Wenatchee School District, Decision 8206-A (EDUC 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DOUGLAS LEWIS,	)	
	)	
Complainant,	)	CASE 16957-U-02-04407
	)	
vs.	)	DECISION 8206-A - EDUC
	)	
WENATCHEE SCHOOL DISTRICT,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	
	)	

Douglas Lewis appeared pro se.

Johnson, Gaukroger, Drewelow and Woolet, by *Phillip R. Johnson*, appeared for the Wenatchee School District.

Douglas Lewis (Lewis) filed an unfair labor practice complaint on November 25, 2002, with the Public Employment Relations Commission (Commission), naming the Wenatchee School District (employer) as respondent. On August 27, 2003, the agency found the complaint stated a cause of action regarding employer interference with employee rights in violation of RCW 41.59.140(1)(a), by allegedly transferring Lewis from one school to another in reprisal for his protected union activities. Examiner Paul T. Schwendiman held a hearing on April 12, 13 and 14, and September 20, 21, 22, 23, 24, 27 and 28, 2004. The parties filed post-hearing briefs. The examiner concludes the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

ISSUE

Did the employer interfere with employee rights in violation of RCW 41.59.140(1)(a), by transferring Lewis in reprisal for his union activities protected by Chapter 41.59 RCW?

THE LEGAL STANDARD

The Educational Employment Relations Act (EERA), Chapter 41.59 RCW, provides: "Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing." RCW 41.59.060(1). It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060. RCW 41.59.140(1)(a).

An "interference" violation under RCW 41.59.140(1)(a) of the EERA is similar to one under RCW 41.56.140(1) of the Public Employees Collective Bargaining Act. Thus, Commission decisions concerning interference violations under Chapter 41.56 RCW, are equally applicable to interference violations under Chapter 41.59 RCW. *Mansfield School District*, Decision 5239-A (EDUC, 1996); *Seattle School District*, Decision 2524 (EDUC, 1986).

The burden of proving unlawful interference rests with the complaining party. WAC 391-45-270(a). An interference violation is found when a typical employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. Complainant need not prove the employer acted with intent or motivation to interfere, nor prove the employee

involved actually felt threatened or coerced. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004); *City of Seattle*, Decision 3566-A (PECB, 1991). Assertion of a violation of the collective bargaining agreement is protected union activity. *See Valley General Hospital*, Decision 1195 (PECB, 1981), *aff'd*, Decision 1195-A (PECB, 1981).

ANALYSIS

Lewis began teaching at Columbia Elementary School (Columbia) in September 1997. In April, 2002, Lewis was a union wing representative. On April 15, 2002, all of the Columbia staff met together to allow Assistant Superintendent Jeanine Butler to explain the difference between a federally mandated school-wide improvement plan and a new state requirement that they have a school improvement plan. Lewis and a fellow union wing representative, Ray Draggoo, objected to that meeting. They argued that the collective bargaining agreement required separate meetings at the different grade levels. After open discussion about whether to proceed, the meeting reconvened twenty minutes later as sequential meetings with teachers at individual grade levels. Lewis' asserting a violation of the collective bargaining agreement was union activity protected by Chapter 41.59 RCW.

The employer later involuntarily transferred Lewis from Columbia to Washington Elementary School, effective the beginning of the 2003-2004 school year. Lewis testified that he believed the transfer was in reprisal for his raising of the issue at the meeting. The timing of the transfer also could support an inference of

retaliatory action.[1] However, the examiner concludes that a typical employee in the same circumstances would reasonably perceive otherwise.

Lewis is a typical employee of the employer in many ways. Like other employees of the employer, he is highly concerned with the education of students and operation of his school. Lewis is also articulate and intelligent. However, Lewis often acted on his concerns by passionately involving himself in meetings with other employees and by attempting to exercise more leadership in meetings than the typical employee. Lewis' passion, physical intensity, and concern for detail expressed while meeting with other employees, far exceeded that of a typical employee.

Lewis personally perceived a connection between his union activity and his transfer. The examiner, however, finds from the total record, including testimony from more than 30 employees at Columbia, that a typical employee could not reasonably perceive Lewis' transfer as a reprisal. The record shows that the typical employee knew of other reasons for his transfer and did not see it as connected to his protected activity.

Lewis' history at Columbia includes forcefully expounding his many ideas while meeting with other employees. His delivery at such

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[1] The examiner denied the employer's motion to dismiss made at the conclusion of Lewis' case in chief. Viewed most favorably to Lewis, the evidence then on the record demonstrated that a factual issue existed concerning whether a typical employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with protected activity.

meetings sometimes included aggressive, confrontational, and angry behavior. His body language and tone of voice sometimes included yelling and pounding the table. Lewis' behavior intimidated some employees.

Two teachers complained to the employer that they felt harassed by Lewis. On April 16, 2002, teachers Mark Woolsey and Ruth Zobel verbally complained to an employer official about Lewis. These teachers and Lewis were interviewed by an employer official. After this initial investigation of their complaints, Woolsey and Zobel filed formal written complaints on May 25 and 27, 2002. Their complaints concerned Lewis' contribution to the inability of teachers at Columbia to work together.

Zobel's written complaint noted long-standing problems involving Lewis, including disagreements between Lewis and Principal Alma Chacon and their former Principal, Rom Castilleja. Zobel wrote that meeting with Lewis, " . . . makes me feel like I am in a hostile work environment."

