STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL UNION 763, Complainant, vs. VALLEY COMMUNICATIONS CENTER, Respondent, and VALLEY COMMUNICATIONS CENTER EMPLOYEE ASSOCIATION, Intervenor/respondent.	)	CASE 9538-U-91-2128 DECISION 4145 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

Davies, Roberts and Reid, by David W. Ballew, Attorney at Law, appeared on behalf of the complainant.

Cabot Dow and Associates by Cabot Dow, appeared on behalf of the employer.

Aitchison, Hoag, Vick and Tarantino, by Deborah Bellam, Attorney at Law, appeared on behalf of the intervenor/ respondent.

On December 16, 1991, Teamsters Local Union 763 filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Valley Communications Center had provided assistance to a rival union, in violation of RCW 41.56.140(1) and (2). A preliminary ruling issued by the Executive Director on February 7, 1992, pursuant to WAC 391-45-110, concluded that the complaint stated a cause of action.

The Valley Communications Center Employee Association (VCCEA) moved for intervention in the proceedings, in opposition to the complaint. On April 3, 1992, the Examiner granted the motion for

intervention. In accordance with WAC 391-45-190. the VCCEA was made a respondent in these proceedings, and was allowed to file an answer to the complaint.

A hearing was conducted in Kirkland on April 14, 1992, before Examiner William A. Lang. Post-hearing briefs were filed by Local 763 and the VCCEA on June 22, 1992.

BACKGROUND

Valley Communication Center operates a police and fire dispatch communications center located in Kent, Washington. The center is in operation 24 hours per day, 7 days per week. At all times relevant to these proceedings, Chris Fisher was the director of the center.

Teamsters Union 763 is the exclusive bargaining representative of certain employees of the Valley Communications Center. The bargaining unit includes all employees in the classifications of "call receiver", "dispatcher" and "dispatcher supervisor". There are 45 employees in that bargaining unit. At all times relevant to these proceedings, Steven Leider was a business representative for Local 763. Leider had represented these employees for four or five years.

The employer's operations are housed in a red brick building which is enclosed within a chain link security fence. There is a surveillance camera above the door. Employees gain access to an employee parking lot located within the security fence, and at the front door, by entering the appropriate code on a key pad. Visitors to the facility must use an intercom phone at the front

door.[1] A picnic table is located within the security fence, on grass adjacent to the employee parking lot, about seven feet from the main entrance. Employees use the picnic table area to eat their lunches in good weather, and to smoke on their breaks.

A collective bargaining agreement was in effect between the employer and Local 763 for the period from January 1, 1989 through December 31, 1991. During the term of that agreement, some of the employees investigated obtaining representation by a different labor organization.

On June 10, 1991, Kathy Stevens, a member of the bargaining unit represented by Local 763, placed a telephone call to the Portland, Oregon, office of the Aitchison, Hoag, Vick and Tarantino law firm. She spoke with Will Aitchison of that firm regarding representation in collective bargaining.[2] As a result of her conversation with Aitchison, Stevens made arrangements for a meeting between bargaining unit employees and James M. Cline, an attorney with the Seattle office of the Aitchison law firm. The meeting was scheduled at a shift change time on Monday, June 10, 1991. Stevens informed other bargaining unit employees of the meeting, but she did not inform the director of the Center about the meeting at that time.

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[1] The intercom phone rings at each of the communication consoles. The visitor may be allowed access to another secured door within the facility, to meet whoever arranged the visit.

[2] Commission records reveal that Aitchison and other members of his law firm have been involved in the formation of more than 40 independent organizations which have, in recent years, supplanted labor organizations affiliated with state and/or national unions. The attorneys of the law firm function like business agents for those independent unions in the negotiation and administration of collective bargaining agreements with employers.

On June 10, Stevens met Cline outside the building, and let the attorney into the secured area. The meeting then took place around the picnic table adjacent to the employee parking lot. Five or six bargaining unit employees were in attendance. The discussion centered on replacing Teamsters Local 763 as the exclusive bargaining representative, by the formation of an independent organization represented by the Aitchison law firm. The record does not indicate whether the assistant director or the shift supervisor was informed of the meeting, or became aware of it while it was taking place.[3]

Director Fisher was out of town on June 10, but subsequently became aware of the fact of the meeting having been held. The employer denied permission for a second meeting on its premises between Cline and the employees.[4]

On July 26, 1991, Leider visited the employer's facility to hold an employee meeting in preparation for the opening of negotiations on a successor collective bargaining agreement. At that meeting, Leider was informed of the June 10 meeting with Cline.

On November 1, 1991, the VCCEA filed a petition with the Public Employment Relations Commission, for investigation of a question

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[3] The shift supervisor is a member of the bargaining unit, along with other employees.

