

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 120, AFL-CIO,	)	
	)	CASE NO. 2793-U-80-412
Complainant,	)	DECISION NO. 1342 - PECB *
vs.	)	
CITY OF TACOMA,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Pamela G. Cipolla, General Counsel, appeared on behalf of the complainant.

Robert R. Hamilton, City Attorney, by Patricia Parfitt, Assistant City Attorney, appeared on behalf of the respondent.

On May 30, 1980, Washington State Council of County and City Employees, Local 120, AFL-CIO, (complainant) filed a complaint charging unfair labor practices against the City of Tacoma (respondent). The complaint alleged that a department supervisor made anti-union remarks to bargaining unit employees and thereby interfered with, restrained and coerced the employees' exercise of rights guaranteed in Chapter 41.56 RCW. A formal hearing was conducted on January 15, February 16 and February 27, 1981 in Tacoma, Washington before Kenneth J. Latsch, Examiner. The parties submitted post-hearing briefs. In addition, respondent submitted a motion to dismiss the complaint as frivolous and without merit.

BACKGROUND:

Among its various operations, respondent runs a Department of Graphic Services, located in the Tacoma Armory Building. Complainant represents employees employed by respondent in several bargaining units, including certain of the full time employees in the Department of Graphic Services. The department's 13 employees are responsible for the preparation of brochures, pamphlets, notices and forms needed by other city departments. Apart from regular full time employees, the department often hires CETA, temporary and project employees. CETA employees are hired for training purposes through grants provided by the federal government and are employed as long as federal funds are available. Temporary employees are hired to work in the department for a specific period of time and may be given full time status if an opening exists. Project employees are hired to

complete a specific project only.

The Department of Graphic Services is directed by a Graphic Arts Supervisor who reports to Bud Bond, City Clerk and Director of General Services. The supervisor plans, coordinates and reviews department work and prepares the department budget. In addition, the supervisor recommends hiring, discipline and discharge of department employees to the City Clerk. The present supervisor, Alan Reames, has held that position for approximately four years. Prior to his arrival, the department operated through four separately supervised sections: graphics, photography, printing and quick copy. Reames consolidated the operations under his supervision and re-organized the department so that he would make all work assignments. The re-organized operation received favorable attention as the City of Seattle reviewed the department and expressed a desire to establish a similar program.

Personnel difficulties arose shortly after Reames was hired. Ed Arnold, a bargaining unit employee, also applied for the supervisor's position. Several employees felt Arnold was better qualified for the position, and there was animosity when Reames was hired. Antagonism grew as Reames modified work practices in the department. Employees complained that the backlog of work was growing because Reames did a poor job of assigning projects. In addition, employees complained that the department's facilities were not being used to their full capacity and yet Reames transferred some work to private printing firms. Regular employees voiced particular concern about the use of CETA employees. Under Reames' re-organization, CETA employees began to work in several department sections at once, and regular employees complained that the CETA personnel took away their normal assignments. Correspondingly, Reames expressed his concern about a slippage in department productivity. Reames felt that certain employees were conducting work slowdowns, and he also encountered what he believed to be insubordination. Employees were openly hostile to Reames, and there was some evidence that printing assignments were being sabotaged. Neither Reames nor the department employees filed formal complaints about the personnel difficulties in the Department of Graphic Services.

Several studies were undertaken to identify problems in the department. Charles Kennedy, Coordinator for the Tacoma Civil Service Board, reviewed the operation and informed Reames of his findings in the early part of 1980. Kennedy noted the use of CETA employees, the allocation of work and sub-contracting as problems. Kennedy also noticed a general lack of communications between Reames and department employees. An independent consultant, Thomas Eklund, identified similar problems, but also found employees to be insubordinate to Reames. The record does not reflect what steps, if any, were taken to correct the situation on the basis of the studies.

The continuing friction led several bargaining unit employees to quit. Even after those resignations, Reames continued to have difficulties with department personnel. Bargaining unit employees requested Mary Brown, staff representative for complainant, to investigate the situation. Brown visited the department to talk with the employees on December 11, 1979, but did not give Reames notice of the meeting before she arrived. The length of Brown's meeting with the employees is in dispute. Respondent maintains that the meeting lasted approximately one hour during the employees' workday. Complainant presented testimony to the effect that the meeting was scheduled for the 15 minute afternoon coffee break and may have run into the scheduled work day by an additional 15 minutes. Employees participating in the meeting received written warnings about their absence to conduct union business during work hours. The record does not indicate whether the employees appealed the warning notices.

Complainant and respondent were parties to a collective bargaining agreement which provided for a Labor/Management Committee. The committee was used to discuss possible solutions for problems arising in the employment relationship. Brown was dissatisfied with efforts to correct the problems in the Department of Graphic Services after the December 11, 1979 meeting, and she requested a meeting of the Labor/Management Committee in a letter forwarded to the city's personnel department on May 7, 1980.