Woolsey's written complaint stated that he perceived Lewis' behavior dating from September 1997 as contributing to a hostile work environment at Columbia. Woolsey wrote regarding Lewis' behavior, "We felt bullied," and noted that Lewis had "harassed" another teacher.

The collective bargaining agreement between the employer and the Wenatchee Education Association requires that harassment complaints be investigated and that the employer determine whether appropriate disciplinary action should be taken.

From May 29 through May 31, 2002, the employer further investigated the harassment complaints and the work environment at Columbia by interviewing all but one absent teacher and many classified employees working at the school. The interviewers did not specifically inquire about Lewis' protected activity, but focused on the working environment and the interaction between employees at the school. The interviewer asked each employee twenty uniform questions including "Why would staff describe a 'hostile work environment' resulting from Doug Lewis' treatment of them or other staff members?" In addition to addressing the general working environment at the school, other questions specifically concerned Lewis' possible mistreatment or bullying of staff members and his behavior when meeting with staff. All interviews included a union representative acceptable to the particular employee being interviewed.

After its investigation, the employer concluded not to discipline Lewis, but decided to transfer him to another school. The typical employee knew of the investigation and resulting transfer. That employee would reasonably associate Lewis' transfer with the investigation of Lewis' behavior and the working environment at the school, rather than with his protected assertion of a violation of the collective bargaining agreement.

Additionally, two other facts lead the examiner to find that employees reasonably would perceive that Lewis transfer was not the result of his protected activity:

First, union wing representative Roy Draggoo also engaged in the same protected activity when he asserted the same issue with Lewis

at the meeting on April 15, 2002. Unlike Lewis, Draggoo was not transferred or otherwise disadvantaged after the assertion.

Second, the employer also transferred Lewis' supervisor, Principal Alma Chacon, to a different school after the employer's investigation. Other employees observed Chacon and Lewis vocally arguing on several occasions prior to April 15, 2002. Lewis perceived Chacon as contributing to problems at the school. Some employees perceived both Lewis and Chacon as contributing to those problems. Unlike Lewis and Draggoo, Chacon did not engage in protected activity that might be perceived as the reason for her transfer.

Conclusion

Based on the record here, the examiner concludes that a typical employee could not reasonably perceive that the employer transferred Lewis because of his protected union activity. Thus, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

FINDINGS OF FACT

1. The Wenatchee School District (employer) is a public employer within the meaning of RCW 41.59.020(5).

2. Douglas Lewis (Lewis) is an employee within the meaning of RCW 41.59.060(1).

3. Lewis began teaching at Columbia Elementary School (Columbia) in September 1997.

4. From September 1997 through April 15, 2002, Lewis passionately involved himself in many formal and informal meetings with other employees at Columbia. Lewis' passion, physical intensity, and concern for detail was sometimes expressed with aggressive, confrontational, and angry behavior. His body language and tone of voice sometimes included shouting and pounding on the table. Some employees found Lewis' behavior disruptive and intimidating.

5. On April 15, 2002, all of the Columbia staff met together. Union wing representatives Lewis and Roy Draggoo objected to that meeting, alleging the collective bargaining agreement with the Wenatchee Education Association required individual meetings at the school's various grade levels. After open discussion about whether to proceed, the meeting was reconvened twenty minutes later as sequential meetings with teachers in their individual grade levels.

6. On April 16, 2002, two teachers verbally complained to an employer official about Lewis' hostile and harassing behavior contributing to a negative working environment at Columbia. These teachers followed up with written complaints.

7. The collective bargaining agreement between the employer and the Wenatchee Education Association requires that harassment complaints be investigated and that the employer determine whether appropriate disciplinary action should be taken.

8. From May 29 through May 31, 2002, the employer investigated the harassment and work environment complaints at Columbia by

interviewing all but one absent teacher and many classified employees working at the school. The interviewers did not specifically inquire about Lewis' protected activity, but focused on the working environment and the interaction between employees at the school.

9. After its investigation, the employer concluded that no discipline of Lewis was required, but transferred him to Washington Elementary School in September 2002 for the 2002-2003 school year.

10. The employer also transferred Columbia Principal Alma Chacon to a different school before the beginning of the 2002-2003 school year.

11. Roy Draggoo remained at Columbia during the 2002-2003 school year.

12. A typical employee would reasonably associate Lewis' transfer with his behavior and/or the employer's harassment investigation and its concerns about the working climate at Columbia, rather than with Lewis' April 15, 2002, protected assertion of a violation of the collective bargaining agreement.

13. A typical employee could not reasonably perceive that protected union activity was the reason for Lewis' transfer to Washington Elementary School.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

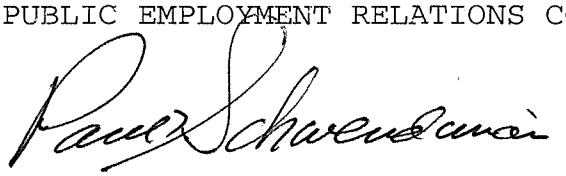
2. The employer's transfer of Lewis identified in Finding of Fact 9 did not interfere with employee rights in violation of RCW 41.59.140(1)(a).

ORDER

Based on the foregoing and the record as a whole, it is ordered that the complaint of an unfair labor practice, as charged in the above entitled action, is DISMISSED.

Issued at Olympia, Washington, on the 18th day of November, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Paul T. Schwendiman, 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.