Mason County, Decision 7048 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| MERRY L. QUY, Complainant, | ) | CASE 14784-U-99-03717 |
| vs. | ) | DECISION 7048 - PECB |
| MASON COUNTY, Respondent. | ) | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

Law Offices of Paul H. King, by John Scannell, Rule 9 Legal Intern, appeared on behalf of the complainant.

Gary P. Burleson, Prosecuting Attorney, by Michael Clift, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On September 15, 1999, Merry L. Quy filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Mason County (employer) as respondent. Quy is identified as an employee of the Mason County Auditor's Office, and her complaint concerns actions by the county auditor, Allen Brotche. A preliminary ruling was issued on November 3, 1999, finding a cause of action to exist on allegations of:

> Employer interference with employee rights, in violation of RCW 41.56.140(1), by the employer's refusal to permit Merry L. Quy to have union representation at an investigatory interview held by her supervisor on May 25, 1999, where the employee feared "she might be disciplined" for a previous incident.

The undersigned was designated as Examiner. The employer filed its answer on November 24, 1999, and a hearing in the matter was held on January 28, 2000. The parties filed post-hearing briefs by April 3, 2000, to complete the record.

On the basis of the evidence presented and the record as a whole, the Examiner concludes that the meeting held on May 20, 1999, was not an investigatory interview, and that the evidence fails to establish that Quy reasonably believed that she was being investigated for disciplinary action. Therefore, the allegation that the employer interfered with Quy's right to union representation was not proven. The complaint is dismissed.

## BACKGROUND

Mason County is organized along traditional lines for county governments in Washington. County Auditor Allan Brotche was elected to office by popular vote, and has held that office for more than 10 years. Licensing Supervisor Jacqueline D. Burnett reports to Brotche. Both Burnett and Brotche have their offices at the county seat, in Shelton, Washington.

Merry L. Quy has been employed in the Mason County Auditor's Office for approximately 10 years. During all of that time, she has been the manager of a branch office located in Belfair, a small community approximately 25 miles north and east of Shelton. She has reported to Burnett for approximately the past year and a half. Her current title is "licensing deputy III".

As the office manager at Belfair, Quy is responsible for auto licensing, marriage licensing, voter registration, and title

transfers. One other county employee works in the Belfair office. Quy and the other employee at Belfair are both covered by a collective bargaining agreement between the employer and the Washington State Council of County and City Employees.[1]

In May of 1998, it was decided that Burnett, Brotche, and Quy should have monthly meetings in Shelton, to further communications between the Belfair and Shelton offices. On June 15, 1998, Burnett sent a memo concerning the first of those meetings, as follows:

> Please report to Shelton for work all day (8-5) on Tuesday, June 23rd. We can include our monthly discussion of any areas that need discussion. ...

Thereafter those meetings appear to have followed a pattern of open discussion, without a formal agenda prepared in advance of the meeting. According to Burnett, the three met monthly, except when canceled by Quy or when Brotche could not be present.[2]

## Conversation Regarding Parking Lot Paving

On April 29, 1999, Brotche called Quy to discuss paving of the parking lot at the Belfair office. He had been contacted by the employer's maintenance and facilities manager, who asked why a previously-scheduled paving project had been canceled. Brotche knew nothing about the situation, and he called Quy to get more information.

Brotche and Quy provided very different versions of their conversation: Quy testified that she believed Brotche was accusing her of

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[1] The union did not represent Quy in this matter.

[2] Brotche was away for a conference in June of 1999.

unilaterally canceling the paving job, that she "rebuked" him, and that she felt he was "[V]ery much threatening about the incident." Furthermore, Quy testified that she believed Brotche was sufficiently adamant with her that she expected he would take disciplinary action against her. In contrast, Brotche testified that he asked Quy what had happened with regard to the scheduled paving of the office parking lot, that she responded that she and the contractor had discussed the amount of business at the office on the scheduled day, that Quy stated that the contractor had decided to reschedule the job to a day when the office was less busy, and that Quy was not accused of doing anything wrong.

The Meeting on May 20, 1999

Nothing further came of the discussion concerning the paving of the parking lot until the next regular monthly meeting between Brotche, Burnett, and Quy. That meeting occurred on May 20, 1999.

When she arrived for the meeting, Quy was accompanied by Kathy Hibbert, an employee of the auditor's Shelton office who is a union shop steward. Brotche was not present at the outset of the meeting, but arrived approximately one hour after it began. After explaining and apologizing for his delayed arrival, Brotche asked why Hibbert was attending the meeting. Quy stated that she wanted Hibbert in the meeting as her union representative, and that she had a right to union representation at any meeting.

