

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL)
WORKERS, Local Union No. 483,)
Complainant,)
vs.)
TOWN OF FIRCREST,)
Respondent)

CASE NO. 792-U-77-90
DECISION NO. 248-A-PECB
MEMORANDUM DECISION

This is an appeal from a decision of an Examiner finding the Employer in violation of RCW 41.56.140(1). The Examiner's decision was issued on June 27, 1977. The Employer filed a timely appeal and both parties filed briefs on appeal. The Commission deems oral argument to be unnecessary in this case.

The Employer takes the position that the termination of Pete Abbott was for good business reasons, based upon his lack of status as a "permanent" employee of the Employer and the refusal of the Town Council to create another permanent position in the Parks Department. The Town argues in its brief that a bargaining relationship already exists between the Employer and the Union which will be unaffected by the termination of Abbott, and that "All that has occurred to date is to reduce the number in the unit from two to one."

The Union puts the focus of its argument on what Abbott was, rather than what the Employer chose to call him, and urges the Commission to disregard the employment status distinctions relied upon by the Employer.

The evidence establishes that Abbott was originally hired under the Comprehensive Education and Training Act (CETA). Following the exhaustion of "CETA" funding, the Employer continued Abbott in regular full time employment, paying him out of funds earmarked in the Employer's budget as "part time" funds. That situation continued for a substantial period of time until shortly after the onset of organizational activity among the park maintenance employees. The evidence also establishes the connection between the organizational activity and the discharge, the timing of the discharge, the existence of work to be done, and the

existence of adequate funds, however designated. The Employer's arguments overlook the well established principle that a collective bargaining unit cannot be considered appropriate if it has only one person included. The net effect of the Employer's position would be to create two one-man units and to thereby frustrate organization of its work force. We are not persuaded that the Employer's separate classification of the two employees involved is entitled to controlling weight. On the contrary, the evidence amply establishes that the refusal to make Abbott's position "permanent" and the resulting discharge of Abbott was motivated at least in part by an anti-Union animus and, therefore, in violation of RCW 41.56.140(1).

We note from the transcript at pages 57 - 58 that Abbott did not seek other work between the date of his discharge and at least the date of the hearing, apparently operating on advice from the Union. If such advice was given, it was clearly wrong, as a discriminatory dischargee has an affirmative obligation to seek other employment and to mitigate the effects of the violation against him. Under these circumstances, the Examiner's full back pay remedy must be revised.

NOW THEREFORE, it is

ORDERED

1. The Commission hereby adopts the findings of fact and conclusions of law issued by the Examiner in the above entitled matter on June 27, 1977.

2. The Order issued by the Examiner on June 27, 1977 is modified as follows:

"IT IS ORDERED that the Respondent, Town of Fircrest, its officers and agents, shall immediately

1. Cease and desist from:

a. Interfering with the exercise of the rights of employees to engage in protected and concerted activities as detailed in RCW 41.56.040.

2. Take the following affirmative action:

a. Offer Pete Abbott immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority rights and other privileges.

b. Post the accompanying notice for a period of sixty (60) days on bulletin boards where notices to employees of the Respondent are usually posted.

c. Inform the Public Employment Relations Commission, in writing, within ten (ten) days from the date of this Order, as to the steps taken to comply herewith.

3. The Notice to Employees attached to the Examiner's decision as Appendix A. is withdrawn and the Notice to Employees attached hereto as Appendix B. is substituted therefor.

DATED this 30th day of November, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

Michael H. Beck
MICHAEL H. BECK, Commissioner

Paul A. Roberts
PAUL A. ROBERTS, Commissioner