

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	CASE NO. 5336-U-84-965
LOCAL 286,)	
)	
Complainant,)	DECISION NO. 2272-A - PECB
)	
vs.)	
)	
METROPOLITAN PARK DISTRICT)	DECISION OF COMMISSION
OF TACOMA,)	
)	
Respondent.)	
)	
)	

Hafer, Price, Rinehart and Schwerin, by John Burns, Attorney at Law, appeared on behalf of the complainant.

Patricia Parfitt, Assistant City Attorney, appeared on behalf of the respondent.

Examiner Rex L. Lacy issued findings of fact, conclusions of law and order in the above-entitled matter on January 9, 1986, finding that the employer had committed "interference" unfair labor practices in violation of RCW 41.56.140(1) but dismissing an allegation of discrimination in regards to the discharge of Judith Pearce. The union has petitioned for review on the latter point.

The Metropolitan Park District of Tacoma, created pursuant to Chapter 35.61 RCW, maintains and operates the Point Defiance Zoo and Aquarium. The zoo has five separate divisions; one of them is the education department. Charles Seaborn supervised the education department until February 1984, when Tom Otten, the assistant zoo and aquarium director, assumed his duties.

International Union of Operating Engineers, Local 286, AFL-CIO, is the exclusive bargaining representative of a bargaining unit of park district employees, including zoo employees. The classification "instructor/graphics coordinator" is not one of the 38 classifications represented by Local 286. In about 1980 to 1982, while the zoo was being renovated, Judith Pearce worked for the zoo as a freelance graphics artist. In May, 1982, the zoo advertised a newly created position entitled "instructor/graphics coordinator". Pearce applied for and obtained the position, beginning her full-time employment in November, 1982.

In November, 1983, Pearce contacted Andy Grobins, then the district personnel director, to ask whether Pearce and co-employee Sharon Cole were entitled to an automatic salary step increase. After investigation by Grobins, their step increases were approved.

Between February and May, 1984, Pearce asked whether her classification was covered by the collective bargaining agreement and whether she could join the union. She asked Seaborn, Otten, Ursula Doolittle (the park board's secretary and administrative aide to the executive director) and other district personnel, as well as the shop steward, about her status. Otten told her that membership in the union would be illegal, because her classification was not covered by the agreement. Later she was told by other management personnel to make up her own mind.

In April, 1984, the park district was notified that a state audit had determined that a revenue shortfall of 8.1% had occurred. The district's five department directors were instructed to prepare and submit plans to reduce 1984 budget allocations to reflect the 8.1% revenue reduction. The zoo's portion of the deficit was \$141,000. Zoo Director Gene Leo submitted several alternative plans to meet the new budget level, but none of them

called for layoffs to balance the budget. When these proposals were rejected by district management, a revised proposal was prepared in early May, 1984, with a recommendation to eliminate the instructor/graphics coordinator position.

About May 7, 1984, Pearce enrolled in Local 286. The employer became aware that Pearce had joined the union, and Otten confronted her, interrogating her about her reasons for joining the union.

About May 16, 1984, the district commissioners adopted the revised budget for 1984, which included elimination of Pearce's position and classification. On May 17, 1984, Otten informed Pearce, in writing, that she was being terminated effective May 31, 1984. The reason given was elimination of her position as part of the overall budget reduction. The termination took effect on that date.

Pearce asked Gene Leo to write a letter of recommendation; Leo refused to issue a "to whom it may concern" recommendation letter. He said he preferred to answer requests from prospective employers more intimately than could be done in such general correspondence.

After May 31, 1984, the zoo hired several seasonal employees to work in the gift shop and concession stand. Also, at least two full-time animal care technicians were hired. Pearce was not notified of these job opportunities or any others within the park district. The graphic artist position was not included in the district's 1985 budget.

On July 2, 1984, Local 286 filed an unfair labor practice complaint with PERC. Hearings were held, and post-hearing briefs were filed. The examiner's finding of an interference violation

relates to Otten's interrogation of Pearce concerning her reasons for joining the union. The examiner ordered that the park district cease and desist from such conduct and that the employer post a notice stating that it would not interfere with or discriminate against any employee because of their exercise of protected activities under Chapter 41.56 RCW. However, the examiner found that the layoff of Pearce was caused by valid business reasons--the revenue shortfall, necessitating a layoff--and would have occurred even absent the employer's interference with the employee's protected rights.

DISCUSSION

For the reasons set forth below, we affirm the examiner's findings, conclusions and order in their entirety.

The central issue raised on this partial petition for review relates to the employer's "budget defense" (as aptly labeled by the examiner at page 10). The examiner essentially found that the park district met its burden of proof of showing that the layoff was for valid business reasons, as opposed to being motivated by anti-union animus. On the basis of the entire record, we agree. Findings of Fact 8 and 9, as well as Conclusion of Law 4 are amply supported by substantial evidence.

Actually, the uncontroverted evidence shows that the park district was experiencing a bona fide budget deficit. That such a deficit was not unusual, or that such a deficit was even a perennial problem for this employer, hardly disproves the existence of the revenue shortfall. Nor does the fact that Ms. Pearce's layoff may have been the first one in the district's history persuade us that it must have been grounded upon improper motives. Her position was new and, according to some of the

evidence, non-essential. The park board's decision to avoid cutbacks in the areas it deemed essential, i.e., animal care personnel, appears reasonable.

The union's contention that the employer should have considered Ms. Pearce for certain animal care and vendor positions that came open after her layoff is premised upon the employer's personnel rules. There are no layoff provisions in the applicable collective bargaining agreement. PERC has no statutory jurisdiction to enforce the employer's personnel rules. There are other forums in which to air such grievances. If there were a pattern suggesting discrimination, or other sufficient evidence of an unfair labor practice (such as proof of a retaliatory layoff for collective activity) we would certainly consider ancillary personnel rule violations as a part of that pattern or practice. However, the record here falls well short of proving such a pattern.

We agree with the examiner that the animal care openings were not at all in Ms. Pearce's field of expertise. Her "graphic arts" skills are very different from the skills required for the animal care technician jobs. Indeed, the minimum qualifications for those positions called for education and experience in zoology, neither of which she had.

As pointed out by the examiner, the temporary concession stand sales positions paid significantly less than the position Pearce had held, and the employer may well have believed her over-qualified or uninterested.

We find nothing in the employer's post-termination actions sufficient to destroy the conclusion that the employer met its burden under Wright Lines, Inc., 251 NLRB 150 (1980), to prove

that the same action (the layoff) would have taken place even absent the protected conduct (her union activities).

Accordingly, we adopt the Findings of Fact, Conclusions of Law and Order of the examiner in their entirety.

DATED at Olympia, Washington, this 30th day of May, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Mark C. Endresen
MARK C. ENDRESEN, Commissioner

Joseph F. Quinn
JOSEPH F. QUINN, Commissioner