City of Bremerton, Decision 12198 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BREMERTON POLICE OFFICERS' GUILD, Complainant, vs. CITY OF BREMERTON, Respondent.	CASE 24948-U-12-6380 DECISION 12198 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline & Casillas, by *Mitchell A. Riese*, Attorney at Law, for the union.

Summit Law Group PLLC, by *Michael Bolasina*, Attorney at Law, for the employer.

On June 29, 2012, the Bremerton Police Officers' Guild (union) filed an unfair labor practice (ULP) complaint against the City of Bremerton (employer). The union alleged that the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by its unilateral change to health insurance benefits, without providing an opportunity for bargaining. Examiner Dianne Ramerman held a hearing on June 18, 2014. On August 25, 2014, the parties filed post-hearing briefs to complete the record.

ISSUE: Did the union file its ULP complaint within the six-month statute of limitations?

In order to preserve its rights, the union needed to file its complaint within six months of the time that the union knew of or should have known of the adverse employment decision. It did not. Thus, the complaint is dismissed for untimeliness; and therefore, it is unnecessary to rule on the merits of any remaining issues.

BACKGROUND

The union and the employer were parties to a collective bargaining agreement that was valid from January 1, 2009, through December 31, 2011. Under Article 14.1 - Insurance Benefits - Medical Insurance, the bargaining unit was provided with the following three medical insurance options: (1) Kitsap Physician's Service Plan A (KPS Plan A); (2) Association of Washington Cities (AWC) Group Health (GH) Plan 1; and (3) another plan of substantially similar or better coverage as GH Plan 1 or KPS Plan A.

In the fall of 2009, the AWC contacted all its member cities and informed them that GH Plan 1 would be discontinued effective January 1, 2012. Consequently, on October 14, 2009, Human Resources Manager Carol Conley sent an email titled "[GH] Plan I with AWC to be terminated 1/1/2012" to all union representatives. The email read as follows:

> All: We have just learned that the current Healthplan [sic] we have with [GH] . . . through AWC will no longer be offered by them as of January 1, 2012. I have already contacted Willis of Seattle, our benefits consultants, and they have advised that we can go directly to [GH] and see if they would continue to offer this plan, what the premium would be, or if they are doing away with it completely. Although we have 2 years to address this issue, we need to start thinking about what our alternatives might be. . . .

The same day Union President Roy Alloway asked Conley, in response to the email, how many bargaining unit members used GH Plan 1 and asked Conley to identify the names of the members on the plan. Conley responded that sixteen (16) members were on GH Plan 1 and identified each by name. Alloway did not take any other action.

Following up on the employer's October 14, 2009 email, Human Resources Manager Charlotte Belmore testified that "[w]e contacted [GH] directly and were told they weren't offering that plan [GH Plan 1] at all anymore."

Nearly two years later, on September 14, 2011, Belmore informed then Union President Wendy Davis of the termination of GH Plan 1 effective December 31, 2011. Davis asked how many union members were using GH Plan 1. Belmore told her approximately fifteen (15) members

would be impacted. Belmore added that she would send an email to all union representatives with the information. Over a month later, on October 25, 2011, Davis emailed Belmore, with a copy to Union Attorney Jim Cline, that the union wanted to open contract negotiations because the contract was expiring on December 31, 2011.

On October 29, 2011, the employer again informed the union of the discontinuation of GH Plan 1. Belmore sent an email to all union representatives and Union Vice President Joseph Boynton, who was also the union's contact person on health care issues. The email read as follows:

> This is to notify you of an *upcoming change* in medical plans. The [GH] Plan the [employer] currently offers ([c]o-pay Plan 1 - $5.00 [c]o-pay) is being *eliminated* by [GH] effective January 1, 2012. The plan they will be offering is [c]o-pay Plan 2. If we do nothing between now and the end of the year the employees who are currently enrolled on the [GH] Plan will automatically be switched to [GH] [c]o-pay Plan 2. I have attached a summary of each plan.

