

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Complainant,

vs.

STATE – ENTERPRISE SERVICES,

Respondent.

CASE 128192-U-16

DECISION 12597 - PSRA

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On May 17, 2016, the Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Enterprise Services (employer) as the respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 2, 2016, indicated that it was not possible to conclude a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. Nothing further has been received from the union.

The defective allegations of the complaint are dismissed for failure to state a cause of action. The Unfair Labor Practice Manager finds a cause of action for employer refusal to bargain since December 2, 2015, by the employer unilaterally changing terms and conditions of employment for bargaining unit employees when it allegedly used its tree removal policy and Site Specific Safety Plan requirements as justification for disciplining bargaining unit employee Scott Hobbs.

The employer must file and serve its answer to this refusal to bargain allegation within 21 days following the date of this decision.

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.

DISCUSSION

The allegations of the complaint concern:

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] by:

1. Since an unspecified date, DES Manager Brent Chapman circumventing the union through direct dealing by seeking input pertaining to draft changes to the DES tree removal policy directly from bargaining unit employees and making changes in response to this input, without providing the union with an opportunity to bargain.
2. Chapman circumventing the union through direct dealing by sending an e-mail to bargaining unit employees on February 18, 2015, regarding discussions he had with staff pertaining to draft changes to the DES tree removal policy.
3. Chapman circumventing the union through direct dealing with employees represented by the union by sending the final draft changes to the standard operating procedure for tree pruning directly to bargaining unit employees on April 22, 2015, before the policy was presented to the union.
4. Since an unspecified date, unilaterally changing the tree pruning policy and procedure for bargaining unit employees, without providing the union with an opportunity for bargaining.
5. Since an unspecified date, unilaterally changing the tree removal policy for bargaining unit employees, without providing the union with an opportunity for bargaining.
6. Since an unspecified date, unilaterally implementing a new Site Specific Safety Plan requirement for bargaining unit employees, without providing the union with an opportunity for bargaining.
7. Since December 2, 2015, unilaterally changing terms and conditions of employment for bargaining unit employees by using the tree removal policy and Site Specific Safety Plan requirements as justification for disciplining bargaining unit employee Scott Hobbs.

Allegation number seven concerning the December 2, 2015, change to terms and conditions of employment states a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The remaining allegations either lack necessary dates and information or appear to be untimely filed.

Need Dates of Events and Names of Participants

The rules for contents of a complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

In this case the complaint does not contain dates for all of the allegations. The facts and events described in portions of the complaint do not contain times, dates, or locations of occurrences for the alleged statements and events. The complaint lacks clear dates regarding unilateral changes to the tree pruning policy, the tree removal policy, and implementing a new Site Specific Safety Plan requirement for bargaining unit employees. The complaint also makes some vague circumvention or direct dealing allegations that do not contain dates or names of participants.

Timeliness*Six-Month Statute of Limitations Period*

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1) governs the time for filing complaints:

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. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011), *citing City of Bremerton*, Decision 7739-A (PECB, 2003).

An exception to the strict enforcement of the six-month statute of limitations may exist where the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Bremerton*, Decision 7739-A, *citing City of Seattle*, Decision 5930 (PECB, 1997); *City of Pasco*, Decision 4197-A (PECB, 1994) (employer’s direct dealing with a bargaining unit

employee and the existence of a separate agreement on reimbursement of training expenses were concealed from the union). However, the Commission has also ruled that the statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025, citing *City of Chehalis*, Decision 5040 (PECB, 1995).

ANALYSIS

The complaint was filed on May 17, 2016, and therefore is timely filed with regard to events that took place on or after November 17, 2015. The allegation of circumvention or direct dealing by the employer sending an e-mail on February 18, 2015, to bargaining unit employees regarding its tree removal policy appears to be untimely filed. Likewise, the allegation of circumvention or direct dealing by the employer sending another e-mail to bargaining unit employees on April 22, 2015, is untimely filed.

The statement of facts does not describe concealment by the employer of its alleged unfair labor practices. Rather, the complaint describes widely circulated e-mail communication to bargaining unit employees. The bargaining unit members who received the e-mails had six months to notify the union about the e-mails so that the union could file a timely complaint. *City of Bremerton*, Decision 7739-A; *City of Chehalis*, Decision 5040. The allegations of direct dealing on February 18, 2015, and April 22, 2015, are untimely filed.

CONCLUSION

The Commission only has authority to process the allegations that were filed within the six-month statute of limitations period. The only allegation that was timely filed and qualifies for further case processing concerns employer refusal to bargain since December 2, 2015, by unilaterally changing terms and conditions of employment for bargaining unit employees when it used its tree removal policy and Site Specific Safety Plan requirements as justification for discipline. The

remaining allegations are dismissed because they either lack necessary dates and information or appear to be untimely filed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint state a cause of action, summarized as follows:

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] since December 2, 2015, by unilaterally changing terms and conditions of employment for bargaining unit employees by using the Tree Removal Policy and Site Specific Safety Plan requirements as justification for disciplining bargaining unit employee Scott Hobbs.

This allegation will be the subject of further proceedings under Chapter 391-45 WAC.

The respondent shall:

File and serve its answer to the allegations listed in paragraph 1 of this order, within 21 days following the date of this order.

An answer shall:

- a. Specifically admit, deny, or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for

good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The remaining allegations of the complaint are DISMISSED for failure to state a cause of action and for untimeliness.

ISSUED at Olympia, Washington, this 25th 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

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12597 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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