STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

THE INTERMITTENT WORKERS FEDERATION: JOHN R. SCANNELL, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE NO. 837-U-77-97 DECISION NO. 489-PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

APPEARANCES:

STEVE J. SEIM, JOHN R. SCANNELL and ROBERT FIEDLER, for the complainant.

EVERETT S. ROSMITH and JOHN FRANKLIN, for the respondent.

STATEMENT OF THE CASE:

Upon a charge filed by John R. Scannell and the Intermittent Workers Federation (herein called I.W.F.), (herein collectively called the complainants), a hearing was held before Examiner Alan R. Krebs on January 31, February 1, 6 and 7, 1978 with all parties present. The issue presented is whether the City of Seattle, (herein called the city or respondent,) interfered with, restrained or coerced public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW, in violation of RCW 41.56.140(1) of the Public Employees Collective Bargaining Act, (herein called the Act). More specifically, it is alleged that respondent suspended Scannell on various occasions because of his membership in and activities on behalf of the I.W.F. 1/ Respondent denies the commission of any unfair labor practices and asserts that any action taken against Scannell occurred because of his substandard work performance.

1/ Complainant in its brief contends that respondent "is guilty of unfair labor charges" because "according to WAC 391-21-520, the failure of the respondent to file a timely answer or show cause why an answer has not been filed requires a finding that the respondent admits the charges contained in the complaint." This contention is rejected since it was not made in the form of a motion prior to the trial on the merits.

FINDINGS OF FACT

I. Jurisdiction

Respondent is a municipality situated within the State of Washington and is a public employer within the meaning of RCW 41.56.030.

II. The Labor Organization Involved

I.W.F. is an organization which has as one of its primary purposes, the representation of employees in their employment relations with employers. The I.W.F. is a bargaining representative within the meaning of RCW 41.56.030(3). 2/

III. The Alleged Unfair Labor Practices

In April, 1974, John Scannell was hired by the City of Seattle as an intermittent worker at the Seattle Center. At that time he was informed that, as an intermittent worker, he could not be guaranteed working any specific number of hours, but that he would be scheduled to meet the needs of the Center. Intermittent workers do not receive many benefits that regular employees receive, such as pensions, medical and dental benefits and sick leave. During his employment Scannell worked between one and five days per week. Scannell worked on the grounds of the Center, performing such tasks as picking up litter and setting up chairs for events.

On June 20, 1976, Scannell, while working, was approached by a tourist. Scannell continued to work while conversing with the tourist. Scannell's foreman asked the tourist to discontinue the conversation with Scannell. Later the foreman again observed Scannell conversing with the tourist. He then told Scannell to ask the man to leave. Scannell suggested that they all see the supervisor, Mel Weisgerber. Weisgerber supported the leadman and a heated argument ensued. During the course of the argument, in which various subjects, including Snannell's appearance were discussed, Scannell indicated that he'd make changes regarding the intermittent workers' lack of benefits.

Later that afternoon Scannell checked the schedule for the intermittent workers and noted that it indicated that he was not to work from June 26th until June 30th. Two of those days reflected days off he would have received customarily. However, none of the other

---

2/ Respondent at hearing contended that the I.W.F. was not a proper party to the complaint. This matter was not referred to in respondent's brief. I see no reason to exclude the I.W.F. as a party.

intermittents had as yet been scheduled past June 25. Later the schedule was changed so that Scannell was scheduled for June 30. Three supervisors including Weisgerber share the responsibility for scheduling. Weisgerber testified that he could not recall not scheduling Scannell for the last five days in June.

On June 23, 1976, Scannell delivered a letter to James Kamada, the personnel director of Seattle Center. In that letter Scannell requested that Kamada "review certain rights and privileges that are not currently given intermittent workers", including sick leave, retirement, and medical and dental benefits. Scannell also requested that Kamada "review . . . [this] unjust suspension of work time. . . since last Sunday, when it became generally known that I was going to take action on these complaints." No testimony was offered which would indicate that any other employees participated in Scannell's action.

Kamada by letter dated July 15th responded that intermittent employees are not entitled to benefits and that Scannell had not been suspended for raising these concerns.

Scannell was scheduled to his satisfaction in July 1976. Beginning August 4, 1976, he faced renewed scheduling difficulties. On that day Donald McDonald, the supervisor of operations support at the Center, observed Scannell on the Center grounds holding a broom and pan, while talking with a nonemployee for five to seven minutes. McDonald then told Weisgerber that Scannell should be worked only when he was absolutely needed. McDonald testified that he issued this directive based solely on Scannell's work performance. He stated that on two previous occasions he had noticed Scannell walk past debris without stopping to pick it up. He further stated that Richard Lonien, the Center's assistant director for administration and operations, had related to him that he had observed Scannell walking without picking up anything. McDonald admits that on other occasions where he has observed employees not working, he took no action. He further admits that he had not observed Scannell talking to the public more than other employees. He acknowledges that he received Kamada's response to Scannell's inquiry during July 1976. However, he denies that at this time he was aware that Scannell was attempting to organize a union. As a result of McDonald's directive, Scannell was not scheduled for the remainder of August and was rescheduled for only a few days during each of the remaining months of 1976.

On August 17, 1976, Scannell submitted a memorandum to Al Gardner, operations crew chief at the Center, in which he invoked step two of the grievance procedure for unrepresented employees. Therein Scannell alleged that management had retaliated against him for using the grievance procedure, that management had not adequately responded to his grievances, that intermittent workers were being subjected to "speedups", that certain of them had been subjected to sex discrimination and that they were unfairly denied benefits.

