STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RUSSELL D. ROSCOE, Complainant, vs. SHORELINE COMMUNITY COLLEGE, Respondent.	CASE 22948-U-10-5850 DECISION 10667 - CCOL ORDER OF DISMISSAL

On January 5, 2010, Russell D. Roscoe (Roscoe) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Shoreline Community College (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on January 8, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. Roscoe was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. On January 25, 2010, Roscoe filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 28B.52.073(1)(a), by its actions concerning Roscoe's employment status.

The deficiency notice pointed out the defects to the complaint. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is

---

[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.

actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions.

A cause of action for employer interference with employee rights is based upon an indication that the employer has taken unlawful action against an employee based upon that employee's exercise of collective bargaining rights. Roscoe's complaint alleges that the employer has misinterpreted state rules in assessing his qualifications to teach business or accounting, but does not allege that the employer acted unlawfully because he exercised collective bargaining rights protected under Chapter 28B.52 RCW. The Commission does not have jurisdiction in this case.

Amended Complaint

The amended complaint alleges employer interference with employee rights in violation of RCW 28B.52.073(1)(a) and discrimination in violation of RCW 28B.52.073(1)(c). The amended complaint contains an amended statement of facts, as well as an amended complaint form concerning the present Case 22948-U-10-5850. The amended complaint also contains a separate complaint form alleging unfair labor practices against the Shoreline Community College Federation of Teachers (union). That complaint was docketed as Case 23000-U-10-5860. This Order of Dismissal notice concerns only Case 22948-U-10-5850 and addresses only Roscoe's claims against the employer.

Roscoe's position was included in a reduction in force (RIF) action by the employer. He states that the employer instructed him to not challenge the RIF. He nevertheless did so and alleges that the employer retaliated against him for his actions. He alleges that the employer denied him union representation during an investigatory interview and interfered with his attempts to obtain other employment, including denying him the opportunity to apply for another job with the employer. He further alleges that the committee administering the RIFs retaliated against him by its failure to follow established procedures in dealing with his RIF.

Apparently, most of the events referred to occurred in 2006 and 2007. Unlike the other collective bargaining statutes administered by the Commission, Chapter 28B.52 RCW does not contain a provision limiting the processing of complaints to unfair labor practices allegations occurring more than six months before the filing of the complaint.[2] The six-month statutes of limitations for Chapter 41.76 RCW and Chapter 41.80 RCW were adopted in 2002; those for Chapter 41.56 RCW and Chapter 41.59 RCW were adopted in 1983. Prior to 1983, the Commission applied a two year limitation of actions in unfair labor practice complaints. The Commission also held that 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 (emphasis in the original). *Municipality of Metropolitan Seattle,* Decision 1356-A (PECB, 1982).

Thus, Commission policy prior to the adoption of statutes of limitations was to use a two year limitation provided under state law. There is no reason here to ignore that policy or vary from it; rather, it is appropriate to follow it. The Commission has not given any indication that Chapter 28B.52 RCW constitutes an exception to the legal principle limiting time for actions. An unlimited period of time for actions under Chapter 28B.52 RCW would be unique to that statute and unreasonable. (In any case, the two year period allowed under the pre-1983 policy is three times longer than the statutory period of time in all other unfair labor practice cases.) The standard regarding limitations of actions set forth in *Municipality of Metropolitan Seattle* is the standard adopted in this case.

WAC 391-45-050(2) requires that statements of facts include times and dates of occurrences. The amended statement of facts contains incomplete information regarding times and dates; however, Roscoe does state that the final decision on his the RIF came at the beginning of June 2007. In the absence of additional information, this is considered the time period that began the two year limitation period in this case, and Roscoe should have filed his original complaint no later than June 2009. The amended complaint is untimely and therefore fatally deficient; because of this, it is unnecessary to discuss the remaining substantial deficiencies to the amended complaint.

---

2 RCW 41.56.160(1), RCW 41.59.150(1), RCW 41.76.055(1), RCW 41.80.120(1).

NOW, THEREFORE, it is

ORDERED

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 3rd day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 02/03/2010

The attached document identified as: DECISION 10667 - CCOL has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	22948-U-10-05850	FILED:	01/05/2010	FILED BY:	PARTY 2
DISPUTE:	ER INTERFERENCE				
BAR UNIT:	ACADEMIC				
DETAILS:	Not hired for teaching position				
COMMENTS:					

EMPLOYER: C COL DIST 7 - SHORELINE
ATTN: LEE LAMBERT
SHORELINE COMM COLLEGE
16101 GREENWOOD AVE N
SEATTLE, WA 98133-5696
Ph1: 206-546-4552 Ph2: 206-546-4551

PARTY 2: RUSSELL D ROSCOE
ATTN:
19300 69TH PL W
SHORELINE, WA 98036
Ph1: 425-273-0064