STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

Parr, Younglove, Lyman and Coker, by *Edward E. Younglove III*, Attorney at Law, joined on the brief by Gregory M. Rhodes, Attorney at Law, for the union.

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

This case comes before the Commission on a timely appeal filed by Washington Federation of State Employees (union), seeking review and reversal of an Order of Dismissal issued by Examiner J. Martin Smith.[1] Community College District 17 (employer) supports the Examiner's decision.

ISSUE PRESENTED

Did the Examiner correctly dismiss the union's complaint alleging that the employer failed to bargain in good faith by instituting a reduction-in-force for certain bargaining unit employees in order to fund a negotiated salary increase for unit employees, on the

[1] *Community College District 17 (Spokane)*, Decision 9795 (PSRA, 2007).

grounds that the complaint was not filed within the six-month statute of limitations?

For the reasons set forth below, we affirm the Examiner's decision that the union did not file its complaint within the six-month statute of limitations.

STANDARD OF REVIEW

This Commission does not conduct a de novo review of examiner decisions in unfair labor practice proceedings under Chapter 391-45 WAC. Rather, we review findings of fact to determine whether they are supported by substantial evidence and, if so, whether those findings of fact support the conclusions of law and the order. *Cowlitz County*, Decision 7007-A (PECB, 2000). Substantial evidence exists if the record contains competent, relevant, and substantive evidence which, if accepted as true, would, within the bounds of reason, directly or circumstantially support the challenged finding or findings. *Ballinger v. Department of Social and Health Services*, 104 Wn.2d 323 (1985). The Commission attaches considerable weight to the factual findings and inferences made by its examiners. *City of Edmonds*, Decision 8798-A (PECB, 2005).

APPLICABLE LEGAL STANDARD

The Commission has the power and authority to evaluate and remedy an unfair labor practice if an unfair labor practice complaint is filed within six months of the occurrence. RCW 41.80.120(1). "The six-month statute of limitations begins to run when the complainant knows or should know of the violation." *City of Bellevue*, Decision 9343-A (PECB, 2007), *citing City of Bremerton*, Decision 7739-A

(PECB, 2003).[2] The start of the six-month period, also called the triggering event, occurs when "a potential complainant has actual or constructive notice of the complained-of action." *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

In *City of Selah*, Decision 5382 (PECB, 1995), the Commission addressed the six-month limitation period and noted that its "precedents in this area are consistent with the rulings of the National Labor Relations Board (NLRB) under the similar limitations in the federal law." The Commission specifically cited *U.S. Postal Service*, 271 NLRB 397 (1984). In *Bryant & Stratton Business Institute*, 321 NLRB 1007 (1996), the NLRB explained its case law on the six-month statute of limitations, including its decision in U.S. Postal Service, as follows:

> In *U.S. Postal Service Marina Center*, 271 NLRB 397 (1984), the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences became effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired. However, as the Board emphasized in a subsequent decision, "*Postal Service Marina Center* . . . was limited to unconditional and unequivocal decisions or actions." *Stage Employees IATSE Local 659 (Paramount Pictures)*, 276 NLRB 881 (1985). Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b), the Respondent. *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995 (1986).

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[2] Because both RCW 41.56.160(1) and RCW 41.80.120(1) provide for a six-month statute of limitations in unfair labor practice cases, precedents interpreting the statute of limitations decided under Chapter 41.56 RCW are applicable to cases decided under Chapter 41.80 RCW. *See State - Natural Resources*, Decision 8458-B (PSRA, 2005).

Under the standard used by the NLRB and embraced by the Commission, the six-month statute of limitations period begins at the time the employer provides clear and unequivocal notice to the union. Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice.

In order to be clear and unambiguous, notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Emergency Dispatch Center,* Decision 3255-B (PECB, 1990).

ANALYSIS

Time Line of Key Events

In order to better understand the pertinent facts of this case, we provide a time line of key events.

- March 10, March 24, April 7, and April 21, 2005 - A planning committee made up of bargaining unit members and members of management met to discuss ideas on how the Head Start program could address a projected budget shortfall. The focus was on deciding what costs would be eliminated to reduce the budget. At one of these meetings a document prepared by one of the employer's office assistants stated "Decision to eliminate full-time EC [Early Childhood] Aid I job at WCCC (only one in the program and now vacant)".

- April 13, 2005 - Theresa Sullivan, shop steward for the union, sent an e-mail to Electra Jubon, Senior Field Representative

for the union. Sullivan informed Jubon that the employer had called Sullivan to let her know "management is looking at reduction of some of our members[']number of working days per year. I received an e-mail about the reduction of hours for 2 FCS [family service coordinators] and 1 teacher yesterday. These are full year/full day positions that are being reduced to 10 month positions." Sullivan also informed Jubon that the employer was planning to hold a labor/management meeting about a reduction-in-force (RIF).

- May 16, 2005 - Employer sent an e-mail to the union. The employer stated that a budget shortfall would be caused by salary increases. The e-mail went on to state:

> The shortfall will result in changes to assigned workdays at our various centers resulting in lay-offs (reduction in hours, not full positions in classified staff at this time). Given the complexity and timing of our cyclic calendar process 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. . . . Head Start's plan at this point is to announce at Friday's forum (May 20) that there will be changes to cyclic calendars, that employees will receive notice to that effect in the form of a letter from Dr. Jim Perez, a copy of which will be provided on Friday. . . . In preparing for the Labor/Management meeting, the HR office has been working with Head Start to update/verify the seniority list of its employees. An obvious concern is not to incorrectly list someone's seniority and give them the incorrect hope (or fear) of not being laid off or being laid off unless that will occur.

