

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-A - PECB

CORRECTED
ORDER OF DISMISSAL

On February 25, 2013, Quan Minh Tran (Tran) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Office and Professional Employees International Union, Local 11 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 5, 2013, indicated that it was not possible to conclude that a cause of action existed at that time. Tran was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 28, 2013, Tran filed an untimely amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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.

DISCUSSION

The deficiency notice pointed out the defects to the complaint.

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), union inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) [and if so, derivative interference in violation of RCW 41.56.150(1)], and union discrimination for filing charges in violation of RCW 41.56.150(3) [and if so, derivative interference in violation of RCW 41.56.140(1)], by actions toward Tran.

The employer is not a party to this complaint and does not need to enter a notice of appearance or otherwise respond.

The complaint is procedurally defective. No collective bargaining agreement was attached to the complaint. The statement of facts is nearly unreadable, is not clear, and thus does not conform to WAC 391-45-050(2).

Although those defects could be cured, the complaint is also substantively defective. Tran was terminated from employment on May 25, 2012. Tran alleges that the union did not properly represent him in his disputes with the employer, including filing a grievance, and did not go to arbitration over his termination. It is an unfair labor practice in violation of RCW 41.56.150 for a union to interfere with an employee's collective bargaining rights in connection with the employee's union activities. It is an unfair labor practice in violation of RCW 41.56.150(2) for a union to induce an employer to commit an unfair labor practice by requesting the employer to take unlawful action against an employee in reprisal for the employee's union activities protected by Chapter 41.56 RCW; and it is an unfair labor practice in violation of RCW 41.56.150(3) for a union to discriminate against an employee for filing an unfair labor practice complaint with, or testifying before, the Commission.

Regarding interference, there are no facts to the complaint showing that the union interfered with Tran because of his union activities. Many of Tran's allegations set forth in the statement of facts concern the employer's alleged retaliation against him for his union activities. Tran does not

apparently allege union retaliation against him, but rather alleges that the union breached its duty of fair representation toward him in his disputes with the employer. A union has a duty to fairly represent its members, but the Commission does not assert jurisdiction in cases arising exclusively out of the processing of claims under an existing collective bargaining agreement, *e.g.*, grievance and arbitration procedures. Tran must seek a remedy through internal union procedures or the courts.

Regarding union inducement, there are no facts to the complaint showing that the union requested the employer to take unlawful action against Tran. Tran alleges union collusion with the employer in his termination, but does not provide evidence of such collusion. Vague and nonspecific claims are insufficient to state a cause of action.

Finally, regarding discrimination for filing charges, there is no information in the complaint showing that Tran filed an unfair labor practice against the union prior to the present complaint, or that he testified before the Commission against the union. The basis for this claim is not apparent.

Amended Complaint

Tran provided a legible amended complaint and attached a collective bargaining agreement. However, the amended complaint does not cure the substantive defects to the complaint. There is no information indicating that the union interfered with or discriminated against Tran based upon his union activities, requested the employer to commit a violation, or that Tran previously filed a complaint, or gave testimony before the Commission, against the union.

The gravamen of Tran's amended complaint is that the union did not file a grievance and go to arbitration on his behalf. The amended complaint does not show that the Commission has jurisdiction. In addition, Tran's claim appears to be untimely and further shows a lack of jurisdiction by the Commission in this case. Tran filed the original complaint on February 25, 2013. The amended complaint alleges that the union refused to arbitrate Tran's termination on May 25, 2012, and again on August 23, 2012. Complaints must be filed within six months of when complainants knew or should have known of alleged violations. RCW 41.56.160(1). The information supplied by Tran indicates that he should have filed this complaint no later than

Saturday, February 23, 2013 (due on Monday, February 25, 2013, under WAC 391-08-100). The complaint was filed by fax, was not perfected by same-day mailing under WAC 391-08-120, and was thus defective. The amended complaint received on March 28, 2013, was untimely under RCW 41.56.160(1). Even if the amended complaint had stated a cause of action, both the original and amended complaints must be dismissed on jurisdictional grounds.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 25490-U-13-6528 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of April, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This 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

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION


EM/JS/ ROBBIE DUFFIELD

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

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