

King County Public Hospital District 2 (SEIU Local 6), Decision 9056 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY PUBLIC HOSPITAL)	
DISTRICT 2 (EVERGREEN HOSPITAL),)	
)	
Employer.)	
-----)	
ANDREA SHEAHAN,)	
)	
Complainant,)	CASE 18889-U-04-4799
)	
vs.)	DECISION 9056 - PECB
)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 6,)	
)	
Respondent.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
)	
)	

Kimberly K. Geariety, Attorney at Law, for the complainant.

Geoff Miller, Staff Counsel, with Douglas Drachler & McKee, by *Martha Barron*, Attorney at Law, for the respondent.

On October 18, 2004, Andrea Sheahan filed the complaint herein, charging unfair labor practices with the Public Employment Relations Commission naming Service Employees International Union, Local 6 (union) as respondent. A preliminary ruling on the complaint was issued on November 12, 2004, and in case 18910-U-04-4809 by Marvin L. Schurke, Executive Director of the Commission. In the instant case the preliminary ruling held that if Sheahan established that Justin Smith was a union official and made a threat of "assassination" and/or other threats against Sheahan

relating to the filing and processing of a decertification petition, a cause of action would be stated against the union for interference with employee rights in violation of RCW 41.56.150(1). In the second case the preliminary ruling held that assuming the facts alleged were true and provable it stated a cause of action for employer discrimination in violation of RCW 41.56.140(1), by the action of King County Public Hospital District 2 (Evergreen Hospital) (employer), in discharging Smith for comments he made in a phone call placed to Sheahan in September 2004. The comments by Smith in that conversation form the basis for the threat allegations herein.

The two cases were consolidated for hearing on February 15 and 16, 2005, before Examiner Vincent M. Helm. At the hearing it was made clear that while the two cases were bifurcated as to testimony and parties, evidence relevant to either case would be considered without regard to when received during the hearing process. The parties filed post-hearing briefs on May 3, 2005.

ISSUES PRESENTED

Issue 1: Was Justin Smith acting as an agent of the union when he made comments to Andrea Sheahan in a telephone conversation he initiated on September 11, 2004?

Issue 2: If the answer to Issue 1 is in the affirmative, did Smith's comments constitute threats by the union which interfered with employee rights in violation of RCW 41.56.150(1)?

The Examiner finds the union did not violate RCW 41.56.150(1)

because comments made by Smith to Sheahan were not within the authority granted to union stewards and were not ratified expressly or impliedly by the union. In view of the foregoing, Issue 2 need not be decided.

ANALYSIS

Issue 1: Was Justin Smith acting as an agent of the union when he made comments to Andrea Sheahan in a telephone conversation he initiated on September 11, 2004?

Decisions under the Labor Management Relations Act (LMRA) are persuasive in interpreting state labor statutes which are similar to the LMRA. *Nuclear Alliance v. WPPSS*, 101 Wn.2d 24 (1981). Since the prohibition against union interference set forth in RCW 41.56.150(1) is a paraphrase of the language found in Section 8(b)(1) of the LMRA, it is appropriate to consider cases arising under that act. *Seattle School District*, Decision 7349 (PECB, 2001); *King County Fire District 4*, Decision 1369 (PECB, 1982).

Common law agency standards determine whether an agency relationship has been established in finding liability under the LMRA. *Battle Creek Health System*, 2004 WL 1091058 (NLRB). In *Kitchen Fresh Inc. v. NLRB* 716 F.2d 351, 114 LRRM 2233 (6th Cir., 1983), the court noted that determining agency status involves a question of fact with the burden of proof being upon the party asserting that an employee is an agent of the union. The court cited extensive authority for the following propositions:

- As a general rule a union is not bound by the actions of an employee absent a common law agency relationship.

- A finding of an agency relationship requires proof that the union authorized, solicited, instigated, ratified, adopted, or condoned the employee's words or deeds or that the union has provided indicia to third parties manifesting apparent authority on the part of the employee to bind the union.
- At the very least the party urging the agency relationship must show actions on the part of the union that unequivocally demonstrated to employees the apparent authority to perform the complained of acts on behalf of the union coupled with a failure by the union to clearly repudiate the unlawful activity once it became aware of the conduct. *Battle Creek Health System*, and cases cited therein.

