

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 77,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 134229-U-21

DECISION 13380 - PECB

ORDER OF DISMISSAL

Angelo Cruz, Attorney at Law, Robblee Detwiler PLLP for the International Brotherhood of Electrical Workers Local 77.

Tamara Gerrard, Assistant City Attorney, for the City of Seattle.

On May 28, 2021, the International Brotherhood of Electrical Workers Local 77 (union) filed an unfair labor practice complaint against the City of Seattle (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on June 24, 2021, notified the union that a cause of action could not be found 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 July 15, 2021, the union filed an amended complaint. The Unfair Labor Practice Administrator dismisses the amended complaint for timeliness.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

ISSUE

The amended complaint alleges the following:

Employer refusal to bargaining in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] outside the six-month statute of limitations, by skimming of operation of various types of heavy machinery previously performed by bargaining unit employees at the Lake Youngs facility, without providing the union an opportunity for bargaining.

The amended complaint lacks facts with timely dates and the amended complaint is dismissed as untimely.

BACKGROUND

The International Brotherhood of Electrical Workers Local 77 (union) represents city employees at the City of Seattle (employer) in the Seattle Public Utilities department. The union and employer have an effective collective bargaining agreement.

Seattle Public Utilities maintains a watershed facility at Lake Youngs. Beau Burkett is a city employee, represented by the union, who works as a Construction Maintenance Equipment Operations Senior (CMEOS). Burkett was stationed at the Lake Youngs facility.

At the Lake Youngs facility Burkett was the only employee represented by the union. Other employees were represented by the United Association of Plumbers and Pipefitters Local 32. The collective bargaining agreement outlines the work jurisdiction for Construction Maintenance Equipment Operations (CMEO) and CMEOS employees. This includes the operation of various types of heavy machinery. According to the collective bargaining agreement, only union CMEOS can operate this type of heavy machinery. Historically, nonunion staff were assigned mowers to maintain rights of way including at Lake Youngs only when a union CMEO or CMEOS was unavailable. When Burkett was stationed at Lake Youngs, if Burkett was busy or unavailable another CMEO or CMEOS would be contacted to fulfill those duties. Although at times the employer assigned nonunion members to use the heavy machinery.

In June 2020 Burkett complained to Manager Gisela Sanabria about the nonunion members using the heavy machinery. The discussions between Burkett and Sanabria intensified and the union filed a grievance on an unidentified date.

In September 2020, the employer proposed temporarily relocating Burkett to the North Water Operations in North King County. In October 2020, Burkett was relocated. Since Burkett's departure from the Lake Youngs facility, the employer has not filled Burkett's vacant position. No CMEO or CMEOS has been assigned to backfill Burkett's absence at the Lake Youngs facility. The Lake Youngs facility continues to need the body of work previously performed by Burkett or other CMEOs and CMEOSs. No CMEO or CMEOS has been assigned to backfill Burkett's absence at the Lake Youngs facility.

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 41.56.160(1). The six-month statute of limitations 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)). 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).

Application of Standard

The deficiency notice informed the complainant that it needed to provide events and dates that occurred within the six-month statute of limitations. The amended complaint lacks facts with specific dates alleged within the statute of limitations. To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaint was filed on May 28, 2021. In order to be timely, the complainant would have needed to describe events and

provide dates that took place on or after November 28, 2020. According to the amended complaint the last identified date was in October 2020 when Burkett was relocated. The amended complaint alludes to the fact that the Lake Youngs facility needs the CMEO and CMEOS body of work. It lacks facts alleging that some other nonunion employee has been doing that work and specifically when that work was performed. The amended complaint does not provide a date within the six month statute of limitations where a skimming violation has actually occurred. Thus the complaint is untimely filed.

ORDER

The amended complaint charging unfair labor practices in the above-captioned matter is DISMISSED for timeliness.

ISSUED at Olympia, Washington, this 22nd day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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.



RECORD OF SERVICE

ISSUED ON 07/22/2021

DECISION 13380 - PECB 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 134229-U-21

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