After the matter proceeded through several steps of the grievance procedure, it eventually reached John W. Fearey, the director of the Center. On November 19, 1976, he sent a letter to Scannell, in which he rejected most of Scannell's complaints. However, he ordered that Scannell be scheduled as he had been prior to August 4th. This discussion was based on the recommendation from a representative of Seattle's personnel department, who conducted an investigation of the matter. He found that while Scannell was disciplined for his work performance and not because he filed a grievance, that Scannell should have received a written warning regarding his work performance, before more severe discipline was taken. Thereafter, Scannell was scheduled as he had been prior to the August 4th incident and, according to his supervisors, his work has been satisfactory.

Scannell testified that he had some discussions with other unrepresented intermittent employees concerning the grievances and the possibility of forming a union during the summer of 1976. However, he states that he did not start actively organizing for the I.W.F. until about December 1976. An intermittent worker who testified on behalf of the I.W.F. stated that the I.W.F. was not taken seriously by the workers until the fall of 1977. All of the authorization cards signed on behalf of the I.W.F. were signed in the latter half of 1977. The I.W.F. constitution was prepared in December 1977. When Robert Fiedler, an I.W.F. officer was observed organizing the intermittent workers in December 1976, the employer inquired of the union which represented the regular workers at the Center as to whether Fiedler was acting on behalf of them. That union responded in the negative. On December 12, 1976, Scannell sent a letter to Lonien, informing him that Fiedler represented the I.W.F. In Scannell's letter of June 23, 1976 to Kamada, Scannell had the letters I.L.F. [3/] under his name. There was no testimony offered which would indicate that Scannell indicated the significance of these letters to any representative of management at that time. In later

---

3/ I.L.F. is the abbreviation for International Laborers Federation which is the name that Scannell originally intended to give his organization.

correspondence with city officials Scannell made no reference to any labor organization until November 1976. I credit the testimony of Weisgerber and McDonald that they had no knowledge that Scannell was organizing on behalf of any union when they began not scheduling him for work in early August, 1976.

The complainants contend that the city's anti-union animus is reflected in its treatment of the intermittent workers and the I.W.F. subsequent to Scannell's suspension. For example, they point to the city's action in prohibiting the I.W.F. from organizing employees during working hours, and a $10,000 reduction in the 1978 budget for intermittent workers. They further contend that certain employees who appeared at Scannell's grievance hearings had their hours dis-discriminatorily reduced.

I find no indication of anti-union animus on the part of the city. Everett Rosmith, the city's director of labor relations, testified that the city maintains a neutral "hands off" approach to organizing and has never campaigned against union organization. Further, most city employees, including some classes of intermittent workers, are organizaed for the purpose of collective bargaining and are represented by a variety of unions. The city has consistently and legitimately maintained the rule that a union's solicitation of an employee is not permitted during the employee's work hours. With regard to the budget reduction for intermittent workers, the record reflects only that it was one of many areas that were reduced in the budget. Nor does the record support the allegation that employees were discriminated against for appearing at grievance hearings. None of the allegedly affected employees testified.

Whether Scannell was suspended because he challenged the city's denial of benefits to intermittent workers, need not be determined for the reasons set forth in the following section.

CONCLUSIONS OF LAW

RCW 41.56.140 provides:

> "It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> * * *."

Certain of these rights are outlined in RCW 41.56.040 which provides:

> "No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of their right under this chapter."

This Commission has previously found that a discharge "motivated at least in part by an anti-union animus" is violative of RCW 41.56.140(1). International Brotherhood of Electrical Workers, Local Union 483 vs. Fircrest, Decision No. 248-A, PECB (1977). Discrimination may take forms other than discharge. Retaliatory action such as failure to schedule would be violative of the Act if done for proscribed reasons. Is one of those proscribed reasons an employer's retaliation against an employee for complaining about terms of employment and received unfair treatment where that employee was acting on his own in an unrepresented unit, and absent an active organization drive? The Commission often looks to decisions interpreting the National Labor Relations Act (NLRA) for assistance in interpreting the Act. However, the NLRA is of limited assistance in the case at hand because of the substantial difference between RCW 41.56.040 and its equivalent in the NLRA, Section 7, which provides:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . ." (Emphasis added.)

Relying on the "concerted activities" clause of Section 7, the U. S. Supreme Court held that even in a wholly unorganized shop, a work stoppage for the purpose of protesting working conditions is activity protected by Section 7. NLRB v. Washington Aluminum Co. 370 U.S. 9 (1962). The National Labor Relations Board, also relying on the "concerted activities" clause has issued conflicting decisions regarding whether the actions of a single employee protesting conditions of employment of mutual concern to all employees, constitutes protected activity; cf. Walls Manufacturing Co., Inc., 128 NLRB 487 (1960) and Air Surrey, 229 NLRB 155 (1977).

RCW 41.56 contains no "concerted activities" clause. Considering that the Act was patterned in large part after the NLRA, I must presume that the absence of the "concerted activities" clause has

significance and that "concerted activities for . . . mutual aid or protection" is not, per se, protected under the Act. Scannell's action in individually protesting terms of employment is so remote from the "right to organize and designate representatives of their own choosing" that I conclude it is not a right protected by RCW 41.56.040.

Respondent has not engaged in violations of the Act as alleged in the complaint.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to RCW 41.56.160 of the Public Employee's Collective Bargaining Act, the undersigned trial examiner hereby orders that the complaint against the City of Seattle be, and it hereby is, dismissed.

DATED at Olympia, Washington this 12th day of September, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Alan R. Krebs

ALAN R. KREBS, Examiner