(Emphasis added). Belmore testified that the union could have negotiated changes to the plan and the impacts of the changes. Between November 9, 2011 and November 15, 2011 emails were exchanged between the parties in an attempt to confirm a negotiation session, but nothing was scheduled.

On November 18, 2011, Belmore sent an email to all city employees, including all union members, titled "[GH] Plan Change." It was labeled with high importance and read as follows:

> The [GH] Plan the [employer] currently offers *is being eliminated* by [GH] effective January 1, 2012. The plan they will be offering is [GH] [c]o-pay Plan 2 . . . .
>
> If you currently have [GH] medical and *you* do nothing between now and the end of the year *you will automatically be switched* to [GH] [c]o-pay Plan 2. If you don't want to stay with [GH] you can switch to KPS during open enrollment. The deadline for open enrollment is December 21, 2011.

(Emphasis added). The next day, on November 19, 2011, Union President Jonathan Meador emailed Belmore asking if her email sent the day before was meant to apply to union members. Belmore responded on November 21, 2011, that "[y]es" it was meant to apply to union members

on GH Plan 1. Detective John Bogen testified that he understood that as of the receipt of Belmore's email dated November 21, 2011, union members would be switched to GH Plan 2 on January 1, 2012, unless they chose to move to the KPS Plan A during open enrollment or the union negotiated a third alternative. When Bogen was asked: "when you were told that you were going to be switched from Plan 1 to Plan 2, that was a unilateral change by the [employer]?," he responded "[y]es." Similarly, he also testified that within a few days of November 21, 2011, after talking to Cline, the union was taking the position that the elimination of GH Plan 1 was a unilateral change without bargaining.

On November 27, 2011, Meador emailed Belmore demanding to bargain the change to health insurance benefits and stated that the employer was responsible for maintaining the status quo. Belmore responded on November 28, 2011, that the employer planned to make health benefits the first topic of discussion during negotiations. Also, on November 28, 2011, Cline sent a similar email to Belmore. Ultimately, the parties scheduled a conference call for December 6, 2011, to negotiate; however, that call never occurred.

The change to health insurance benefits from GH Plan 1 to GH Plan 2 occurred on January 1, 2012. On June 29, 2012, the union filed this ULP complaint.

DISCUSSION

Applicable Legal Standards

"[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the [C]ommission." RCW 41.56.160(1). The clock begins to run when the adverse employment decision is made and communicated to the complainant. *City of Mount Vernon*, Decision 10728-A (PECB, 2010), *citing City of Bellevue* 9343-A (PECB, 2007). The triggering event occurs when "a potential complainant has actual or constructive notice of the complained-of action." *City of Bellevue*, Decision 10830-A (PECB, 2012), *citing Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). This notice, whether actual or constructive, must be clear and unequivocal. *City of Bellevue*, Decision 10830-A. Unequivocal notice of a decision requires that a party communicate enough information about

the decision or action to allow for a clear understanding. *City of Bellevue*, Decision 10830-A. Statements that are vague or indecisive are not adequate to put a party on notice. *City of Bellevue*, Decision 10830-A. In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change, i.e. notice of intent to implement the action in question. *City of Bellevue*, Decision 10830-A; *Community College District 17 (Spokane)*, Decision 9795-A (PSRA, 2008), *citing Emergency Dispatch Center*, Decision 3255-B.

The time limitation has been strictly enforced, even when settlement negotiations 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.

City of Bremerton, Decision 7739-A (PECB, 2003), *citing City of Spokane*, Decision 4937 (PECB, 1994); *see also City of Mount Vernon*, Decision 10728-A. The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events that are the basis of the charges. *City of Bellevue*, Decision 10830-A; *but see Lake Washington School District*, Decision 11913-A (PECB, 2014) (implementation, not notice, triggering event in cases involving "skimming").

