STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION LOCAL 882,	)	
Complainant,	)	CASE NO. 6095-U-85-1143
vs.	)	DECISION 2553-A - PECB
KING COUNTY,	)	DECISION OF COMMISSION
Respondent.	)	

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.

Teamsters Union Local 882 has charged King County with unfair labor practices under RCW 41.56.140(1) and (2), alleging that the employer unlawfully assisted a decertification effort launched by some members of a bargaining unit represented by the union. A hearing was held before Examiner Katrina I. Boedecker, who issued findings of fact, conclusions of law and order dismissing the complaint on the merits. The union has petitioned for review. Both parties filed briefs to the Commission.

BACKGROUND

The union represents King County employees in a "courthouse" unit consisting of approximately 240 technicians, clerks,

office assistants and related employees in various departments of county government. These departments are located on several floors of the King County Administration Building and other buildings.

Karen Goodwin-Shropshire and Karen Isaacson, two finance department employees within the bargaining unit represented by the union, were the principal proponents of the decertification effort at issue here. In early October, 1985, they wrote a letter to the members of the "courthouse" bargaining unit, questioning the "adequacy" of the Teamsters' representation and requesting signatures on a decertification petition.

Isaacson typed the letter during her rest breaks and lunch hour, using the county-owned typewriter at her desk. The original letter was prepared on paper retrieved from a county recycle bin. The two employees paid a private company to print copies of the letter. The letter, printed on legal size (11" x 14") paper, was folded into thirds, with all the writing on the inside. They then sealed the letters with labels, which they purchased, with the names of bargaining unit members typed on the labels. Goodwin-Shropshire is responsible, as a finance department employee, for maintaining records of payroll deductions for union dues by union members, and she had obtained the names of unit members from county records of dues check-off authorization cards.

The two decertification proponents distributed most of the letters themselves, on non-work time. Letters were delivered to unit members working on the third, fifth and sixth floors of the County Administration Building. Some employees were not at their work stations when the letters were delivered, so the letters were just left on their desks. While many of the employees were at their desks during the delivery, the propo-

nents did not discuss the contents of the letter with them at that time.

For employees working on the fourth floor, Goodwin-Shropshire delivered approximately 40 letters to Maryann Humphreys, the confidential secretary to General Services Manager Leo Sowers. Humphreys, who is also the payroll clerk for fourth floor employees, has frequent contact with Goodwin-Shropshire in the course of their duties as county employees, including handling questions regarding payroll for fourth floor employees, delivering flyers for distribution by Humphreys with pay-checks, and the like. Humphreys testified that she did not know what the documents given to her by Goodwin-Shropshire were, and that they looked like regular documents. She distributed the decertification letters within one day.

One of the letters left with Humphreys was addressed to an employee who had transferred to another location. Humphreys took that letter to Assistant Manager James Buck, to ask him what to do with it. Buck opened the letter. When he saw what the letter was, Buck contacted county Personnel Manager Al Ross. Buck was advised by Ross to maintain neutrality on the question of union representation. Buck then contacted various section supervisors in the department, telling them the decertification effort was not a management concern and not to participate in it. None of the employees to whom Humphrey distributed the letters returned them.

There was a sufficient response to the "decertification" letter to support filing of a representation petition with the Commission on October 23, 1985. Case No. 6046-E-85-1082.[1] After the

[1] The representation case remains pending before the Commission in "blocked" status under WAC 391-25-370.

filing, Ross sent a memo to certain supervisors of bargaining unit employees. That memo noted that it was "imperative" that all management personnel maintain neutrality.

Robert Cowan, the county's Finance Department Director, testified that the county had a no solicitation policy at the time the "decertification" letters were distributed. He questioned the proponents, who assured him that the solicitation was not done on county time. Cowan met with his management staff to reiterate the county's neutral position.

POSITIONS OF THE PARTIES

In support of its petition for Commission review, the union contends that the Examiner erred by requiring proof of employer hostility to the union. The union alleges that the Examiner ignored the holdings in Renton School District, Decision 1501-A (PECB, 1982) and Pierce County, Decision 1786 (PECB, 1983). In particular, the union points to the involvement of Humphreys, who it describes as a "regular spokesperson for management", in the distribution of the "decertification" letter. The union maintains that the county should have disavowed the decertification activities, and also notes that county property was used in the effort.

In response, the county maintains that the Examiner did not depart from the above-cited precedents. The employer argues that hostility of the employer to the union was not a necessary element of the Examiner's decision. The employer argues that the county's contact with the decertification effort was de minimis, and that the employees could not reasonably have believed that Humphreys was reflecting "company policy" by distributing the letters under the circumstances presented.

The employer notes that none of the fourth floor employees returned the letter. In conclusion, the employer argues that the union failed to sustain its burden of proving that the employer gave the overall impression of supporting the decertification.

