

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RONALD D. KNEPPER,)	CASE NO. 4428-U-83-712
Complainant,)	DECISION NO. 1909 - PECB
vs.)	FINDINGS OF FACT,
CITY OF ASOTIN,)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
_____)

Gary L. Carpenter, Attorney at Law, appeared on behalf of the complainant.

Jay R. Jones, Attorney at Law, and Scott C. Broyles, Attorney at Law, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on January 17, 1983, wherein he alleged that the above-named respondent had violated RCW 41.56.040 and 41.56.140(1) by discharging complainant for his exercise of rights guaranteed in Chapter 41.56 RCW. George G. Miller was designated to make and issue Findings of Fact, Conclusions of Law and Order. Pursuant to notice issued by the Examiner, hearing on the complaint was held on June 16, 1983 at Clarkston, Washington. The parties submitted post-hearing briefs.

BACKGROUND

The City of Asotin is a small municipality located in the southeastern portion of the State of Washington. The city's 1,000 residents receive municipal services through seven city departments. The departments are under the general supervision of an elected mayor and a city council. Daily operations in some departments are directed by department supervisors. Due to the small size of the city's work force, certain departments do not have designated supervisors. In such cases, council members direct administrative functions for the affected department. Events leading to this unfair labor practice complaint arose in the Asotin Police Department.

Complainant, Ronald Knepper, became an unpaid reserve officer in the Asotin Police Department in 1979. While he was required to perform approximately 30 hours of service per week as a reserve, it was not unusual for complainant to

work 40 hours per week or more. On September 1, 1979, complainant became a paid, regular part-time police officer and a short time later, he became a full-time officer. His employment history is open to several interpretations. Complainant presented a number of witnesses who testified that Knepper was a superior police officer who projected a good image for the city. To the contrary, respondent produced witnesses who had a variety of problems with the manner in which complainant performed his duties.

During his tenure as a police department employee, Knepper also served as police chief. As chief, Knepper was responsible for regular patrol and law enforcement activities as well as the department's administrative functions. He also supervised the city's only other police officer and established work shifts. Because respondent believed that complainant was having difficulty serving as chief, it was decided to eliminate the "police chief" position. Department administrative duties were given to council member Robert Packwood, who began his duties as police administrator in August, 1982. As with complainant's entire employment history, the parties disagree over Knepper's reaction to the change. Complainant testified that he did not object to Packwood's assumption of administrative duties. Packwood testified that Knepper initially seemed to be relieved, but later grew resentful. This was so even though complainant's salary was not reduced when the police chief position was abolished.

There was some pressure on Packwood to terminate Knepper because of complainant's conduct on the job, but Packwood decided to work with Knepper to resolve the problems. As the months progressed, complainant was involved in several more incidents which caused problems with respondent. Of particular concern to the city were two absences from work that occurred because Knepper forgot what his assigned shift was. Respondent never imposed any discipline for any of complainant's actions, however.

In Fall, 1982, city employees began a unionization effort. Complainant testified that he was instrumental in bringing a union to the city of Asotin. Yet, he never signed a union authorization card. The record does not indicate that he ever approached respondent with any information about the union or any request for recognition. On October 20, 1982, complainant had a brief conversation with John Cole, staff representative for Washington State Council of County and City Employees. Cole testified that the meeting was accidental and lasted only for a few minutes. Cole told Knepper that he was welcome to attend a meeting for county employees later in the month, but he never had any further contact with complainant. Another city employee, Ali Taylor, apparently was the primary contact between employees and the union. An informational meeting was held at Taylor's house several weeks later. Knepper did not attend.

During the union's organizational drive, Mayor Charles Foltz asked several employees how they were going to vote in the upcoming election. At approximately the same time, council members Dale Brannen and Ken Simonsen spoke to potential voters about their intentions. One employee who was contacted, John Broughman, testified that Brannen stated that an employee would have to be laid off if a union asked for a high monetary settlement. The record does not reflect whether Foltz, Brannen or Simonsen asked Knepper about his intentions concerning the union.

By November 30, 1982, respondent had decided to terminate Knepper's employment. Respondent attempted to contact complainant during the time set for his regular work shift, so he could be told of the decision.^{1/} It was unable to do so. On December 1, 1982, Packwood, Foltz and another council member met Knepper as he came to work and informed him that he was fired. The ensuing conversation is disputed. Knepper testified that Foltz told him that he was "the best police officer" the city ever had. Foltz and Packwood testified that they simply told complainant that he was fired. Knepper did not receive reasons for his dismissal on December 1st. On December 7, 1982, he wrote to respondent asking for an explanation. He did not receive a response until December 16, 1982, when respondent sent Knepper a letter detailing a number of reasons leading to his termination.

Complainant testified that he was discharged for union activities, since he did not receive any explanation on the day he was fired. On January 17, 1983, Knepper filed an unfair labor practice complaint. In it, he alleged that he was discharged because of his union activities. Respondent, through testimony presented by Foltz and Packwood, asserted that the discharge had to be made for business reasons.

