

BACKGROUND:

The Emergency Dispatch Center provides radio communications for fire, police, and medical service operations for most of Benton County, Washington. It is governed by a policy board comprised of representatives of its participating jurisdictions. Judith Mills is director of the dispatch center.

Robin Gibson was hired as a call receiver on January 4, 1982. Call receivers answer incoming telephone calls and relay information to the dispatchers. Call receivers are trained to become dispatchers. As a new hire, Gibson was placed on a one-year probationary period pursuant to the employer's personnel rules.

On May 16, 1982 Gibson was promoted to dispatcher. Dispatchers are responsible for relaying calls and emergency dispatching of fire, police and medical services for each participating jurisdiction. Dispatchers follow established procedures set forth in manuals provided to all dispatching employees. Radio language and code words for all situations are set forth in the procedural manuals. Gibson's performance between May 16, 1982 and October 10, 1982 vacillated between satisfactory and unsatisfactory. During that period of time Gibson received several notifications of improper radio use for overly long transmissions and for incorrect addresses relayed to fire, police, and medical services officers. Gibson's uneven work performance resulted in Gibson being assigned to participate in a two-phase intensive retraining program in October, 1982.

During October, 1982 dispatch center employees filed a grievance containing approximately 18 issues involving working conditions at the center. Specifically cited at the hearing was a work scheduling problem. Gibson and seven other employees signed the grievance.

During the first week of December, 1982, a representative of Teamsters Union Local 839 met with dispatch center employees at a Kennewick, Washington restaurant. The purpose of the meeting was to obtain authorization cards so that Local 839 could represent the employees for the purpose of collective bargaining. The eight employees at the meeting, including Gibson, signed authorization cards. Thereafter, Local 839 requested that the employer voluntarily recognize the union as the exclusive bargaining representative of its employees. Supervisory employees were included in the union's initial request for recognition.

At its regular scheduled meeting on December 6, 1982, the policy board authorized Greg Cuoio, Personnel Director of the City of Kennewick, to participate in an authorization card cross-check to determine the union's majority status if supervisors were excluded from the bargaining unit sought by Local 839. The union consented to the exclusion of the supervisors and a

cross-check was scheduled to be held by a representative of the Commission at the PERC office at Kennewick, Washington on December 29, 1982. On December 29, 1982, prior to the previously scheduled cross-check, the employer, citing perceived economic considerations, dispensed with the cross-check and voluntarily recognized Teamsters Union Local 839 as the employees' exclusive bargaining representative.

Gibson satisfactorily completed phase I of the retraining program during November, 1982. Thereafter, Gibson committed two procedural mistakes in radio communications. Citing Gibson's unacceptable work performance, Mills discharged Gibson on December 29, 1982.

POSITION OF THE PARTIES:

The complainant contends that Gibson was discharged because of her activities on behalf of Teamsters Union Local 839; that Gibson's discharge was designed to reduce the union's majority status and that Gibson's probationary employee status made her vulnerable to retaliation for her support of the union.

The respondent contends that Gibson was terminated because of poor work performance; that the employer was unaware, and did not care, about Gibson's activities on behalf of Teamsters Union Local 839; and that the employer had decided on December 6, 1982 to recognize Local 839, subject to the outcome of an authorization card cross-check.

DISCUSSION:

The NLRB has adopted the following causation test for determining allegations of discriminatory discharge:

In all cases alleging violations of Section 8(a)(3) of LMRA or violations of Section 8(a)(1) turning on employer motivation, NLRB will employ the following "causation test". (1) General Counsel must make prima facie showing sufficient to support inference that protected conduct was a "motivating factor" in employer's decision; (2) once this is established, employer has burden of demonstrating that same action would have taken place even in absence of protected conduct.

Wright Lines Inc., 251 NLRB 150 (1980).

The test has been affirmed by the U. S. Supreme Court in NLRB vs. Transportation Management Corporation and adopted by the Public Employment Relations Commission in City of Olympia, Decision No. 1208-A (PECB, 1981), and Valley General Hospital, Decision No. 1195-A (PECB, 1981).

Gibson's activity on behalf of Teamsters Union Local 839 consisted of attending the organizing meeting and contacting other employees. Although there are no surrounding circumstances indicating that the employer bore any anti-union animus, the timing of the discharge invites close scrutiny. The Examiner concludes that the complainant has a colorable claim that her protected activities on behalf of Teamsters Union Local 839, could have been a motivating factor in the employer's decision to discharge Gibson. The analysis thus shifts to the second part of the test under Wright Lines, Inc., supra.

The record does not establish that Mills was aware of Gibson's role on behalf of the union. There is some evidence that Mills was away from work during the time frame involved. In any event, the board of directors had agreed to recognize Local 839, if the union represented a majority of employees in an authorization card cross-check. Testimony of witnesses at the hearing, including the complainant, clearly established that Gibson's overall work performance was unsatisfactory until she undertook the retraining program. Shortly after phase one of the two part intensive retraining program ended, she reverted back to the unsatisfactory work habits which necessitated the employer's actions in October, 1982. Just as clearly, testimony reveals that the employer, pressed by the expiration of Gibson's probationary period, decided that further training would not be allowed, and that Gibson was to be terminated. The evidence compels a conclusion that Gibson would have been discharged regardless of her union activity.

FINDINGS OF FACT

1. Emergency Dispatch Center is a public employer within the meaning of RCW 41.56.030(1). Judith Mills is director of the dispatch center.
2. Teamsters Union Local 839, is a bargaining representative within the meaning of RCW 41.56.030(3). The union represents all Emergency Dispatch Center employees, excluding supervisors and the director.
3. Robin Gibson was an employee of the employer from January 4, 1982 to December 29, 1982. Gibson's work performance vacillated between satisfactory and unsatisfactory during her employment. She was placed in a two phase re-training program in October, 1982. Phase 1 of the re-training program was completed in November, 1982. Gibson's performance was rated satisfactory by her supervisor and team trainer. Gibson was thereafter involved in two serious breaches of communication relays that were referred to Mills. Gibson was terminated on December 29, 1982 by Mills. Mills cited Gibson's poor work performance as the reason for Gibson's termination.

4. During December, 1982 Teamsters Union Local 839, engaged in organizing the emergency dispatch center employees. Gibson attended an organizational meeting and signed an authorization card. Thereafter, Local 839 requested the employer voluntarily recognize the union as the employees exclusive bargaining representative.
5. On December 6, 1982 the employer authorized Greg Cuoio, Personnel Director, City of Kennewick, to participate in a cross-check to determine Local 839's majority status and the cross-check was scheduled for December 29, 1982 at the Public Employment Relations Commission's offices in Kennewick, Washington.
6. On December 29, 1982 the employer voluntarily recognized Teamsters Union Local 839 as the exclusive bargaining representative for the dispatch center employees.
7. The employer was not aware of Gibson's union activities on behalf of Teamsters Union Local 839. It terminated Gibson on December 29, 1982 for poor work performance.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The Emergency Dispatch Center, its agents and officers, have not violated RCW 41.56.140 by terminating Robin Gibson.

ORDER

The complaint charging unfair labor practices in this matter is dismissed.

DATED at Olympia, Washington, this 24 day of November, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Examiner