DISCUSSION

Charges of "unlawful assistance" were dealt with in Renton School District, Decision 1501-A (PECB, 1982). It was held there that the employer committed a technical violation of RCW 41.56.140(1) and (2) when, during the pendency of a representation proceeding, the employer notified the incumbent exclusive bargaining representative that it was holding dues checkoff money in escrow pending the results of an election, implying the possibility that the funds could be turned over to the petitioning organization. The Examiner ruled that the employer thus created the appearance of favoritism, albeit unintentionally, of one union over the other. The Examiner indicated that, but for the pendency of the representation case and the fact that the unfair labor practice case had operated as a "blocking charge" under WAC 391-25-370, the Examiner would have ruled that the violations were de minimis and dismissed them. In light of the circumstances, he ordered the employer to publish a notice to "clear the air".

The only other "unlawful assistance" case cited by the parties or found among PERC precedent is Pierce County, Decision 1786 (PECB, 1982). It was found there that the Pierce County Deputy Sheriffs Independent Guild (Guild) had used the employer's facilities while preparing for a representation petition. The Guild held meetings on the employer's premises, used the employer's telephones, and even used the employer's offices and

work time for guild purposes. The Guild also posted its notices on the employer's bulletin boards. Although these improper uses of county property were unknown to the employer and were stopped immediately upon discovery, the Examiner held that there was a technical violation of RCW 41.56.140(1). Interestingly, the Examiner held in Pierce County that the evidence was insufficient to prove an "assistance" violation under RCW 41.56.140(2), because a showing of intent was required.[2] In effect, the Examiner held that the totality of the evidence showed that Pierce County appeared to "assist, support or show a preference" for the Guild over the incumbent Teamsters local even though the county stopped misuse of its facilities and resources "reasonably quickly" after being made aware of the situation. As in Renton, supra, since the employer had already voluntarily ceased the violation, the Examiner limited the remedy to ordering the employer to post notices informing bargaining unit members of its neutrality.

RCW 41.56.140(2) makes it an unfair labor practice for an employer:

> To control, dominate or interfere with a bargaining representative

Consistent with Renton and Pierce County, we hold that an "assistance" violation requires proof of employer intent to assist one union (bargaining representative within the meaning of RCW 41.56.030(3)) to the detriment of others. Since the union did not prove such an intent, and since there was no union receiving assistance, that charge is dismissed.

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[2] The Examiner noted that, by contrast, proof of intent is not needed to prove an "interference" violation under RCW 41.56.140(1).

The remaining question is whether the totality of this record demonstrates the employer has violated RCW 41.56.140(1) by interference with or restraint or coercion of its employees in the exercise of their rights protected by RCW 41.56.040. The union has the burden of proof in this unfair labor practice case. WAC 391-45-270.

We assume for purposes of this analysis, that intent need not be shown here. The essence of an interference violation is employer conduct "which makes impossible the free exercise of employees' rights". NLRB v. Monroe Tube Co., Inc., 545 F.2d 1320, 1325 (2d Cir., 1976). The propriety of the employer's conduct must be assessed in light of all of the facts to ascertain whether it was coercive. Ibid, at 1327.

We believe that no bargaining unit member would reasonably have believed that the employer had sponsored or assisted the decertification effort, given only the facts proven here. We agree with the union that proof of employer hostility (or anti-union animus) is unnecessary. But proof of the appearance of assistance is needed, and such proof is sorely lacking here. The efforts of the petitioners were restricted to off-duty time. The paper was taken from a recycle bin and was of little or no value to the employer. The use of county equipment was very minimal here, and there is no showing that any unit members (other than the decertification proponents) knew that a county-owned typewriter was used to type the original letter. The involvement of Humphreys was involuntary and perhaps even unknown by the members of the bargaining unit as well. It was not unusual for Humphreys to distribute papers to employees on the fourth floor. In any case, the salutation on the letter ("Dear Fellow Teamster") made it obvious that the letter did not issue from Humphreys or anyone else associated with the management.

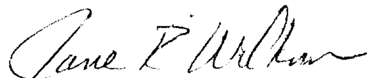
The employer maintained the strictest neutrality on the issue that may reasonably be expected. But the union would have us go further, to subject the employer to an affirmative duty to disavow the decertification effort. Under the facts of this case, where the effects of the incident were de minimis, no such disavowal will be ordered.

We hold that the evidence was insufficient to show an appearance of support for the decertification effort. Therefore, there is no interference or coercion violation under RCW 41.56.140(1). The employees were still free to exercise their rights with respect to the question concerning representation.

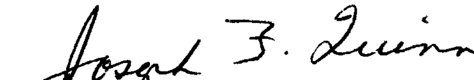
The findings of fact, conclusions of law and order of the Examiner are affirmed.

Dated at Olympia, Washington, this 18th day of February, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



JOSEPH F. QUINN, Commissioner

Commissioner Mark C. Endresen
did not take part in the
consideration or decision
of this case.