

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RALPH VILLEGAS,)	
Complainant,)	CASE NO. 2531-U-80-364
v.)	
WARDEN SCHOOL DISTRICT,)	
Respondent.)	
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RALPH VILLEGAS,)	
Complainant,)	CASE NO. 2532-U-80-365
v.)	DECISION NO. 1235 - EDUC
MOXEE SCHOOL DISTRICT,)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW AND ORDER
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Symone Scales, Attorney at Law, appeared on behalf of the complainant.

Ries and Kenison, by Jerry J. Moberg, Attorney at Law, appeared on behalf of the respondent Warden School District.

Rocky L. Jackson, Attorney at Law, appeared on behalf of the respondent Moxee School District.

On January 14, 1980, Ralph Villegas filed two complaints with the Public Employment Relations Commission, alleging that Warden School District (Warden) and Moxee School District (Moxee) had committed unfair labor practices in violation of RCW 41.59.140(1)(a) and (c). In Case No. 2531-U-80-364, he alleges that Warden discriminated against him because of his activities in the Warden Education Association (association) by referring to him as a "militant troublemaker" in response to an inquiry from Moxee, where he was seeking employment. In Case No. 2532-U-80-365, he alleges that Moxee discriminated against him by refusing to hire him solely because of his activities in the association. A hearing was held on the consolidated record before Alan R. Krebs, Examiner, on October 1 and 2, 1980 in Yakima, Washington.

FACTS:

From 1974 through 1978, Ralph Villegas was employed by Warden as a counselor and physical education teacher for elementary school children.

He also performed coaching duties. At that time, approximately 39 teachers were employed by Warden in three schools. Ray Sheahan was the superintendent of schools and Walter Weaver the elementary school principal. The teachers were represented for collective bargaining purposes by the association, an affiliate of the Washington Education Association (W.E.A.). Villegas was the local association president for the 1977-78 school year.

Villegas believes that he had a good relationship with Sheahan and Weaver until April, 1978, when he personally delivered a grievance to Sheahan. However, the grievance was not even discussed before it was withdrawn by the association several weeks later.^{1/} Toward the end of the 1977-78 school year, Warden notified the association that it could no longer hold association meetings during working hours. Further, Villegas was reprimanded by his principal for missing recess duty. Also, Warden began requiring coaches to attend all school meetings. Nevertheless, at the end of the school year, Villegas received an excellent evaluation.

Villegas submitted his resignation to Warden during the summer recess after the conclusion of the 1977-78 school year. In approximately July of 1978, he submitted an employment application to the Moxee School District. On his application, Villegas listed three names, none of them from Warden, as employment references. In August 1978, he interviewed with Elmer Leonard, Moxee's Assistant Superintendent, for a position as a junior high school counselor. Leonard's duties included the initial processing and screening of applicants for certificated positions. Applicant files were maintained in his office. During the interview, Leonard took notes and requested that Villegas supply references from Warden. Villegas gave him the names of Sheahan and Weaver.

Villegas thereafter made several calls to Leonard's office inquiring about Moxee's decision regarding the position. When he first reached Leonard, he recalls being informed that no decision had yet been made. According to Villegas' recollection, Leonard said it looked good from the response of the references listed on his application, but that the information from Warden was like a 180 degree turn, though Leonard did not say precisely what he had been told by Sheahan or Weaver. Villegas recalls that during that phone conversation Leonard inquired if he was a union negotiator and that he responded that he was not, but was the union president. Villegas indicated that in a later conversation, Leonard said that he might be hired on a probationary basis.

^{1/} In an earlier PERC case, Warden was held to have committed unfair labor practices when it discriminated against another employee who filed a grievance during May, 1978. Warden School District No. 146-161, Decision 1062 (EDUC, 1981).

Leonard does not recall making such remarks, and he, Sheahan, and Weaver recall no discussion of Villegas' union activities among them. The counselor position required certification by the state Superintendent of Public Instruction. Villegas' initial certification was due to expire during the 1978-79 school year and could not be extended unless he completed certain course work. Sheahan believes that this was discussed when Leonard phoned to inquire about Villegas. Ultimately, Moxee decided not to fill the counselor position for the 1978-79 school year. In April, 1979 Villegas' counselor certification lapsed.

In the spring of 1979, Villegas submitted another application for employment to Moxee. In May 1979, he interviewed with Leonard for a position as an elementary school physical education instructor, a position to be shared by two grade schools. Leonard sent him directly from that interview to separate interviews with principals at Terrace Heights and Moxee elementary schools.

