STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FIRCREST POLICE GUILD,	)	
	)	
Complainant,	)	CASE 11640-U-95-2735
	)	
vs.	)	DECISION 5094 - PECB
	)	
CITY OF FIRCREST,	)	
	)	PARTIAL ORDER OF
Respondent.	)	OF DISMISSAL
	)	
	)	

On March 15, 1995, the Fircrest Police Guild filed two unfair labor practice complaints with the Public Employment Relations Commission. In each, it alleged that the City of Fircrest had unilaterally changed working conditions for the bargaining unit which it represents, in violation of RCW 41.56.140(4). In the above-captioned case,[1] the guild charges that the employer unilaterally changed its rules concerning shift rotation, traffic citation quotas, and rules for early departure form work. Additionally, this complaint alleges that the employer interfered with employee rights by interrogation, threats of reprisal, or promises of benefit during a period of union organizing in 1994.

A preliminary ruling letter sent to the parties on April 13, 1995,[2] noted that the allegations concerning interrogation of employees

---

[1] The other complaint, which was docketed as Case 11641-U-95-2736, concerns an alleged unilateral change of medical benefits.

[2] At that stage of the proceedings, all of the facts alleged in the complaints were assumed to be true and provable. The question at hand in a preliminary ruling 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.

about their union activities and any threats of reprisal or promise of benefit made during the organizing effort were untimely under RCW 41.56.160, having been filed more than six months after the only occurrence date indicated.[3] The union was given a period of 14 days to permit the filing of an amended complaint, or face dismissal of the untimely allegations.

On April 19, 1995, the guild's attorney filed a one-paragraph response to the preliminary ruling letter, which stated:

> Although I agree with you that the facts alleged in paragraph 3 of our statement would not support an unfair labor practice because of their untimeliness, I believe that they are very relevant to whether or not the City has unlawfully interfered with the Guild and retaliated against it by unilaterally changing its rules concerning shift rotation, unilaterally changing the traffic citation quotas, and unilaterally changing the rules for early departure for work. The Guild alleges that these actions were not only a refusal to bargain but are also unlawful interference with the Guild and as such constitute a separate violation under RCW 41.56.140(1). The allegations under that theory are timely.

It offered no citations of statute or rules, or any other legal authority, for the apparent claim that the existence of a timely unfair labor practice claim breathes new life into a related claim on which the statute of limitations has already expired.

The complainant's attempt to "piggyback" its untimely interference allegations on its timely refusal to bargain allegations is without merit. RCW 41.56.160 is clear. It is consistent with the six month statute of limitations imposed on unfair labor practice

---

[3] The preliminary ruling letter noted that such conduct could constitute an unfair labor practice, if it were the subject of a timely filed complaint.

filings under the National Labor Relations Act, and it has been consistently enforced by the Commission. See U.S. Postal Service, 271 NLRB 397 (1984); Spokane County, Decision 2377 (PECB, 1986); City of Dayton, Decision 2111-A (PECB, 1986); and City of Chehalis, Decision 5040 (PECB, 1995). A party which does not think enough of available unfair labor practice claims to pursue them in a timely manner is not entitled to have a change of heart just because another dispute erupts later. Even if evidence of one or more previous unfair labor practice violations might be admitted to establish some material fact in a current case (e.g., to show a strained bargaining relationship or a repetitive pattern of unlawful conduct), evidence of a foregone unfair labor practice claim is not probative in a later case. The employer will not be put to the expense to defend, and the Commission will not be put to the task of deciding, whether timely pursuit of the now stale interference allegations would have produced a finding of a violation. The allegations concerning employer interrogation of employees and any threats of reprisal or promises of benefits during the organizing effort must be dismissed.

NOW, THEREFORE, it is

ORDERED

1. The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED as untimely under RCW 41.56.160, with respect to allegations that the employer interfered with the rights of employees and/or discriminated against employees prior to September 9, 1994.

2. The complaint charging unfair labor practices filed in the above-captioned matter states a cause of action under RCW 41.56.140(4) with respect to:

a. Unilateral change of rules concerning shift changes among bargaining unit employees;
b. Unilateral change of traffic citation quotas imposed on bargaining unit employees;
c. Unilateral change of rules concerning early departures from work; and
d. Circumvention of the union by direct communications by the employer with bargaining unit members concerning public lobbying efforts by the bargaining unit.

Those allegations will be assigned to an examiner in due course.

PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to the complaint within 21 days following the date of this letter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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.

An answer filed by a respondent shall:

1. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

2. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

3. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

Issued at Olympia, Washington, this 23rd day of May, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.