

*Kiona Benton School District*, Decision 11563-A (EDUC, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIONA BENTON EDUCATION  
ASSOCIATION,

Complainant,

vs.

KIONA BENTON SCHOOL DISTRICT,

Respondent.

CASE 24392-U-11-6253

DECISION 11563-A - EDUC

DECISION OF COMMISSION

*James A. Gasper*, Attorney at Law, for the union.

Lyon Weigand & Gustafson P.S., by *Jeanie R. Tolcacher*, Attorney at Law, and  
*John L. Seitz*, Attorney at Law, for the employer.

On November 1, 2012, Examiner Stephen W. Irvin issued *Kiona Benton School District*, Decision 11563 (EDUC, 2013). The Examiner dismissed the unfair labor practice complaint finding the Kiona Benton School District (employer) did not discriminate against three employees, as alleged in the union's complaint and amended complaints. The union filed a timely notice of appeal on November 21, 2012. The notice of appeal made general assignments of error. The notice of appeal did not identify specific findings of fact, conclusions of law, or order that the union was appealing. The employer contends that the Commission should dismiss the union's appeal for failure to comply with WAC 391-45-350(3).

There are two grounds for dismissal in this case. First, the union failed to follow agency rules in filing its appeal. *Clover Park School District*, Decision 7073-A (EDUC, 2001), *aff'd*, *DeLacey v. Clover Park School District*, 117 Wn.App. 291 (2003). Second, the union failed to appeal any of the Findings of Fact, thus they were treated as verities on appeal. *C-Tran*, Decision 7088-B (PECB, 2002). The Findings of Fact support the Conclusions of Law.

The procedure for filing an appeal of an unfair labor practice complaint is established by WAC 391-45-350. A notice of appeal shall identify “the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.” WAC 391-45-350(3). A party must put the Commission and opposing party on notice of the arguments it desires to advance. *Clover Park School District*, Decision 7073-A. If the notice of appeal does not supply sufficient information on which to determine a specific basis for an appeal, then the Commission does not need to reach the substantive issues of the case. *Id.* The Commission expects the parties to closely monitor their compliance with the rules. If a party fails to comply with the rules, the Commission has an obligation to apply the rules in fairness to the opposing party. *Clover Park School District*, Decision 7073-A.

Failure to comply with WAC 391-45-350 is a basis for dismissing an appeal. *Clover Park School District*, Decision 7073-A, *aff'd*, *DeLacey v. Clover Park School District*, 117 Wn.App. 291 (2003). In *Clover Park School District*, the complainant, who was represented by counsel, appealed an Examiner’s decision. The complainant’s notice of appeal stated:

Pursuant to WAC 391-45-350 comes now the complainant, Suzanne DeLacey in the above captioned matter, and notifies the Commission and parties of her intent to exercise her right to appeal the recent decision of Examiner Rex L. Lacey.

The employee filed an untimely amended notice of appeal. The employer moved for dismissal, arguing that the notice of appeal failed to comply with WAC 391-45-350(3) because it failed to identify the specific rulings, Findings of Fact, Conclusions of Law, or Orders in error. The Commission dismissed the appeal for failure to comply with WAC 391-45-350(3) declining to exercise its discretion to waive its rules.

The employee appealed the Commission’s decision. The Court of Appeals affirmed, noting that the Commission strictly enforces time limitations and the procedural requirements related to the contents of complaints. *DeLacey v. Clover Park School District*, 117 Wn.App. at 296. When the Commission dismissed the appeal, the Commission was strictly enforcing its procedural rules. *Id.* at 297. The Commission did not abuse its discretion when it declined to waive the requirements of its rules as allowed by WAC 391-08-003. *Id.* at 299.

In this case, the notice of appeal stated:

1. The Examiner committed error in finding that the Kiona-Benton School District (District) did not retaliate against Amberlee Swensen for filing and testifying at a PERC unfair labor practice proceeding when it thereafter nonrenewed her employment as a certificated teacher under the pretext of fiscal management and teacher retention concerns.
2. The Examiner committed error when he denied the Association's motion at hearing to amend its complaint to allege a violation of 41.59.140(a)(1) RCW of the Educational Employment Relations Act (EERA) as the facts pertained to Amberlee Swensen's treatment by the District.
3. The Examiner committed error when he found that Gary Finn's termination as a substitute with the District was not in retaliation for participating in protected activities, i.e., Mr. Finn had been subpoenaed to appear as a witness at an arbitration hearing and his subsequent termination was pretext.
4. The Examiner committed error when he found that discipline imposed upon Jennifer Oliver, treasurer for the Association and building representative at the high school, was in retaliation for her engaging in protected activities.

While the union identified the general rulings alleged to be in error, the union failed to identify the findings of fact, conclusions of law, and order to be in error. Simply stating, as the union did in this case, that the Examiner erred in his conclusion is insufficient to put the Commission and the opposing counsel on notice of what the issues are on appeal. It is the obligation of the appealing party to clearly identify the findings of fact, conclusions of law, and order that are asserted to be in error.

Even if the Commission ignored the deficiencies in the appeal process, the outcome is the same. This is because despite the union's failure to comply with WAC 391-45-350(3), the Commission has nonetheless reviewed the entire record.

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002). Unchallenged findings of fact are accepted as true on appeal. *C-Tran*, Decision 7088-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).

The Examiner correctly stated the legal standard. The Findings of Fact are verities on appeal and support the Examiner's Conclusions of Law. After fully considering the evidence and arguments before us, we affirm the Examiner.

NOW, THEREFORE, it is

ORDERED

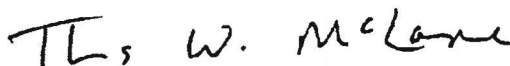
The Findings of Fact, Conclusions of Law, and Order issued by Examiner Stephen W. Irvin are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



THOMAS W. McLANE, Commissioner

Commissioner Brennan did not participate in the consideration of or the decision in this case.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

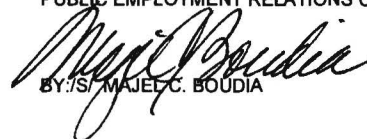
112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 11/21/2013

The attached document identified as: **DECISION 11563-A - EDUC** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: MAJEL C. BOUDIA

CASE NUMBER: 24392-U-11-06253 FILED: 11/10/2011 FILED BY: PARTY 2  
DISPUTE: ER DISCRIMINATE  
BAR UNIT: TEACHERS  
DETAILS: See 24649-S-12-0273  
COMMENTS:

EMPLOYER: KIONA BENTON SCHOOL DISTRICT  
ATTN: ROM CASTILLEJA  
1107 GRACE AVE  
BENTON CITY, WA 99320  
Ph1: 509-588-3717 Ph2: 509-588-2000

REP BY: JEANIE TOLCACHER  
LYON WEIGAND AND GUSTAFSON  
222 N 3RD ST  
PO BOX 1689  
YAKIMA, WA 98907-1689  
Ph1: 509-248-7220

REP BY: JOHN L SEITZ  
LYON WEIGAND AND GUSTAFSON  
222 NORTH 3RD STREET  
PO BOX 1689  
YAKIMA, WA 98907  
Ph1: 509-248-7220

PARTY 2:  
ATTN: KIONA BENTON EDUCATION ASSN/WEA  
CONNIE MEREDITH  
PO BOX 5146  
BENTON CITY, WA 99320-5146  
Ph1: 509-588-4845

REP BY: JAMES GASPER  
WASHINGTON EDUCATION ASSN  
PO BOX 9100  
FEDERAL WAY, WA 98063-9100  
Ph1: 253-765-7023 Ph2: 206-854-4609