Villegas recalls that Leonard gave him his file to take with him to his other interviews, and that when he stopped at stop signs in the course of driving between Terrace Heights and Moxee schools, he reviewed that file. He claims to have "glanced real quick" at handwritten notes on five small green slips of paper which he believed to be records of telephone conversations between Leonard and the persons whom Villegas had named as employment references. Villegas recalls the notes of Weaver and Sheahan appearing close together and containing the comments "militant", "untrustworthy", "did not follow resignation procedures correctly". Villegas could not remember what other comments were made, or whether the comments he recalled were under Sheahan or Weaver's name. After looking through his file, Villegas proceeded to the interview with Principal Erb at Moxee school. He did not make copies of the notes, nor did he at that time record for himself the comments contained on the notes. The file remained with Erb after that interview, and Villegas never saw it again. Villegas within a day afterward wrote out his recollection of the contents of the green notes.

Another individual, Robert Adamson, was hired by Moxee to fill the physical education position. Adamson had worked as a physical education instructor in his prior position where his responsibilities covered several schools, and he had organized a physical education program from scratch. Terrace Heights Principal Hake testified that Adamson's experience was what Moxee was looking for, that his credentials were good, and that he was the unanimous choice of Leonard, Erb, and himself to fill the position. Leonard and Hake believed Villegas' qualifications for the position to be adequate only, and certainly below those of Adamson.

In approximately July 1979, Villegas contacted the association regarding the matters surrounding his application for employment with Moxee. The instant unfair labor practice charges were filed in January 1980.

POSITIONS OF THE PARTIES:

The complainant alleges that Warden and Moxee conspired to discriminate against him because of his activity in the association. He claims harassment by Warden beginning shortly after the filing of the grievance concerning teacher evaluation, and that Sheahan and Weaver made negative comments regarding his union activities to Moxee's administration. Finally, he claims that Moxee then unlawfully acted upon the information from Warden and failed to hire him because of his union activities.

The respondents deny that any negative remarks, particularly concerning Villegas' union activity, ever passed between them. They specifically deny that agents of Warden ever referred to Villegas as a "militant" or a "troublemaker". They dispute the existence of any animus by Warden toward Villegas, and claim that Weaver was not even aware of his union activities. They dispute the existence of any notes such as the complainant claims to have seen in his file, and claim that the existence of such notes, even if proved, does not rise to the level of an unfair labor practice. Further, they claim that the complainant was not qualified at all for the initial position for which he interviewed, and was far less qualified for the physical education position than was the individual hired. Finally, they argue that the complaint should be dismissed for failure to prosecute in a timely manner (laches).

PERTINENT STATUTORY PROVISIONS:

RCW 41.59.060(1) 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, and shall also have the right to refrain from any or all of such activities..."

RCW 41.59.140(1) states, in pertinent part,

"It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

. . .

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment..."

DISCUSSION:

Laches Argument

Respondents argue that the complaints in these cases should be dismissed as untimely filed. They argue that a six month time limit is customary among hearings boards, and also that they have been substantially prejudiced by the failure to timely file, in that the complainant's file was destroyed after his interview, according to normal practice, and they therefore are not able to produce the file as evidence to support their claim that no notes existed.

This agency has no six-month statute of limitations on filing unfair labor practice charges as does the National Labor Relations Board (NLRB). The Examiner is not persuaded by respondents' arguments that the association's delay in the filing of the charges warrants their dismissal. Moxee's destruction of Villegas' file occurred shortly after Villegas had seen it.

The Alleged Interference and Discrimination

An attempt to blacklist or cause other adverse action against former employees because of their union membership or activities, constitutes unlawful interference, restraint, and coercion in violation of RCW 41.59.140(1). Steere Broadcasting Corp., 158 NLRB No. 45 (1966). An unfair labor practice is also committed if an employer discriminates against a job applicant based on union activities. RCW 41.59.140(1)(c); Phelps Dodge Corporation v. NLRB, 313 U.S. 177 (1941).

Having observed the demeanor of Villegas, Leonard, Sheahan, and Weaver, and considering the plausibility of the various versions, and the apparent difficulty that the school district officials had in recalling the details of the conversations in question, the Examiner is inclined to credit Villegas to the extent that following the 1978 employment interview Villegas was informed by Leonard that some problems were raised as a result of Leonard's conversations with Sheahan and Weaver, and that Leonard and Villegas discussed Villegas' union activities at Warden. Villegas' testimony as to his sincere recollection of what he saw in his Moxee applicant file is also credited. However, Villegas made no copies or contemporaneous recording of the contents of those notes, though he claims that he later made written notes of what he saw. Villegas was unable to recall the context of the words he remembers, and could not recall on which specific notes the words appeared. In addition, since the notes were handwritten, the possibility exists that Villegas misread the handwriting, particularly since by his own admission he only "glanced real quick" at them. Further, Villegas raised a suspicion that his testimony may have been embellished when he testified during direct examination that he recognized Leonard's handwriting on the interview notes. Cross

examination of Villegas indicated that this was unlikely since he was unfamiliar with Leonard's handwriting.

