City of Longview, Decision 9884 (PECB, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LONGVIEW POLICE GUILD,	)	
	)	
Complainant,	)	CASE 20840-U-07-5310
	)	
vs.	)	DECISION 9884 - PECB
	)	
CITY OF LONGVIEW,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	

Garrettson Goldberg Fenrich & Makler, by *Jaime B. Goldberg,* for the union.

Summit Law Group, PLLC, by *Bruce L. Schroeder,* for the employer.

The Longview Police Guild (union) is the exclusive bargaining representative of all fully commissioned law enforcement officers employed by the City of Longview (employer). On January 2, 2007, the union filed an unfair labor practice complaint against the employer, charging employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2). A preliminary ruling was issued on January 3, 2007, finding a cause of action to exist concerning these charges by the actions of Chief of Police Alex Perez in ordering Police Guild President Ed Jones to notify the employer when a guild member consulted with Jones in his role as guild president, or when Jones had questions about his role as guild president. Examiner Claire Nickleberry conducted a hearing on April 20, 2007, in Longview, Washington. The parties filed post-hearing briefs.

ISSUES PRESENTED

1. Did the employer interfere with employee rights in violation of RCW 41.56.140(1) when Chief Perez ordered Guild President Jones to notify the employer when a guild member consults with Jones in his role as guild president, or when Jones has questions about his role as guild president?

2. Did the employer dominate or assist the union in violation of RCW 41.56.140(2) by the actions listed in Issue 1?

The Examiner concludes that the employer did not violate RCW 41.56.140 (1) or (2).

Issue 1

Did the employer interfere with employee rights in violation of RCW 41.56.140(1) when Chief Perez ordered Guild President Jones to notify the employer when a guild member consults with Jones in his role as guild president, or when Jones has questions about his role as guild president?

APPLICABLE LEGAL STANDARD

Under RCW 41.56.040, employers are restricted from directly or indirectly interfering with, restraining, coercing or discriminating against any public employee or group in their right to organize and designate representatives without interference. RCW 41.56.140(1) enforces those rights.

The complainant has the burden of proof in unfair labor practice claims. WAC 391-45-270(1)(a). An interference violation is committed where an employee could reasonably perceive employer

actions as a threat of reprisal or force or promise of benefit associated with the pursuit of rights under the statute. The Commission noted in *King County*, Decision 6994-B and 6995-B (PECB, 2002), that "the legal determination of interference is based not upon the reaction of the particular employee involved, but rather on whether a typical employee in a similar circumstance reasonably could perceive the actions as attempts to discourage protected activity." In *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004), the Commission re-confirmed criteria to consider when determining if an interference charge should be found. The Commission stated:

> Employer communications to employees could be an interference unfair labor practice under any one, any combination, or all of the following criteria:
>
> 1. Is the communication, in tone, coercive as a whole?
>
> 2. Are the employer's comments substantially factual or materially misleading?
>
> 3. Has the employer offered new "benefits" to employees outside of the bargaining process?
>
> 4. Are there direct dealings or attempts to bargain with the employees?
>
> 5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?
>
> 6. Did the union object to such communications during prior negotiations?
>
> 7. Does the communication appear to have placed the employer in a position from which it can not retreat?

This criteria was originally established in *City of Seattle*, Decision 2483 (PECB, 1986). It is not necessary for a complainant to show that the employer intended to interfere, or even that the employees involved actually felt threatened. *City of Omak*, Decision 5579-B (PECB, 1997); *City of Tacoma*, Decision 8031-A (PECB, 2004). A complainant is not required to show intent or

motive for interference or that the employee involved was actually coerced, or that the respondent acted with union animus. *King County*, Decision 8630-A (PECB, 2005). The complainant bears the burden of demonstrating that the employer's conduct resulted in harm to protected employee rights. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

ANALYSIS

Guild President Jones holds the rank of sergeant in the Longview Police Department. The background to the allegations in this case involves his concern that his responsibility as a sergeant to conduct internal affairs investigations creates a conflict of interest with his position as guild president. The evidence indicates that Jones has been sufficiently concerned about the potential conflict to have raised this issue with Police Chief Perez on at least two other instances: once during a supervisors' workshop held in September 2005, and again shortly after he became guild president.

The incident that precipitated this complaint was Jones' assignment to two internal affairs investigations of incidents involving police officers Dawn (Taylor) Johnston and Chris Angel. As a result of that assignment, Jones wrote an e-mail message to Robbie Berg, Human Resource Director, on December 6, 2006. In that e-mail, Jones noted that, at the time of the assignment, he had spoken "somewhat extensively" with Johnston, and "in much less detail" with Angel. Jones wrote, "If members cannot feel free to discuss with their president pending or possible discipline issues for fear of having their statements used against them, the guild is substantially weakened."

