

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

R. KEITH HOELLER,

Complainant,

vs.

GREEN RIVER COLLEGE,

Respondent.

CASE 127690-U-15

DECISION 12528-C - CCOL

DECISION OF COMMISSION

Kathryn Re, Representative, and *R. Keith Hoeller*, for the complainant.

John D. Clark, Assistant Attorney General, Attorney General Robert W. Ferguson,
for Green River College.

Complainant Keith Hoeller, formerly an adjunct faculty member, taught philosophy at Green River College (employer) for 25 years. He was a member of the bargaining unit of academic employees represented for collective bargaining purposes by the Green River United Faculty Coalition.

While working at the college, the complainant advocated on behalf of adjunct faculty members, including cofounding an association dedicated to the interests of part-time faculty. He has written extensively about what he perceives to be unfair treatment of adjunct faculty both at the college and on the national level.

The complainant filed the unfair labor practice complaint on October 29, 2015, contending in his 22-page complaint, as described in the amended preliminary ruling, that the college breached RCW 28B.52.073 by retaliating against him for his protected activities. On September 8, 2016, Hoeller resigned from teaching, and he retired in December 2016.

The matter proceeded to hearing on hearing on January 19, 29, and 31, 2018; April 3, 2018; May 21 and 22, 2018; and June 12, 2018. The record includes a hearing transcript of 1,417 pages, and more than 150 exhibits. The complainant and the employer filed post-hearing briefs on

September 12, 2018. The Examiner reviewed the extensive record, made 124 findings of fact as required by WAC 391-45-310(2), and, on December 20, 2018, issued detailed findings of fact and conclusions of law, concluding that the college had not violated RCW 28B.52.073. *Green River College*, Decision 12528-B (CCOL, 2018).

The complainant's designated representative, a fellow adjunct faculty employee, filed a notice of appeal on his behalf. The notice of appeal does not comply with the rules governing appellate practice before the Commission. WAC 391-45-350(3) requires an appellant to "identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error." The notice of appeal did not specifically challenge any of the Examiner's findings and conclusions. Instead, the complainant's notice of appeal is a discursive rehash of his complaint and post-hearing brief. While the notice of appeal makes clear that the complainant disagrees with the Examiner's ultimate order, he offers no assistance in identifying the specific findings of fact that he contends the Examiner made in error.

The issue before the Commission is whether the employer discriminated against Hoeller. Findings of fact that are not appealed are verities on appeal. In this case, the findings of fact support the Examiner's conclusions of law. We affirm the Examiner.

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

Decisions issued by examiners include numbered findings of fact and conclusions of law and an order. *Puyallup School District*, Decision 12814-A (PECB, 2018). When appealing an examiner's decision, the appellant "shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error." WAC 391-45-350(3). Unchallenged findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A (PECB, 2001).

Application of Standards

Compliance with WAC 391-45-350(3) is necessary to put the Commission and the opposing party on notice of the arguments that the appealing party intends to advance. *City of Kirkland*, Decision 6377-A (PECB, 1998). Failure to comply with WAC 391-45-350 is a basis for dismissing an appeal. *DeLacey v. Clover Park School District*, 117 Wn. App. 291 (2003); *Kiona Benton School District*, Decision 11563-A (EDUC, 2013). The Commission “expects parties to closely monitor their compliance with the rules, and if a party fails to do so, PERC has an obligation, in fairness to the other party, to apply the rules.” *DeLacey v. Clover Park School District*, 117 Wn. App. 291, 296 (affirming the Commission’s decision to dismiss a complaint for failure to comply with WAC 391-45-350). Parties who ignore the requirements of WAC 391-45-350(3) do so at their peril.

It is not the Commission’s obligation to comb through filings in search of the sources of Hoeller’s disagreement with the Examiner’s findings and conclusions. Rather, the rules of appeal place on the appellant the duty to identify the portions of the decision that are in error. Appellants may use the appeal brief to identify the portions of the record that support the desired outcome, but an appellant may not cure the shortcomings of a notice of appeal in the appeal brief. The complainant’s appeal brief fails to specify by number the findings of fact or conclusions of law that he wishes the Commission to reject. Thus, neither the Commission nor the employer had adequate notice of which findings of fact the complainant contends are in error.

Because the complainant fails to identify specific findings of fact that are alleged to be in error, the Examiner’s findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347; *Brinnon School District*, Decision 7210-A. We review the application of the law to those facts, de novo. *Wapato School District*, Decision 12894-A (PECB, 2019). The Examiner correctly applied the law to the facts.

Conclusion

The Examiner’s unchallenged findings of fact are verities on appeal. On appeal, the Commission reviews conclusions of law, de novo. We conclude that the findings of fact fully support the

Examiner's conclusions of law. We accordingly affirm the Examiner's findings of fact, conclusions of law, and order in their entirety.

ORDER

The findings of fact, conclusions of law, and order issued by Examiner Page Garcia are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 30th day of April, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



KENNETH J. PEDERSEN, Commissioner

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



RECORD OF SERVICE

ISSUED ON 04/30/2019

DECISION 12528-C - CCOL has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in blue ink, appearing to read "Amy Riggs", is positioned above the typed name.

BY: AMY RIGGS

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