

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION LOCAL 882,)	CASE NO. 6095-U-85-1143
)	
vs. Complainant,)	DECISION NO. 2553 - PECB
)	
KING COUNTY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	

Hafer, Price, Rinehart and Schwerin, by John Burns, Attorney at Law, appeared on behalf of the complainant.

Norm Maleng, Prosecuting Attorney, by John W. Cobb, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On November 6, 1985, Teamsters Union Local 882 filed a complaint charging unfair labor practices against King County. The complaint alleged that the county violated RCW 41.56.140(1) and (2) by assisting a decertification effort by some bargaining unit employees against the union. A hearing was conducted May 1, 1986 in Seattle, Washington.¹ The parties submitted post-hearing briefs by June 27, 1986.

BACKGROUND

Teamsters Union Local 882 represents a bargaining unit of King County employees commonly referred to as the "Courthouse Unit." The unit is comprised of technicians, clerks, office assistants

¹ The case was assigned to the examiner on January 24, 1986. By January 28, 1986, the examiner had confirmed with the parties that their earliest available date for holding the hearing was March 31, 1986. On February 24, 1986, the union requested, and the employer did not object, to have the hearing postponed until May 1, 1986.

and related employees in several county agencies: finance/-purchasing; records and elections; facilities management; real property; automobile and marriage licenses. The offices are located on different floors of the King County Administration Building and other locations. There are approximately 240 employees in the unit. Karen Goodwin-Shropshire and Karen Isaacson are two represented employees in the finance department.

Sometime around the beginning of October, 1985, Goodwin-Shropshire and Isaacson composed the following letter:

Dear Fellow Teamster:

Our contract has nearly expired and once again, concern is being expressed about our union and whether we are being adequately represented by the Teamsters. While the Teamsters have done an adequate job in the past, many feel that our needs as a primarily clerical group are not being met by a union which is primarily non-clerical in nature, and that perhaps another union would be able to better meet our needs and address our concerns.

In order to determine whether or not enough dissatisfaction exists to change unions, it is necessary to formally request that a vote be held. This petition is a request for such a vote. It does not mean that your signature will "get rid of" the union - it's only a statement that you want to vote on the matter. Your petition is important regardless of your position or opinion - a vote will ensure that we have a way of knowing whether or not we as a whole feel that we're being adequately represented, and whether or not we wish to do something about it if we aren't.

Attached is the petition which needs to be handed back to Karen Isaacson in Personal Property in room 609 of the Administration

Building by October 15, 1985. Please fold your petition so that your vote remains confidential. As soon as the results are tallied, we will let everyone know the results.

Again, signing the petition IN NO WAY means that you want to eliminate union representation. At this point, we are merely trying to determine what the general consensus of opinion is.

PLEASE RETURN EVERYTHING BELOW THIS LINE

Executive Director
Public Employee Relations Committee
603 Evergreen Plaza
Olympia, WA 98504

Dear Sir/Madam:

I am in agreement with the request to hold an election (vote) pertaining to decertification of Teamster's Local 882.

LEGAL SIGNATURE: _____

PRINT NAME: _____

DATE SIGNED: _____

ADDRESS: street city state zip

DEPARTMENT/SECTION: _____

Please indicate your preference below:

- Keep the Teamsters
- Change to another union
- Get rid of the union entirely
- Try for an open shop (union membership optional for those who want it)
- Other (please describe): _____

Isaacson typed the letter while on her rest breaks and lunch hour, using the county-owned typewriter at her assigned desk. The rough draft of the letter was prepared on paper retrieved from the recycle bin next to a xerox machine in a county work area. Goodwin-Shropshire and Isaacson paid for having the letter reproduced at Sudden Printing, a private company. The letter was printed on legal size (11" x 14") paper. It was then folded into thirds, with all the writing on the inside.

Goodwin-Shropshire and Isaacson sealed the letters shut with labels which were purchased at their own expense. On each label was typed or written the name of a member of the bargaining unit. Goodwin-Shropshire looked at county records of dues check-off authorization cards to find the names of bargaining unit members. As part of her job duties, she is responsible for maintaining the records of voluntary payroll deductions for union dues by bargaining unit members.

Goodwin-Shropshire and Isaacson distributed most of the letters themselves. The distribution was done on their own time. Letters were given to employees in the bargaining unit who worked on the third, fifth and sixth floors of the County Administration Building. Some employees were not at their work stations when the delivery was made. In those cases, the letter was left on the employee's desk. Many of the employees were at their work stations when the letters were distributed. Goodwin-Shropshire and Isaacson did not discuss the contents with the other employees, however.