Perez first became aware of Jones' concern when Berg notified him of the e-mail she received from Jones. He then met with Jones and Captain Dixie Wells to discuss Jones' concerns. Perez followed up with Berg in a December 13, 2006 e-mail relating the results of the meeting with Jones and indicating that he had relieved him of Johnston's case but required him to retain Angel's case. To further clarify the discussion in that meeting, Perez sent a letter to Jones on December 18, 2006, outlining a sergeant's responsibilities for conducting internal affairs investigations.

This charge is based in large part on the contents of the letter written by Perez to Jones. In the letter, Perez attempted to clarify the expectations of the sergeant as they related to internal affairs investigations and suggested a process for determining how Jones could balance his supervisory responsibilities with his position as guild president.

Perez used the Johnston and Angel investigations as examples of how he would view Jones' responsibilities in each situation and suggested that they would "serve as markers to help you (Jones) discern the proper course of action for future incidents." Perez expounded on his theory to explain in detail why he viewed the cases differently and why he would expect different actions from Jones in the two circumstances. Regarding the Johnston case Perez stated that when he assigned the case to Jones he was not aware that Jones "had already developed a union representative relationship with Officer Johnston specifically over the Castle Rock matter." He further stated that when he was informed of that relationship, he immediately relieved Jones of the responsibility of investigating the Johnston case. In the case with Officer Angel, Perez indicated in his memo to Jones that the situation was different because Jones "had already done a preliminary investiga-

tion to include speaking with the complainant and notifying me (Perez) of the circumstances via memo. The next logical and appropriate step would be for you, as Officer Angel's supervisor, to complete the investigation and put it in the appropriate internal investigations format."

The union's argument focuses on the last two bullets on the second page of the letter which state:

> - When you appropriately and directly engage a bargaining member in a guild representative relationship over a particular situation that could be subject to investigation, you should notify Captain Wells or I as soon as possible. This way we can avoid assigning investigations or other duties that could be compromising. Note: Although to my knowledge it is unchallenged, the Washington Officer Involved Domestic Violence Law mandates officer disclosure and supervisor responsibility without regard to union position status.
>
> - In the event you are on duty and have questions as to which hat you should wear (Sergeant or Guild Rep.), before you commit to anything other than that of an LPD supervisor you shall contact your captain and or on-duty commander and seek direction.

While these directives outline a process for resolving the conflict which is unacceptable to the union, I do not see them as posing a threat or coercive in nature. It appears reasonable for Perez to capture this concern since it had arisen previously, and for him to propose a resolution in writing to clarify the employer's expectation.

Perez attempts to recognize the duties of the union president in his letter by stating that there may be instances "when it would be appropriate for your union role to be primary over that of LPD

sergeant." He further acknowledges that "it is this administration's duty to respect these instances." Perez draws the line at universally exempting Jones "from the duty to investigate subordinates' performance simply because they happen to be in the same bargaining unit." He suggests in the last two directives that Jones notify the captain or chief as soon as possible when he "appropriately and directly engage(s) a bargaining member in a guild representative relationship over a particular situation that could be subject to investigation . . . ." in an attempt to "avoid assigning investigations or other duties that could be compromising." Perez testified that he was not requesting guild representatives to reveal the content of conversations with members but that, as with the Johnston and Angel cases, a discussion regarding a potential conflict take place.

The last bullet suggests that if Jones has questions about "which hat you should wear (sergeant or guild rep)," he should contact the captain or on-duty commander to seek direction. Perez stated that he was referring to a situation like the Johnston case where a detailed discussion had taken place between Johnston and Jones as her guild representative.

The last paragraph of the letter concludes with "if there is a circumstance that I have overlooked that you believe legally negates any of your supervision duties, please feel free to see me to discuss." This certainly indicates an invitation to Jones to pursue concerns he may have had regarding the directives.

CONCLUSION

In reviewing the criteria for an interference finding, I do not find that the union has met the burden of proof. While the letter

in question is written in a somewhat formal way, it is not coercive or threatening in nature. On the contrary, the process that it describes is in general how the Johnston and Angel cases had been handled. These cases appear to have been resolved satisfactorily and do not provide evidence of interference by the employer.

The union has not demonstrated harm to any individual or group as a result of this process, and the employer has left open the opportunity to further discuss the concerns should the union have any.

Issue 2

Did the employer dominate or assist the union in violation of RCW 41.56.140(2) by the actions listed in Issue 1?

