STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1604, | ) | |
| Complainant, | ) | CASE 18830-U-04-4783 |
| vs. | ) | DECISION 9343-A - PECB |
| CITY OF BELLEVUE, | ) | |
| Respondent. | ) | DECISION OF COMMISSION |

Lori M. Riordan, City Attorney, by *Cheryl Zakrzewski*, Attorney at Law, appeared for the employer.

Webster Mrak Blumberg, by *James H. Webster*, Attorney at Law, appeared for the union.

This case comes before the Commission on timely appeals filed by the City of Bellevue (employer) and the International Association of Fire Fighters, Local 1604 (union) seeking to overturn Findings of Fact, Conclusions of Law, and Order issued by Examiner Walter M. Stuteville, dismissing the unfair labor practice charge filed by the union.[1] We affirm the decision of the Examiner for the reasons discussed herein.

ISSUES PRESENTED

1. Did the employer fail to bargain over the decision or the impact of its decision to reduce the number of positions on Light Force 3 from five fire fighters to four fire fighters?

[1] *City of Bellevue*, Decision 9343 (PECB, 2006).

2. Did the union waive its right to bargain over this staffing change by the terms of the collective bargaining agreement?

3. Was the complaint filed by the union timely?

We find that the complaint filed by the union was not timely as determined by the Examiner. We also find that it was unnecessary for him to consider the merits of the remaining issues listed as 1 and 2 above. Accordingly, we affirm his decision and vacate the Findings of Fact and Conclusions of Law.

ANALYSIS

Applicable Legal Standard

The statute of limitations for filing an unfair labor complaint under the Public Employees' Collective Bargaining law (PECB) is six months from the date of occurrence. RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bremerton,* Decision 7739-A (PECB, 2003). The clock begins to run when the adverse employment decision is made and communicated to the complainant. *City of Seattle,* Decision 7278-A (PECB, 2001), citing *Emergency Dispatch Center,* Decision 3255-B (PECB, 1990).

In *Emergency Dispatch Center,* the statute of limitations began to run when a schedule was posted on a bulletin board, not the date that it was effective. In *City of Seattle,* the statute of limitations began to run when a seniority list was issued, not six months later when it was actually used. In *City of Seattle,* Decision 5930 (PECB, 1997), the union had notice that the fire department was creating a new safety division and reallocating personnel. The union argued unsuccessfully that the statute of

limitations tolled as the parties continued to bargain over the effects.

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. Filing a complaint within the time limits is a matter of subject matter jurisdiction. *Clark v. Selah,* 53 Wn. App. 832 (1989); *Stewart v. Omak School District,* 108 Wn. App. 1049 (2001); *Malpica v. Mary M. Knight School District 311,* 93 Wn. App. 1084 (1999). A jurisdictional issue may be raised sua sponte by a court at any time. *Hanson v. Murphy,* 121 Wn. 2d 552 (1993). *See also Acosta v. Artuz,* 221 F.3d 117 (2nd Cir. 2000); *Herbst v. Cook,* 260 F.3d 1039 (9th Cir. 2001); *Kiser v. Johnson,* 163 F.3d 326 (5th Cir. 2001).

Application of Standard

On November 13, 2003, the union sent a memorandum to the employer stating that "[a]ny reduction in staff assigned to Light Force 3, will have significant and unacceptable workload and safety impacts at the company level." The union and the employer had been discussing the issue since it was first proposed in 1995 and continued to discuss it after the memo was issued. At stake was the reduction of a fire fighter position that would be used to fund a new position: Battalion Staff Assistant.

In January 2004, the employer began the recruitment process for the Battalion Staff Assistant. On March 11, 2004, the employer announced the reduction of the Light Force 3 fire fighter position, effective March 14, 2004. The union filed its complaint on September 15, 2004.

Computing the statute of limitations from the time that the union was aware that the employer planned to reduce the fire fighter position, that time could arguably begin in 1995 when the union first learned of the plan. Certainly the union had constructive knowledge of the plan in November when they submitted an objection in writing to the employer. The latest the union could argue to have been aware of the reduction was on March 11, 2004, when it was announced and the most extreme computing would have been on March 14, when it took effect. In all of these cases the complaint was untimely, having been filed more that six months after the alleged violation.

The union argues on appeal that the Examiner erred in his finding that the complaint was untimely on several grounds. It argues that the complaint was timely in that the new position was not filled until March 17, 2004, and that since the employer did not raise the defense of timeliness, the Examiner had no jurisdiction to consider the issue.

The union's argument on when the statute began running ignores the fact that the union was well aware of the plan to reduce the number of firefighting positions for several months prior to the effective date and even bargained over the reduction. It also ignores the effective date of the actual reduction and would have the statute begin running when a secondary action occurred. Allowing for consequential acts to control the running of the statute would lead to a slippery slope of arguments about when an act that would start the statute running actually occurs.

The union has made no argument that there was any reason that the union could not have filed its complaint earlier. No hardship or intervening action was alleged. By waiting more than six months after the effective date of the reduction, the employer has been

put in a position of possible economic hardship that might have been avoided had the union filed within six months of learning of the plan or before the plan took effect.

Finally, the Examiner did not err when he raised the issue of timeliness sua sponte. The issue is a question of subject matter jurisdiction and may be raised as any time.

CONCLUSION

The Examiner did not err in dismissing the complaint as untimely. However, he did not need to decide the merits of the remaining issues. Accordingly, we vacate Findings of Fact 3, 4, 5, and 6 and Conclusions of Law 2 and 3.

NOW, THEREFORE, the Commission makes the following:

## AMENDED FINDINGS OF FACT

The Findings of Fact issued by Examiner Walter M. Stuteville are affirmed and adopted as the Findings of Fact of the Commission, except paragraphs 3, 4, 5, and 6, which are stricken from the record.

## AMENDED CONCLUSIONS OF LAW

The Conclusions of Law issued by issued by Examiner Walter M. Stuteville are affirmed and adopted as the Conclusions of Law of the Commission, except paragraphs 2 and 3, which are stricken from the record.

## ORDER

The Order dismissing the complaint issued by Examiner Walter M. Stuteville is affirmed and adopted as the Order of the Commission.

Issued at Olympia, Washington, the 16th day of February, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner