STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117 Complainant, vs. WASHINGTON STATE DEPARTMENT OF CORRECTIONS Respondent.	CASE 136331-U-23 DECISION 13978 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Eamon McCleery, Senior Staff Attorney, for Teamsters Local 117.

Carmen Hargis-Villanueva, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Corrections.

An unfair labor practice (ULP) complaint was filed by Teamsters Local 117 (union) against the Washington State Department of Corrections (employer or DOC) on March 23, 2023. The complaint alleged that the employer refused to bargain in violation of RCW 41.80.110(1)(e) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] when it unilaterally changed scheduling practices for Relief Sergeants without providing the union an opportunity to bargain. The employer filed an answer on April 24, 2023. The undersigned Examiner conducted a virtual hearing on May 29, 2024, and the parties filed post-hearing briefs on August 1, 2024, to complete the record.

ISSUE

Did the Union File Its ULP Complaint Within the Six-Month Statute of Limitations?

The union needed to file its complaint within six months of the time that it knew of or should have known of the adverse employment decision. After careful consideration, I have determined that the union's complaint was filed outside the six-month statute of limitations

and is thus untimely. Therefore, it is unnecessary to rule on the merits of any remaining issues. Accordingly, the complaint is dismissed.

BACKGROUND

The union represents a wide range of job classifications under the employer, including Corrections and Custody Officer 3, which uses the working title of Corrections Sergeant. Some positions within the classification are designated as "relief positions," indicating that employees occupying those positions are scheduled in a way to fill in for sergeants who are out on leave. The assignments of Relief Sergeants, including workdays and shifts, are addressed in the parties' collective bargaining agreement (CBA). In relevant part, the CBA states,

> 16.3 Scheduled Work Period Employees
>
> A. Regular Work Schedules
>
> The regular work shift for scheduled work period employees will consist of either:
>
> 1. Five (5) consecutive uniform work shifts of not more than eight (8) consecutive hours of work (excluding any meal period) in a twenty-four (24) hour period followed by two (2) consecutive days off; . . .
>
> C. Employer Initiated Schedule Changes
>
> 1. The Employer will provide scheduled work period employees with seven (7) calendar days' notice of a shift and/or days off change unless the change is at the written request of the employee.

On July 22, 2022, a dispute over the interpretation of this language arose at the Clallam Bay Corrections Center (CBCC) when Relief Sergeant Lloyd Bookter received a schedule change notice. This notice moved Bookter from his regular third shift (2:00 p.m. to 10:00 p.m.) to second shift (6:10 a.m. to 2:10 p.m.).

On July 28, 2022, Bookter emailed Diana Rosvall, the Roster Manager for the prison, the following:

> I have a question fpr [*sic]* you. You have me scheduled for August 23 to Comm center on 2nd shift. You then have me scheduled for the 24th to 1st shift IMU. The 24th shift would incur overtime as I will be working 2 shifts in 24 hrs. Do you want me to do this? Sgt Bookter

Rosvall responded that the two shifts were not within the same calendar day. Subsequent to this exchange, the employer amended the notice of schedule change indicating that Bookter should start his first shift on the new schedule later in the day to allow eight hours off between his shifts. The change was effective August 23, 2022.

On August 31, 2022, Amy Bunting, Union Representative, filed a grievance with Megan Smith, Labor Relations Manager. The grievance argued that Bookter's schedule change violated the CBA as Bookter would be working more than 8 hours within a 24-hour period. Bunting also indicated that the union had brought this issue to the attention of CBCC management, but it was unable to resolve the dispute informally prior to the filing of the grievance.

On March 17, 2023, Sarena Davis, the union's Director of Corrections and Law Enforcement, filed a grievance with Smith arguing that the employer had violated article 16.3, as well as several other articles, and highlighted a previous arbitration award that had dealt with a similar scheduling issue. This award was issued on July 19, 2011, by Arbitrator Anthony Vivenzio. Davis summarized the arbitration award in the grievance filing, indicating that the Arbitrator had determined that the employer had violated the CBA when it assigned an employee to a new schedule in contradiction to the agreement in 16.3(A)(1). Vivenzio highlighted that the reassignment process outlined in 16.3(C) did not obviate the employer's responsibility to adhere to the requirements of 16.3(A)(1).

The union offered the award as an exhibit at hearing in the instant case. Vivenzio stated that, but for the provisions of the CBA, the grievant in the arbitration case would have worked five consecutive days, with two consecutive days off, and would have had at least 15.5 hours between shifts. This schedule could have resulted in the grievant receiving changeover days. These changeover days, wherein an employee was paid for a day that they did not work as part of the process of reassignment, was a working condition highlighted by the employer as one arising from the employer's past practice. Vivenzio concluded that,

> The Union has met its burden of proof by a preponderance of the evidence that the Employer violated Article 16.3(A)(1) and 16.3(C) and as those Articles have been interpreted by the Parties through past practice, and that said practice is terminable in manner recognizing the interests of the Parties, and will enter an Award to that effect.

The parties seem to have interpreted Vivenzio's conclusion differently and in contradiction to each other. The employer interpreted the decision to mean that it could unilaterally end the practices discussed in the award, which it did. Prison Staffing Manager Tana Southerland, who oversees the roster management program across the DOC, testified at hearing that the DOC's practice of ensuring that Relief Sergeants have at least eight hours between shift changes has been in place since the summer of 2011, the time Vivenzio's award was issued. The employer also pointed to notes from July 9, 2014, taken by the employer as a record of discussions during collective bargaining, wherein the employer indicated it had been scheduling employees in a way as to provide eight hours between shifts. The union interpreted the award language to indicate the employer had to provide notice of its intent to terminate the practices, which it did not.