APPLICABLE LEGAL STANDARD

It is unlawful under RCW 41.56.140(2) for an employer to control, dominate or interfere with a bargaining representative. The union bears the burden of proof and must establish that the employer intended to control or interfere with the administration of the union and/or intended to dominate the internal affairs of the union. *King County*, Decision 2553-A (PECB, 1987)

The element of intent in the case of control, domination or interference in RCW 41.56.140(2) is in contrast to the standard for interference previously discussed regarding RCW 41.56.140(1), where intent is not required, but simply the belief of a reasonable person that interference took place.

In *Washington State Patrol,* Decision 2900 (PECB, 1988), the Executive Director extensively discussed the historical aspect and

origin of unlawful employer domination and/or assistance found in the National Labor Relations Act (NLRA). The NLRA has long been interpreted to prohibit employer-dominated "company unions." *Pasco Housing Authority,* Decision 5927-A (PECB, 1997). This precedent established in the federal act is reflected in RCW 41.56.140(2). The intent of the statute is to avoid "company unions" where the employer controls or is involved in the union's day-to-day operations and/or finances of the union. In many cases brought before the Commission, the charge of domination is related to assistance or interference with representation elections. *Renton School District,* Decision 1501-A (PECB, 1982), *State -Corrections,* Decision 7870-A (PSRA, 2003).

ANALYSIS

In attempting to put to rest an ongoing issue regarding Jones' responsibility to perform internal affairs investigations, Perez outlined a process that he was proposing as a resolution. Although he presented certain aspects of that resolution as a directive, he also presented the opportunity to further discuss the issue if Jones had further concerns. Perez testified that he was not requesting that Jones divulge confidential discussions that he may have with members, but that Jones identify to police management when he may be concerned about a potential conflict.

As discussed in the first issue, Perez' letter is not evidence of intent on the employer's part to dominate and/or assist the union in its affairs and/or finances. I find Perez' testimony credible and consistent with his letter to Jones to support the fact that he proposed a procedure that he believed had worked well in the Johnston and Angel cases. This procedure set forth guidelines

that, based on these two cases, created a reasonable expectation for future practice. Additionally, the final line of the letter to Jones states:

> Finally, if there is a circumstance that I have overlooked that you believe legally negates any of your supervision duties, please feel free to see me to discuss.

If Perez had intended to control and/or dominate the guild or Jones as its president, it is not likely that he would invite Jones to discuss the issue further. In the letter to Jones, Perez is addressing management's right to expect certain responsibilities to be performed by its sergeants. Rather than dominating and/or assisting the union, Perez has laid out a process by which Jones' responsibilities as both a sergeant and guild president can be maintained.

CONCLUSION

The evidence provided does not support a finding of employer domination and/or assistance. There is no evidence that the employer intended to control the day-to-day activities or financial business of the union.

FINDINGS OF FACT

1. The City of Longview is a "public employer" within the meaning of RCW 41.56.030(1).

2. The Longview Police Guild is a "bargaining representative" within the meaning of RCW 41.56.030(3).

3. The Longview Police Guild represents a bargaining unit of approximately forty-eight (48) fully commissioned law enforcement officers employed by the City of Longview.

4. Alex Perez is the Chief of Police for Longview Police Department.

5. Ed Jones is the President of the Longview Police Guild and a sergeant with the Longview Police Department.

6. On December 6, 2006, Jones was assigned two internal affairs investigations by Captain Dixie Wells. One was regarding Officer Dawn Taylor/Johnston. The other involved Officer Chris Angel.

7. On the evening of December 6, 2006, Jones sent an e-mail to the Human Resource Director, Robbie Berg, regarding his perceived conflict of interest in being required to perform internal affairs investigations on union members. Berg forwarded that information to Chief Perez.

8. On December 13, 2006, Perez sent an e-mail to the Human Resource Director indicating that he had met with Jones to discuss this issue and had relieved him of the Johnston case because there did appear to be a conflict.

9. On December 18, 2006, Perez sent a letter to Jones explaining his view of the issue and setting forth some directives as to how he thought future situations should be handled. He closed the letter with an offer to discuss the issue further if Jones had concerns about the directives.

10. The letter referenced in finding of fact 9 did not meet the criteria for interference and/or dominance or control of the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By writing a letter outlining a process to resolve the conflict between Jones' role as guild president and his role as a sergeant relating to his performance of internal affairs investigations, the employer did not commit an unfair labor practice under RCW 41.56.140 (1) or (2).

ORDER

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

ISSUED at Olympia, Washington, this 14th day of November, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Claire Nickleberry

CLAIRE NICKLEBERRY, 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.