On May 13, 1980, Reames called a meeting of department employees which, in part, gave rise to these unfair labor practice proceedings. Among those in attendance were Reames, Joe Smith, (shop steward), Jerry Timmons, Peter McDonald, Stephen Williams, Kathy McPherrren, Melba Jean Carvello and Peggy Bocott. Smith and Timmons were bargaining unit members. McDonald was a CETA employee and Williams was a temporary employee who was not a member of the bargaining unit. McPherrren, Carvello and Bocott worked in Reames' office as clerks and were not members of the union. Remarks made at the meeting are in dispute and are subject to different interpretations.

According to Smith, Reames said that he was going to "tighten the screws" on everyone in the department and that he believed union grievances "to be a waste of taxpayers' money". Smith also recalled that Reames stated that he was "sick and tired" of grievances.

Reames testified that he did not make any of the statements testified to by Smith. According to Reames, the meeting was part of a regular schedule of meetings used to discuss problems in the department. Reames testified that he discussed productivity problems and remarked that similar difficulties were costing public employees their jobs on a nationwide basis. He also stated that he felt as if employees were filing grievances without talking to him about the underlying problem. The record does not indicate how many grievances had been filed prior to the May 13, 1980 meeting.

Other employees in attendance at the meeting give widely varying accounts of what was said. Jerry Timmons recalled Reames saying that grievances were a waste of taxpayers' money, and that employees should come to him and discuss their problems in the department. Timmons testified that he did not feel intimidated or coerced by Reames' remarks. McDonald, Williams, McPherrren, Carvello and Bocott all testified that they did not hear Reames make the remarks referred to by Smith.

Smith met with Reames later that same day. The meeting occurred when Smith went to Reames' office to check on the status of a work order. During the course of conversation, the topic of union grievances came up, and Smith testified that Reames made several intimidating remarks. According to Smith, Reames said that he was going to "tighten the screws" on everybody because of union grievances. Smith testified that Reames also stated that he had enough information to get Smith, Timmons and John Zantua, another bargaining unit member, fired because of their insubordination, and that he wanted to "make it hard" on the individual filing grievances with the union. Smith also recalled Reames saying that grievances were a waste of taxpayers' money. Reames recalled the private conversation with Smith on May 13, 1980, but denied that he made any threatening statements. Reames testified that he discussed the implementation of a new evaluation system with Smith, and he pointed out deficiencies in Smith's productivity. Reames also testified that he may have referred to the lack of cooperation shown by department employees, but did not threaten to fire any specific employee. Reames also offered testimony that he wanted to know who was having difficulties in the department so he could discuss the problem with the dissatisfied employee. McPherrren, Carvello and Bocott, who all worked in Reames' office area, did not recall the meeting between Reames and Smith.

Although not alleged in the complaint, Smith testified, without objection, that Reames made additional threatening remarks during a conversation at Smith's work station on May 14, 1980. According to Smith, Reames said, "Joe, I could just strangle you for this", referring to a telephone call Reames received from the City Clerk, informing him of the Labor/Management Committee meeting that was called to discuss problems in the department. Smith also testified that Reames said employees would be laid off because of union grievances and that Reames told Smith "to do a good job or else". Reames testified that he did not have any specific recollection of the May 14, 1980 discussion with Smith. Other department employees were not present for the conversation between Reames and Smith.

Smith testified that Reames' remarks had an immediate impact on department employees. Employees were hesitant to file grievances or contact union officials to discuss problems in the department. Smith testified that he was reluctant to contact the union but did on several occasions after the May 13 and 14, 1980 discussions with Reames. Smith never filed a formal grievance as shop steward in the Department of Graphic Services.

POSITIONS OF THE PARTIES:

Complainant argues that respondent, through remarks made by a department supervisor, interfered with, restrained and coerced bargaining unit employees in violation of RCW 41.56.140(1). Complainant maintains that statements made by the department supervisor intimidated employees from filing grievances and from contacting the union representative to discuss problems arising in the department.

Respondent contends that it cannot be bound by the remarks made by an employee, although the employee holds supervisory status. Respondent further argues that the supervisor did not make the remarks alleged, and complainant has failed to substantiate the charges contained in the unfair labor practice complaint.

DISCUSSION:Agency Issue

Respondent devotes a considerable part of its brief to the proposition that Alan Reames is not an "employer" and, therefore, could not commit an unfair labor practice violative of RCW 41.56.140(1). Relying on the decisions in Municipality of Metropolitan Seattle v. Department of Labor and Industries, 88 Wn.2d 925 (1977) and International Association of Firefighters v. City of Yakima, 91 Wn.2d 101 (1978), respondent asserts that Reames is an "employee" within the meaning of RCW 41.56.030(2).

