STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARINE ENGINEERS' BENEFICIAL ASSOCIATION, Complainant, vs. WASHINGTON STATE FERRIES, Respondent.	CASE 132477-U-20 DECISION 13167 - MRNE ORDER OF DISMISSAL

On January 17, 2020, the Marine Engineers' Beneficial Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under chapter 391-45 WAC, naming the Washington State Ferries (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on January 27, 2020, 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 February 14, 2020, the union filed an amended complaint. The Unfair Labor Practice Administrator dismisses the alleged events in the amended complaint as untimely.

ISSUE

The amended complaint alleged:

> Employer refusal to bargain in violation of RCW 47.64.130(1)(e) [and if so, derivative interference in violation of RCW 47.64.130(a)] outside the six month statute of limitations, by unilaterally changing how overtime was paid on watches

[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.

scheduled beyond twelve and one-half hours, without providing the union an opportunity for bargaining.

The amended complaint is dismissed as untimely and thus is not within the Commission's jurisdiction.

BACKGROUND

The Marine Engineers' Beneficial Association (union) represents unlicensed engineer officers at the Washington State Ferries (employer). The employer and union are parties to a collective bargaining agreement effective July 1, 2019, through June 30, 2021. The union filed grievances related to incremental overtime that went to arbitration in 2012. The union and employer agreed to abide by the arbitrators decision.

From approximately January 3, 2013, until April 2019 the employer allegedly paid overtime on watches scheduled beyond twelve and one-half hours in one hour increments. Employee time sheets are filled out daily by either the employee or the Chief Engineer. The Chief Engineer then reviews each submitted time sheet and certifies each time sheet. Once submitted to the payroll department, the payroll clerk reviews each submitted time sheet and enters the information in the payroll software system. Next, the auditor reviews the time sheets in the software system and if a mistake is identified, the time sheet is corrected or "scratched" and a written explanation is added to the time sheet. Finally, after the auditor's review, the time sheet is submitted for processing.

Beginning in May 2019, the employer allegedly began intermittently "scratching" pay sheets when overtime was submitted in one hour increments on watches scheduled beyond twelve and one-half hours. Instead of following the alleged practice of one hour increments, the overtime was reduced to six minute increments.

On June 25, 2019, the union allegedly sent the employer an email explaining why overtime was paid in one hour increments when watches are scheduled beyond twelve and one-half hours. On July 10, 2019, during a conversation between the union and employer, the employer stated it would instruct payroll auditors to stop "scratching" pay sheets and the unlicensed Engine Room

employees would receive overtime in one hour increments when they worked watches scheduled beyond twelve and one-half hours.

On July, 16, 2019, the union reached out to the employer identifying an employee's time sheet that had again been "scratched" and reminded the employer of the July 10 conversation. The employer informed the union it would not return to the one hour increment, and had decided to continue scratching pay sheets. The employer also wanted to wait until after the outcome of a pending grievance-arbitration before the parties addressed the pay for overtime issue.

Again on August 29, 2019, the union received notice of an employee's "scratched" time sheet, where overtime was provided in six minute increments instead of one hour increments. For the first time, the time sheet included the explanatory notation ".40 minutes each day per MEC Case NO20-04, DECISION NO. 491 – MEC." The employer has continued this practice of using the pay policy and stamp.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. "[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 47.64.132(1). The six-month statute of limitations period begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)), *Washington State Ferries*, MEC Decision 210 (1999). 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).

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. Filing by email attachment is subject to limitations including, "If an electronic

filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open." WAC 391-08-120(4)(e) and (5)(iv).

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The metadata created by the successful transmission of the email or electronic filing constitutes the time of service. WAC 391-08-120(4)(e). The metadata shows the complaint was received by PERC on January 16, 2020, at 11:08 p.m. PERC's office closes at 5:00 p.m. Timeliness is based on the date the complaint was filed. Because the complaint was filed after 5:00 p.m. on January 16, 2020, the document is deemed filed on January 17.

In order to be timely, the complainant would have needed to describe new events that took place on or after July 17, 2019. According to the complaint, the employer began scratching pay sheets when overtime was submitted in May 2019. On July 10, 2019, the employer allegedly stated it would return to paying the employees overtime in one hour increments when they worked on watches scheduled beyond twelve and one-half hours. On July 16, 2019, the employer notified the union that it was not going to return to paying overtime in one hour increments.

On August 29, 2019, the union received an employee's scratched time sheet where overtime was provided in six minute increments. The timesheet included a stamp, used for the first time, which read, ".04 minutes each day per MEC CASE NO20-04 DECISION NO. 491 – MEC." Based on the facts alleged in the complaint, the employer did not change the practice of scratching pay sheets and paying overtime in six minute increments. The change in August 2019, was the addition of the stamp articulating the practice the employer was already using.

The union allegedly had notice of the employer's practice of paying overtime in six minute increments in May 2019 and again on July 16, 2019. The only alleged change in August is that the employer placed a new stamp on the employee's time sheet. Thus, even if the July 16, 2019, began a new timeline, the union had actual knowledge of the employer not paying the overtime in one hour increments on July 16, 2019. The complaint would have needed to be filed no later than January 16, 2020, at 5:00 p.m., to have been timely. The mere adding of a stamp on the pay sheet explaining the

employer's action in August 2019 does not create a new start date for the statute of limitations. The union had actual knowledge of the change on July 16, 2019. Thus the amended complaint must be dismissed.

ORDER

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

ISSUED at Olympia, Washington, this 12th day of March, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, Unfair Labor Practice Administrator

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 03/12/2020

DECISION 13167 - MRNE has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 132477-U-20

EMPLOYER: WASHINGTON STATE FERRIES

REP BY:
FRANKLIN PLAISTOWE
OFFICE OF FINANCIAL MANAGEMENT
LABOR RELATIONS SECTION
PO BOX 47500
OLYMPIA, WA 98504-7500
labor.relations@ofm.wa.gov

ELIZABETH DELAY BROWN
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
elizabeth.brown@atg.wa.gov

PARTY 2: MARINE ENGINEERS' BENEFICIAL ASSOCIATION

REP BY:
JEFF DUNCAN
MARINE ENGINEERS' BENEFICIAL ASSOCIATION
5210 12TH ST E
FIFE, WA 98424
jduncan@mebaunion.org

ERIC WINGE
MARINE ENGINEERS' BENEFICIAL ASSOCIATION
5210 12TH ST E
FIFE, WA 98424
ewinge@mebaunion.org

JACK HOLLAND
REID, MCCARTHY, BALLEW & LEAHY, L.L.P.
100 W HARRISON ST NORTH TOWER STE 300
SEATTLE, WA 98119-4143
jack@rmbllaw.com