STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 270,	)	CASE 11065-U-94-2575
Complainant,	)	DECISION 4937 - PECB
vs.	)	
CITY OF SPOKANE,	)	
Respondent.	)	ORDER OF DISMISSAL

On April 14, 1994, Washington State Council of County and City Employees, Local 270 (WSCCCE), filed a complaint charging unfair labor practices filed with the Public Employment Relations Commission, alleging that the City of Spokane had refused to bargain concerning a position unilaterally removed from the bargaining unit represented by the union. Specifically, the union alleged that the employer ceased dues deduction in April of 1993 with respect to a position which had been the subject of a title change made with the union's knowledge in 1991.

The complaint was considered by the Executive Director under WAC 391-45-110,[1] and a preliminary ruling letter issued on August 26, 1994 indicated that the complaint appeared to be untimely. The union was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

---

[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.

On September 8, 1994, the union filed an amended complaint which was accompanied by copies of numerous documents related to the dispute. The matter is again before the Executive Director for a preliminary ruling under WAC 391-45-110.

The Statute of Limitations

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Like the federal National Labor Relations Act on which it is patterned, Chapter 41.56 RCW imposes a six month "statute of limitations" on the filing of unfair labor practices:

> 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered 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 power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that may have been or may hereafter be established by law. ...
>
> [Emphasis by **bold** supplied.]

Although that statute was amended in 1994 to simplify enforcement and temporary relief procedures, the "statute of limitations" feature of the section has been in effect since 1983.

In applying RCW 41.56.160, the Commission has enforced the six month period of limitations from the time that the complainant party knew or should have known that a cause of action existed. Port of Seattle, Decision 2796-A (PECB, 1988). Exceptions have been made only where the existence of a cause of action was concealed from the potential complainant, as in City of Pasco, Decision 4197-A (PECB, 1992).

The Allegations of This Case

This case concerns an alleged unilateral removal of a position from the bargaining unit represented by the union. It is clear that an employer has a duty to give notice and provide opportunity for collective bargaining prior to removing positions or work from a bargaining unit.[2] An employer which acts unilaterally in declaring a position "exempt" from a bargaining unit does so at its peril. Where a dispute exists concerning the bargaining unit status of any position or classification, either the employer or the incumbent exclusive bargaining representative may initiate a unit clarification proceeding under Chapter 391-35 WAC.

The union indicates that it first became aware of employer actions affecting the disputed "telecommunications" position in 1991. Although it recites a litany of employer-caused delays and its own unsuccessful efforts to arrive at a solution to the dispute during the next two years, the critical transaction is described in the amended complaint as follows:

> 16. On April 7, 1993, a letter was directed to Ken Palmer, Director of MIS asking why the dues deduction has been halted for Jack Trelawney. Mr. Palmer was requested to respond and failed to do so. (Exhibit #14.)

The referenced "exhibit" is a copy of the union's April 7, 1993 letter, as follows:

> Recently Jack Trelawney worked overtime to resolve a phone issue in the Water Department. Jack has informed me that his overtime has been changed to compensatory time on an hour for hour basis. This change was made without his concurrence. As you may be aware, Jack has the option of selecting overtime or compensatory time and it is on the basis of 1.5 hours to 1.0 hours

---

[2] South Kitsap School District, Decision 472 (PECB, 1978).

> worked. Please refer to the current Local 270 Agreement. Jack informs me that his desire was overtime at the rate of 1-1/2 X the regular hourly rate. Please process this overtime in a timely fashion.
>
> Second, I am advised that Jack's dues deductions have been stopped. The employee authorizes dues deductions to begin and only the employee can cease the deduction. I am formally requesting from you the following:
>
> 1. The name of the individual who directed the dues deduction be ceased and under what authority this was done; and
> 2. Reinstatement of Jack's dues deduction immediately.
>
> I am requesting compliance with the above within five (5) days of your receipt of this letter.

Since dues checkoff is a statutory right of the incumbent exclusive bargaining representative for all bargaining unit employees, under RCW 41.56.110, this allegation and letter clearly indicate that the union knew or should have known that the employer had "unilaterally removed the disputed position from the bargaining unit". Moreover, the failure or refusal of the employer to respond to the union's demands concerning the overtime pay within the time specified should have put the union on notice that the employer was refusing to bargain with it concerning the "wages" of this position.

The union cites subsequent delays by the employer in responding to the union on this matter, and it would have an October 27, 1993 letter mark the first date on which the employer refused to bargain. Actions sometimes speak louder than words, however, and the employer's actions of March and April of 1993 gave rise to the cause of action here.

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. Spokane County, Decision 2167-A (PECB, 1985).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED as untimely under RCW 41.56.160.

Issued at Olympia, Washington, on the 16th day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.