STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION DIVISION NO. 587, Complainant, vs. MUNICIPALITY OF METROPOLITAN SEATTLE (METRO), Respondent.	CASE NO. 3537-U-81-524 DECISION NO. 1356-A PECB DECISION OF COMMISSION

Amalgamated Transit Union, Division No. 587, raises three issues in its petition for review of the Executive Director's decision partially dismissing its complaint charging unfair labor practices (unilateral change - refusal to bargain):

1. Should the union's complaint be barred by the two-year statute of limitations, RCW 4.16.030?

2. If not, should the complaint be barred by the doctrine of laches?

3. If not, should the complaint be deferred to contract arbitration?

The Executive Director ruled that the complaint was barred by the above-cited statute of limitations. He also suggested that it would be barred by the doctrine of laches, and if not so barred, it is a matter that should be deferred to arbitration. The union disagrees with the first two conclusions of the Executive Director. As to the third conclusion, the union would defer to arbitration under certain conditions, but the respondent employer, the Municipality of Metropolitan Seattle, has taken a position against arbitration.

We agree with the Executive Director that the portion of the complaint that was dismissed was in fact filed after the relevant limitations period had expired. We therefore do not need to address the other two issues raised in the petition for review.

The gist of the union's charge is that the employer repudiated an agreement it had reached with the union in settlement of a grievance. As is often the case with contract repudiations, this repudiation was evidenced in a series of events that took place over a period of time. The question before us is

which event triggered the running of the two-year statute of limitations, RCW 4.16.030. The petitioner agrees the statute is applicable here. U.S. Oil and Refining Co. v. State of Washington, Department of Ecology, 27 Wn.App. 102, 615 P.2d 1340 (1980).

The relevant facts are as follows: The union's complaint herein was filed on July 20, 1981. In May of 1979, the employer indicated to the union its intention not to honor the agreement at issue. On July 13, 1979, the personnel manager of the employer sent a letter to the union that stated:

> "This letter is to confirm that the Agreement between Metro and Division No. 587 . . . which is dated April 12, 1979, . . . is invalid.
>
> Named union officials were advised that these agreements were invalid in May. I also advised you of this fact in June . . ."

Some discussions apparently ensued, and on November 13, 1979 the employer sent a letter to the union declaring the matter at "impasse". During 1980 the effect of the employer's repudiation was seen as it was implemented with respect to two employees.

As a general rule, a cause of action accrues, and the statute of limitations begins running at the earliest point in time that the complaint concerning an alleged wrong could be filed. Edison Oyster Co. v. Pioneer Oyster Co., 22 Wn.2d 616, 157 P2d 302 (1945).

This proposition is illustrated in a recent decision affirmed by the National Labor Relations Board, Island Typographers, 252 NLRB 9 (1981), in which the administrative law judge wrote:

> "[I]n the case of an unlawful unilateral change, the 10(b) limitations period begins to run when the Union first has notice of the employer's action. Durfee's Television Cable Co., 174 NLRB 611, 613 (1969)."

It appears from the decision, however, that notice to the union should be clear or unequivocal. See: Peerless Roofing Co. v. NLRB, 641 F.2d 734, 107 LRRM 2330 (9th Cir. 1981).

If, however, the notice to the union is clear, it does not matter that later events repeat, confirm, or supply further evidence of the alleged wrong. Petitioner argues that such a view gives rise to premature claims, that is, that claims will be filed before a matter has had a chance to work itself out. We note, however, that the statute of limitations allows a party to sit on its claim for up to two years in order to pursue settlement. Moreover, it is not uncommon in civil proceedings that a complaint will be filed with serious settlement discussions following. If the matter is settled, the complaint is simply withdrawn.

We agree with the Executive Director that the union's cause of action ripened against the employer no later than the July 13 letter, because that letter is certainly an unequivocal repudiation of any alleged agreement. It is noteworthy that the union apparently shared this view when it filed the complaint, stating in Paragraph 4.B that:

> "1) On and after July 13, 1979, the Respondent, acting through personnel manager Sue Pavlou and others, engaged in unilateral mid-term modification of the terms and conditions of employment."

The union in its petition for review, now seeks to amend its complaint to state that the triggering event did not occur until November 13, 1979. We will not allow this amendment, for a number of reasons. The foregoing being that its request is untimely, and also because any amendment would not alter the terms of the July 13, 1979 letter, in which the employer did indeed engage in a unilateral action that could have altered the terms and conditions of employment.[1/]

We also note an additional point of interest. If, as it appears, the union accepts that an "impasse" in fact existed in November, 1979, then it may be that, aside from the statute of limitations problem, the union has no cause to complain that the employer refused to bargain in good faith. The reason is that the apparently undisputed facts indicate that the employer actually did bargain in good faith to impasse. See: Federal Way School District, Decision 232-A (EDUC, 1977). The employer may have breached a contract with the union. The Commission, like the NLRB, does not handle contract disputes. Such disputes are, depending on circumstances, a matter for arbitration (to which we would defer any unfair labor practice charge, as the Executive Director noted), or a matter to be taken up directly in court unless, as may be the case here, the statute of limitations has run on these alternatives as well.

1/ The respondent-employer notes correctly that the union's petition for review was filed 23 days after the Executive Director's decision was entered. WAC 391-45-350 allows 20 days for filing, plus a two-day extension in this instance because the last two days of the filing period consisted of a Sunday and a holiday. While it is Commission policy to require strict adherence to the time limits for filing for review, WAC 391-08-103 extends the 20-day period for an additional three days when service is by mail, as was the case here.

ORDER

The decision of the Executive Director is affirmed.

DATED this 8th day of June, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

R. J. WILLIAMS, Commissioner

MARK C. ENDRESEN, Commissioner