In *Tyson Fresh Meats, Inc.*, 2004 WL 2967808 (NLRB), the National Labor Relations Board (NLRB), citing *Battle Creek Health System*, and *Bio-Medical Applications of Puerto Rico, Inc.*, 269 NLRB 827 (1984), noted the general agency rules that a principal is responsible for its agents acts where performed in furtherance of the principal's interest and within the scope of authority which would be normally attributable to the agent. Where stewards are given extensive authority by contract or practice with respect to union matters there is a greater likelihood of union liability for the acts of a steward. A union has been held liable for acts of its members or stewards where the acts of those individuals have consisted of open and flagrant misconduct and the union has not disavowed such activities. *Battle Creek Health System; NLRB v. Bulletin Co.*, 443 F.2d 863 (3rd Cir., 1971), cert. denied, 404 U.S. 1018 (1972). The NLRB has noted, however, that no authority to threaten violence is either expressed or can be implied from the limited authority normally conferred upon stewards with respect to performance of union duties. *Communications Workers Local 9431*,

304 NLRB 446. A union will not be held responsible where a steward acts on his/her own, outside of any express, implied, or apparent authority to be acting as a union agent. *NLRB v. Shen-Valley Meat Packers, Inc.*, 211 F.2d 289 (4th Cir. 1954). General concepts set forth above with respect to liability of a union for actions of its stewards have also been endorsed by the U.S. Court of Appeals for the Ninth Circuit. See *NLRB v. Longshoremen's Union*, 283 F.2d 558 (9th Cir. 1960)

Service Employees International Union (SEIU) adopted an initiative at its national convention in 2000. The jurisdiction of local unions were realigned in an effort to most effectively represent employees in various industrial or service segments of the economy. In furtherance of this policy the SEIU national executive board in November 2002 determined that all health systems/acute care and mental health bargaining units represented by the union would be transferred to SEIU District 1199 NW (1199). A written transfer agreement was entered into by the union and 1199 effective February 5, 2003. At the same time and effective the same date the two entities executed a servicing agreement. This agreement provided that 1199 would assume responsibility, as the agent of the union, for collective bargaining negotiations, labor contract administration, grievance adjustment, arbitration, and representation of bargaining unit members covered by the transfer agreement.

A bargaining unit of clerical and service employees of the employer transferred under the foregoing agreement. The union stewards in the bargaining unit involved did not support that transfer. Andrea Sheahan had been a union steward and conference committee member in the bargaining unit until September 3, 2004. She and another union steward filed a petition with the Commission to decertify the union

as bargaining representative on August 31, 2004. The petition included Sheahan's cell phone number as the telephone number of the contact person. The space on the form to indicate the name of the contact person was blank.

On August 17, 2004, the employer notified the presidents of the union and 1199 by letter that effective that date no employee of 1199 could be on employer premises unless (they were) a patient or visiting a patient. Similar correspondence was transmitted by the employer to the union on September 9, 2004, and to 1199 on September 28, 2004. During the foregoing periods the employer's security escorted employees of 1199 from the employer's premises and the employer called local police in connection with 1199 employees' attempts to be on the employer's premises for representation purposes.

On September 2, 2004, 1199 staff representatives met with certain bargaining unit employees of the employer, who had indicated an interest in serving as members of the union bargaining team. Justin Smith attended the meeting. During the meeting, Johnathan Rosenblum, the head of internal organizing and the individual appointed to lead 1199 negotiations with the employer, advised the employees that union stewards had filed a decertification petition and would have to be replaced. He further said that the employees in attendance at this meeting would be designated as stewards.

Smith testified he advised those in attendance that he would not accept an appointment as steward. Two employees of 1199 who were present at the meeting did not corroborate this at the hearing. On September 3, 2004, the president of the union sent a letter to the

employer indicating Smith was a steward. Smith verbally conveyed his refusal to be a steward to an 1199 representative with whom he met on September 11, 2004, shortly before his phone call to Sheahan. Smith later sent the union a letter containing his resignation as steward. That letter was mailed sometime after September 11, 2004, and was received September 23, 2004. The union admitted in its answer that Smith was a steward on September 11, 2004.

In the September 11, 2004, meeting, 1199 representative Suely Ngouy met with Smith to update him on what had transpired at a September 9, 2004, bargaining team meeting which Smith did not attend. During the meeting with Ngouy, Smith conveyed his refusal to function as a union steward noted above. Ngouy informed Smith that leaders of the decertification effort had sent a letter to the homes of employees and noted she had not seen the letter.

Following this meeting Smith went home and read the letter from the six former stewards now leading the decertification effort. Upon reading the letter, Smith accessed the Commission website and located the decertification petition filed by Sheahan and a fellow employee. From that document he obtained the phone number listed for contact person.

