

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	
ENGINEERS, LOCAL 17,)	CASE 7633-U-88-1606
)	
Complainant,)	DECISION 3419 - PECB
)	
vs.)	
)	
CITY OF SEATTLE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Paul M. Grace, Business Representative, appeared on behalf of the union.

James Pidduck, Assistant City Attorney, appeared on behalf of the employer.

On October 20, 1988, International Federation of Professional and Technical Engineers, Local 17, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had committed unfair labor practices within the meaning of RCW 41.56.140(1), (2) and (4), by its conduct toward one of its employees. Specifically, the union alleges that the employer relieved Wei Miao of all work assignments related to processing of Capital Improvement Project (CIP) work authorizations in reprisal for his having filed a grievance, and, without offering to bargain with the union over the matter, assigned that work to a non-represented employee. The complaint was reviewed by the Executive Director pursuant to WAC 391-45-110, and was found to state a cause of action. A hearing was held in the matter at Seattle, Washington, on July 18, 1989, before Jack T. Cowan, Examiner. The parties filed post-hearing briefs to complete the record.

BACKGROUND

The union represents certain of the office-clerical employees within the Engineering Department of the City of Seattle, including the employees in the accounting technician classification series. The Data Control Unit is one of four subdivisions in the Accounting Services Division of the Engineering Department. That unit consists of one non-represented supervisor, Pat Gentleman, and three accounting technicians. Ms. Gentleman has been with the unit since 1978. Technician III Linda Trias has been employed since 1979; Technician II Wei Miao began working with the city in 1979, moving into his present position in 1982; Technician I Penny Picato is a new employee.

Part of the work activity of the Data Control Unit included the processing of capital improvement project work authorizations, commonly referred to as "CIP W/A's". For a time prior to 1986, the employees in the Data Control Unit checked the CIP forms for accuracy and for signature. In 1986, the unit was provided access, for the first-time, to a document titled "project summary report". The latter document substantially improved the unit's capability for checking the accuracy of CIP's. Miao expressed a desire to become proficient with the new system, and was given the opportunity to do so. Ms. Gentleman would use the report to check the accuracy of the CIP's, then forward them to Miao, who was expected to input the CIP's into "the system". Approximately 10% of the CIP's were routed directly to Miao, and he alone checked those prior to putting them into the system.

During the summer of 1987, it was brought to Ms. Gentleman's attention that there was a problem with the work flow among the three people she supervised. As a result of such notice, coupled with her own observations, she advised her subordinates, by memo, that she wanted them to update their procedures by the end of March, 1988. She also advised them that she wanted to study the

workload, to re-distribute some tasks to make the workload more equitable, and to solve any existing production problems.

On March 15, 1988, Local 17 filed a grievance on Miao's behalf, alleging that "the city has worked the grievant as an accountant without proper classification and compensation". The remedy sought was to have Miao reclassified and paid as an accountant. The grievance was filed directly with the employer's Labor Relations Department at the third step of the contractual procedure, and Ms. Gentleman was not aware of its existence until much later.

As a result of her review of unit activity, Ms. Gentleman determined some time in mid-1988 that a number of the CIP's were remaining on Miao's desk longer than the two-day turnaround allowed for processing in the Data Control Unit. Further, she found Miao was rechecking CIP's which she had already checked. At that point, Ms. Gentleman elected to process all of the CIP's herself, including those which formerly had been routed directly to Miao, and to thereby exclude Miao from checking any of the CIP's.

Ms. Gentleman's immediate supervisor, Accounting Services Manager Thomas Lorenz, testified of his established policy that, if an employee was going to be away from his or her desk for a period longer than that needed to get a cup of coffee, the absence should be reported to the employee's immediate supervisor. Miao was accused of having been away from his desk for lengthy periods of time without having advised anyone. On one occasion, he left his work area to attend a meeting on the previously mentioned classification grievance, without telling Ms. Gentleman that he was leaving or where he was going. On August 3, 1988, Ms. Gentleman issued a written directive to Miao, calling upon him to advise her whenever he left his desk.

On August 12, 1988, Ms. Gentleman entered a comment on Miao's evaluation form, as follows:

We should be more aware of the existence of a defined chain of command and should make use of that chain whenever the circumstances indicate.

The chain of command in the subject department was well defined, as were procedures for communication with the various management levels. Ms. Gentleman had cautioned Miao regarding his adherence to established procedure. The comment on the evaluation form was based on Ms. Gentleman having been advised by three different individuals, all of whom were above her in the management structure, that Miao had contacted them on certain matters without having first contacted Ms. Gentleman. The comment was taken by Miao as being unfavorable.