[4] There is a conflict in testimony between Director Fisher and bargaining unit employee Stevens. Fisher testified that she learned of the employees' June 10 meeting with Cline when Stevens requested permission to conduct a second meeting with Cline at the center. Fisher said she told Stevens that she would check with the center's attorney and get back to Stevens, and that she later told Stevens that the employees could not meet with Cline on the employer's premises. Stevens denied that she told Fisher of the June 10 meeting with Cline, or that she approached Fisher about having a second meeting with Cline. Stevens claimed that a secretary told her that the employees could not meet with Cline at the center.

concerning representation involving Valley Communications Center employees historically represented by the Local 763.[5]

POSITION OF THE PARTIES

Teamsters Local 763 argues that the record establishes that an attorney of a law firm which represents independent associations met with employees on the employer's premises, and that meeting has created an appearance of favoritism by the employer toward the effort of that law firm to represent the employees through an independent association. The union cites Pierce County, Decision 1786 (PECB, 1983), as precedent for the proposition that it is not necessary to show employer intent in order to establish a violation of RCW 41.56.140(1). Asserting that the representation process has been tainted by the presence of the attorney on secured premises, Local 763 asks that the petition be dismissed.

The employer denied having knowledge of the disputed meeting or intent to show any preference between organizations. The employer participated at the hearing in the examination of witnesses, but declined to file a post-hearing brief or argument.

The VCCEA argues that neither the employer nor the incumbent union knows, as a fact, that a meeting took place, but it did not actually controvert that a meeting took place. The VCCEA also asserts that, because it was not yet formed, the employer could not have favored one organization over another. Citing King County, Decision 2553-A (PECB, 1987) as precedent, the VCCEA contends that the employer must have had an intent to violate RCW 41.56.140(2), that the employer had no prior knowledge of the meeting, that there was no appearance of employer assistance, and that no reasonable

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[5] Case 9456-E-91-1573. Proceedings on that case have been suspended as "blocked" by this unfair labor practice case, pursuant to WAC 391-25-370.

employee could conclude that the employer favored one union over the other. In the alternative, the VCCEA asserts that the conduct in this case is extremely minimal and remote, as compared to the conduct at issue in Pierce County, supra. The VCCEA contends that the dismissal of its representation petition would be too harsh a remedy, and that a "clear the air" posting would be the proper remedy for any violation in this case. Finally, the VCCEA asserts that it and Local 763 should be given equal time to discuss representation case issues with the employees, in order to avoid the impression that the employer favors the incumbent.

DISCUSSION

It should be clear from RCW 41.56.140(2), and from precedent, that an employer may not assist in the decertification of an incumbent union, City of Tukwila, Decision 2434-A (PECB, 1986), or give the appearance of assisting a rival union's efforts to replace an incumbent, Pierce County, supra. The right to choose an exclusive bargaining representative belongs only to the employees in a bargaining unit under RCW 41.56.040.

While a finding of "intent" is necessary to finding a violation under the "domination and unlawful assistance" prohibition of RCW 41.56.140(2), the standard for judging "interference" claims under RCW 41.56.140(1) is whether employees could reasonably perceive the employer's conduct as an interference with their rights. In Pierce County, the Examiner found a "technical" interference violation by the employer under RCW 41.56.140(1), because the employer should have known that a rival union was using its facilities as a union office, and was using its phone and other equipment for union business. In Renton School District, Decision 1501 (PECB, 1982), the Examiner found that the employer's action of escrowing dues checkoff funds while a representation petition was pending could be construed by the employees as an expression of the employer's

preference of one of the competing organizations over the other. In City of Edmonds, Decision 3018 (PECB, 1988), the employer continued to deduct dues in favor of a fraternal organization which had become a labor organization. Although perhaps unintentional, each of those employers was ordered to post notices to employees for a short time, to "clear the air".

The record of this case suffers from a paucity of facts. The evidence does establish that Kathy Stevens was the in-house promoter of an effort to form a rival union, but it does not establish whether Stevens is a shift supervisor.[6] Stevens stated she called the Aitchison law firm in Portland, but the record does not disclose whether the employer's telephone was used for that call or for any follow-up calls with Cline. Although Stevens stated that the meeting between Cline and five or six employees took place at the change of shifts, it is not clear from the record whether some of the employees attended on work time.[7] While the evidence shows that Director Fisher was not present on the premises on the day of the disputed meeting, the record fails to indicate who was in charge of the facility in her absence, or whether that person was aware of the meeting taking place within its secure area.

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[6] Stevens' testimony can be charitably characterized as evasive, with inconsistencies and lapses of memory. For example, Stevens stated that she brought her own paper to work on which she wrote a notice of the meeting for the employees. She testified that she hand-wrote over forty notes inviting employees to a second meeting with Cline, and placed them in the employees' mail boxes. Ignoring the available inference that all of this was done on work time, she would have the Examiner believe she wrote each invitation by hand, foregoing the convenience of using the employer's office copier. In response to cross examination, Stevens was not certain about the writing of the notes, and thought some other employees may have been involved or perhaps the notes weren't written at all.

[7] The Examiner notes that the communication consoles cannot be left unmanned.

