

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 280,)	
)	
Complainant,)	CASE NO. 1281-U-77-160
vs.)	DECISION NO. 504-PECB
CITY OF PASCO,)	DECISION AND ORDER
)	
Respondent.)	

APPEARANCES:

CLAUDE M. THOMPSON, Business Manager, for the complainant.

CHERYL LUX DURYEA (Cabot Dow Associates), for the respondent.

MEMORANDUM DECISION

I. STATEMENT OF THE CASE:

Upon a charge filed by International Union of Operating Engineers, Local Union No. 280, herein called the union, a hearing was held before Examiner Alan R. Krebs on March 22 and April 6, 1978. The issue presented is whether the City of Pasco, herein called the city or respondent, interfered with, restrained, or coerced public employees in the exercise of their right to organize and designate representatives, in violation of RCW 41.56.140(1) of the Public Employees' Collective Bargaining Act, herein called the Act. More specifically, the union alleged that respondent unlawfully discharged an employee in retaliation for her union activities, coerced employees by having a policeman deliver the termination letter in the midst of a union meeting, and coerced employees by certain statements made by an agent of respondent to a gathering of employees. Briefs received from the union and respondent have been duly considered.

II. THE ALLEGED UNFAIR LABOR PRACTICES

On December 12, 1977, Robbi Robertson, a fifteen-year employee in the finance department of the city, was terminated. While many of

the city's employees are union represented, the employees of the finance department are not. Robertson testified that several weeks prior to her discharge she had approached the union and had obtained union authorization cards to distribute among her co-employees. Thereafter, Robertson and two other employees led the efforts to organize the eight employees in the finance department. Each of the employees were approached regarding the union during coffee breaks or the lunch hour. By Thursday, December 8th, all eight employees had signed cards for the union.

Until about five weeks prior to her discharge, Robertson was employed as deputy treasurer in the financial department of the city. In this position, she was responsible for performing the bookkeeping functions regarding incoming money. Her supervisor, the treasurer, Richard Leiper and his superior, Leo Olney, the finance director, each testified that Robertson's work performance in the treasurer's office was adequate, although she had personality conflicts with some fellow employees and on several occasions encountered problems dealing with members of the public.

On November 2, 1977, Robertson, despite her objection, was transferred to the accounts payable desk as part of a reorganization resulting from a reduction in force. In her new position, Robertson was supervised by Olney.

On November 10, Robertson fell at work, injuring her arm. She was unable to return to work until November 17th. The injured arm continued to affect Robertson's ability to perform her job assignments. On December 6th, Olney instructed Robertson to stay at home until her arm recovered. Robertson was still on leave when she was discharged the following week.

Olney testified that he made the decision to terminate Robertson based on what he perceived to be her unsatisfactory work performance subsequent to her transfer. The union contends that Robertson was discharged because she led an effort in early December to organize the employees of the finance department into complainant's union.

Olney testified that Robertson appeared to be trying to perform well at the accounts payable desk, but appeared to be upset over her transfer. He assigned Phyllis Turner, who previously worked the accounts payable desk, to train Robertson at her new position. On December 1, 1977, Turner informed Olney that Robertson was having difficulty learning her

job. Turner testified that Robertson was upset by her transfer, but fully cooperated with her and that she could have done a good job once she adjusted to the change. Turner noted that Robertson was only at the accounts payable desk for a few weeks. Olney acknowledged that the accounts payable responsibilities were relatively complex. Nevertheless, he testified that Robertson had ample time to learn her new responsibilities. He asserted that her inability to learn her new tasks played a part, along with her arm injury, in his decision to ask Robertson to stay home until her injury mended. Olney testified that over the next several days he noticed that Robertson had misfiled several documents. He testified that he then made the decision to terminate her.

Olney testified that an incident which occurred in mid-November also influenced his decision. Robertson was instructed to sell surplus parking meters to the public at \$3.50 each. Leiper instructed her to sell several of them to a city employee at \$2.50 each. Robertson refused. Instead she asked Olney how much she should charge. Olney responded that the price was \$3.50. Leiper had another employee sell the parking meters to the city employee at \$2.50 each. Olney investigated the matter and determined that the sale at the reduced price was proper and conveyed this to Robertson. Robertson then brought the matter to the attention of the city manager and later raised the matter at a council meeting. Olney testified that on November 22nd, the morning following the council meeting, he handwrote a written reprimand which in part read: "If you ever refuse to carry out a direct order or job assignment or go behind my back your employment with the city will be terminated immediately." Olney testified that he handed the handwritten draft to Robertson to read and thereafter he misplaced it and did not locate it until after Robertson was terminated. He testified that it was never typed or placed in Robertson's personnel file. Robertson denied ever seeing the reprimand.

