

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FRANKLIN D. WOOD,)	
)	
Complainant,)	CASE NO. 5742-U-85-1058
)	
vs.)	DECISION 2481-A - PECB
)	
CITY OF CENTRALIA,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Michael Hanbey, Attorney at Law, appeared on behalf of the complainant.

Skellenger, Ginsberg and Bender by Michael J. Fox, Attorney at Law, appeared on behalf of the respondent.

On March 25, 1985, Franklin D. Wood filed a complaint charging unfair labor practices against the City of Centralia. The complaint alleged that the city, through supervisory personnel at Centralia City Light, violated RCW 41.56.140(1), (3) and (4) by terminating Mr. Wood from employment at City Light's hydroelectric facility. A hearing was conducted on July 16, August 22, August 23, October 17, October 18, and November 20, 1985 in Olympia, Washington. Examiner Kenneth J. Latsch issued his Findings of Fact, Conclusions of Law and Order on June 30, 1986, dismissing the complaint on the merits. The complainant filed a timely petition for review.

BACKGROUND AND POSITIONS OF PARTIES

The extensive background of this case is ably reviewed in the examiner's decision and will not be repeated here. In brief summary, the complainant's employment with the city was terminated in September of 1984.

The complainant essentially maintains that he was not laid off, but terminated, because he had refused in 1983 to get involved in a management scheme for getting rid of union representation. Additionally, the complainant alleges that the city unilaterally established the position of "relief operator" and then excluded him from the opportunity to apply for this newly created position.

The city, aside from denying the complainant's allegations, maintains that Wood was terminated for simple and straightforward reasons: (1) His position was eliminated; and (2) He did not apply for a replacement position that his seniority with the city permitted him to claim. The city agrees with the examiner's decision.

DISCUSSION

On the issue of retaliation against the complainant, the length of time between complainant's alleged spurning of the management anti-labor scheme and the alleged retribution is great. Conflicting testimony makes even the underlying question of whether there really was a management anti-labor scheme very uncertain. The question of whether there actually was retaliation by the city must be evaluated in the light of alternative explanations available and offered.

The record establishes that the city automated its hydro-electric plant as an economy and efficiency move. It also appears from the record that the automation program was implemented in conjunction with a plan for attrition through retirements, thereby allowing the transition to be made with the potential for no layoffs. A disputed aspect of the automation program was that the employees holding the two "operator" positions that were to remain would be required to live in on-site housing. Two other positions (in a separate "canalman" classification) carried no such requirement.

The complainant was known to object to living on-site, and he bid only for a canalman position. Two employees with greater seniority than the complainant also bid for the canalman positions. Only one employee with greater seniority than the complainant bid for an operator position. During the period of bidding (mid-December, 1983 to mid-February, 1984), the complainant did not change his bid to seek the remaining operator position. Therefore, an outside applicant was hired in June, 1984. Wood's employment was terminated.

Complainant's point that the city created the position of relief operator (as distinguished from resident operator) is not well taken. While a city proposal in bargaining referred to a resident operator and to a relief operator, no such distinction was made in the application process. Additionally, both the "resident" and "relief" positions required on-site residency and similar duties. As the examiner's decision notes, the complainant very likely would have been hired into the operator classification had he applied.

Through his own inaction, the complainant lost the right to claim employment under seniority preferences he had earned by employment with the city prior to the implementation of the

automation program. In an attempt to correct this situation, the complainant submitted an application to the city in September of 1984, much too late to be considered.

ORDERED

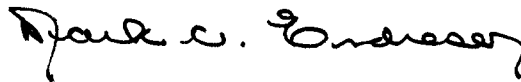
The findings of fact, conclusions of law and order of the examiner are affirmed.

DATED at Olympia, Washington, this 10th day of November, 1986.

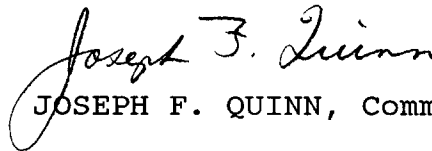
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner