STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED STAFF NURSES UNION, UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 141,	)	CASE 16444-U-02-4221
Complainant,	)	DECISION 8378-A - PECB
vs.	)	
GRANT COUNTY PUBLIC HOSPITAL DISTRICT 1, d/b/a SAMARITAN HEALTHCARE,	)	DECISION OF COMMISSION
Respondent.	)	

Kirk S. Bond, Attorney at Law, for the union.

Garvy, Schubert & Barer, by *Bruce E. Heller*, Attorney at Law, for the employer.

This case comes before the Commission on an appeal filed by Grant County Public Hospital District 1 (employer), seeking to overturn Findings of Fact, Conclusions of Law, and Order issued by Examiner J. Martin Smith. United Staff Nurses Union, United Food and Commercial Workers, Local 141 (union) supports the Examiner's decision. We affirm the Examiner's decision.

BACKGROUND

The employer operates a hospital and related health care facilities; the union represents the registered nurses working at that hospital.

On December 10, 2001, the union filed an unfair labor practice complaint alleging the employer had refused to bargain in good faith by declaring an impasse in the parties' collective bargaining negotiations. (Case 16139-U-01-4125.) The parties continued to participate in mediation through April 2002, and the employer's board considered a mediator's proposal at a meeting on May 6, 2002.

Shortly before May 6, 2002, the union served subpoenas upon several employer officials to compel their presence at the hearing in Case 16139-U-01-4125. During its meeting on May 6, the employer's board rejected the mediator's proposal.

This case concerns comments made by two employer officials shortly after the employer's board rejected the proposal on May 6. In its complaint filed on June 14, 2002, the union alleged that those comments interfered with, restrained and coerced public employees in violation of RCW 41.56.140(1), and that the employer refused to bargain in good faith by rejecting the mediator's proposal because of the subpoenas. Examiner J. Martin Smith issued a decision on February 2, 2004, agreeing with the union's allegations. The employer timely filed this appeal.

DISCUSSION

Standard of Review

This Commission reviews the findings of fact issued by examiners, to determine whether they are supported by substantial evidence. If so, the Commission reviews the conclusions of law issued by examiners to determine whether they are supported by the findings of fact. *Cowlitz County*, Decision 7007-A (PECB, 2000).

Interference with Statutory Rights

Applicable Legal Standards -

RCW 41.56.040 grants public employees the right to organize and designate representatives of their own choosing without the interference, restraint, coercion or discrimination from their employer. RCW 41.56.140(1) enforces the rights granted by RCW 41.56.040, by making it an unfair labor practice for employers to interfere with the exercise of employee rights. Employer communications to employees could be an interference unfair labor practice under any one, any combination, or all of the following criteria:

1. Is the communication, in tone, coercive as a whole?
2. Are the employer's comments substantially factual or materially misleading?
3. Has the employer offered new "benefits" to employees outside of the bargaining process?
4. Are there direct dealings or attempts to bargain with the employees?
5. *Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?*
6. Did the union object to such communications during prior negotiations?
7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

City of Seattle, Decision 2483 (PECB, 1986) (*emphasis added*). It is not necessary to show that the employer acted with intent or motivation to interfere, nor is it necessary to show that the employee involved actually felt threatened or coerced. The determination is based on whether a typical employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities. Even if non-coercive in

tone, a communication may be unlawful if it has the effect of undermining a union. *City of Seattle*, Decision 3566-A (PECB, 1991).

While an employer has free speech rights, its opposition to union activities cannot rise to the level of interference with or discrimination against employees for engaging in protected activities. *See Pasco Housing Authority*, Decision 5927-A (PECB, 1997). Any balancing of the employer's rights of free speech and the rights of employees to be free from coercion, restraint, and interference "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might more readily be dismissed by a more disinterested ear". *Town of Granite Falls*, Decision 2692 (PECB, 1987) (quoting *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)).

Application of Standards -

The employer argues that statements made to bargaining unit employees by Stephen Bibe, the assistant administrator for patient care at the hospital, were Bibe's own opinion, so that the Examiner erroneously found a violation of RCW 41.56.140(1). The employer also argues that no evidence was presented that these statements had any coercive effect on the members of the bargaining unit.