On December 8th, according to Olney's testimony, he independently reached the decision to terminate Robertson. He consulted with neither Leiper nor Turner in this regard. He testified that he made the decision at about 11 p.m. following an evening budget meeting and communicated this decision the same night to Jim Ajax, the director of the city's community development department. Olney testified that while driving home from the meeting, he "bounced" the problem off Ajax to see how he viewed it. Ajax testified that at that time, he had informed Olney that Sorrow, an employee in the community development department, and a former employee in the finance department, would have to be laid off. According

to Ajax, Olney responded that there may be an opening in his department because he intended to dismiss or lay off Robertson. Ajax could not remember the precise terminology that Olney used. He noted that it was "a side light" to the conversation, that it "wasn't a big part" in the discussion, that it was merely a brief remark. Ajax testified that Olney didn't tell him why Robertson was to be no longer employed and that he was preoccupied with his own lay-off problem. Olney testified that the following morning he informed Sorrow that Robertson would not be coming back and that Sorrow might join the finance department. Sorrow was not called to testify. Ajax testified that he saw Olney speak with Sorrow.

Olney testified that the same day, Friday, December 9th, he prepared a draft of Robertson's termination letter. He testified that at this time he was not aware of any union activity.

Olney testified that he first learned of the union during the evening of December 9th. He testified that at that time his secretary, Evelyn Wells, came to his house and informed him of the union's organizational effort among the employees and of the signing of union authorization cards by all the employees. Wells testified that no names were mentioned. Olney admits that he was aware that Robertson had "tried to get unionization a couple of times" in the past. However, he stated that he did not assume that Robertson was "at the foot" of the union activity. Nevertheless, as Wells was leaving his home, Olney told her that he had earlier made a decision to terminate Robertson. Wells testified that Olney told her that he had already drafted the termination letter, that besides her only Sorrow knew and that he had asked Sorrow if he would come back to the accounts payable desk. Wells noted that Phyllis Turner was soon to leave for surgery and thus could not reoccupy the accounts payable desk. Olney testified that he informed Wells of his decision so that he could establish that he had made the decision prior to the time that he knew about the union organizational effort.

Olney testified that on Sunday, December 11th, he returned to his office where he reworded his draft of the termination letter and typed the final copy. The letter read as follows:

Dear Mrs. Robertson:

As the Director of the Finance Department, I have spent many hours trying to work through how to best deal with you as an employee who has: 1. Allowed your personal feelings toward other employees to destroy your ability to perform assigned tasks.

2. Openly refused to perform tasks assigned. 3. Bad mouthed management to other employees and upset them to the point that they were physically ill and unable to do their work. 4. Taken your dissatisfaction with the way the department is run to the public.

The conclusion I have come to is, you are like the rotten apple in a box of good ones and unless removed the whole box will rot.

Therefore, you are hereby notified that as of December 11, 1977 your employment with the city of Pasco is terminated. Your termination check will be prepared in the normal time cycle and mailed to you on Friday, December 23, 1977, assuming you have turned in your office key by that time.

I also request that you cease agitating the other employees.

Leo E. Olney

Wells testified that she normally typed evaluations of employees prepared by Olney. She further testified that Olney had never terminated anyone else. This was supported by Robertson who testified that no one in the department had been terminated during the 15 years she had been employed there.

On Monday morning, December 12th, Olney gave the termination letter to Albert Tebaldi, the police chief. Olney told Tebaldi to deliver the letter at Robertson's home as soon as possible. Several officers attempted to deliver the letter, albeit unsuccessfully since no one was at home. When Tebaldi informed Olney at about 5 p.m. that the letter was not delivered, Olney responded that it could be delivered to her at a union meeting being held that evening at the Red Lion Motel. Olney testified that he was told of the union meeting that afternoon by Maxine Higginson, an employee in the treasurer's office. That evening a police officer of the City of Pasco interrupted a union meeting of the employees in the proposed bargaining unit to deliver the termination letter to Robertson. Tebaldi testified that the police department had never previously been requested to deliver a termination letter.

