Washington State Patrol, Decision 6105 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE PATROL TROOPERS ASSOCIATION,	)	
Complainant,	)	CASE 13398-U-97-3269
vs.	)	DECISION 6105 - PECB
WASHINGTON STATE PATROL,	)	
Respondent.	)	ORDER OF DISMISSAL

On September 9, 1997, the Washington State Patrol Troopers Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging the Washington State Patrol had interfered with employee rights in violation of RCW 41.56.140(1), dominated or unlawfully assisted the union in violation of RCW 41.56.140(2), and refused to bargain in violation of RCW 41.56.140(4), all by unilaterally changing long-standing promotional practices and dealing directly with bargaining unit members about new conditions on promotions.

The complaint was reviewed by the Executive Director pursuant to WAC 391-45-110,[1] and a deficiency notice issued on October 8, 1997 notified the union of several problems with its complaint.

[1] See WAC 391-45-110. 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 Commission.

Specifically, the complaint lacked dates required by WAC 391-45-050 for:

- The employer's discussions with bargaining unit members about allegedly new conditions on promotions;
- the union's first discovery of the employer's alleged circumvention;
- the union's first discovery of the employer's alleged changes to its promotional policies;
- the union's first demand for negotiations on the alleged change of promotional procedure; and
- the employer's response, if any, to the request for negotiations.

The deficiency notice also point out a lack of clarity in the complaint about whether the incident was a violation of unchanged policy or the first application of a changed policy. A third noted deficiency was the lack of identification of the person or persons who had acted on behalf of the employer in offering the alleged conditional promotions and/or the alleged change of promotional practices.

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. The union timely filed an amended complaint on October 22, 1997. The amended complaint supplied detailed allegations which remedied most of the noted deficiencies, but created a new problem.

Complaint Untimely Filed

Consistent with the six-month period of limitations found in the National Labor Relations Act (NLRA), RCW 41.56.160(1) states, in pertinent part:

> 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. ...

[Emphasis by **bold** supplied.]

The Commission has held that the six-month period begins when a complainant knew or reasonably should have known of the alleged unlawful action. See, Port of Seattle, Decision 2796-A (PECB, 1988) [the "clock begins to run when the adverse employment decision is made and communicated to the employee"]; City of Pasco, Decisions 4197-A and 4198-A (PECB, 1994) [union was unaware employee had signed individual contract until employer attempted to enforce it, so six-month period computed from when union discovered existence of contract]; Emergency Dispatch Center, Decision 3255-B (PECB, 1990) [six-month period began when employer announced schedule change].

The complaint which initiated this proceeding was filed with the Commission on September 9, 1997, thus making March 9, 1997 the earliest date for which the complaint could be considered timely filed.

The amended complaint alleged that:

- Employer officials contacted bargaining unit employees about the conditions on promotions "during the week before" promotions implemented on March 10, 1997;

- the union learned about the employer's contacts with the bargaining unit employees during the same period (i.e., between March 3 and March 9); and

- the union wrote a letter to the employer on March 7, demanding bargaining on the conditions imposed on promotions.

Thus, the union knew about the alleged conditions on promotions prior to March 9, 1997. Applying the precedents described above, it is clear the complaint filed in this matter is untimely.

The March 10 implementation date for the promotions does not overcome the fact that the complaint itself indicates the union discovered the employer's alleged unlawful actions on or before March 7, 1997, and even acted on its discovery by its March 7 letter.[2]

The union did not trigger a new statute of limitations computation when it wrote to the employer again on May 9, 1997. The union's second letter merely noted the lack of an employer response to the earlier letter, and made a second demand for bargaining on the alleged changes. No new employer action in the intervening period

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[2] In its letter of that date, the union stated it had learned the employer was "proposing promotions to the rank of sergeant effective Monday, March 10, 1997" which varied from past practices in the manner alleged in the complaint, and asked the employer to put the promotions in limbo while negotiating any changes to promotional practices.

had revived or modified the issue.[3] The union was only reiterating a position it had taken earlier. To permit such boot-strapping would allow complainants to extend the statute of limitations at will, in contravention of the procedure established by the Legislature in RCW 41.56.160.

Allegations Outside Commission's Jurisdiction

Other problems with the complaint would preclude finding a cause of action to exist, even if the complaint were timely.

Enforcement of Title 43 RCW -
In both its initial and amended complaints, the union relies on provisions in Title 43 RCW, which governs the state executive branch, to establish the past practices it alleges have been unilaterally changed. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission lacks jurisdiction to enforce provisions of Title 43 RCW.

Continuing Lack of Factual Details -
Both the initial and amended complaints allege the employer unilaterally changed a past practice of posting all temporary and permanent promotions to the rank of sergeant, so that existing sergeants would have notice of the opportunity. The initial complaint lacked any date for the union's discovery of that alleged change, and the amended complaint did not repair that defect. Without specific details, it is impossible to conclude this discovery occurred on or after March 10, 1997. The Executive

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[3] For the opposite conclusion where the employer acted on the issue again, see, Morton School District, Decisions 5838 and 5839, (PECB, 1997).

Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic. It is not possible to conclude from the materials now on file that the union has a cause of action against the employer for unilaterally changing its promotional notice procedures.

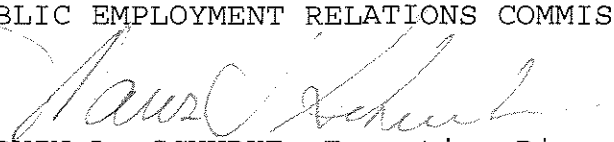
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED.

Issued at Olympia, Washington, this 6th day of November, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.