Brotche recessed the meeting and consulted with the employer's personnel director, Charles "Skip" Wright. Upon his return from talking with Wright, Brotche insisted that Hibbert be excused from the meeting. Brotche further stated that he would consider Quy to be insubordinate, and would take disciplinary action against her, if she insisted that Hibbert remain in the meeting.

Hibbert left the meeting. The monthly meeting between Brotche, Burnett, and Quy then went forward in a routine manner, without any further discussion of disciplinary action. Quy then filed the complaint to initiate this unfair labor practice proceeding.

## POSITIONS OF THE PARTIES

Based on the fact that there was no set agenda for the monthly "communications meeting" between herself and her supervisors, and because of her conversation with Brotche about the parking lot paving project, Quy contends that she had a reasonable expectation that what she said in the meeting held on March 20, 1999, would be used against her. She further asserts that Brotche's threat of disciplinary action if Hibbert did not leave the meeting increased her belief that she was going to be disciplined.

The employer asserts there was no objective basis for Quy to believe that the routine monthly meeting was to be an investigatory interview or was to involve any disciplinary action. The employer points out that the paving issue was not raised by Brotche at the meeting, and was discussed only when raised by Quy at the end of the meeting.

## DISCUSSION

### The Statutes

As was recently outlined in the decision issued by this Examiner in Cowlitz County, Decision 7037 (PECB, 2000), RCW 41.56.040 delineates the right of public employees to organize and be free from interference in exercise of their collective bargaining rights:

> No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

The Supreme Court of the State of Washington has ruled that Chapter 41.56 RCW is to be liberally construed to effect its purpose of implementing the right of public employees to join and be represented by labor organizations. Nucleonics Alliance v. Washington Public Power Supply System, 101 Wn.2d 24 (1984). See, also, Municipality of Metropolitan Seattle v. PERC, 118 Wn.2d 621 (1992).

Enforcement of the statutory rights conferred in RCW 41.56.040 is through the unfair labor practice provisions of the statute. RCW 41.56.140 enumerates unfair labor practices by public employers:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> (4) To refuse to engage in collective bargaining.

The Commission has jurisdiction to determine and remedy unfair labor practice claims. RCW 41.56.160. The burden of proof in an unfair labor practice proceeding rests with the complaining party, and must be established by a preponderance of the evidence. WAC 391-45-270.

Interference Allegations -

To establish an "interference" violation under RCW 41.56.140(1), a complainant need only establish that an employer engaged in conduct which employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. City of Seattle, Decision 3066 (PECB, 1989); affirmed Decision 3066-A (PECB, 1989). See, also, City of Pasco, Decision 3804-A (PECB, 1992), and cases cited therein. A showing that the employer acted with intent or motivation to interfere is not required. Nor is it necessary to show that the employees concerned were actually interfered with or coerced. It is not even necessary to show anti-union animus for an interference charge to prevail. Clallam County v. Public Employment Relations Commission, 43 Wn.App. 589 (1986).

The Right to Union Representation -

Cowlitz County, supra, provides a historical account of precedents applicable in this case, some of which is repeated here:

Affirming a decision of the National Labor Relations Board (NLRB), the Supreme Court of the United States ruled in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), that an employee's rights under the National Labor Relations Act (NLRA) are violated where:

(1) The employee reasonably believes that a meeting called by management is for the purpose of eliciting information which might support potential disciplinary action;

(2) the employee requests union representation, and

(3) the request for representation is denied.

The basic premise of Weingarten is to insure that an employee may have the assistance of the exclusive bargaining representative in

circumstances where the employee may be too intimidated, inarticulate, or unsophisticated to properly present the facts in an investigatory setting. Such requests for assistance are regarded as being part of the employee's statutory right to a representative of his or her own choosing, and the denial of the request is deemed to be an unlawful interference with such rights. An employee must specifically request representation and may waive that right.

The Public Employment Relations Commission has adopted the Weingarten policy as applicable under state collective bargaining laws which parallel the NLRA. See, Okanogan County, Decision 2252-A (PECB, 1986). The Commission has previously rejected employer attempts to distinguish what have been termed "voluntary" and "non-investigatory" meetings, and has imposed extraordinary remedies upon an employer which committed repetitive violations. See, City of Seattle, 3593-A (PECB, 1989).

The right to union representation applies to an interview which turns into an investigatory session, even if it was originally convened (and/or announced) to advise the employee of previously determined discipline, Gulf State Manufacturing v. NLRB, 704 F.2d 1390 (5th Cir. 1983). Kennewick School District, Decision 5632-A (PECB, 1996). Particularly relevant in the this case, the existence of reasonable grounds for concerns about potential discipline is **not** predicated upon the subjective perceptions of individuals in each case, but upon objective standards based upon all of the circumstances of the particular case. Spartan Stores, Inc. v. NLRB, 628 F.2d 953 (6th Cir. 1980). Thus, the Commission affirmed a violation where an employer refused a request for a union representative at an "investigatory" meeting where the employee had a **reasonable** belief the interview could lead to disciplinary action against him. City of Seattle, Decision 3593-A (PECB, 1991).