There appears to have been no formalized procedure to accommodate opportunities for work-out-of-class within the Data Control Unit. Employees were not required to tell one another in advance of anticipated absences. If one of the employees was absent, the others were expected to act in their behalf. Claims for "work-out-of-class" pay were not questioned or contested. Specifically, Linda Trias testified that it is up to the employee to put the request for work-out-of-class pay on his or her time card, and that she had never questioned Miao if he claimed pay for work-out-of-class. Trias was absent from work on only two occasions between March 15, 1988 and October 20, 1988. Miao never asked to work out-of-class on those occasions, and he was not denied the opportunity to work out-of-class.

After these unfair labor practice charges were filed on October 20, 1988, Lorenz asked Gentleman for a response. The record indicates that she first became aware of Miao's pay classification grievance at that time.

POSITIONS OF THE PARTIES

The union alleges that the unilateral transfer of CIP work authorization duties from Wei Miao to his unrepresented supervisor constitutes an unfair labor practice. The union alleges that the transfer of unit work, the requirement that Miao report his comings and goings, the comment on Miao's evaluation form and the failure to pay Miao for work-out-of-class are all retaliatory actions in response for Miao's having filed a grievance.

The employer contends that any removal of duties was accomplished within the scope of management prerogative, without any malice or retaliatory intent. It contends that, lacking any awareness or knowledge of the filing of a grievance, the supervisor could not have used such grievance as justification or reason for subsequent removal of duties or change of procedure.

DISCUSSIONReprisals for Pursuit of Grievance Rights

RCW 41.56.040 and 41.56.140(1) protect the right of public employees to file and process grievances. Valley General Hospital, Decision 1195-A (PECB, 1981).

To act in reprisal, the supervisor must be aware of the matter on which such a reprisal is based. In Pullman School District, Decision 2632, (PECB, 1987), the complainant met its burden of establishing a prima facie case that the discharge of an employee was motivated in reprisal for his use of the grievance procedure. No such prima facie showing can be found in this case, however. Ms. Gentleman was not in any way aware of Miao's grievance until after the filing of the instant case, and so could not have made the re-allocation of work assignments, the "report absences"

directive, the "chain of command" evaluation comment, or any decisions on "work-out-of-class" in reprisal for the filing of the grievance. There is simply no cause-and-effect relationship demonstrated in the evidence.¹

Skimming of Unit Work

An employer has a duty to give notice to and, upon request, bargain with the exclusive bargaining representative of its employees prior to transferring bargaining unit work to persons outside of the bargaining unit. South Kitsap School District, Decision 472 (PECB, 1978). It is clear that there was no notice or bargaining in this case, but a question remains as to whether there was actually any transfer of bargaining unit work.

The reallocation of responsibilities at issue in this matter is claimed by the employer to have been accomplished in response to an identified productivity problem within the subject unit. Awareness of that problem, which centered on work flow, processing duties and conformity with established deadlines, occurred in the latter part of 1987. Accounting Services Manager Tom Lorenz, Supervisor Pat Gentleman, and Accounting Technician III Linda Trias were all aware of the situation at that time.²

CIP work authorizations were among the documents which were not being processed within the expected two-day turnaround time. Such

¹ The probable impact of such reclass was never discussed in this record. Were Miao's pay classification grievance to have been successful, it conceivably could have triggered reclassifications upgrading the pay of some or all of the other members of the unit. Aversion to such a result by other unit members seems unlikely. Had Ms. Gentleman been aware of Miao's pay classification grievance, she could well have been its active proponent.

² Thus, awareness existed before Miao filed his pay reclassification grievance on March 15, 1988.

documents were found on Miao's desk, and Ms. Gentleman also became aware that Miao was duplicating her work on CIP work authorizations. She concluded that Miao was spending an inordinate amount of time duplicating work which had already been done, and that this led to an inability to accomplish his assigned tasks in a timely fashion. Gentleman reviewed Miao's duties with him in early June, 1988. By her direction, Miao's duties were changed to no longer include verifying the information on CIP's or assigning CIP work authorization numbers. When Miao continued to duplicate her work even after their June discussion, Gentleman issued a memo on July 27, 1988, confirming that she alone was processing CIP work authorizations.³

Whether work on CIP work authorizations was considered by Miao to be an integral part of the justification for his pay classification grievance⁴ does not appear in the evidence, nor does the description of the duties or requirements for the accountant position he was seeking. In a November 22, 1988 meeting with the employer, Miao stated that he worked about 26 hours per year on CIP work authorizations, spending approximately 2 minutes on each work authorization. At the hearing in this matter, Miao testified that 15% of his total work time involved CIP work authorizations. It appears doubtful that his claim for the accountant position would be hinged on the minimal amount of CIP work that Miao performed.