The union stated that, through the process of investigating and prosecuting the grievance that had arisen out of Bookter's grievance, it learned that the employer had been scheduling employees in a way that contradicted Vivenzio's award at several prison facilities. This knowledge led to Davis' filing of the March 17, 2023, grievance. The union filed the complaint in this case with the Commission on March 23, 2023.

ANALYSIS

Applicable Legal Standard(s)

Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1) governs the time for filing complaints:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That 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 . . . . This power shall not be

> affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)).

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 Renton*, Decision 12563-A (PECB, 2016) (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). Under the "discovery rule," the statute of limitations does not begin to run until the complainant, using reasonable diligence, would have discovered the cause of action. *U.S. Oil & Refining Co. v. State Department of Ecology*, 96 Wn.2d 85, 92 (1981). The doctrine of equitable tolling requires the exercise of reasonable diligence on the part of the complainant. *Adult Residential Care, Inc.*, 344 NLRB 826 (2005). The party asserting that equitable tolling should apply bears the burden of proof. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379 (2009). To prove that the statute should be tolled, the complainant would need to show deception or concealment of the facts forming the basis of the unfair labor practice complaint and the exercise of diligence by the complainant. *City of Renton*, Decision 12563-A (citing *Millay v. Cam*, 135 Wn.2d 193, 206 (1998)).

The Commission has also ruled that the statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025 (citing *City of Chehalis*, Decision 5040 (PECB, 1995)).

Application of Standard(s)

The union's complaint is untimely as it was filed more than six months after the union had knowledge of the employer's alleged violation. The Vivenzio decision that the union seeks to enforce was issued in July 2011. The decision addresses the CBA articles at issue in the instant

case and discusses the time between shifts, the number of days off, and the number of working days. Even if the union did not have knowledge of the employer's determination to schedule employees with at least 8 hours between shifts rather than the 15.5 hours identified in the contract at any time prior to Bookter's reassignment, the union knew of the violation no later than August 31, 2022, when it filed a grievance about the issue. At that time, the union was put on notice that the employer had been assigning employees in a way contradictory to the union's interpretation of the Vivenzio award. The union learning that the employer was violating one aspect of the award, the time between shifts, was enough to put it on notice that the employer was allegedly violating the award. While the union later learned that the employer was allegedly violating the award in more than one way, by not granting two consecutive days off through the issuance of changeover days, this does not change the fact that the union had prior notice of the violations. August 31, 2022, the date the union filed the grievance about the past practice the employer is alleged to have unilaterally changed, is beyond the six-month statute of limitations from the filing of the complaint with the Commission on March 23, 2023.

CONCLUSION

The union was unable to prove that the employer unilaterally made changes to the relief scheduling process within the six months preceding the filing of the complaint with the Commission. The complaint is dismissed.

FINDINGS OF FACT

1. The Washington State Department of Corrections is a public employer under RCW 41.80.005(8).

2. Teamsters Local 117 is an employee organization under RCW 41.80.005(7).

3. The union represents a wide range of job classifications under the employer, including Corrections and Custody Officer 3, which uses the working title of Corrections Sergeant. Some positions within the classification are designated as "relief positions," indicating that employees occupying those positions are scheduled in a way to fill in for sergeants who

are out on leave. The assignments of Relief Sergeants, including workdays and shifts, are addressed in the parties' CBA.

4. On July 22, 2022, a dispute over the interpretation of this language arose at the Clallam Bay Corrections Center (CBCC) when Relief Sergeant Lloyd Bookter received a schedule change notice. This notice moved Bookter from his regular third shift (2:00 p.m. to 10:00 p.m.) to second shift (6:10 a.m. to 2:10 p.m.).

5. On July 28, 2022, Bookter emailed Diana Rosvall, the Roster Manager for the prison, the following:

> I have a question fpr [sic] you. You have me scheduled for August 23 to Comm center on 2nd shift. You then have me scheduled for the 24th to 1st shift IMU. The 24th shift would incur overtime as I will be working 2 shifts in 24 hrs. Do you want me to do this? Sgt Bookter

6. Rosvall responded that the two shifts were not within the same calendar day. Subsequent to this exchange, the employer amended the notice of schedule change indicating that Bookter should start his first shift on the new schedule later in the day to allow eight hours off between his shifts. The change was effective August 23, 2022.

7. On March 17, 2023, Sarena Davis, the union's Director of Corrections and Law Enforcement, filed a grievance with Smith arguing that the employer had violated article 16.3, as well as several other articles, and highlighted a previous arbitration award that had dealt with a similar scheduling issue.

8. The union stated that, through the process of investigating and prosecuting the grievance that had arisen out of Bookter's grievance, it learned that the employer had been scheduling employees in a way that contradicted Vivenzio's award at several prison facilities. This knowledge led to Davis' filing of the March 17, 2023, grievance.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.80 RCW and chapter 391-45 WAC.

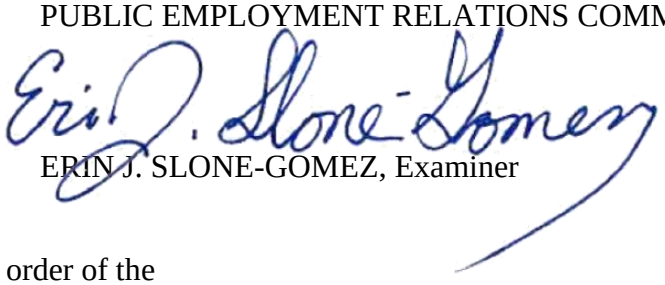
2. Based on findings of fact 4-8 the union failed to show that it filed its complaint within the six months of time that it knew or should have known of the adverse employment decision.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 25th day of October, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ERIN J. SLONE-GOMEZ, Examiner

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.