

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SOUTHWEST WASHINGTON AGENCY  
ON AGING AND DISABILITIES,

Employer.

QUAN MINH TRAN,

Complainant,

vs.

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL  
UNION, LOCAL 11,

Respondent.

CASE 25490-U-13-6528

DECISION 11703-B - PECB

DECISION OF COMMISSION

*Quan Minh Tran*, appeared *pro se*.

On February 25, 2013,<sup>1</sup> Quan Minh Tran (Tran) filed an unfair labor practice complaint alleging that the Office and Professional Employees International Union, Local 11 (union) interfered with employee rights, induced the employer to commit an unfair labor practice, and discriminated against Tran. Unfair Labor Practice Manager David I. Gedrose reviewed the complaint in accordance with WAC 391-45-110. On March 5, Gedrose concluded the complaint failed to state a cause of action and issued a deficiency notice. Specifically, Tran's complaint did not conform to WAC 391-45-050(2), failed to allege facts that the union interfered with or discriminated against Tran for his union activities, and failed to allege facts that the union induced the employer to take unlawful action against Tran. The deficiency notice provided Tran with 21 days to amend his complaint.

<sup>1</sup> All dates are in 2013 unless otherwise noted.

On March 28, Tran filed a motion to amend his complaint. On April 5, Gedrose issued an Order of Dismissal.<sup>2</sup> The Order of Dismissal pointed out that Tran's amended complaint was untimely. The Order of Dismissal pointed out that the allegations made in the amended complaint were outside of the six-month statute of limitations provided for in RCW 41.56.160(1). Additionally, the amended complaint did not cure the substantive defects of the complaint. On April 9, Gedrose issued a Corrected Order of Dismissal.<sup>3</sup> The Corrected Order of Dismissal points out that Tran's complaint did not comply with WAC 391-08-120.

On April 10, Tran sent Gedrose an e-mail that stated:

Mr. Gedrose,

Per your advice offered yesterday in our phone call I hereby request an appeal to the said decision issued on 4/5/13.

Respectfully,  
Quan Tran

On April 10, Tran sent an e-mail to Executive Director Michael P. Sellars following up on a phone call they had earlier in the day. Tran wrote:

I did ask you about what the legal timelines are in relation to PERC filings and gave you the specifics of my situation (3/26/13 vs 3/28/13). You responded to me by saying "it depends." I respectfully request you to research this issue and give me a definitive answer soon or guide me where to research the matter."

On April 12, the Executive Director responded and provided Tran with references to the applicable RCWs and WACs. Tran filed no other documents with the agency.

On May 9, the Clerk of Commission sent an e-mail to Tran inquiring as to whether it was his intent that the April 9, 2013 e-mail to Gedrose serve as his appeal of Decision 11703-A. On May 10, Tran responded, "Yes."

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<sup>2</sup> *Southwest Washington Agency on Aging and Disabilities (Office of Professional Employees International Union, Local 11), Decision 11703 (PECB, 2013).*

<sup>3</sup> *Southwest Washington Agency on Aging and Disabilities (Office of Professional Employees International Union, Local 11), Decision 11703-A (PECB, 2013).*

Tran's complaints and appeal are procedurally and substantively defective. Tran alleged that on May 25, 2012, he requested the union to pursue a grievance on his behalf and the union refused. On August 23, 2012, the union informed Tran that the decision stood. Any events occurring prior to August 23, 2012, are outside of the six-month statute of limitations. RCW 41.56.160(1). Only in limited circumstances does the Commission assert jurisdiction over complaints alleging failure to process grievances. *See City of Seattle*, Decision 11291-A (PECB, 2012).

Tran did not file the appeal in accordance with the rules. WAC 391-45-350(5) requires that a notice of appeal "shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120(3) and (4)." Tran sent his "appeal" to Gedrose. Filings with the agency are appropriately filed if they are mailed to the agency; personally delivered to the agency; faxed to the agency and followed up by mail service; or e-mailed to the agency and followed up by mail service. WAC 391-08-120(2). The agency's website lists the agency's contact information, including the e-mail address for filing documents electronically. Documents sent directly to agency staff do not satisfy the filing requirement of WAC 391-08-120.

The procedure for filing an appeal of an unfair labor practice complaint is established by WAC 391-45-350. The April 10 e-mail does not identify the findings of fact, conclusions of law, or order claimed to be in error. WAC 391-45-350(3). Tran's "appeal" does not conform with the requirements of WAC 391-45-350 and WAC 391-08-120.

The Commission has waived its rules when a waiver serves the purpose of Chapter 41.56 RCW and is not shown to prejudice another party. *Central Kitsap School District*, Decision 3167-A (PECB, 1991). In this case, the purposes of Chapter 41.56 RCW would not be further served by allowing the April 10 e-mail to serve as an appeal and waiving the requirements of WAC 391-45-350 and 391-08-120. Tran requested information from the Executive Director, who provided detailed information, including citations and quotes from WAC 319-45-350 and WAC 391-08-120. The Executive Director's e-mail should have put Tran on notice that his e-mail to Gedrose did not satisfy the requirements of the rules.

It was unclear to agency staff whether Tran intended to appeal Decision 11703-A. Agency staff should not have to follow up with parties to determine whether or not they intended documentation to be a filing. The Commission applies its rules equally to complainants represented by counsel and those appearing *pro se*. *City of Bellingham*, Decision 11422-A (PECB, 2013); *Port of Seattle*, Decision 7604-A (PECB, 2002); *Seattle Public Health Hospital*, Decision 1781-B (PECB, 1984).

Tran's initial complaint did not state a cause of action. Tran did not file an amended complaint in response to the deficiency notice in a timely manner. In accordance with WAC 391-45-110(1), Tran was provided 21 days to file an amended complaint. Tran's amended complaint was due on March 26. Tran filed his amended complaint on March 28; the amended complaint did not cure the substantive deficiencies of his original complaint. Tran's filing was untimely and appropriately dismissed.

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 21<sup>st</sup> day of May, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
THOMAS W. McLANE, Commissioner



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

*Majel C. Boudia*  
BY: /s/ MAJEL C. BOUDIA

CASE NUMBER: 25490-U-13-06528 FILED: 02/25/2013 FILED BY: PARTY 2  
DISPUTE: UN MULTIPLE ULP  
BAR UNIT: MISCELLANEOUS  
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