More important, the record indicates that CIP's are only a small part of the total work processed by the Data Control Unit, and that CIP work authorizations constitute only about 20% of the CIP work. Of those, Miao had been checking only one in ten on a direct basis.

³ Again, Gentleman was acting at that time without knowledge of Miao's pay classification grievance.

⁴ Miao was seeking a reclassification from "technician II" to an "accountant" title.

The balance of the CIP activity had come to Miao on a flow-through basis, not for checking but for processing. Testimony of both Gentleman and Trias verified that checking of CIP's was, and remains, Ms. Gentleman's responsibility, and that is substantiated by the position description in evidence for Gentleman's position. Miao's rechecking of the work of his supervisor did not constitute a recognized or accepted part of his job duties. Those CIP's constituted, by his own admission, a minimal portion of his total work activity. Thus, any removal of "job duties" that occurred here was limited to precluding CIP checking that Miao had taken over from Gentleman in the first place. The action did not substantially change the wages, hours or working conditions of the individual employee, or of the bargaining unit as a whole, and does not appear to constitute a removal of bargaining work. Therefore, the re-transfer of work to the excluded supervisor, when performed to best effect a reasonable accomplishment of the task in an equitable and cost effective manner, did not constitute a mandatory subject of bargaining under RCW 41.56.030(4). See, King County, Decision 1957 (PECB, 1984).

FINDINGS OF FACT

1. The City of Seattle is a municipality of the state of Washington, and is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. International Federation of Professional and Technical Engineers, Local 17, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the City of Seattle, including non-supervisory office-clerical employees working in the Data Control Section of the Engineering Department.

3. On March 15, 1988, Local 17 filed a pay classification grievance on behalf of Wei Miao, requesting that he be reclassified to an "accountant" classification. Miao's immediate supervisor was not involved in the processing of that grievance, and was not aware of its existence until at least October of 1988.
4. Beginning as early as mid-1987, and continuing to mid-1988, the Accounting Services Section of the Engineering Department was undergoing a review to find new and revised methods of operations to improve and expedite the work flow.
5. On June 14, 1988, Miao was relieved of all work assignments related to the checking of Capital Improvement Project (CIP) work authorizations. Those duties were re-transferred to Miao's immediate supervisor, Pat Gentleman, who had been responsible for them in the first place and continued to perform 90% of all such assignments.
6. On August 3, 1988, Miao was directed to advise Gentleman whenever he left his desk. Such directive was consistent with policy established by Gentleman's superior(s), and was in response to multiple occasions when Miao was absent from his work station without notice to his supervisor.
7. On August 12, 1988, Gentleman entered comments on Miao's performance appraisal, cautioning and directing him to adhere to the chain of command and to not go to her superiors without first contacting Gentleman. Such directive was consistent with the established chain of command in the department and with Gentleman's previous admonitions to Miao.
8. Between the May 15, 1988 filing of the grievance referred to in paragraph 3 of these findings of fact, and the October 20, 1988 filing of the complaint charging unfair labor practices

in this matter, there had been only two occasions when Miao could have worked "out-of-class". The record does not establish that Miao requested, or that he was denied or prevented from requesting, any pay for work-out-of-class during that time frame.

CONCLUSIONS OF LAW

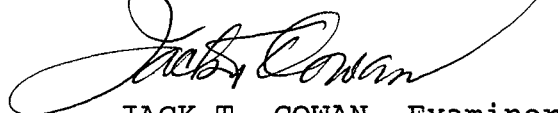
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The record fails to establish that the employer has taken any action in retaliation for the filing or pursuit of a pay classification grievance on behalf of Wei Miao, so that there has been no violation of RCW 41.56.140(1) or (2).
3. The record fails to establish that the "checking" of capital improvement project work authorizations undertaken by Wei Miao was or became bargaining unit work, so that there has been no violation of RCW 41.56.140(4) in connection with the employer's directive that such work be done by the supervisor originally responsible for that work.

ORDER

The complaint in the above-entitled matter is dismissed.

DATED at Olympia, Washington, this 13th day of February, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JACK T. COWAN, Examiner

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