For the distribution to employees on the fourth floor, Goodwin-Shropshire delivered approximately 40 of the letters to Maryann Humphreys, confidential secretary to the General Service Manager, Leo Sowers. Humphreys also is the payroll clerk for the fourth floor employees. As such, she has frequent contacts with

Goodwin-Shropshire stemming from her duties in the payroll section of the finance department. The contacts range from questioning the number of hours an employee worked to delivering fliers to Humphreys for her to attach to employees' pay checks. Humphreys distributed all the letters during the course of one day. She testified that she did not know what they were and that they looked like regular documents.

Shop Steward Phyllis Richardson testified that Humphreys had given out other documents in the past which were similar to "junk mail". Richardson was neither surprised nor curious to receive a letter delivered by Humphreys. Richardson did not know who had sent the letter when it was delivered. Maida Okazaki and Jeannie Chow, both bargaining unit employees testified that the salutation of "Dear Fellow Teamster" suggested to them that the letter came from someone who was already a Teamster.

One of the letters left with Humphreys was addressed to an employee who had transferred to a position not on the fourth floor. Humphreys took the letter to the department's assistant manager, James Buck, for advise regarding what to do with the document. Buck opened the letter to see if it should be forwarded. When he saw that it was a possible decertification effort, he contacted county personnel manager, Al Ross. Ross advised him to maintain a neutral stance regarding the question of representation. Buck informally communicated to the supervisors of the animal, business, marriage license and vehicle license sections that the decertification effort was not a management concern and management employees were not to participate in it.

Goodwin-Shropshire and Isaacson received sufficient responses from the letters to file a decertification petition. Case No.

6046-E-85-01082. None of the employees to whom Humphreys distributed the letters returned them.

On October 28, 1985, Ross sent a memo to certain supervisors of employees in the Teamster's bargaining unit. The memo stated:

Attached for your information is a copy of a petition filed with the Public Employment Relations Commission (PERC) by members of Teamsters, Local 882 who are seeking to have the union decertified. It is imperative that all management personnel maintain a neutral position during the pendency of the process.

If any questions arise, please contact me personally or Wes Moore if I am not readily available.

Robert Cowan, the Director of the Office of Finance, testified that King County had a no solicitation policy during the time the letters were circulated. He spoke with Goodwin-Shropshire and Isaacson who assured him that they had not done any of the solicitation activities on county time. Cowan also had a meeting with his management staff to reiterate that the position of the county. He stressed that as the employer, the county was "absolutely and strictly" neutral regarding the decertification effort; supervisors were not to speak to bargaining unit employees in either a "pro or con manner" regarding the decertification; and that the supervisors were to insure that bargaining unit employees did not discuss the decertification while they were working on county time.

POSITIONS OF THE PARTIES

The union argues that Humphreys' close identification as a spokesperson for the manager of general services made her

distribution of the decertification material a management activity. As such, the acts are alleged to have been improper employer involvement in a decertification campaign. The union asserts that King County created the impression of supporting the decertification action by failing to disavow Humphreys' action once it became known and by failing to curb or correct the petitioners' use of county property along with their violation of the county's no solicitation rule. The union contends that since the employer's involvement tainted the decertification process, the petition currently pending before the Commission should be dismissed as part of the remedy in this case.

The employer claims that Humphreys' distribution of the letters could not reasonably be construed as a reflection of county policy. It asserts that King County's response to the petitioners' conduct did not create an impression of support by the employer of the decertification effort. The county concludes that its involvement, if any, in the decertification process was de minimis and cannot support a charge of unfair labor practice.

DISCUSSION

The union cites Community Cash Stores, Inc., 238 NLRB 265 (1978) for the proposition that an action by a person identified with management is a management act. The Board wrote in Community Cash:

... we rely on the substantial evidence in the record indicating that [line employee] Clowney had the apparent authority to act for Respondent in its antiunion campaign. The critical issue in making this determination is whether under all the circumstances the employees would reasonably believe that Clowney was reflecting company policy and speaking and acting for management.

The union connects Humphreys' position as a confidential secretary to the department director with her distribution of the decertification letter making the distribution itself a management act. In the instant case, however, the most that union witnesses would testify to was that they were "confused" about where the letter was from. The letter had no identification on its face of the sender. Humphreys did not directly hand the document to each employee. She placed them on employees' desks; some employees were not at their work stations at the time. The letter does not bear county letterhead; the salutation is "Dear Fellow Teamster". Humphreys action does not meet the Community Cash standard that an employee could reasonable believe that Humphreys was reflecting company policy in an antiunion campaign.

The union's reliance on Columbia Building Materials, 239 NLRB 1342 (1979), does not show a full reading of the case. In Columbia Building a maintenance man in the bargaining unit was the son of a plant supervisor. The Board found that he was:

... a conduit for instructions to other employees, and a number of the employees, reasonably under the circumstances, considered that he was in charge in the absence of [his father].

Humphreys was the secretary to the director of the department. There is also an assistant director in the department. There is no evidence that department employees believed that Humphreys was in charge of the department in the absence of Sowers.

