out, this agency does not have jurisdiction over claims of racial and gender discrimination in employment.

- Wilson's allegation that the employer retaliated against her when it falsified her job performance evaluations occurred between June and September 2008.
- Wilson alleged that the employer terminated her employment in violation of Chapter 41.56 RCW. Wilson had unequivocal notice of her termination on November 26, 2008, and her termination is the controlling event of her unfair labor practice complaint. *See Community College District 17, Decision 9795-A (PSRA, 2008)*. The fact that she was seeking administrative review of the employer's decision as well as the fact that the union filed a contractual grievance under the terms of the collective bargaining agreement regarding her termination does not toll the statute of limitations.

Because Wilson failed to file her complaint within the six-month statute of limitations, the Unfair Labor Practice Manager did not err in dismissing her complaint.

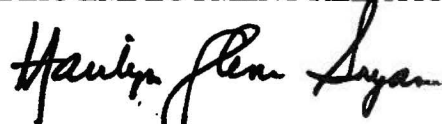
NOW, THEREFORE, it is


ORDERED

The Order of Dismissal issued by Unfair Labor Practice Manager David I. Gedrose is AFFIRMED.

ISSUED at Olympia, Washington, this 2<sup>nd</sup> day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
THOMAS W. McLANE, Commissioner