

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES,
COUNCIL 2,

Complainant,

vs.

CITY OF RAYMOND,

Respondent.

CASE 25871-U-13-6629

DECISION 11864 - PECB

ORDER OF DISMISSAL

On August 1, 2013, the Washington State Council of County and City Employees, Council 2 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Raymond (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 7, 2013, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

The union did not file an amended complaint, but sent a letter requesting reconsideration of the deficiency notice. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative interference in violation of RCW 41.56.140(1)], by breach of its good

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.

faith bargaining obligations in failing or refusing to implement a salary grid agreed to in negotiations. The deficiency notice pointed out the defects to the complaint.

The union alleges that the parties negotiated a salary grid and executed the agreement that included the grid on May 7, 2012. Kathy Brown (Brown), a union staff representative, was one of the union participants. The union believed the salary grid would be effective upon ratification. The complaint states that on June 29, 2012, Brown “found out that the new agreed upon salary grid had not been implemented,” and wrote a letter to the mayor demanding implementation. The complaint states that Brown “did not hear back and assumed that the new salary grid had been adopted.” On March 5, 2013, Brown brought the issue back to the employer; the employer replied on March 12, 2013, stating that the salary grid “was for the 2014 negotiations.”

The union filed the complaint in the apparent belief that the date of violation was in March 2013. However, the six month statute of limitations under RCW 41.56.160(1) begins to run when the complainant knew or should have known of the alleged violation. *City of Bremerton*, Decision 7739-A (PECB, 2003). Brown was a staff representative for the union and thus acted as a union agent. Brown knew on June 29, 2012, that the salary grid had not been implemented. The union should have filed a complaint on that issue no later than December 29, 2012. Brown’s assumption that the salary grid had been implemented did not toll the statute of limitations. The date of violation is not based upon the union’s most recent inquiry into the salary grid delay, an inquiry occurring over eight months after its initial knowledge of the alleged delay. The complaint is untimely.

Request for reconsideration

On August 14, 2013, the union sent a letter requesting reconsideration of the deficiency notice. A complainant may file an amended complaint in response to a deficiency notice. WAC 391-45-110(1). The deficiency notice issued on August 7, 2013, gave the union the requisite 21 days to file an amended complaint. The union did not file an amended complaint on or before August 28, 2013.

A complainant may request reconsideration of a preliminary ruling under WAC 391-45-110(2)(b); however, there is no provision for reconsideration of a deficiency notice other than through an amended complaint. It was not possible to consider the union's August 14 letter in this ruling.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 25871-U-13-6629 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of September, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written over a horizontal line.

DAVID I. GEDROSE, Unfair Labor Practice Manager

This 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: 25871-U-13-06629 FILED: 08/01/2013 FILED BY: PARTY 2
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BAR UNIT: WATER/SEWER
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