## Application of the Legal Standard

In this case, the record does not support a conclusion that Quy had an objective basis for concern, either prior to or during the meeting held on March 15, 1999, that a disciplinary investigation is going to take place. Thus, the principles enunciated in Weingarten and subsequent decisions do not apply here.

Lack of Reasonable Cause for Concern -
Quy testified that she believed she was going to be disciplined at the May 20 meeting for having canceled the scheduled parking lot paving project, and that she would need union representation at that meeting. She argues that she had a reasonable belief that the interview was going to be used against her, because Brotche had recently questioned her about the paving project. That testimony and argument is not persuasive, however.

First, the conversation between Quy and Brotche about the parking lot paving project occurred on April 29, 1999, fully three weeks prior to the meeting held on May 20, 1999.

Second, Quy's testimony characterizing the parking lot paving project as having been "canceled" overstates the situation. The evidence indicates the paving project was merely rescheduled to a day when there would be fewer customers at the Belfair office. There seem to have been valid concerns about heavy traffic on the day originally set for the paving, and the evidence does not support an inference that either the contractor, the county engineer, or Brotche were particularly inconvenienced or upset by the change.

Third, there had been no conversation or events during the intervening period which provided any basis for Quy to anticipate an investigatory interview on May 20 concerning the paving project.

Fourth, the May 20 meeting was scheduled as a routine, monthly meeting between Brotche, Burnett, and Quy.

Fifth, as was customary, there was no advance agenda for the May 20 meeting. In fact, there was no indication that the monthly meeting was to be anything other then the regularly-scheduled session held in a continuing series to maintain and/or improve communication between the Shelton and Belfair offices.

Given the surrounding circumstances, there was no objective reason for Quy to have asserted a right to union representation under the Weingarten precedents.

The Meeting was not Converted to "Investigatory" -
Nothing occurred at the May 20 meeting to convert that routine session into an investigatory interview, or to indicate that any disciplinary action was being considered by the employer. Brotche did not even raise the paving job as a subject for discussion, and it was only raised by Quy herself, at the end of the meeting. Even then, it was only discussed in a context of being an example of communications issues between the two offices. Those facts make this case substantially different from Cowlitz County, supra, and other cases where employer officials have converted meetings called for other purposes into investigatory interviews.

Alleged Violation of Contractual Rights -
Although the subject was not pursued in the complainant's brief, Quy testified that she believed having Hibbert accompany her to the May 20 meeting was in compliance with specific language in the collective bargaining agreement covering her employment. She pointed to language found in Article XV, Section 1, as follows:

> Employees shall have the right to Union representation.

Quy referred to the contract during the May 20 meeting, and Hibbert recorded in her notes of that meeting:

> [Quy] said that per the union agreement that she had a right to union representation at any meeting.

Apart from there being a debatable question about whether that contract language was intended to provide employees a right to union representation at ***any and all*** meetings with employer officials, it is not necessary to decide such a question here. Numerous Commission decisions have stated and reiterated that the Commission, does not assert jurisdiction to remedy violations of collective bargaining agreements through the provisions of the unfair labor practice procedures of Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976). If Quy wanted to enforce her rights under the collective bargaining agreement, the appropriate recourse for her would have been to pursue a grievance under the grievance and arbitration machinery of the contract itself.

The Threat of Disciplinary Action -

Quy now asserts that Brotche committed an "interference" violation under RCW 41.56.140(1) by threatening her with discipline for insubordination if she did not forgo having her shop steward in the May 20 meeting. The evidence does not support that claim, however.

According to Hibbert's notes of the May 20 meeting, Quy wanted union representation because she believed that she had a contract right to such representation, not because she believed that she was under any threat of imminent discipline. As indicated above, Quy had no objective evidence or basis for concern that Brotche intended to use the meeting as an investigatory interview in anticipation of imposing any disciplinary action upon Quy.

Brotche's mention of insubordination concerned Quy's insistence on having Hibbert present in the meeting, rather than any issues about the April 29 conversation concerning the paving project.[3] From her testimony, it is apparent that Quy's request for union representation at the May 20 meeting was probably reflective of ongoing concerns on her part about her relations with Brotche.[4] Such concerns neither provide basis for her to be insubordinate about a request outside of her Weingarten rights, nor protect her from the consequences of her own misconduct.[5]

## FINDINGS OF FACT

1. Mason County is a county of the State of Washington, and is a public employer within the meaning of the Public Employees' Collective Bargaining Act.

2. Merry L. Quy is an employee of Mason County who works in the Belfair office of the Mason County Auditor's Office. Her position is covered by a collective bargaining agreement between the employer and the Washington State Council of County and City Employees.

