

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES and its LOCAL NO. 846DC,)	CASE NO. 2007-U-79-275
Complainant,)	DECISION NO. 1220-PECB
vs.)	
DOUGLAS COUNTY, DOUGLAS COUNTY COMMISSIONERS and GEORGE LASSITER,)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.)	

Pamela G. Bradburn, Attorney at Law, appeared on behalf of the complainant.

Judith McCauley, Attorney at Law, appeared on behalf of the respondents.

The above-named complainant filed a complaint with the Public Employment Relations Commission on March 9, 1979 wherein it alleged that the above-named respondents had committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (2). George G. Miller, a member of the Commission staff, was designated to act as Examiner and to make and issue findings of fact, conclusions of law and order. Pursuant to notice issued by the Examiner on July 5, 1979, hearing on the complaint was held on July 31, 1979. Simultaneous filing of post-hearing briefs occurred on September 24, 1979.

BASIS FOR THE COMPLAINT

The complaint alleges:

Complainant Local No. 846DC is the exclusive bargaining representative of the employees in Douglas County's Road Department and has been since 1976.

On or about December 20, 1978, an experienced truck driver, whose father-in-law is a Douglas County employee, is in the bargaining unit, and is a local member, was interviewed by George Lassiter, foreman of the Mansfield District of the Douglas County Road Department, for a truck driver vacancy in that District.

During the interview George Lassiter questioned the applicant, Jim Tidwell, about his attitude toward the local and whether he would join it if he were hired.

Upon being asked to explain the question, Mr. Lassiter stated that none of the employees in his district were union members and he wanted to keep it that way, though he knew he should not ask such questions.

Mr. Tidwell's response to the question was that he was neutral on the issue.

Mr. Tidwell was not offered the position for which he applied, was interviewed, and was qualified.

Mr. Lassiter is not a member of the bargaining unit represented by the complainant.

Relief sought:

- 1) The truck driver position be offered to Jim Tidwell immediately;
- 2) Back pay with interest from the date he should have been hired to the date he is hired;
- 3) Posting of appropriate notices by the County and George Lassiter.

BACKGROUND

During the month of December, 1978, a job opening occurred in the Mansfield District of Douglas County Road Department. Notices of this opening for a single axle dump truck driver was posted in the Road Department's three (3) area shops - Mansfield, East Wenatchee and Waterville. Mr. Linn Glessner, Mr. Jim Tidwell and Mr. Charles Hoback emerged as finalists in the selection process. Glessner was chosen for the job.

DISCUSSION

On or about December 20, 1979, James Tidwell was interviewed by Area Supervisor George Lassiter regarding a truck driver position opening in Lassiter's district. During the interview, Tidwell presented Lassiter with an employment application which provided the basis for a brief discussion of Tidwell's prior work experience. Tidwell was advised that whoever was hired for the truck driving position would be required to live in Mansfield, and that Lassiter would help him find housing if the position were offered.

Lassiter testified that he indicated to Tidwell that the Road Department was represented by a union and that membership in the union was voluntary, that he also asked if Tidwell was a member of a union, and advised that he could possibly transfer his membership to the union representing the Road Department. Tidwell's version of the conversation differs somewhat. Tidwell stated that Lassiter asked him how he felt about the union to which

he replied he was neutral. Further, Tidwell testified that Lassiter stated that the Mansfield shop was not union and that he did not encourage joining the union. There were no other witnesses to the interview, which was conducted in a one-on-one setting.

The procedures used in hiring employees by the Douglas County Road Department are as follows:

1. Based on applications submitted, personal interviews are held when the person requesting the position is not personally known either to the County Engineer or to one of the superintendents.

2. The interview is usually attended by the superintendent having an opening in his District and the County Engineer.

3. Experience and employment stability are key factors considered in applicants for positions.

4. After conducting interviews and receiving applications, the superintendent indicates his preference to the County Engineer. The County Commissioners and the Engineer have the final determination of hiring within the Road Department.

The County Engineer Townsend was not present during Tidwell's interview due to health reasons.

Tidwell first submitted his application to the Douglas County Road Department in July of 1977. At that time he came to the attention of the County Engineer, Duane Townsend, and the East Wenatchee Area Superintendent, George Hilliard. Tidwell applied for a variety of jobs at the Road Department during the spring and summer of 1978. Hilliard testified that, based on his experience with Tidwell, he would not recommend Tidwell's employment by the County. Townsend testified that he would not have approved Tidwell for the position in Mansfield, both from his prior contacts and from evaluation of Tidwell's employment application.

Subsequent to the Tidwell interview, Lassiter submitted his preference of Linn Glessner for the position to the County Engineer who in turn submitted the choice to the Douglas County Commissioners. Glessner was hired for the position. Glessner had applied for a position with the County in the Mansfield area in 1977 had been recommended by both the Area Superintendent and the County Engineer, however, their recommendation was rejected by the County Commissioners due to the feelings of one of the Commissioners at that time. The December, 1978, recommendation of Lassiter and the County Engineer was accepted.