Based upon the foregoing evidence I conclude that at the time of Smith's phone call to Sheahan on September 11, 2004, he in fact was a steward for the union. This conclusion is predicated upon:

- the union's answer to the complaint;
- the failure of any corroboration for Smith's assertion that at the September 2, 2004, meeting he voiced his refusal to accept

the position of steward;

- his failure to communicate his resignation as steward to any responsible union official prior to his resignation letter received by the union on September 23, 2004;
- his admission that the resignation letter was written after the telephone conversation with the plaintiff on September 11, 2004; and
- the resignation letter does not support Smith's contention that he had declined to accept appointment as a steward but rather indicates that he had functioned as a steward and would no longer function as such.

The next question that needs to be answered is whether the union is responsible for Smith's comments in his conversation with Sheahan on September 11, 2004. The resolution of this issue involves consideration of the authority of a union steward; the union's actions or failure to act with respect to either authorizing or ratifying Smith's contact with Sheahan and his statements to the complainant; and Smith's intent with respect to contacting the complainant.

The normal functions of a union steward are to represent the union's interests in administering the collective bargaining agreement in the workplace including representing employees and enhancing relationships with employees and employer representatives. Those functions do not encompass threatening employees for exercising rights protected by the statute. Indeed Smith noted in his testimony he was a union steward for the postal workers union for a number of years and that he had been taught that he should not threaten employees. Smith, it should be noted, was employed

full time by the U.S. Postal Service and worked for the employer on a part-time basis as a janitor.

Smith testified without contradiction that he placed the telephone call to the complainant on September 11, 2004, on his own initiative, without any encouragement from, or a request by, any union representative to do so. Moreover, the lead organizer for 1199, Denise Baeza testified that the union was not contacting any bargaining unit employees directly because of the negative effect of prior efforts at employee home contact. Ngouy also testified that when she advised Smith to look for a letter from the decertification committee, she did not tell him to contact Sheahan or what to say if he did. Smith testified the purpose for his telephone call was to ascertain how the leaders of the decertification effort obtained his home address and to obtain answers to questions produced in his mind by the contents of the letter. Moreover, Smith believed he was not a union steward.

While elements of the conversation between Smith and Sheahan are sharply disputed, it is fair to state the conversation at times was heated and that in essence Smith manifested strong opposition to the decertification effort. Smith did not indicate in the conversation that he represented the union or threaten any retaliatory action on the part of the union toward Sheahan.

In assessing union responsibility for Smith's actions, I conclude that Smith did not tell Sheahan that he held any position with the union or was calling with the union's knowledge or approval. While Sheahan believed Smith was in fact a paid staff representative of the union, there was nothing other than conjecture on her part to support this belief. Sheahan did not know of Smith's relationship

to the union because Smith did not truthfully advise her as to his identity.

While Smith contends he identified himself to Sheahan as Justin Smith, I do not credit this contention. Sheahan on two different occasions, within hours of the telephone call, told a police officer and a security guard that the caller had identified himself as Keith. I find no motivation for Sheahan to fabricate in this regard. I believe her recollection, recorded over a week after the telephone call, relative to Smith also providing a last name which she only partially comprehended, might have been assisted by the employer in the interim providing her with the full name of a janitor in environmental services with the first name Keith. The existence of such an employee, not a union member, and who had incidental contact with Smith may have been the catalyst for Smith using that name. In any event the record is clear that Smith deliberately failed to provide Sheahan with his true name and thus effectively kept her from being aware of his relationship to the union.

No representative of the union knew that Smith placed a telephone call to Sheahan until October 4, 2004, when employer representatives met with Smith and his representative Baeza. At this meeting the circumstances of the telephone call to Sheahan were reviewed prior to the employer imposing discipline upon Smith for his comments. Between September 11 and October 4, Baeza had heard rumors from Ngouy and a union bargaining team member that either a 1199 staff representative or a bargaining unit employee had threatened one or more employees. Whenever this subject came up, Baeza stated an employee of the union would not threaten employees or encourage anyone else to do so. She also requested that she be

informed of any specific allegation. A bargaining team member also told 1199 representative Ngouy that Sheahan had been threatened by a union member or a staff representative. Ngouy reported this to Baeza. Baeza contacted the bargaining team member who had talked to Ngouy and learned that individual had no knowledge as to who had been threatened, but had assumed it was complainant.

