

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL UNION 763,)	
)	
Complainant,)	CASE 9538-U-91-2128
)	
vs.)	DECISION 4145-A - PECB
)	
VALLEY COMMUNICATIONS CENTER,)	
)	
Respondent,)	
)	
and)	
)	
VALLEY COMMUNICATIONS CENTER)	
EMPLOYEE ASSOCIATION,)	DECISION OF COMMISSION
)	
Intervenor/respondent.)	
_____)	

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.

This case comes before the Commission on a timely petition for review filed by Teamsters Local 763, seeking to overturn a decision issued by Examiner William A. Lang.¹

BACKGROUND

Valley Communications Center operates a police and fire dispatch communications center located in Kent, Washington. At all times relevant to these proceedings, Chris Fisher was the director of the

¹ Valley Communications Center, Decision 4145 (PECB 1992).

center. A training operations supervisor and three shift supervisors report to Fisher.

Teamsters Local 763 is the exclusive bargaining representative of approximately 45 employees of the Valley Communications Center. The bargaining unit includes all employees in the classifications of "call receiver", "dispatcher" and "dispatcher supervisor". The latter classification encompasses the four supervisors who report to Fisher. Steven Leider, a business representative for Local 763, had represented these employees for four or five years.

The center is in operation 24 hours per day, 7 days per week. Both the building in which the center is housed and an employee parking area are surrounded by a chain link security fence. Employees use a computer access code to either open the parking gate or gain entrance through the front door of the facility. Employees use a picnic table located within the security fence, on grass adjacent to the employee parking lot, during meal and break periods.

Visitors to the facility must request access by using an intercom phone located at the front door.² The collective bargaining agreement in effect between the employer and Local 763 for the period from January 1, 1989 through December 31, 1991, provided that representatives of Local 763 must obtain permission from the employer before coming on the premises. Employees frequently have personal visitors, especially at their meal breaks, but such visitors are brought into the Center grounds without asking permission from anyone.

² There is a surveillance camera above the front door, but no guard is stationed at the facility. The intercom phone rings at each of the communication consoles and at the desk of a front office secretary, who normally responds when present. In the secretary's absence, any of the dispatchers might respond.

During the last year of the labor contract, some members of the bargaining unit were considering whether to obtain representation by a labor organization other than Teamsters Local 763. One of those employees, Kathy Stevens, placed a telephone call on June 10, 1991, to Will Aitchison of the Aitchison, Hoag, Vick and Tarantino law firm. Stevens made arrangements for a meeting between bargaining unit employees and James M. Cline of the Aitchison firm, and she informed other bargaining unit employees of the scheduled meeting. Stevens did not inform the director of the Center about the meeting at that time.

Stevens met Cline outside the compound at a shift change time on June 10, 1991, and let the attorney into the secured parking area. Cline then met with Stevens and five or six other bargaining unit employees around the picnic table located adjacent to the employee parking lot. The purpose of the meeting was to answer employees' questions about a change of bargaining representatives, and the discussion centered on the formation of an independent organization represented by the Aitchison law firm to replace Local 763.

Director Fisher was out of town on June 10, 1991, but subsequently became aware of a meeting having been held between Cline and the employees. The employer denied permission for a proposed second meeting on its premises between Cline and the employees.³ That meeting was subsequently held at another location. Stevens

³ 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; that she told Stevens she would check with the center's attorney; and that she later told Stevens that the employees could not meet with Cline on the employer's premises. Stevens denied telling Fisher of the June 10 meeting with Cline, or asking permission for a second meeting with Cline. Stevens claimed she set up the second meeting and then was told by a secretary that the employees could not meet with Cline at the Center.

testified that she or other bargaining unit employees hand wrote notices of the second meeting, which were probably placed in the employees' mailboxes at the Center.

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 told that there had been a meeting of employees earlier at which a representative of the Aitchison firm had been present.

The employees proceeded with the creation of the Valley Communications Center Employee Association (VCCEA). On November 1, 1991, that organization filed a petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of the Valley Communications Center employees historically represented by Local 763.⁴

On December 16, 1991, Teamsters Local 763 filed this complaint charging unfair labor practices with the 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 VCCEA subsequently moved for intervention as a respondent, and that motion was granted.

A hearing was conducted in Kirkland, Washington on April 14, 1992, before Examiner William A. Lang. Following the receipt of briefs from the parties, Examiner Lang found that the employer had not unlawfully interfered with the exercise of rights protected by Chapter 41.56 RCW, and he dismissed the complaint.

⁴ 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.

POSITION OF THE PARTIES

Teamsters Local 763 claims the Examiner departed from Commission precedent by requiring proof of willful assistance by an employer as a precondition to finding a violation of RCW 41.56.140(1). According to Local 763, Examiner Lang determined that Cline's presence within the employer's facility may have created an appearance of unlawful assistance. The union asserts that such a finding suffices to establish an interference violation.