During the morning of December 12th, Olney called a meeting of the employees and informed them that Robertson had been terminated. Olney testified that he told the employees that Robertson would not do as she was requested and displayed animosity toward Leiper. The employees then requested that they be permitted to caucus in private. Olney testified that before the meeting resumed, Higginson gave him a copy of a letter she had prepared requesting her withdrawal from the union. When Olney returned to the meeting, he was informed that all

the employees signed cards requesting union representation. Olney testified that he told the employees that if that's what they wanted, they were entitled to it, but that he was a little disappointed, that they could work out their problems without a union, and they didn't have much to gain by joining a union. He testified that he also told them that sometimes having a union is advantageous to management.

After the meeting three more employees submitted to Olney copies of letters which were identical to the one that Higginson had submitted. Wells testified that she had composed the letter before the meeting.

III. DISCUSSION.

I find that a motivating factor behind Olney's discharge of Robertson was her union activities. I find Olney's denial of this to be incredible. Olney testified that on December 12, 1977 the day that Robertson was notified of her discharge, he did not know who was behind the organizational campaign and he did not assume that it was Robertson. Yet in the termination letter Olney accuses Robertson of having "bad mouthed management to other employees" and being a "rotten apple in a box of good ones" and concludes by saying: "I also request that you cease agitating the other employees." The meaning of these statements is clear when considered in the context of the surrounding circumstances and is indicative that Olney believed Robertson to be behind the organizational campaign. The timing of the discharge is to say the least suspicious. Robertson was a leader of the organizational campaign which only several days previously had succeeded in obtaining authorization cards from every employee in the unit. No employee had been fired from the unit at least for the past 15 years. Further, Robertson had been on disability leave from a work-related injury for several days prior to the date that the alleged decision to terminate was made.

Besides the text of the termination letter, there are other indications of Olney's anti-union animus. He admits speaking against the union at the meeting on December 12th. Further, as will be discussed hereinafter, Olney's action in having a policeman deliver the termination letter to Robertson in the midst of a union meeting constitutes an independent unfair labor practice.

Further, Olney's stated reasons for terminating Robertson appear to be pretextual. Robertson had a fifteen-year record with the city as an admittedly adequate employee. She was transferred to an admittedly complex position, in which she was admittedly trying. The person assigned to training Robertson at the new position testified that she was

slow in learning, but was cooperating and would eventually learn her new responsibilities. Olney testified that the immediate factor that led to his decision to terminate Robertson was her misfiling certain documents. What precisely these documents were was not explained at the trial. Apparently no one ever spoke to Robertson about her allegedly poor work performance at the accounts payable desk prior to her discharge. Further, the vehemence of the termination letter does not follow from the alleged offense of being a slow learner at a new job.

The city's defense that Olney made his decision to fire Robertson on the night of December 8th, before he had knowledge of the union activities, is not persuasive. Olney testified that he told two people of his decision. One, Sorrow, was not called to testify. The other, Ajax, indicated that he had a hazy recollection of the conversation, but that an isolated remark made by Olney in the context of a discussion of layoffs in Ajax's department, left Ajax with the impression that Olney intended to lay off or dismiss Robertson for unexplained reasons. This does not convince me that Olney had already reached a firm decision to terminate Robertson. The fact remains that aside from Olney's testimony there is no evidence that he took any steps to terminate Robertson until after he admittedly learned of the union activities.

IV. CONCLUSIONS

1. The act of having a city policeman deliver a termination letter to a union activist in the midst of a union meeting off the employer's premises constitutes unlawful interference with the right of the employees to organize in violation of RCW 41.56.140(1).^{1/} Such conduct unlawfully implies a threat of discharge to other employees in the bargaining unit.^{2/} Further, it tends to create the impression among the employees that their union activities are under the surveillance of their employer.^{3/} As such, it tends to inhibit the employees subsequent union activities.

^{1/} RCW 41.56.140(1) provides: "It shall be an unfair labor practice for a public employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter . . ."