The notation of "militant" and "untrustworthy", if made, could be related to Villegas' protected activities at Warden. However, the record does not support a conclusion that such remarks were made by Sheahan or Weaver, nor does it support the inference that a no-hire recommendation was made by them. It is possible that agents of Warden used those words. It is also possible that the terminology was unrelated to Villegas' union activities. Also plausible is that Leonard made the notation "militant" after he independently interrogated Villegas. Considering the denials by Leonard, Sheahan and Weaver that they discussed Villegas' union activities, and absent any direct evidence implicating Warden, the actions of Moxee's agent, Leonard, do not amount to substantial evidence upon which to base a conclusion that Warden committed an unfair labor practice. The evidence, when considered as a whole, creates a suspicion that Warden acted unlawfully, but that is not enough. Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

Regarding the allegations against Moxee, Villegas was sent on interviews even after Moxee possessed knowledge of his protected activities. No one was hired for the first position for which he applied. The record does not support a finding that Villegas was as qualified as the individual hired for the physical education position. The complainant has not met its burden of proof, and the unfair labor practice charges cannot be sustained.^{2/}

FINDINGS OF FACT

1. Warden School District No. 146-161 (Warden) is an employer within the meaning of RCW 41.59.020(5). At all times material herein, Ray Sheahan was superintendent of schools and Walter Weaver was principal of the elementary school.
2. Moxee School District No. 90 (Moxee) is an employer within the meaning of RCW 41.59.020(5). Elmer Leonard is the assistant superintendent of schools, Bill Hake the principal of Terrace Heights elementary school, and (no first name on record) Erb the principal of Moxee elementary school.

^{2/} Leonard's hiring interview interrogation of Villegas concerning his union activities could constitute a violation. Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177 (1941). However, such a violation is inappropriate for consideration here since it was not alleged in the complaint.

3. Warden Education Association (association) is an employee organization within the meaning of RCW 41.59.020(1) and is the exclusive bargaining representative of certificated non-supervisory employees of the Warden School District.

4. Ralph Villegas was employed by Warden as an elementary school physical education instructor and counselor from 1974 through 1978. He was the president of the association during the 1977-78 school year, when several grievances were filed.

5. Villegas resigned from Warden in 1978, and interviewed for a counselor position with Moxee in August 1978. At that time, he named Sheahan and Weaver as employment references from Warden. Leonard contacted Sheahan and Weaver by telephone to obtain information about Villegas. Subsequently, Leonard implied to Villegas that Warden had not given him a good recommendation. Leonard discussed with Villegas the latter's union activities at Warden. Moxee did not fill the position for the 1978-79 school year.

6. In May 1979, Villegas had interviews with Leonard, Hake, and Erb for a position as elementary school physical education instructor with Moxee. Villegas carried his applicant file with him and "glanced real quick" at it between the interviews with Hake and Erb. He recalls seeing the notations "militant", "untrustworthy", and "did not follow resignation procedures correctly" on green notes which he believed to be records of telephone conversations with Sheahan and Weaver. He made no copies or contemporaneous record of these notations. Sheahan, Weaver, and Leonard each deny that Villegas' union activities were discussed during those phone conversations. A more qualified individual was hired to fill the physical education position.

CONCLUSIONS OF LAW

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

2. By the facts described in Findings of Fact 4, 5, and 6, Warden School District No. 146-161 has not interfered with and discriminated against the complainant in violation of RCW 41.59.140(1)(a) and (c).

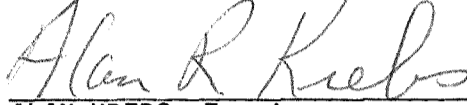
3. By not hiring the complainant, Moxee School District No. 90 has not engaged in discrimination in violation of RCW 41.59.140(1)(c).

ORDER

The unfair labor practices charges in Case No. 2531-U-80-364 and Case No. 2532-U-80-365 are dismissed.

Dated at Olympia, Washington, this 3rd day of September, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ALAN KREBS, Examiner