We reject the employer's claim that Bibe's statements did not constitute interference in violation of RCW 41.56.140(1). Bibe's comments were made during a regularly-scheduled staff meeting, when he stated that bargaining unit members needed the full picture regarding the subpoenaing of employer officials. Bibe continued by stating that it was his opinion that issuing the subpoenas was not the smartest thing to do. Although the employer attempts to

characterize Bibe's testimony as his own opinion, the applicable test is not how the employer characterizes the statement, but how the employee perceives the statement. Activities, statements, and knowledge of a supervisor are properly attributable to employers when the respondent does not establish a basis for negating the imputation of knowledge. *Pinkerton's Inc.*, 295 NLRB 538 (1989).

We also reject the employer's "no coercive effect" defense. Apart from the union having no obligation to show an actual coercive effect, the union's representative, John Aslakson, testified that several members of the bargaining unit presented concerns to him about the union's decision to serve the subpoenas and the effect it had on bargaining unit members. The record reflects and the testimony supports a finding that statements made by the employer regarding the issuance of the subpoenas were not well-received by members of the bargaining unit.

This Commission has previously held that employers must use caution when making statements to rank-and-file bargaining unit members as compared to statements made to union officials. In *City of Bremerton*, Decision 3843-A (PECB, 1994), a management official told a union official that management had ways of finding out about what occurred at union meetings. The Commission found that a reasonable union official familiar with the history of the bargaining unit would be able to hold a private meeting, and thus no interference could be found. Unlike the situation in *City of Bremerton*, the statements at issue in this case were made by an employer official to members of the bargaining unit.

The Examiner properly ruled that Bibe's statements regarding the union's issuance of subpoenas at the staff meeting constituted a violation of 41.56.140(1).

Refusal to Bargain

Applicable Legal Standards -

RCW 41.56.030(4) and Commission precedents clearly establish that parties have a duty to bargain in good faith. That requires parties engaged in collective bargaining to explain and provide reasons for their proposals, as well as for their rejection of proposals made by the other party. *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988); *aff'd* Decision 2350-D (PECB, 1989). RCW 41.56.140(3) specifically prohibits employers from discriminating in reprisal for pursuit of claims before this Commission.

Application of Standards -

At the conclusion of the employer's meeting on May 6, 2002, Bibe and Chief Administrator Keith Baldwin had a series of conversations with bargaining unit employees. In each case, the employer officials commented on the union's issuance of the subpoenas. Bargaining unit member Sandra Martin testified that Baldwin told her the union "could have had it all" and that the reason the employer rejected the mediator's proposal was because the union "served the board with papers." Martin testified that Bibe was standing behind Baldwin, nodding in agreement as Baldwin spoke. Neither Martin nor Bibe testified that Baldwin qualified the statement as his own opinion.

The employer argues that the evidence does not support the Examiner's finding that the comments by Baldwin and Bibe to bargaining unit members connecting the subpoenas and the rejection of the mediator's proposal constituted an unfair labor practice. The employer also asserts that the comments by Baldwin and Bibe were nothing more than speculation, since neither of them was

actually present when the board voted on the mediator's proposal. Finally, the employer argues that the Examiner ignored the testimony of two of its board members, who stated that the issuance of the subpoenas had no effect on the decision to reject the contract.

We reject the employer's assertions that Baldwin and Bibe were merely speculating, and cannot be attributed to the employer. We agree with the Examiner that the statements made by two senior officials of the employer represent admissions-against-interest by the employer. Although Baldwin and Bibe both testified that they thought they were giving their own opinions during their conversations with Martin, neither of them expressly told Martin that they were expressing personal opinions.

With regards to the testimony of Ballinger and Frick, it cannot be said that the Examiner ignored that evidence, rather he simply found that the statements were not credible.

An analogous situation to the instant case occurred in *Glenroy Construction Co., Inc.*, 215 NLRB 866 (1954), where an employer was found liable for statements made a supervisor. In *Glenroy*, an employee laid off for nondiscriminatory reasons filed a complaint with the NLRB based on his discharge. The employee's union representative complained to the employer, and subsequently arranged to have the employee reinstated. However, no one properly informed the employee of his reinstatement. When the employee contacted his supervisor about returning to work, the supervisor told him that he did not want him back "for filing them charges." The NLRB found a violation, holding employers are bound by their supervisor's statements.

Based on the evidence presented, we conclude that the employer bargained in bad faith in violation of RCW 41.56.140(4) and (1).

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued in the above-captioned matter by Examiner J. Martin Smith are affirmed and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, the 29th day of October, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

JOSEPH W. DUFFY, Commissioner

PAMELA G. BRADBURN, Commissioner