STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. COMMUNITY COLLEGE DISTRICT 17 (SPOKANE) Respondent.	)	CASE 20006-U-05-5077 DECISION 9795 - PSRA ORDER OF DISMISSAL

Parr, Younglove, Lyman and Coker, by *Edward E. Younglove III*, Attorney at Law, for the union.

Rob McKenna, Attorney General, by *Donna Stambaugh*, Assistant Attorney General, for the employer.

On December 12, 2005, the Washington Federation of State Employees (union) filed an unfair labor practice complaint with the Public Employment Relations Commission. That complaint alleged that Community College District 17 (employer) committed interference violations as well as failure to bargain in good faith as per RCW 41.80.110(1) by instituting a reduction-in-force for certain bargaining unit employees in order to fund a salary increase for employees as negotiated.

A preliminary ruling was issued January 20, 2006, directing the case to a hearing. The employer filed its answer on February 13, 2006. A hearing was held June 20 and 21, 2006, at Spokane, Washington before Examiner J. Martin Smith. The parties filed briefs and memoranda to complete the record in this case. A motion to dismiss was included in the employer's closing brief. The employer claims that the union's charge was untimely filed.

The Examiner rules that the union's charge was untimely filed, and therefore it is unnecessary to rule on the merits of the remaining issues presented.

ISSUES PRESENTED

1. Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) by its reduction of hours (lay off)?

2. Did the employer refuse to bargain in violation of RCW 41.80.110(1)(e) by breach of its good faith bargaining obligations when it instituted a reduction-in-force to fund a salary increase for employees?

3. Did the union waive its rights to prosecute these charges by untimely filing the charge?

Whether the complaint was timely filed is a threshold question to consideration of the other issues in this matter. The Examiner therefore considers the timeliness issue first.

ANALYSIS

Applicable Legal Standard

RCW 41.80.110(1) became effective July 1, 2004, and constitutes the "new generation" collective bargaining statute for employees of the State of Washington, replacing many of the provisions of RCW 41.06 and relying on parallel provisions of RCW 41.56 et. seq., the Public Employees Collective Bargaining Act. Community College Districts are State employers within the meaning of both statutes.

The State Collective Bargaining Act, RCW 41.80, establishes a "statute of limitations" for filing an unfair labor complaint:

> RCW 41.80.120(1) Unfair labor practice procedures -- Powers and duties of commission. (Effective July 1,2004) (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission . . . .

This language mirrors the language of RCW 41.56.160. In rulings under that statute, the Commission has consistently held that the statute of limitations begins to run when the complainant knew or should have known 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 Bellevue,* Decision 9343-A (PECB, 2007) *citing Emergency Dispatch Center,* Decision 3255-B (PECB, 1990).

ISSUE 3: Did the union waive its rights to prosecute these charges by untimely filing the charge?

District 17 joined Evergreen State College (TESC) and twelve other community college districts to bargain the Head Start agreement under RCW 41.80. The 2005-2007 agreement was being negotiated at the same time as agreements for other state employee units in the first wave of contracts under the new bargaining law. New contracts had to reach "tentative agreement" by October 1, 2004, so that the legislative session of January 2005 could ratify (or reject) the agreements. The 59th legislature ratified the contracts during the spring of 2005. The Examiner will not detail those negotiations except to say that the bargaining unit of Head Start and ECEAP program employees was appropriate and was subject to a prior agreement.

During these negotiations the parties agreed to a cost of living increase of 3.2% and a market adjustment to within 25% of market for positions not already within that threshold. These were to take effect on July 1, 2005. The Head Start and Early Childhood Education Achievement Program (ECEAP) receive federal funding and/or grants and do not receive money from the State's general fund. The employer determined that the negotiated increases could not be funded with available program funds. The employer determined that it would need to reduce hours of some employees to fund the negotiated increases.

On May 16, 2005, the district director of human resource services for Community Colleges of Spokane, Norman Sievert, sent an e-mail to senior union representative, Electra Jubon, outlining the funding problem and requesting a Labor/Management meeting. The e-mail stated in part: "The shortfall *will* result in changes to assigned workdays at our various centers resulting in layoffs (reduction in hours, not full positions in classified staff at this time)." (emphasis added). The e-mail continued, "It is important to meet with the Federation and Head Start representatives to discuss how the layoffs will be conducted, particularly given that they will be effective after July 1 and thus governed by the new contract."

On May 19, 2005, the college's executive vice-president, Jim Perez, sent a memo to all Head Start and ECEAP employees. He outlined the funding problem and stated, "The result will be the reduction of work days for several positions with a minimal disruption to the primary goals of delivery. A reduction in hours is considered a 'layoff' and entitles you to certain rights under your union contract." The evidence also shows that the union was actually aware of the layoffs as early as April 13, 2005. On that date,

Theresa Sullivan, chief steward, e-mailed Jubon with information indicating that she had been notified of the layoffs.

It is clear in these documents that the employer put the union and employees on notice that a "layoff" was pending. Meetings were subsequently held and the parties discussed various aspects of the situation during the next several months. The charge filed in the instant case was dated December 12, 2005. This date is outside of the six month statute of limitations.

The union stated in its closing brief: "The union continued to hope the College would fund the raises; however, in July and August 2005, the College implemented a layoff of Head Start staff." If the union had filed this case when the layoff occurred, it would have been timely. Instead, the union waited an additional three months before filing this unfair labor practice.

The time limitation set forth in the statute has been strictly enforced, even when settlement discussions are occurring. The Executive Director has stated:

> While the union's efforts to resolve these issues with the employer are commendable, the fact of making those settlement efforts does not absolve the union of compliance with the statute of limitations. To the contrary, a party faced with delays or avoidance by the opposite party to a dispute may well need to file a timely unfair labor practice complaint to protect its rights, even if settlement negotiations are ongoing. *City of Spokane,* Decision 4937 (PECB, 1994) *See also Spokane County,* Decision 2167-A (PECB, 1985)

In the City of Bellevue, Decision 9343-A, the Commission stated:

> 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 continue to bargain over the effects.

The Commission has consistently maintained strict adherence to the statute of limitation and clearly the filing of this case was outside of the six month time frame.

Conclusion

It is clear that the union failed to file its complaint within the six month statute of limitations, and this case should be dismissed. It is therefore unnecessary to address the other issues identified in this case.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED as untimely under RCW 41.80.120.

ISSUED at Olympia, Washington, this 2nd day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, Examiner

This order 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

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	20006-U-05-05077	FILED:	12/12/2005	FILED BY:	PARTY 2
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					

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