The union also uses Placke Toyota, Inc., 215 NLRB 395 (1974), to attempt to turn Humphreys' activity into management action. In Placke the identification of an activity as a "management act" arose when the petitioner used company letterhead for the decertification petition and then had the petition placed on a

supervisor's desk for employees to sign during the days of the decertification campaign. The facts on the record in the present case are dramatically different from the action in Placke. County letterhead was not used. Humphreys placement of an unidentified document on an employee's desk does not equate to having a decertification petition positioned on a supervisor's desk for employees to come up to and sign.

The union's final argument is that King County acquiesced by silence and therefore created the impression of support. The union cites two Commission cases to substantiate its position. In Renton School District, Decision 1501-A, (PECB, 1982) the employer was presented with dues deduction cards from 100% of the bargaining unit employees. The cards cancelled the deduction authorization for the incumbent union and authorized that dues be sent to the "raiding" union. The employer sent notice to each employee that it would hold all dues in escrow until the "appropriate recipient" was officially determined. RCW 41.56-.110 allows dues deductions only for the certified or recognized exclusive bargaining representative. The examiner held that intent was not necessary for a finding that employer conduct interfered with employees' rights. The examiner found that the appearance of favoritism towards one union over another required a conclusion that the employer had committed a technical violation of the statute. In Pierce County, Decision 1786 (PECB, 1983), the employer inadvertently tolerated one union's use of employer property for union meetings, union business phone calls and other related union activity. There the examiner held that the employer's silent acquiescence during the representation campaign could have reasonably been construed by employees as an expression of employer preference favoring one of the competing organizations over the other.

The use of a county-owned typewriter by an employee on break for the typing of one letter does not rise to the use of employer

facilities which existed in Pierce County. County witnesses testified that once the paper is deposited in the recycle bin, it is no longer considered county property. No other employee testified that anyone knew what Isaacson was doing during her break periods. There is no evidence that any employee thought the letter showed that the county favored decertification. The record does establish that management was at all times aware that it was legally required to remain neutral on the issue.

The union argues that the employer's failure to disavow Humphreys' distribution of the letter and Goodwin-Shropshire's violation of the no solicitation rule was enough to create the impression of employer partiality. No witness was produced who could substantiate such an "impression". By contrast, the employer's argument is well taken that, had King County attempted to explain or disavow the actions as the union suggested, employees might have been left with the impression that King County was concerned with the outcome of the decertification when no such interest existed.

The delivery of an unmarked letter by a confidential secretary/-payroll clerk and the minor use of employer equipment does not suggest that King County bore any hostility toward Local 882. The union has not proved that King County has interfered in the decertification process to the extent that it would be impossible for its employees to freely exercise their rights with respect to the question concerning representation.

FINDINGS OF FACT

1. King County, Washington, is a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Union Local 882, is a labor organization and bargaining representative within the meaning of RCW 41.56-.030(3). It is the exclusive bargaining representative of approximately 240 employees in the courthouse unit employed by King County.
3. Karen Goodwin-Shropshire and Karen Isaacson are two represented employees in the courthouse unit. Approximately the beginning of October 1985, the two women composed a letter inquiring whether bargaining unit members felt they were being adequately represented. The letter was typed on a county typewriter on plain white paper retrieved from the county recycle bin. The women paid for other supplies and the printing of the letter themselves. They did all work associated with this letter on their rest breaks or lunch hour. The letter was folded and sealed in such a way that it was impossible to tell from the outside who had sent it or to what the letter pertained.
4. Officials of the employer could not reasonably have known that its office equipment or supplies were being used in this endeavor.
5. Goodwin-Shropshire and Isaacson delivered the letters to most of the bargaining unit employees. They did so on their own time and they did not discuss the contents with other employees who were working.
6. For the distribution to employees on the fourth floor, Goodwin-Shropshire delivered approximately 40 letters to Maryann Humphreys, confidential secretary to the General Service Manager, Leo Sowers. Humphreys is also the payroll clerk for the section. She distributed all the letters during the course of one day. Humphreys was not aware of the content of the letters.

7. County management has continuously advised concerned supervisors to maintain a neutral stance regarding the question concerning representation.

CONCLUSIONS OF LAW

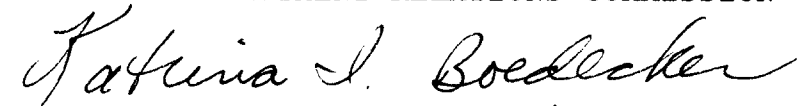
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The unauthorized, uncondoned and minor use of employer equipment along with the delivery of an unmarked letter by a confidential secretary does not establish employees could have reasonably believed that King County appeared to assist, support or show a preference for decertification of Teamsters Union Local 882 in violation of RCW 41.56.140(1) and (2).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, it is ordered that the complaint of Teamsters Union Local 882 charging unfair labor practices against King County is dismissed.

DATED at Olympia, Washington, this 24th day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

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