

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

AFSCME COUNCIL 65 LOCAL 377,

HF No. 4U 2025/26,

Petitioner.

**RULING ON RESPONDENT'S
MOTION TO DISMISS**

v.

CITY OF PIERRE,

Respondent,

This is an unfair labor practice complaint brought before the South Dakota Department of Labor and Regulation, Division of Labor and Management, pursuant to SDCL 3-18-3. Respondent, City of Pierre, ("Respondent"), has filed a Motion to Dismiss based on Petitioner, AFSCME Council 65, Local 377 ("Petitioner") failing to timely file its complaint pursuant to SDCL 3-18-3.4, and Petitioner failing to state facts constituting an unfair labor practice under SDCL 3-18-3.1. It is concluded the complaint was not filed timely and must therefore be dismissed for lack of jurisdiction.

The available record consists of the parties' pleadings and arguments submitted so far.

Respondent refers to the timely filing requirement in SDCL 3-18-3.4: "Any complaint brought under the provisions of §§ 3-18-3.1 and 3-18-3.2 shall be filed with the Department of Labor and Regulation within sixty days after the alleged commission of an unfair labor practice occurs or within sixty days after the complainant should have known of the offense." As Petitioner's complaint was not filed until, at the earliest, October 9, 2025, Respondent argues it was not timely.

Petitioner has pointed to many things Respondent did or did not do that it alleges constitute bad faith bargaining. It claims Respondent failed to bargain in good faith by unreasonably delaying in submitting its proposals. Petitioner provided its first round of

proposals on June 15, 2025. Respondent responded by acknowledging receiving the proposals on June 17, 2025, and informing Petitioner it would not submit its proposals until September 1, 2025; new City Commissioners were taking office on July 1, 2025, and Respondent would have to work on and discuss its proposals with the new members. On June 27, 2025, Petitioner replied by letter, alleging Respondent was not bargaining in good faith. Respondent sent its proposals on August 29, 2025.

Petitioner further claims Respondent engaged in surface bargaining. The parties were negotiating an entirely new contract, and Respondent's August 2025 package contained 54 proposals on a variety of provisions such as comp time, overtime, and longevity pay. The parties met eleven times, from October 23, 2025 to January 30, 2026. Petitioner claimed in the course of these discussions that Respondent was not negotiating in good faith. On January 30, 2026, having proffered various amendments to its original proposals, Respondent submitted its last, best, and final offer, and asked Petitioner to vote on it. Petitioner replied that it would not accept the offer, would not take to its membership for a vote, and intended to ask for mediation or file an unfair labor practice complaint. Respondent was notified Petitioner had declared impasse the same day. Petitioner filed its unfair labor practice complaint on April 22, 2026, eighty-three days later.

In *General Drivers and Helpers Union v Brown County*, 269 N.W.2d 795 (SD 1978), our Supreme Court announced that judicial interpretation of the National Labor Relations Act could be used as guidance where no state authority was available. *Brown County*, 269 N.W.2d at 798.

The NLRB standard is whether a charging party has "clear and unequivocal notice, either actual or constructive, of facts necessary to support a ripe unfair labor practice." See, *E.g., American Postal Workers Union*, 374 NLRB 92, 4 (2026). Further, in motions to dismiss in general, the available record must be reviewed in the light most favorable to Petitioner. *E.g., Kustom Cycles, Inc. v. Bowyer*, 2014 SD 87, ¶ 8, 857 N.W. 2d 401, 405.

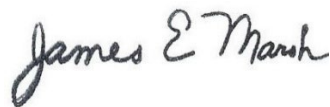
Here, by its own statements, Petitioner admitted actual knowledge of facts it believed constituted unfair labor practices occurring as early as June 27, 2025, and no later than January 30, 2026, and openly declared in several letters the warning of filing a complaint about them. There is no question Petitioner had actual knowledge of facts it felt constituted unfair labor practices more than sixty days before its complaint was filed. The complaint is untimely, and the Department therefore lacks jurisdiction to proceed further on it. Petitioner's complaint should be dismissed.

In conclusion, Petitioner's unfair labor practice was not timely filed, as it had constructive or actual notice of the issues giving rise to the complaint more than sixty days before it filed its complaint, and the complaint must therefore be dismissed. Petitioner's petition is DISMISSED with prejudice.

The above will serve as the Department's ORDER in this matter.

Dated this 27th day of August, 2026.

BY THE DEPARTMENT:

A handwritten signature in dark ink that reads "James E. Marsh". The signature is written in a cursive, flowing style.

James E. Marsh
Administrative Law Judge