RCW 41.56.040 provides: "Right of employees to organize and designate representatives without interference. 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."

^{2/} Hedstrom Co., 223 NLRB No. 211 (1976).

^{3/} Hendrix Mfg. Co. v. N.L.R.B., 321 F.2d 100 (5th cir. 1963); affirming Hendrix Mfg. Co., 139 NLRB No. 10 (1962).

II. None of the statements made by Olney at the meeting held on December 12, 1977, constituted threats or promises of benefits aimed at defeating organization,^{4/} and they did not constitute unfair labor practices.

III. Respondent was motivated to discharge Robertson on December 12th, not wholly by any legitimate reasons it has asserted, but at least in part by its resentment of the leading part Robertson played in the union's organizational campaign. Accordingly, I conclude that by discharging Robertson, respondent violated RCW 41.56.140(1).^{5/}

Upon the entire record in this proceeding and having observed the testimony and demeanor of the witnesses, I make the following:

FINDINGS OF FACT

1. Respondent is a municipal corporation of the State of Washington and is a public employer within the meaning of RCW 41.56.030.

2. The union is a bargaining representative within the meaning of RCW 41.56.030(3).

3. On December 12, 1977, respondent, through its agent Leo Olney, discharged Robbie Robertson at least in part because of her union activities.

4. On December 12, 1977, respondent, through its agent Leo Olney, held a meeting of the employees during which he said that Robbie Robertson was discharged because of her work performance. Later in the meeting, when the issue of unionization was raised by the employees, Olney responded that if that's what they wanted, they were entitled to it, that he was a little disappointed, that they could work out their problems without a union, that they didn't have much to gain by joining a union, and that sometimes having a union is advantageous to management.

5. On December 12, 1977, respondent, through its agent Leo Olney, caused a city policeman to deliver Robbie Robertson's termination letter during a union meeting.

4/ Hospital Service Corp. d/b/a Blue Cross, 219 NLRB No. 1 (1975).

5/ International Brotherhood of Electrical Workers, Local Union 483 v. Fircrest, Wa. PERC Decision No. 248-A-PECB (1977).

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter.

2. By discharging Robbie Robertson for her union activities, respondent violated RCW 41.56.140(1).

3. By having a policeman deliver Robbie Robertson's discharge letter during a union meeting, respondent violated RCW 41.56.140(1).

4. Respondent's conduct during the meeting of employees held on December 12, 1977, was not violative of the Act.

Having found that respondent has engaged in unfair labor practices in violation of RCW 41.56.140(1), respondent must be ordered to cease and desist from violation of the Act and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

IT IS ORDERED THAT Respondent, City of Pasco, its officers and agents, shall immediately:

1. Cease and desist from:

a. Discouraging membership in International Union of Operating Engineers, Local Union No. 280, or any other labor organization, by discharging or refusing to reinstate any of its employees, or by threatening employees with any other reprisals, or in any other manner discriminating in regard to hire or tenure of employment, except to the extent permitted by RCW 41.56.140(1).

b. Creating an impression of surveillance of employees' union activities.

c. In any other manner interfering with, restraining or coercing its employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining.

2. Take the following affirmative action:

a. Offer its employee Robbie Robertson immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority and other rights and privileges.

b. Make its employee, Robbie Robertson, whole for any loss of pay or benefits she may have suffered by reason of her discriminatory discharge, by payment of the amount she would have earned as an employee, from the date of the discriminatory action taken against her until the effective date of an unconditional offer of reinstatement made pursuant to this Order. Deducted from the amount due shall be the amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis. Also deducted shall be an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and respondent shall provide evidence to the Commission that such amount has been repaid to the Washington State Department of Employment Security as a credit to the benefit record of the employee. The amount due shall be subject to interest at the rate of eight (8) percent from the date of the violation to the date of payment.

c. Post immediately at its premises copies of the attached notice to employees marked "Appendix" for a period of sixty (60) days on bulletin boards where notices to employees of respondent are usually posted.

d. Inform the Public Employment Relations Commission, in writing, within twenty (20) days from the date of this Order, as to the steps taken to comply herewith.

DATED at Olympia, Washington, this 5th day of October, 1978.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



ALAN R. KREBS
Hearing Examiner