Lassiter, under oath, denied any questions were asked Tidwell during the position interview concerning his feelings about the union. Two employees hired within the prior year at the Mansfield location testified that during their interview, Lassiter had informed them that the union was the bargaining representative for the Douglas County Road Department and that membership in the union was voluntary. Further, he informed them that, after being hired, a union representative would be contacting them. They also testified that Lassiter had never discussed with them or questioned them concerning union membership or representation.

The Complaint herein is brought under RCW 41.56.140(1) and (2), which makes it an unfair labor practice for an employer to interfere with, restrain or coerce public employees in the exercise of their rights under the Public Employees Collective Bargaining Act. The unfair labor practices provisions of the state statute are comparable to the provisions contained in the National Labor Relations Act, Section 8 (a)(1) and (2). Guidelines have been established for interrogation under the NLRB by Federal District Courts. The leading case in this area is Bourne vs National Labor Relations Board, 56 LRRM 2241 (2d Cir. 1964), which sets forth the guidelines for determining if interrogation is an unfair labor practice:

"Under our decisions interrogation, not itself threatening, is not held to be an unfair labor practice unless it meets certain fairly severe standards.

NLRB v. Firedoor Corp., 291 F.2d 328, 48 LRRM 2408 (2d Cir.), cert. denied, 368 U.S. 921, 49 LRRM 2111 (1961); NLRB v. Syracuse Color Press, Inc., 209 F.2d 596, 33 LRRM 2334 (2d Cir.), cert. denied 347 U.S. 966, 34 LRRM 2143 (1954); NLRB v. Montgomery Ward & Co., 192 F.2d 160, 29 LRRM 2041 (2d Cir. 195).

These include:

- (1) The background, i.e., is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identify of the questioner, i.e., how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of "unnatural formality"?
- (5) Truthfulness of the reply.

Examination of the record, interpreted in the light most favorable to the Board, indicates that the interrogation involved here did not in any realistic sense meet the tests set forth.

- (1) There is very little to show any pattern of employer hostility and discrimination.
- (2) The information sought was quite general. "How is the union doing?"; "Are the employees for the

union?" rather than specifically "Who are the ring leaders?" "Who has joined?" etc.

(3) The principal interrogation was by low ranking supervisors.

(4) The employees were interrogated informally while at work.

(5) In general the replies were truthful, i.e., there was no evidence that the interrogation actually inspired fear."

The testimony offered by the complainant falls substantially short of the requirements of Bourne, supra. There is no history of employer hostility or discrimination. In fact, the County Engineer testified that he has, for the most part, final say on employment and he himself has been a member of a bargaining unit (Local 17, PTE, King County) and still belongs to the union. Second, the information allegedly sought did not involve action against any individual employees. Third, the person questioning in this case, Lassiter, indicated that he is a supervisor in the Mansfield area but has only the right to advise on potential hirees. He specifically denied the allegation of the questions indicated by Tidwell. Fourth, the place of the interview was in the County Shop at Mansfield. Both Lassiter and Tidwell indicated there was a friendly, relaxed atmosphere throughout the interview. Fifth, Tidwell testified that his response to the questions were that he was not a union member and that he was neutral as to unions.

The Complainant has the burden of proof in any unfair labor practice case. See WAC 391-45-270. The record in this case fails to substantiate the complaint of unfair labor practice by Douglas County, Douglas County Commissioners and George Lassiter. The complainants case pivots on Tidwell's uncorroberated testimony as to what questions Lassiter asked at the interview. The Examiner is not convinced that Tidwell failed to get the job because of the questions asked and the answers given. The Examiner is convinced that Tidwell failed to get the job because there was a better qualified applicant available. Having considered the evidence, testimony, arguments and post-hearing briefs, the Examiner now makes the following:

FINDINGS OF FACT

1. Douglas County, Washington, is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local No. 846DC is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3).

3. James Tidwell had a job interview by George Lassiter, Superintendent of the Mansfield area, Douglas County Road Department on December 20, 1978.
4. James Tidwell was not selected for the position because he was not deemed to be the most qualified applicant.
5. Tidwell gave uncorroborated testimony concerning interrogation by Lassiter concerning Tidwell's union activities, which was denied by Lassiter.
6. The complainant did not produce any circumstantial or other evidence demonstrating any anti-union animus or course of conduct by Lassiter or the employer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The respondents, Douglas County, Douglas County Commissioners, and George Lassiter, did not violate RCW 41.56.140 by not hiring James Tidwell.

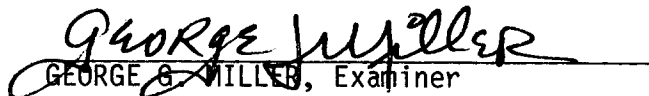
On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

The complaint charging unfair labor practices filed in the above-entitled matter is dismissed.

DATED at Spokane, Washington, this 7th day of August, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE MILLER, Examiner