City of Bellingham, Decision 10907-A (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BELLINGHAM POLICE GUILD, Complainant, vs. CITY OF BELLINGHAM, Respondent.	CASE 23211-U-10-5917 DECISION 10907-A - PECB DECISION OF COMMISSION

Cline and Associates, by *James M. Cline,* Attorney at Law, and *Kelly M. Turner,* Attorney at Law, for the union.

Joan Hoisington, Bellingham City Attorney, by *Peter Ruffatto*, Assistant City Attorney, and Summit Law Group, by *Otto G. Klein, III,* Attorney at Law, and Sofia D. Mabee, Attorney at Law, for the employer.

On May 6, 2010, the Bellingham Police Guild (union) filed an unfair labor practice complaint alleging the City of Bellingham (employer) committed an unfair labor practice by threatening to lay off three bargaining unit members. On July 14, 2010, the employer filed a motion for summary judgment. Examiner Guy O. Coss issued a decision[1] dismissing the union's complaint as untimely. The union filed a timely appeal.

The only issue before this Commission is whether the union's complaint was filed within the statute of limitations. We affirm the Examiner. The union did not file its complaint within the six-month statute of limitations.

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[1] *City of Bellingham,* Decision 10907 (PECB, 2010).

FACTS

In 2009, the employer and union engaged in negotiations for a collective bargaining agreement to begin in 2010 after their 2007-2009 agreement expired. On August 17, 2009,[2] Police Chief Todd Ramsay (Ramsay) sent an e-mail to police department staff informing them that, at that time, layoffs would not be necessary.

In September and October, the parties exchanged proposals. On October 15, Ramsay met with union President Cliff Jennings (Jennings) and Second Vice President and Bargaining Committee Chair Donna Miller (Miller). During the meeting, Ramsay informed Jennings and Miller that he had been asked to begin developing some possible layoff proposals.

The parties met in negotiations on November 16 and agreed to meet on November 20. On November 18, Ramsay informed the union that the employer was generating three layoff notices to be delivered to bargaining unit members on November 20. Ramsay explained that if the union accepted the employer's last offer, the layoffs could be avoided.

APPLICABLE LEGAL PRINCIPLES

"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).

In *City of Selah*, Decision 5382 (PECB, 1995), the Commission addressed the six-month limitation period and noted that its "precedents in this area are consistent with the rulings of the National Labor Relations Board (NLRB) under the similar limitations in the federal law." The

[2] All dates are in 2009 unless otherwise noted.

Commission specifically cited *U.S. Postal Service*, 271 NLRB 397 (1984). In *Bryant & Stratton Business Institute*, 321 NLRB 1007 (1996), the NLRB explained its case law on the six-month statute of limitations, including its decision in *U.S. Postal Service*, as follows:

> In *U.S. Postal Service Marina Center*, 271 NLRB 397 (1984), the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences became effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired. However, as the Board emphasized in a subsequent decision, "Postal Service Marina Center ... was limited to unconditional and unequivocal decisions or actions." *Stage Employees IATSE Local 659 (Paramount Pictures),* 276 NLRB 881 (1985). Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b), the Respondent. *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995 (1986).

Under the standard used by the NLRB and embraced by the Commission, the six-month statute of limitations period begins at the time the employer provides clear and unequivocal notice to the union. Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice. *Community College District 17 (Spokane)*, Decision 9795-A (PSRA, 2008).

In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994).

The Commission has previously rejected a continuing violation theory. In *City of Bremerton*, Decision 7739-A (PECB, 2005), the Examiner found that the union's complaint was untimely because the union was aware of the existence of a "me too" clause and a parity clause in two other collective bargaining agreements more than six months prior to filing a complaint. The union argued that it met its burden of proof to establish a continuing violation by showing that

the clauses interfered with its bargaining rights. The Commission affirmed the Examiner. At any time in the future, if the "me too" clause interfered with the union's rights, it could file a complaint. Absent actual evidence that the existing "me too" clause interfered with employee rights within the statute of limitations, the complaint was untimely.

Multiple violations, each giving rise to its own statute of limitations, may occur as part of a larger event. In *Seattle School District*, Decision 9982-A (PECB, 2000), the employer conducted an investigation of a complaint by an employee against the union representing the employee. The union filed its complaint on March 13, 2007, and the employer conducted the investigation between May 2006 and July 19, 2006. The Examiner found that events occurring before September 13, 2006, were time barred. The Commission agreed. The union was aware that the employer was investigating the complaint. The events occurring more than six months prior to the union filing its complaint were outside the statute of limitations. However, certain events, such as the issuance of the investigator's report, resulting discipline, and other procedural violations, may occur at different times and may be independent triggering events.

ANALYSIS

The union argues that the Examiner erred in finding that on October 15, the employer put the union on notice of its position regarding layoffs, thereby triggering the statute of limitations. According to the union, the events occurring more than six months prior to the filing of the complaint are background information and each individual unfair labor practice triggers the statute of limitations. Under the union's analysis, the October 15 conversation is a separate triggering event for which no remedy can be granted, and the November 18 threat of layoffs is a separate triggering event. We disagree and affirm the Examiner.

The union did not contest any of the Examiner's Findings of Fact, thus we treat them as verities on appeal. *Brinnon School District,* Decision 7210-A (PECB, 2001).

Commission decisions have consistently found complaints untimely when the complainant had clear and unambiguous notice of the alleged offending act. However, discussions that an event might be necessary does not always trigger the statute of limitations.

Evidence of events occurring more than six months prior to the filing of the complaint has been admitted as background information. The admission of background evidence does not preclude an Examiner from finding that the complaint is untimely. In *City of Seattle*, Decision 5930 (PECB, 1997), the complaint contained a lengthy history of negotiations concerning creation of a "safety officer" position. The employer's answer disputed the facts alleged by the union and raised the statute of limitations as an affirmative defense. The Examiner admitted further background evidence at the hearing. The union alleged the complaint was timely because it was part of a continuing violation. The Examiner found the decision to create the safety officer position occurred outside of the six months prior to the filing of the complaint and dismissed the allegation.

The employer discussed the possibility that there would be layoffs during 2009. On October 15, Ramsay told the union that he had been asked to develop possible layoff proposals. The employer notified the union on November 18, 2009, that it was generating three layoff notices to be delivered to employees on November 20, 2009. During the October 15 conversation, Ramsay communicated enough information to Jennings and Miller for the union to understand that layoffs were not off the table. The fact that the employer did not provide the details of the layoff plan or generate the notices sooner does not render the notice meaningless. The triggering event in this case is the October 15 conversation between Ramsay and President Jennings and Vice President Miller. If the union thought the employer was using layoffs as a bargaining tactic, the union had notice of the employer's tactic when Ramsay told Jennings and Miller that he was preparing layoff proposals.

In *City of Seattle*, evidence predating the six months prior to the complaint was presented as background in the complaint and admitted during the hearing. Just as the Examiner in *City of Seattle* reviewed the evidence and identified an earlier triggering event, the Examiner in this case

reviewed the background evidence and found that the triggering event occurred outside of the statute of limitations. The complaint was untimely.

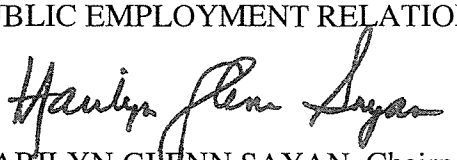
NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Guy O. Coss are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 15th day of March, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	23211-U-10-05917	FILED:	05/06/2010	FILED BY:	PARTY 2
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BAR UNIT:	LAW ENFORCE				
DETAILS:	-				
COMMENTS:					

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