On February 28, 1983, an election was conducted by the Public Employment Relations Commission to allow employees of the City of Asotin to express their desires on being represented by Washington State Council of County and City Employees. The union won the election and, on March 8, 1983, was certified to represent a bargaining unit described as:

INCLUDED: All full-time and regular part-time employees in the following departments in the City of Asotin: Water, Sewer, Parks, Police and City Hall.

EXCLUDED: Volunteer Fire Department, City Clerk, and all other employees of the City of Asotin.

See: City of Asotin, Decision No. 1594 (PECB, 1983).

^{1/} On November 30th, respondent discharged Richard Wolters. A complaint filed by Wolters is the subject of a separate proceeding before this Examiner in Case No. 4374-U-82-699.

POSITIONS OF THE PARTIES

Complainant asserts that he was discharged because of his union activities. Complainant maintains that he was a "moving force" behind the union organizational drive, and that respondent did not have any legitimate reason for discharging him.

Respondent denies that it committed any unfair labor practices. Respondent argues that it made its decision to discharge Knepper solely on the basis of his performance as a police officer, and that his union activities had no effect on the discharge.

DISCUSSION

RCW 41.56.040 prohibits a public employer from interfering with employee attempts to organize for purposes of collective bargaining. The statute provides:

No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or any other right under this chapter.

The complainant has the burden of proof. To be successful in his claim, complainant must show that he was engaged in protected activity, that respondent had knowledge that complainant was engaged in protected activity and that respondent's motivation for the discharge was based on his protected activity. See: Port of Seattle, Decision No. 1624 (PECB, 1983) and Whatcom County, Decision No. 1886 (PECB, 1984). The evidence presented must be more than mere suspicion. See: City of Olympia, Decision No. 1208-A (PECB, 1982).

The record clearly indicates that respondent knew that its employees were attempting to organize a bargaining unit and to be represented by Washington State Council of County and City Employees. Had they been pleaded as such in this case, the contacts made by the mayor and several city council members with employees would easily be construed as violations of RCW 41.56.140(1), since they would at least indirectly interfere with the employees' freedom of choice in the matter. However, these incidents are not before the Examiner for resolution. The sole purpose of this decision is to determine whether the employer acted upon its knowledge of the union organizational effort when it discharged Ronald Knepper.

While respondent had knowledge of a city-wide organizational effort, complainant has failed to prove that he was somehow engaged in a protected

activity when he was discharged. Knepper maintained that he was instrumental in bringing the union to the City of Asotin. However, the record reflects that complainant had only one discussion with a union official and took absolutely no participation in the organization efforts. In such a situation, it cannot be said that complainant was engaged in activity protected by Chapter 41.56 RCW when he was discharged.

Complainant and respondent had a troubled employment relationship. Knepper brought forward several examples of poor management practices. However, such charges cannot form the basis of an unfair labor practice complaint. See: City of Tacoma, Decision No. 1342 (PECB, 1981). Since complainant cannot prove that respondent discharged him for participation in a protected activity, this unfair labor practice complaint must be dismissed.

FINDINGS OF FACT

1. The City of Asotin is a municipality of the State of Washington, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Ronald Knepper began employment with the city as an unpaid reserve police officer. He later became a full-time paid officer, and at one point, held the position of "police chief."
3. As chief, Knepper performed regular law enforcement duties as well as administrative functions for the city's police department. Among the administrative work, Knepper established work schedules for himself and the city's other police officer.
4. The mayor and several members of the Asotin City Council received citizen complaints about the way in which Knepper performed his duties. Council member Robert Packwood took over the police department's administrative work in an effort to correct the problems.
5. Knepper's work performance did not improve significantly after Packwood assumed his duties as administrator. The city was particularly concerned with several incidents when Knepper was absent from his regular work shift, thus requiring the city's other police officer to cover Knepper's duties.
6. In the Fall of 1982, city employees expressed an interest in being represented by a union for purposes of collective bargaining.
7. On October 20, 1982, Knepper met John Cole, staff representative for Washington State Council of County and City Employees. Cole was in the

area for negotiations on behalf of Asotin County Deputy Sheriffs. The meeting lasted only a few minutes. Cole invited Knepper to attend a county employee union meeting later in the week. Knepper did not attend.

8. The city employees' unionization effort began in earnest at an unspecified date after Knepper's brief discussion with Cole. An organization meeting was held in an employee's home, and interested employees signed authorization cards. Knepper did not attend the meeting or sign a card.
9. On December 1, 1982, Knepper was discharged. The city did not provide him with specific reasons for the dismissal until December 16, 1983.
10. On February 28, 1983, an election was conducted among City of Asotin employees to determine whether they desired to be represented by Washington State Council of County and City Employees. The union won the election.
11. Knepper's discharge was not based on anti-union animus.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By discharging Ronald Knepper, as described in the above Findings of Fact, the City of Asotin did not violate RCW 41.56.040 and 41.56.140(1).

ORDER

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

DATED at Spokane, Washington, this 3rd day of May, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner

ISSUED at Olympia, Washington, this 8th day of May, 1984.

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.