CONCLUSION

Based upon the foregoing, I conclude there is no evidence that Smith was acting as a union agent during the course of his telephone conversation with Sheahan on September 11, 2004. To the contrary, I conclude he was acting on his own behalf. Moreover, no subsequent action of the union constituted ratification or adoption of any statements he made to her. Indeed, upon every opportunity the union reaffirmed to employees its opposition to threats by its representatives or others. Accordingly, any statements made by Smith to Sheahan in their telephone conversation, regardless of the exact words used by him, do not bind the union and do not support a finding that the union violated the statute.

FINDINGS OF FACT

1. King County Public Hospital District 2 (Evergreen Hospital) is a "public employer" within the meaning of RCW 41.45.030(1).
2. Service Employees International Union, Local 6, is a "bargaining representative" within the meaning of RCW 41.56.030(2).
3. Complainant, Andrea Sheahan, is a "public employee" within the meaning of RCW 41.56.030(2).
4. At all times relevant herein the union was the bargaining

representative for a unit of certain employees of the employer.

5. On August 31, 2004, Sheahan, along with Caroline Lindley, both employees of the employer, filed a petition with the Public Employment Relations Commission to decertify the union as the bargaining representative for the bargaining unit represented by the union employed at the employer's facility.
6. At the time of the filing of the petition, Sheahan was a union steward and conference committee member for the bargaining unit described in paragraph (4) above.
7. On September 2, 2004, the union designated Justin Smith, a part time employee of the employer and a bargaining unit member, to be a union steward. Throughout the period of time relevant here, the union held Smith out to be a steward. Smith, at no time relevant herein, took effective action to rescind this status. Accordingly, Smith was a union steward on September 11, 2004.
8. On September 3, 2004, the union removed Sheahan from her position as steward and conference committee member.
9. The decertification petition was prompted principally by agreements in February 2003, between the union and Service Employees International Union, District 1199 NW adopted in response to an initiative by Service Employees International Union whereby representation of bargaining unit employees of the employer and union memberships of such employees was transferred from the union to 1199 effective February 5, 2003, without any provision being made for bargaining unit employees to vote on the matter.

10. On August 17, 2004, the employer advised the union and 1199 that it would not deal with employees of 1199 in connection with representation of the union's bargaining unit and would not permit employees of 1199 to be on employer premises except as a patient or to visit a patient. The employer thereafter rigorously enforced its position.
11. Smith, on September 2, 2004, in addition to being designated as a union steward, was selected to serve on the union's negotiating committee for upcoming contract negotiations with the employer.
12. On the afternoon of September 11, 2004, Smith met with a staff representative of 1199 to be informed of what transpired at a meeting of the union negotiating committee which he had been unable to attend. In the course of this conversation he was advised to look for a letter to employees from leaders of the decertification effort.
13. Upon returning home, Smith opened and read the letter referenced above. He then went to the Commission website and located the decertification petition noted in paragraph 5 above. He thereafter placed a call to the contact number listed on the petition which was Sheahan's cell phone.
14. Smith and Sheahan engaged in a telephone discussion on September 11, 2004, wherein Smith misrepresented his identity but in no way indicated that he was calling on behalf of the union, representing the union, or that the union would take any action against Sheahan.
15. Sheahan did not recognize Smith's voice and, in spite of Smith's representation that he was an employee, believed Smith

to be an individual employed as a staff representative by 1199.

16. In the telephone conversation Smith vigorously opposed the decertification effort and made comments alleged by Sheahan to constitute threats of physical harm.
17. Between September 11, 2004, and October 4, 2004, there is no evidence the union had knowledge of Smith's telephone conversation with Sheahan.
18. The union through various 1199 staff representatives had knowledge that an unidentified employee of 1199 or an employee of the employer had threatened one or more employees of the employer, one of whom might have been Sheahan.
19. Restrictions placed by the employer upon 1199 employees' access to the employer's premises impeded efforts by 1199 to ascertain the facts upon behalf of the union.
20. When an employee informed an 1199 representative of the rumor that threats had been made, the 1199 representative responded that the union would not threaten employees or encourage others to do so on its behalf. Employees were also urged to advise 1199 representatives if any new information relative to the matter came to their attention.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter to decide the unfair labor practice allegations against the union pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The union did not violate RCW 41.56.150(1) by virtue of any statements made to Andrea Sheahan by Justin Smith on September 11, 2004, as they were made on his own behalf and were not authorized or ratified by the union.

ORDER

The complaint charging unfair labor practices in the above captioned matter is DISMISSED.

Issued at Olympia, Washington, on this 12th day of August, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT HELM, 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.