- May 19, 2005 - The employer distributed a memo to employees concerning Head Start funding. The memo explained that in order to cover the cost of wage increases:

> . . . management concluded that in the best interest of its clients . . . operations will be reorganized. . . . The result will be the reduction of work days for several positions with a minimal disruption to the primary goals of service delivery. A reduction in hours is considered a 'layoff' and entitles you to certain rights under your union contract. A Labor/Management Committee meeting has been scheduled for June 2 to discuss how the layoff options will be determined, and the timing of the process.

- June 2, 2005 - The union and employer held a Labor/Management meeting to discuss the personnel impact of salary increases. At this meeting the parties talked generally about the Head Start budget. They discussed layoffs and reducing employee hours as a way to compensate for the projected budget shortfall. The parties decided they needed another meeting to finish this discussion and agreed to meet on June 13.

- June 6, 2005 - The employer distributed a memo to all employees summarizing the June 2 Labor/Management meeting. The memo stated, "Head Start management and classified employee representatives met to discuss several proposed reductions for Head Start, including reductions in length of cyclic calendars for several employees."

- June 13, 2005 - The union and employer held a Labor/Management meeting to continue discussing layoffs and reductions in employee work hours. The employer provided the union with a list of employees and job positions. The employer verbally went through the list with the union and explained how many hours would be cut from specific positions. In total the employer announced a reduction in work hours for approximately 51 different bargaining unit positions. The employer informed the union that it would notify the affected employees after

the new collective bargaining agreement went into effect on July 1, 2005.

- June 16, 2008 - The employer distributed a memo to all employees summarizing the June 13 Labor/Management meeting. The memo informed employees that Head Start management had provided the union with new cyclic calendars for 2005-2006.

- June 29, 2005 - The union and employer meet in a Labor/Management meeting to discuss how to conduct the layoffs based on seniority and allow employees to bid for shifts.

- July 12, 2005 - The employer began delivering letters to affected employees notifying them that their scheduled work hours were being reduced. The employer e-mailed a copy of the letters to the union.

- December 12, 2005 - The union filed its unfair labor practice alleging that the employer failed to bargain the law off of employees.

The Examiner dismissed the union's complaint as being untimely. Specifically, the Examiner concluded that the employer and union's communications on April 13, 2005, regarding potential lay-offs provided sufficient notice to the union as to begin tolling the statute of limitations.

The union argues that the Examiner erred in his finding that the April 2005 notice sufficiently placed the union on notice. Instead, the union argues that the triggering event is when the adverse action actually occurred, in this case the June 13, 2008 Labor Management meeting where the list of employees was actually

provided, and therefore the complaint is timely. Applying our existing precedent, we agree with the Examiner that the union's complaint is untimely.

We begin by noting that although the bargaining unit members may have learned through the March and April 2005 discussions with the employer that the budget situation may have potentially necessitated layoffs, those discussions did not constitute formal notice to the union. *See, e.g., Clover Park Technical College*, Decision 8534-A (PECB, 2004)(discussions about change for employee parking at a policy committee meeting did not constitute formal notice of change). Rather, we find that the fact of this case falls squarely within the standard announced in *City of Bellevue*, Decision 9343-A.

In *City of Bellevue*, an employer had been contemplating a reduction-in-force for several years, but informed the union on March 11, 2004, that it was reducing its forces, effective March 14, 2004. The union filed its complaint alleging that the employer refused to bargain the reduction on September 15, 2004. The examiner dismissed the complaint as untimely. The Commission affirmed the Examiner's decision that the complaint was not timely, and noted that even in examining the facts favorable to the union, at best the union had notice on March 11, 2004.[3] Thus, the complaint was not filed within the six-month statute of limitations. Accordingly, the Examiner did not err in finding the union did not file its complaint in a timely manner.

Here, the employer's May 16, 2005, e-mail to the union placed the union on sufficient notice that lay-offs were going to occur as to

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[3] The Examiner in City of Bellevue also found the union's complaint lacked merit. On appeal, the Commission found that it did not need to address those merits because the complaint was clearly not timely.

trigger a bargaining obligation. Although the finer points of the lay-offs and reduction in hours was not specifically addressed, the e-mail sufficiently states that it is important to meet with the union to negotiate how those changes will be effected. Accordingly, we find that the May 16, 2005 e-mail serves as the triggering event for purposes of computing the statute of limitations. Because the union failed to file its complaint within six months as required by RCW 41.80.120, the union's complaint is not timely.[4]

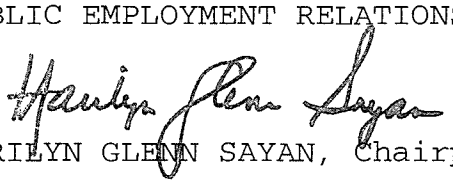
NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order of Dismissal issued by Examiner J. Martin Smith are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 26th day of November, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

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[4] We remind parties that when faced with a factual situation similar to the one presented here, parties may very well need to file an unfair labor practice complaint to preserve its collective bargaining rights. *City of Spokane*, Decision 4937 (PECB, 1994).