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[3] In his brief, Quy's representative argued, "[Y]et the affected employee was threatened with termination if she exercised her right to terminate the meeting." None of the witnesses testified of any threat of termination; the record does not support the suggestion that Quy attempted to terminate the May 20 meeting.

[4] When asked if Brotche had ever disciplined her, Quy responded: "No, he hasn't, but I always felt there was a possibility."

[5] Even if she had a contractual right to union representation at the May 20 meeting, an "obey and grieve" standard is customarily applied where employees have disagreements with their supervisors.

3. Quy's immediate supervisor is Jackie Burnett, who reports to the Mason County Auditor, Al Brotche. Burnett and Brotche have offices at the county seat in Shelton, Washington.

4. In 1998, Brotche, Burnett, and Quy began having monthly meetings to maintain or improve communications between the Shelton and Belfair offices. It was not their practice to establish or have an agenda in advance of those meetings.

5. Prior to or on April 29, 1999, Quy had a conversation with a contractor who had been scheduled to pave the parking lot at the Belfair office on April 29, 1999. During that conversation, Quy indicated that the day scheduled for the work was one of the busiest days of the month for that office. The contractor then rescheduled the paving project for a different date.

6. In a telephone conversation on April 29, 1999, Brotche questioned Quy about the rescheduling of the paving project. Quy and Brotche gave conflicting testimony regarding that conversation: Quy testified that Brotche had accused her of canceling the paving project, that she "rebuked" Brotche, and that she had felt that he was "...very much threatening about the incident"; Brotche testified that he merely asked what had happened concerning the paving project, and whether Quy had asked to have the paving rescheduled.

7. Brotche, Burnett, and Quy were scheduled to have their regular monthly meeting on May 20, 1999, in Shelton. Quy brought a union shop steward, Kathy Hibbert, with her to that meeting. During the course of that meeting, Brotche stated that there was no reason for a union representative to be present, as no disciplinary or corrective action was to be taken. Brotche

then ordered Hibbert to return to her duties, and threatened Quy with disciplinary action if she insisted upon a union representative in the meeting. Hibbert left the meeting.

8. The May 20 meeting continued without any interrogation of Quy concerning matters that were or could be a basis for disciplinary action against her. The telephone conversation concerning the paving project was not raised by Brotche or Burnett, and was discussed at the end of the meeting only after Quy cited it as an example of ongoing communication problems between the two offices.

9. No disciplinary action was imposed upon Quy, either as a result of her conversation with Brotche on April 29, 1999, or as a result of the meeting on May 20, 1999.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Merry L. Quy had no objective reason to believe that the regularly scheduled meeting to be held between herself and her supervisors on May 20, 1999, was to include an investigatory interview on matters for which she might be subject to disciplinary action, so that she did not have a right to union representation at that meeting and Mason County did not violate RCW 41.56.140(1) by denying her request for union representation at that meeting.

3. The Examiner has no jurisdiction to determine the merits of Quy's claim that she had a right to union representation at the meeting held on May 20, 1999, or any other meeting between

herself and her employer, inasmuch as the Commission does not assert jurisdiction under RCW 41.56.140 through 41.56.160 to remedy violations of collective bargaining agreements.

## ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED on its merits.

Issued at Olympia, Washington, on the 9th day of May, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WA 98504-0919



## RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 7048 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, POSTAGE PREPAID, ADDRESSED TO THE PARTIES AND THEIR REPRESENTATIVES LISTED IN THE DOCKET RECORDS OF THE COMMISSION AS INDICATED BELOW:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ REBECCA AMES

CASE NUMBER: 14784-U-99-03717 FILED: 09/15/1999 ISSUED: 05/09/2000

FILED BY: PARTY 2 DISPUTE: ER INTERFERENCE DETAILS: Er. refused to allow union rep at investigatory mtg.

COMMENTS:

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| Employer: | MASON COUNTY | MICHAEL E CLIFT |
| Attn: | MASON COUNTY COMMISSIONERS<br>PO BOX 639 | MASON COUNTY<br>P O BOX 639 |
| | SHELTON, WA 98584<br>360-427-9670 | SHELTON, WA 98584<br>(360) 427-9670 |
| Rep by: | ALLAN BROTCHET<br>MASON COUNTY<br>P. O. BOX 400<br>SHELTON, WA 98584<br>(360) 275-4467 | |
| Party # 2<br>Attn: | MERRY L QUY<br>PO BOX 2096 | JOHN SCANNELL<br>LAW OFFICES OF PAUL H. KING<br>318 6TH AVE S #117 |
| | BELFAIR, WA 98528<br>360-275-5067 | SEATTLE, WA 98104<br>(206) 624-3685 |
| Rep by: | | |