

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS,	)	
WAREHOUSEMEN AND HELPERS,	)	CASE NO. 1416-U-78-176
LOCAL UNION NO. 252,	)	
	)	DECISION OF COMMISSION ON REVIEW
Complainant,	)	
	)	
vs.	)	DECISION NO. 459-A, PECB
	)	
CITY OF MORTON,	)	
WASHINGTON	)	
	)	
Respondent.	)	
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A petition for review of the Examiner's decision was filed by the City of Morton on July 13, 1978 followed by an amended petition and brief on July 27, 1978. The Respondent's brief was filed August 11, 1978.

The Amended Petition for Review asks the Commission to review the Examiner's findings of fact III, IV, and IX and conclusions of law II. These are as follows:

FINDINGS OF FACT

\* \* \* \* \*

III

On two occasions, November 23, 1978 and on or about November 30, 1977, the mayor of Morton threatened to 'cut' the police force of the City if the employees joined the Union.

IV

The 1978 budget for the City of Morton, adopted on December 5, 1977, provided funds for a full contingent of a chief and three police officers.

\* \* \* \* \*

IX

The true reason for the Henricksen discharge was that it was a follow-up of the threats made in No. III above and resulted from the anti-union animus of the city rather than its financial condition.

\* \* \* \* \*

CONCLUSIONS OF LAW

\* \* \* \* \*

II

The respondent City of Morton has interfered with, restrained and coerced employees in the exercise of their rights guaranteed by RCW 41.56.040 and has engaged in unfair labor practices within the meaning of RCW 41.56.140(1).

For several years the Police Department in the City of Morton has consisted of a Chief of Police and three officers. The 1978 budget for the City of Morton was prepared during the fall of 1977 and finally adopted by the City Council on December 5, 1977. This budget continued the provision for a Chief of Police and three officers.

In November 1977, the officers contacted Teamsters Local 252 with a view toward possibly choosing that local union as their bargaining agent. They met with the Union officials on November 29, 1977, but their contacting the Union was reported in the press prior to that date.

According to former Police Chief Green, on November 23rd and again a week later, the mayor of Morton told him that if the officers "went union" he would lay one off. The mayor admits to the two conversations with Chief Green but insists that what he said was that if the officers joined the union and the union made heavy demands and got them, he would have to lay somebody off.

We are unable to reverse the Examiner's finding that Chief Green's version of these conversations should be accepted. The Examiner saw and heard the witnesses. The events fell out as Chief Green testified the mayor said they would. In November 1977 neither the mayor nor anybody else knew what demands the Union would make, or whether or not the City would feel constrained to meet its demands.

After the officers selected Teamsters Local 252 as their bargaining agent, a negotiating session was arranged for January

11, 1978 with the mayor and the city council in the city council chambers. While there may be some question as to the exact words spoken on this occasion by the mayor and the individual council members, Mr. Jacobson's testimony to the hostility expressed by the mayor and council to the union and to the collective bargaining process stands without substantial contradiction, and indeed, is corroborated to the extent necessary to sustain the Examiner's findings.

On January 16, 1978, Officer Henricksen was told that he would be laid off effective January 31st, and he was so laid off. The letter informing him of his layoff contained no reference to any alleged economic reasons therefore. At the bargaining session on January 11, 1978, the City did not suggest to the Union that the demands presented would force the layoff of any member of the police force.

At a civil service hearing called to inquire into the circumstances of Officer Henricksen's layoff, Chief Green testified to the conversations he had with the mayor in November about the officers joining the Union and testified to the same effect as he did at the hearing in the instant case. The response of the mayor was to call him a liar in public, but the mayor did not, on that occasion, advance the three items he later urged as economic considerations prompting Officer Henricksen's layoff.

On January 31, 1978 the mayor caused a letter to be sent to Officer Henricksen stating that he was laid off for economic reasons, the economic justifications for the layoff being (1) the repeal of the sales tax on food; (2) a settlement with another police officer which would have to be paid in 1978; and (3) the cost to the city of repairing damage caused by a flood. We are unable to reverse the findings of the Examiner that each of these assigned economic justifications was pretextual, part of an after the fact rationalization for the layoff.

The sales tax on food had been repealed by vote of the people in November 1977 and was well known to the mayor and the city council prior to the adoption of the budget on December 5, 1977. The settlement with the former police officer was anticipated in the fall of 1977, and the approximate amount of the settlement were also known prior to the adoption of the budget. The flood occurred on December 2, 1977 three days before the budget was finally adopted. The mayor's professed inability to recall the date of this event, an event of obvious importance to the defense of the city's case and an event the date of which was, and is, readily verifiable from official records, clouds the city's entire case.

We are mindful that Chief Green was a former chief at the time he testified. But the testimony of Mr. Jacobson and the mayor's evasive testimony and lapses of memory make it impossible for us to reverse the findings of the Examiner.

The fact that Officer Henrickson was not advised of the threats testified to by former Chief Green until January is unimportant, since we are not concerned with threats which may have actually intimidated the police officers but with threats which suggest a discriminatory motive for the layoff of Officer Henricksen.

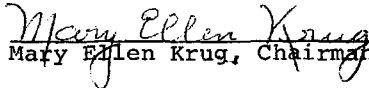
The mayor's survey in January of other cities of size comparable to Morton, which he testified indicated that the City of Morton had one more officer than the population indicated, is not persuasive as to the economic motivation for laying off Officer Henricksen. In the first place, the survey was not undertaken until after the budget had been adopted. In the second place, the budget provided for a police force consisting of a chief and three officers, and at the bargaining session on January 11, 1978, the mayor stated that the budget had been adopted and would not be altered. The layoff of Officer Henricksen

was an alteration of budget which the mayor had indicated on the 11th of January would not occur.

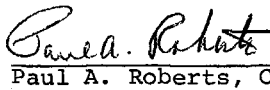
After reviewing the entire record, we affirm the findings of fact, conclusions of law and order of the Examiner.

We do note that the Examiner overlooked awarding interest on the back pay award as required by WAC 391-21-556(3). We hereby remedy that omission. The back pay awarded shall bear interest as required by the rules.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
Mary Ellen Krug, Chairman

  
Michael H. Beck, Commissioner

  
Paul A. Roberts, Commissioner

Signed September 7, 1978  
Issued September 8, 1978  
Re-issued September 12, 1978