In *Emergency Dispatch Center*, Decision 3255-B, the employer announced a new schedule by sending impacted employees a memorandum of the change in practice in October with an effective date the following January 1. Although the union objected five days after the memorandum was sent and stated that the issues should be bargained, no unfair labor practice complaint was filed until that June 30. In ruling that the memorandum was the critical event, rather than the effective date of the change, the Examiner placed the focus on when the employees first had notice and learned of the change.

Analysis

In this case, the record clearly shows that at the latest, on November 21, 2011, the union had unequivocal notice of the change to GH Plan 1. By waiting to file its complaint until June 29, 2012, the complaint is untimely.

The employer first advised the union president of the elimination of GH Plan 1 on October 14, 2009, but other than ask the employer about the number of members who would be impacted by the change, the union took no action. The employer wanted to begin talking about how to address the change in 2009, but the union did not express the same interest.

Two years later, the employer again provided notice of the GH Plan 1 elimination to the union president on September 14, 2011, and to the union vice president on October 29, 2011. Belmore answered questions from the union regarding the exact number of bargaining unit members on GH Plan 1 who would be impacted by the change. Then, on November 21, 2011, Belmore responded to Meador that "[y]es" her email sent to all city employees on November 18, 2011, notifying them of the change, applied to union members. These communications provided enough information, including an explanation of differences between GH plan 1 and 2, for the union to understand that the decision had been made to terminate GH Plan 1 effective January 1, 2012. *See City of Bellevue*, Decision 10830-A; *City of Mount Vernon*, Decision 10728-A; *City of Tukwila*, Decision 9691-A (PECB, 2008) (medical benefits are mandatory subjects of bargaining). The emails giving notice of the change were not written in "possible" or "probable" terms, but rather with decisive language referencing "an upcoming change" and stating that the plan "is being eliminated." *See City of Bellevue*, Decision 10830-A.

If it was not clear previously, Belmore's response to Meador on November 21, 2011, regarding her November 18, 2011 email, left no doubt at that time that an adverse employment decision had been made, that the decision would impact bargaining unit members, and that the decision had been communicated to the union with enough detail for it to understand the decision. *See City of Bellevue*, Decision 10830-A; *City of Mount Vernon*, Decision 10728-A; *Emergency Dispatch Center*, Decision 3255-B. At the latest, this response on November 21, 2011 started the clock running on the six-month statute of limitations.

Finally, the evidence confirms that the union had actual notice of the change at the end of November 2011: (1) Bogen's corroborating testimony that on November 21, 2011, he knew union members would be switched to GH Plan 2 on January 1, 2012, if they or the union did nothing; (2) Bogen's corroborating testimony that within a few days of November 21, 2011, the union took the position that the elimination of GH Plan 1 was a unilateral change; and (3) the union's request to maintain the status quo on November 27 and 28, 2011. Thus, the union had until the end of May 2012 to file a timely ULP complaint and preserve its rights; however, it waited until June 29, 2012, more than six months later.

Conclusion

The union's complaint alleging that the employer refused to bargain by its unilateral change to health insurance benefits is barred by the statute of limitations and is untimely. Therefore, it is unnecessary to address the merits of any remaining issues.

FINDINGS OF FACT

1. The City of Bremerton (employer) is an employer within the meaning of RCW 41.56.030(12).

2. The Bremerton Police Officers' Guild (union) is an exclusive bargaining representative within the meaning of RCW 41.56.030(2).

3. The union and the employer were parties to a collective bargaining agreement that was valid from January 1, 2009, through December 31, 2011. Under Article 14.1 - Insurance Benefits - Medical Insurance, the bargaining unit was provided with the following three medical insurance options: (1) Kitsap Physician's Service Plan A (KPS Plan A); (2) Association of Washington Cities (AWC) Group Health (GH) Plan 1; and (3) another plan of substantially similar or better coverage as GH Plan 1 or KPS Plan A.

