

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LABORERS UNION, LOCAL 242,

Complainant,

vs.

TOWN OF SOUTH PRAIRIE,

Respondent.

CASE 128183-U-16

DECISION 12596 - PECB

ORDER OF DISMISSAL

On May 13, 2016, Laborers Union, Local 242 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Town of South Prairie (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on May 31, 2016, indicating 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.

On June 21, 2016, the union filed an amended complaint. The amended complaint did not cure the defects identified in the deficiency notice. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a timely cause of action.

### DISCUSSION

The allegations of the complaint concern:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], since an unspecified date, by skimming and contracting out Utility Operator work previously performed by bargaining unit employees, without bargaining with the union to agreement or lawful impasse.

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<sup>1</sup> 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.

The deficiency notice pointed out several defects with the complaint. The statement of facts is missing necessary dates and information concerning alleged contracting out and skimming of bargaining unit Utility Operator work.

#### Legal Standards for Contracting Out

“[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.” RCW 41.56.160(1). A cause of action accrues, and the statute of limitations begins to run, at the earliest point in time that the complaint concerning the alleged wrong could be filed. *Municipality of Metropolitan Seattle*, Decision 1356-A (PECB, 1982), citing *Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn.2d 616 (1945). 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).

A complaint alleging a unilateral change, such as a skimming or contracting out violation, must establish both: (1) the existence of a relevant status quo; and (2) a change of employee wages, hours, or working conditions. *Seattle School District*, Decision 11161-A (PECB, 2013), citing *City of Kalama*, Decision 6773-A (PECB, 2000). If there is no change in the status quo, then there has not been skimming. *Lake Washington School District*, Decision 11913-A (PECB, 2014), citing *Seattle School District*, Decision 11161-A, *City of Anacortes*, Decision 6863-B (PECB, 2001); *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Seattle*, Decision 2935 (PECB, 1988).

There must be an actual unilateral change for a cause of action for skimming or contracting out to exist. See *State – Office of the Governor*, Decision 10948-A (PSRA, 2011). In a contracting out case, the statute of limitations begins to run when bargaining unit work is assigned outside of the bargaining unit.

### ANALYSIS

The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. The complaint was filed on May 13, 2016, and therefore is only timely with regard to events that took place on or after November 13, 2015.

The amended complaint did not include the dates that the skimming and contracting out of Utility Operator position work began. The date(s) of occurrence were needed to determine whether the allegations were timely filed.

In its amended complaint the union attempts to make a legal argument that the complainant is timely because the contract expired in December 2015. Specifically the union argues “When the Collective Bargaining Agreement terminated in December 2015 any understanding or past practice terminated with it.” This is not an accurate statement of law. To the contrary, following the expiration of a collective bargaining agreement, an employer must maintain terms and conditions of employment that existed at the time the agreement expired during the subsequent negotiations for a new collective bargaining agreement. *Kitsap County*, Decision 10836-A (PECB, 2011), citing *City of Mukilteo*, Decision 9452-A (PECB, 2008). An employer who alters a term or condition of employment during this period without first satisfying its bargaining obligation violates the statute.

### CONCLUSION

The union’s complaint alleging employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], since an unspecified date, by skimming and contracting out Utility Operator does not qualify for further case processing because it is untimely filed.

ORDER

The amended complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a timely cause of action.

ISSUED at Olympia, Washington, this 14th day of July, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "J. Bradley", is written over the printed name.

JESSICA J. BRADLEY, Unfair Labor Practice Manager

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.



**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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**RECORD OF SERVICE - ISSUED 07/14/2016**

DECISION 12596 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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