If the employer knowingly permitted the use of its phone to make long distance inquiry on setting up a rival organization, or permitted the meeting to be held on its premises during working time with the full cooperation of a supervisor, it would be clear that a violation had occurred. But the record does not show that the employer knew or should have known such events took place. In this respect the incumbent union has failed to sustain the burden of proof necessary to find a violation of RCW 41.56.140(2).

Conducting a meeting on the employer's premises with a law firm whose purpose is to discuss replacement of an incumbent union, and the use of the employer's mailboxes to distribute notices of the meeting,[8] may tend to give the appearance of unlawful employer assistance in supporting the creation of a rival union. The facts of this case are readily distinguishable from those in Pierce County, however. The record here shows that the employer neither knew nor should have known of the use of its facilities and mailboxes. When the employer was later advised that a meeting had been held, it properly refused the request for the second meeting. In the absence of evidence of willful assistance, an interference violation cannot be sustained. Since the employer acted to insist on its neutrality, the Examiner concludes that a procedure and remedy similar to that used in Pierce County would not be appropriate in this case. The facts in Renton School District and in the City of Edmonds are also distinguishable from the facts here. Both of those cases deal with affirmative employer conduct which could be construed as favoring a rival organization, while the only affirmative action by the employer in the case at hand was to deny the further use of its facility by the rival union.

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[8] In Regents of the University of California v. Public Employment Relations Board, 108 U.S. 1404 (1988), the Supreme Court of the United States held that use of an employer's internal mail system to deliver unstamped mail from the union to its members would violate federal Private Express Statutes that grant the U.S. Postal Service a near-monopoly over mail delivery.

The association's argument based on there being no organization in existence is specious. The prohibition on assisting rival unions logically extends to assisting the formation of a rival union. Promoting efforts of a rival union undercuts the incumbent union's certification as the exclusive bargaining representative and, thereby, disrupts labor peace. Kitsap County, Decision 2116 (PECB, 1984).

The association attempted to introduce into evidence a letter written by the incumbent union to its members, which purported to discuss representation issues. The incumbent union objected to its introduction as being irrelevant. The objection was sustained and the letter was ruled inadmissible. Nevertheless, the association argued in its post-hearing brief that the employer should grant the rival union access to its premises, in order for the employer to avoid an appearance of favoritism because the incumbent union may have discussed representation issues at its business meetings. The argument is beyond the scope of these pleadings. This case only concerns a claim of unlawful employer assistance to a group of employees who were exploring the establishment of a rival union. The case does not involve the right of the rival union to gain access to the employer's premises.[9]

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[9] Federal precedents hold that rival unions have no right to meet with employees on the employer's premises, so as to obtain "equal time" with the incumbent. See: Laub Baking Co., 131 NLRB 869 (1961), where the National Labor Relations Board held that, where an incumbent union has access to the plant by virtue of its right to service its contract, an employer need not equalize things by granting an outside union's request for similar access. In a more recent case, the United States Court of Appeals for the Fourth District (Richmond) ruled that a city school board properly prohibited a rival union's solicitation in the school parking lot. Gratten v. Board of School Commissioners of Baltimore City, No. 86-3021, December 1, 1986.

FINDINGS OF FACT

1. Valley Communications Center is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Local Union 763, a labor organization and bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of Valley Communications Center. The bargaining unit includes employees in the classifications of "call receiver", "dispatcher" and "dispatch supervisor".

3. Valley Communications Center Employee Association, a labor organization and prospective bargaining representative within the meaning of RCW 41.56.030(3) and RCW 41.56.070, was created as the result of a meeting held between employees of the Valley Communications Center and an attorney from the firm of Aitchison, Hoag, Vick & Tarantino. The first of those meetings was arranged by Valley Communications Center employee Kathy Stevens, but the record does not establish what employer facilities were used, if any, in arranging that meeting.

4. Certain employees of Valley Communications Center met with an attorney from the Aitchison law firm on the employer's premises on June 10, 1991. The meeting took place without the knowledge or consent of the employer.

5. When the employees who were attempting to organize a rival union asked permission to hold another meeting on the employer's premises, the employer refused.

6. Although the employees who were attempting to organize a rival union may have utilized the employer's internal mail system to distribute notices of meetings, that was done without the employer's knowledge or consent.

7. On November 1, 1991, the Valley Communications Center Employee Association filed a petition with the Public Employment Relations Commission, for the investigation of a question concerning representation involving employees of Valley Communication Center in the classifications of "call receiver", "dispatcher" and "dispatch supervisor". The record fails to establish that employees would reasonably have perceived that the employer was showing a preference for the association over Teamsters Union Local 763.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By the events described in paragraphs 3, 4, 5 and 6 of the foregoing findings of fact, Valley Communications Center has not violated RCW 41.56.140(1) or (2).

ORDER

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the complaint charging unfair practice is hereby DISMISSED.

Enterer at Olympia, Washington, on the 11th day of August, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

William A. Lang

WILLIAM A. LANG, Examiner

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