4. In the fall of 2009, the AWC contacted all its member cities and informed them that GH Plan 1 would be discontinued effective January 1, 2012. Consequently, on October 14,

2009, Human Resources Manager Carol Conley sent an email titled "[GH] Plan I with AWC to be terminated 1/1/2012" to all union representatives. The email read as follows:

> All: We have just learned that the current Healthplan [sic] we have with [GH] . . . through AWC will no longer be offered by them as of January 1, 2012. I have already contacted Willis of Seattle, our benefits consultants, and they have advised that we can go directly to [GH] and see if they would continue to offer this plan, what the premium would be, or if they are doing away with it completely. Although we have 2 years to address this issue, we need to start thinking about what our alternatives might be. . . .

5. On October 14, 2009, Union President Roy Alloway asked Conley how many bargaining unit members used GH Plan 1 and asked Conley to identify the names of the members on the plan. Conley responded that sixteen (16) members were on GH Plan 1 and identified each by name. Alloway did not take any other action.

6. Following up on the employer's October 14, 2009 email, Human Resources Manager Charlotte Belmore testified that "[w]e contacted [GH] directly and were told they weren't offering that plan [GH Plan 1] at all anymore."

7. On September 14, 2011, Belmore informed then Union President Wendy Davis of the termination of GH Plan 1 effective December 31, 2011. Davis asked how many union members were using GH Plan 1. Belmore told her approximately fifteen (15) members would be impacted. Belmore added that she would send an email to all union representatives with the information.

8. On October 29, 2011, the employer again informed the union of the discontinuation of GH Plan 1. Belmore sent an email to all union representatives and Union Vice President Joseph Boynton, who was also the union's contact person on health care issues. The email read as follows:

> This is to notify you of an *upcoming change* in medical plans. The [GH] Plan the [employer] currently offers ([c]o-pay Plan 1 - $5.00 [c]o-pay) is being *eliminated* by [GH] effective January 1, 2012. The plan they will be

> offering is [c]o-pay Plan 2. If we do nothing between now and the end of the year the employees who are currently enrolled on the [GH] Plan will automatically be switched to [GH] [c]o-pay Plan 2. I have attached a summary of each plan.

(Emphasis added).

9. On November 18, 2011, Belmore sent an email to all city employees, including all union members, titled "[GH] Plan Change." It was labeled with high importance and read as follows:

> The [GH] Plan the [employer] currently offers *is being eliminated* by [GH] effective January 1, 2012. The plan they will be offering is [GH] [c]o-pay Plan 2 . . . .
>
> If you currently have [GH] medical and *you* do nothing between now and the end of the year *you will automatically be switched* to [GH] [c]o-pay Plan 2. If you don't want to stay with [GH] you can switch to KPS during open enrollment. The deadline for open enrollment is December 21, 2011.

(Emphasis added).

10. On November 19, 2011, Union President Jonathan Meador emailed Belmore asking if her email sent the day before was meant to apply to union members. Belmore responded on November 21, 2011, that "[y]es" it was meant to apply to union members on GH Plan 1.

11. Detective John Bogen testified that he understood that as of the receipt of Belmore's email dated November 21, 2011, union members would be switched to GH Plan 2 on January 1, 2012, unless they chose to move to the KPS Plan A during open enrollment or the union negotiated a third alternative.

12. When Bogen was asked at hearing: "when you were told that you were going to be switched from Plan 1 to Plan 2, that was a unilateral change by the [employer]?," he responded "[y]es."

13. Bogen testified that within a few days of November 21, 2011, after talking to Cline, the union was taking the position that the elimination of GH Plan 1 was a unilateral change without bargaining.

14. The change to health insurance benefits from GH Plan 1 to GH Plan 2 occurred on January 1, 2012.

15. On June 29, 2012, the union filed this unfair labor practice complaint.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. As described in Findings of Fact 3 through 15, at the latest on November 21, 2011, the Bremerton Police Officers' Guild had actual notice of the decision to terminate GH Plan 1, but did not file its unfair labor practice complaint until June 29, 2012, making the complaint untimely under RCW 41.56.160(1).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 12th day of November, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DIANNE RAMERMAN, 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.