

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHORELINE COMMUNITY COLLEGE,  Employer.	
RUSSELL D. ROSCOE,  Complainant,	CASE 23000-U-10-5860
vs.	DECISION 10675 - CCOL
SHORELINE COMMUNITY COLLEGE FEDERATION OF TEACHERS,  Respondent.	ORDER OF DISMISSAL

On January 25, 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 Federation of Teachers (union) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 2, 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 February 9, 2010, Roscoe filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

On January 5, 2010, Russell D. Roscoe (Roscoe) filed an unfair labor practice complaint against Shoreline Community College (employer) alleging employer interference with employee rights in

<sup>1</sup> 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.

violation of RCW 28B.52.073(1)(a). The case was docketed as Case 22948-U-10-5850 (22948-U). A deficiency notice was issued on January 8, 2010. Roscoe filed an amended complaint on January 25, 2010. The amended complaint contained an amended statement of facts, as well as an amended complaint form concerning Case 22948-U. The amended complaint also contained a separate complaint form alleging unfair labor practices against the Shoreline Community College Federation of Teachers (union). That complaint has been docketed as the present Case 23000-U-10-5860 (23000-U).

The deficiency notice issued on February 2, 2010, concerns only Case 23000-U. Under Commission docketing procedures, the employer receives notice of the case filing, but only the union needs to respond in Case 23000-U. The deficiency notice pertains only to those portions of the amended statement of facts that allege unfair labor practice violations by the union.

The allegations of the complaint concern union interference with employee rights in violation of RCW 28B.52.073(2)(a) and discrimination for filing charges in violation of RCW 28B.52.073(2)(c), by its actions concerning Roscoe.

The deficiency notice pointed out the defects to the complaint. Roscoe's position was included in a reduction in force (RIF) action by the employer. Roscoe alleges union interference with employee rights and discrimination for filing charges, by the union's failure to adequately represent him in the RIF, by failing to pursue information and advising him to accept the RIF, by not representing him at an arbitration hearing over the RIF, by failing to represent him during a disciplinary meeting with the employer, and by refusing to file a grievance against the employer.

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.<sup>2</sup> 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

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<sup>2</sup> RCW 41.56.160(1), RCW 41.59.150(1), RCW 41.76.055(1), RCW 41.80.120(1).

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 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 complaint no later than June 2009. The complaint is untimely and therefore fatally deficient; because of this, it is unnecessary to discuss the remaining substantial deficiencies to the complaint.

#### Amended Complaint

The amended complaint affirms that the allegations against the union originated in 2007. The amended complaint is untimely.

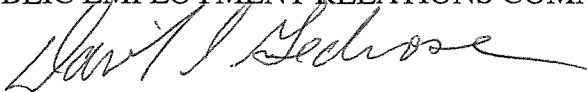
NOW, THEREFORE, it is

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 12th day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "David I. Gedrose".

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.