The VCCEA asserts that the Examiner's decision comports with previous Commission precedent and asks that it be affirmed.

The employer did not file any response to the petition for review, and is presumed to favor affirmance of the Examiner's decision.

DISCUSSIONThe Applicable Law

RCW 41.56.040 and Commission precedent make clear that the right to choose an exclusive bargaining representative belongs only to the employees in an appropriate bargaining unit. RCW 41.56.140(1) prohibits a public employer from interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.140(2) prohibits an employer from controlling, dominating or interfering with a bargaining representative. An employer may neither assist in the decertification of an incumbent union,⁵ nor give the appearance of assisting a rival union's efforts to replace an incumbent.⁶

⁵ City of Tukwila, Decision 2434-A (PECB, 1986).

⁶ Pierce County, Decision 1786 (PECB 1983).

It is also well established that the burden of proving an allegation of unfair labor practices rests with the complaining party, and must be established by a preponderance of the evidence.⁷ An employer may commit a violation of RCW 41.56.140(1) unintentionally, if the circumstances indicate that employees could reasonably have perceived the employer's conduct as interfering with their protected rights under the collective bargaining statute.⁸ Our precedents require a showing of willful intent by an employer, however, to establish a violation of RCW 41.56.140(2).⁹

Application of Precedent

In the context of the security arrangements in existence at the facility, the holding of a meeting on the employer's premises for the purpose of organizing a rival labor organization gave rise to a colorable claim in this case. The record, however, clearly supports a finding that the actions complained of were done without the knowledge of or consent of the employer. Thus, there was no employer "intent", and the alleged violation of RCW 41.56.140(2) was properly dismissed.

We concur as well with the Examiner's ruling that the complainant's burden of proof was not met on the "interference" allegations in this case. The Examiner noted at one point that the acts of: (1) meeting on the employer's premises with a law firm whose purpose is to discuss replacement of an incumbent union, and (2) using the employer's mailboxes to distribute notices of the meeting, may tend

⁷ WAC 391-45-270 includes: "The complainant shall prosecute its own complaint and shall have the burden of proof." See, also, Lyle School District, Decision 2736 (PECB, 1987); Bellingham Housing Authority, Decision 2335 (PECB, 1985).

⁸ Pierce County, *supra*; Renton School District, Decision 1501 (PECB 1982).

⁹ Pierce County, *supra*.

to give the appearance of unlawful employer assistance to a rival union. We read that remark as simply indicating that a violation could conceivably be found in such instances. As far as the actual circumstances of this case are concerned, the Examiner made the following specific finding:

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 763.¹⁰

That finding of fact by the Examiner is fully supported by the record, and we find it dispositive on the "interference" claim advanced by Local 763.¹¹

The meeting between Cline and the employees was scheduled without the prior knowledge and consent of the Center director, and was held on a day when Director Fisher was not on the premises. The meeting was set up by a member of the bargaining unit who was not a supervisor.¹² There is no evidence that any management official was aware in advance of the scheduling or subject of the meeting. Neither is there any evidence that employees were permitted to attend the meeting on work time.

In contrast to meetings conducted by Local 763, which always occurred inside the Center building,¹³ Cline met with the employees

¹⁰ Valley Communications Center, Decision 4145 at Finding of Fact 7.

¹¹ The Examiner's decision appears to confuse the distinction between violations of RCW 41.56.140(1) and (2) at page 8, but that does not change the finding or result.

¹² The Examiner described the record as silent on this point, but Director Fisher testified that Stevens was not a supervisor.

¹³ Leider testified that he had never met with any of the bargaining unit members outside at the picnic table.

at the picnic table outside of the building. Cline was admitted into the parking lot by a bargaining unit member. Employees routinely admit personal visitors, such as spouses or lunch dates, without prior approval. The record suggests that Center management did not concern itself with or generally know the purpose of such visits. The record indicates no reason why any Center supervisor should have recognized Cline as the representative of a raiding union. Thus, members of the bargaining unit had no reason to believe that the employer knew of Cline's presence or the purpose of the meeting.

Given the foregoing circumstances, we concur with the Examiner that the events complained of did not give employees reason to perceive the employer's conduct as interfering with their protected rights. The Examiner's findings of fact will be amended to include some additional facts which support that conclusion, but we adopt the conclusions of law and order without change.

NOW, THEREFORE,

I. The Commission makes the following:

AMENDED 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. Ms. Stevens is not a supervisor and 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, and was conducted at a picnic table where employees routinely entertained personal guests. There is no evidence the meeting occurred on work time or that employees felt the employer would likely know of the attorney's presence or the purpose of the meeting.
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 Communications 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.

II. The conclusions of law and order of dismissal entered by Examiner William A. Lang are affirmed and adopted as the conclusions of law and order of the Commission.

Issued at Olympia, Washington, the 28th day of January, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. McCREARY, Commissioner

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