The cases cited by respondent deal with the collective bargaining rights of supervisory and confidential employees. It is evident that Alan Reames is not a confidential employee in that he does not participate in the formulation of collective bargaining policies. However, it is equally clear that Reames is a supervisor, and, as such, can direct the operations in the Department of Graphic Services. Reames is not a member of the bargaining unit, nor is he represented by any union. The most important consideration, however, is whether department employees perceive that Reames speaks on behalf of the employer. Reames has authority to recommend hiring, discipline and discharge of department employees, and he personally assigns work orders. In his position as supervisor, Reames is the employer's primary contact with its employees, and he acts as the employer's agent binding the employer by his actions. See: City of Mercer Island, Decision No. 1026 (PECB, 1980).

Interference Issue

An employer or its agent can commit an unfair labor practice by interfering with, restraining or coercing employees in the exercise of rights conferred by Chapter 41.56.RCW. See: City of Morton, Decision No. 459, 459-A (PECB,

1978). Such unfair labor practices can be found when an employer threatens reprisal against employees if they exercise their guaranteed rights, including the right to process grievances. Valley General Hospital, Decision 1195, 1195-A (PECB, 1981). In construing the protections afforded employees under the National Labor Relations Act, the National Labor Relations Board has found a violation where an employer threatened employees with dismissal if they invoked the grievance procedure contained in a collective bargaining agreement. See: A & W Products Co., Inc., 244 NLRB No. 175, 102 LRRM 1271 (1979). Where a complaint alleges threats of reprisal, intention is not controlling in determining whether statements made by management interfere with rights guaranteed by Chapter 41.56 RCW. Rather, it is the ability of a reasonable employee to perceive a threat from the statements made. See: City of Olympia, Decision No. 1208 (PECB, 1981).

Turning to the merits of this case, it is clear that communications between the supervisor and department employees was poor, and that the general working atmosphere was strained. However, the Examiner cannot pass judgment on management practices. The scope of inquiry is limited to determining whether or not an unfair labor practice was committed through statements attributed to Alan Reames.

The issue before the Examiner boils down to a question of credibility. Joe Smith's testimony is, in large part, unsubstantiated. Employees who participated in the department meeting of May 13, 1980 did not hear Reames make the statements complained of, nor did complainant offer any witness to verify Smith's recollection of the meeting. Jerry Timmons substantiated only a portion of Smith's testimony and only to the extent of remembering Reames' comment about unions being a waste of money. Complainant did not offer any testimony to substantiate Smith's account of the second meeting he had with Reames on May 13, 1980.

Complainant has the duty to prosecute its case and has the burden of proof. See: City of Mercer Island, Decision No. 1108 (PECB, 1981). In this case, complainant has failed to sustain its burden of proof. Given the highly charged, emotional atmosphere in the Department of Graphic Services, statements could have been taken out of context. Without additional testimony to corroborate Smith's testimony, it is impossible to find that an unfair labor practice was committed.

#### FINDINGS OF FACT

1. The City of Tacoma is a municipal corporation located in Pierce County and is a "public employer" within the meaning of RCW 41.56.030(1). Among its various divisions is the Department of Graphic Services.
2. Washington State Council of County and City Employees, Local 120, AFL-CIO, is a "bargaining representative" within the meaning of RCW

41.56.030(3). The union represents employees in certain departments of the City of Tacoma, including employees in the Department of Graphic Services. Joe Smith is the complainant's steward in that department.

3. Alan Reames, Supervisor of Graphic Arts, directs the operation of the Department of Graphic Services. Reames makes all work assignments and effectively recommends hiring, discipline and discharge of department employees.

4. Since Reames was hired as supervisor, there have been a variety of personnel problems in the Department of Graphic Services. Lack of communication between Reames and department employees, allocation of work and insubordination have been identified by independent studies as problems in the department.

5. On May 13, 1980, Reames called a general department meeting in his office. Smith testified that Reames said he was going to "tighten the screws" on everyone and that union grievances "were a waste of taxpayers' money". Jerry Timmons, a bargaining unit employee present at the meeting, testified that he heard Reames say something about unions being a waste of money, but other employees who testified did not hear the statements attributed to Reames by Smith. Several employees testified that they recalled Reames referring to production shortfalls at the meeting. Reames testified that the May 13, 1980 meeting was called to discuss productivity problems in the department

6. Smith testified that he met privately with Reames later in the day on May 13, 1980, and that Reames made additional threatening statements to him at that meeting. Reames testified that he told Smith to improve his productivity and that he would like disgruntled employees to discuss their problems with Reames. The conversation was not overheard by any other employee testifying at the hearing.

7. The record does not indicate what reduction, if any, occurred in the filing of grievances after the May 13, 1980 meeting.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. Alan Reames is a supervisor who can bind his employer, the City of Tacoma, by his actions and statements.

3. The complainant has not sustained its burden of proof establishing that the respondent, by its agent Reames or otherwise, interfered with the exercise of employee rights secured by RCW 41.56.

ORDER

It is ordered that the complaint charging unfair labor practices filed in this matter is hereby dismissed.

DATED at Olympia, Washington this 18th day of January, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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KENNETH J. LATSCH, Examiner