STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF REDMOND, Complainant, vs. REDMOND CITY HALL EMPLOYEES ASSOCIATION, Respondent.	CASE 128286-U-16 DECISION 12617 - PECB ORDER OF DISMISSAL

On June 28, 2016, the City of Redmond (employer or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Redmond City Hall Employees Association (union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on July 28, 2016, indicated that it was not possible to conclude a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by the complainant. The Unfair Labor Practice Manager dismisses the complaint for untimeliness and failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern:

> Union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) [and if so, derivative interference in violation of RCW

[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.

> 41.56.150(1)] during the six months preceding the filing of the complaint by its conduct in bargaining, by failing to bargain with the employer over the use of a revised performance evaluation form, and by filing an unfair labor practice complaint against the employer.
>
> Union restraint or coercion in violation of RCW 41.56.150(1) since May 16, 2016, by requesting remedies from the Public Employment Relations Commission for conduct by the employer that is not a violation of Chapter 41.56 RCW.
>
> Union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)] by refusing to bargain in good faith with the employer after identifying alleged current effects arising from the employer's adoption and implementation of the new performance evaluation form.

The deficiency notice pointed out several defects in the complaint. The complaint does not describe union restraint or coercion in violation of RCW 41.56.150(1) or union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The complaint seems to make a variety of arguments about bad faith bargaining by the union but makes only one allegation for a violation of RCW 41.56.150(4). This allegation does not qualify for processing because it doesn't describe a clear and timely instance of refusal to bargain.

Timeliness

Six-Month Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. "[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).

To determine timeliness the Commission looks at the dates of events in the complaint in relation to the filing date. The Commission cannot process complaints involving untimely filed

allegations. The complaint was filed on June 28, 2016. In order to be timely, the complaint would have needed to describe triggering events that took place on or after December 28, 2015. Many of the alleged facts describe conduct that took place prior to December 28, 2015. These facts will be considered as background information only.

ANALYSIS

Applicable Legal Standards

Union Inducement of Employer to Commit an Unfair Labor Practice

RCW 41.56.150(2) makes it an unfair labor practice for a union to "induce the public employer to commit an unfair labor practice." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

In *Municipality of Metropolitan Seattle* the union was seeking limitations on assignments that were made available to part-time drivers. At the bargaining table, the employer could legally agree to restrict part-time drivers' shifts. The Commission explained that the mere designation of "part-time" status does not bring an employee into a classification protected from invidious discrimination.

Union Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.150(1).

Duty to Bargain

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *University of Washington*, Decision 11414-A (PSRA, 2013).

In order to resolve their contractual differences through negotiations, parties to the collective bargaining agreement must meet in a timely fashion. *Seattle School District*, Decision 10732-A (PECB, 2012), *citing Morton General Hospital*, Decision 2217 (PECB, 1985). To prove a failure to meet, the complainant must demonstrate that it requested negotiations on a collective bargaining agreement or a mandatory subject of bargaining and that the other party either failed or refused to meet with the complainant or imposed unreasonable conditions or limitations which frustrated the collective bargaining process. *State – Washington State Patrol*, Decision 10314-A (PECB, 2010), *citing City of Clarkston*, Decision 3246 (PECB, 1989). A case-by-case analysis is necessary to prove a violation. If not properly justified under existing precedent, a failure to timely respond to requests for bargaining is an unfair labor practice. *State – Washington State Patrol*, Decision 10314-A.

In determining whether an unfair labor practice has occurred, the totality of the circumstances must be analyzed. *Walla Walla County*, Decision 2932-A (PECB, 1988); *City of Mercer Island*, Decision 1457 (PECB, 1982). A party that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4) and (1) and 41.56.150(4) and (1). A finding that a party has refused to bargain in good faith is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *See Spokane School District*, Decision 310-B (EDUC, 1978). What may be reasonable conduct in one case may not be reasonable in another. *City of Clarkston*, Decision 3246.

Application of Standards

The statement of facts does not describe conduct by the union that could constitute union restraint or coercion in violation of RCW 41.56.150(1) or union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). Rather, the complaint seems to serve as an answer to the unfair labor practice complaint filed by the union against the employer on May 16, 2016, in Case 128189-U-16, where the union is alleging:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], since November 25, 2015, by unilaterally announcing and implementing changes to merit pay for bargaining unit employees by changing the evaluation form and numerical performance rating system for determination of pay, without providing the union with an opportunity for bargaining.

The complainant makes various arguments about why it should be found that the employer fulfilled its bargaining obligations with regard to the evaluation form that is the subject of the complaint filed by the union. The employer's complaint further alleges delay in bargaining by the union. It also describes a disagreement over whether the use of a new evaluation form was a mandatory or permissive subject of bargaining. This is significant because the mandatory versus permissive nature of a bargaining subject impacts parties' bargaining obligations. However, the complaint does not allege union refusal to bargain by insisting to bargain over a permissive subject. Rather, it alleges that the union violated "RCW 41.56.150(4) . . . by refusing to bargain in good faith after identifying alleged current effects arising from the [employer's] adoption and implementation of the new performance evaluation form." The complaint also argues that the implementation of the evaluation form was a permissive subject of bargaining.

The employer's argument appears to be a waiver by inaction argument against the union's refusal to bargain allegations in Case 128189-U-16. A union's decision to waive bargaining by inaction on what the employer alleges is a permissive subject is an argument that the employer can use to explain why it did not complete effects bargaining. As the case law above explains, a finding that a party has refused to bargain in good faith is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *City of Mountlake Terrace*, Decision 11831-A

(PECB, 2014). It is not an unfair labor practice for a union to waive its right to bargain over the effects of a change to a permissive subject of bargaining.

The employer filed its answer to the union's complaint in Case 128189-U-16 and will have an opportunity to present its defenses to the examiner assigned to hear that case. It is not necessary for the employer to file a complaint against the union in order to present affirmative defenses to the refusal to bargain allegations.

The complaint in this case goes on to argue that because the employer does not believe the complaint filed by the union has merit, the Commission should find that the union interfered with employee rights when it filed its complaint. Specifically, the employer argues that the processing of the complaint filed by the union is "interfering with the [employer's] rights in the negotiation process by [the union] seeking remedies that it is not legally entitled to receive."

The complaint does not contain facts describing union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). No facts in the complaint indicate that the union was asking the employer to commit an unlawful act. Similarly, the complaint does not describe conduct by the union that could constitute restraint or coercion of employees in the exercise of their collective bargaining rights in violation of RCW 41.56.150(1).

CONCLUSION

The complaint does not describe union restraint or coercion in violation of RCW 41.56.150(1) or union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The complaint raises a variety of vague arguments about bad faith bargaining by the union. These allegations do not qualify for processing because they lack specific information. Further, the statement of facts does not describe clear and timely events that could constitute union refusal bargain in violation of RCW 41.56.150(4).

ORDER

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for untimeliness and failure to state a cause of action.

ISSUED at Olympia, Washington, this 19th day of September, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12617 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 128286-U-16

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