King County, Decision 6994-A (PECB, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Complainant,	CASE 14042-U-98-3471 DECISION 6994-A - PECB
vs.	CASE 14454-U-99-3581 DECISION 6995-A - PECB
KING COUNTY, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Ray Goforth, Business Representative, appeared on behalf of the complainant.

Norm Maling, Prosecuting Attorney, by Diane Hess Taylor, Assistant Prosecuting Attorney, and Robert Railton, Labor Negotiator, appeared on behalf of the respondent.

On July 21, 1998, International Federation of Professional Engineers and Technical Employees, Local 17 (union) filed an unfair labor practice complaint with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. Case 14042-U-98-3471 was docketed.

On March 15, 1999, the union filed additional unfair labor practice charges involving different King County employees. Case 14454-U-99-3581 was docketed, and the matters were consolidated.

A preliminary ruling was issued on August 14, 1998, under WAC 391-45-110, finding that the complaints stated claims for relief under RCW 41.56.140(1) and (4).

The employer filed its answer and affirmative defenses on September 14, 1998.[1] The employer filed a motion for summary judgment on March 25, 1999, seeking dismissal of the complaints.[2]

A hearing was held before Examiner J. Martin Smith on separated dates. The hearing commenced on October 7, 1999, but was continued to March 30, 2000. The hearing was then concluded on May 31, 2000. The parties filed briefs.[3]

Based upon the record in this case, the Examiner concludes that the employer did not commit unfair labor practices under the applicable collective bargaining statute. The complaints are DISMISSED.

BACKGROUND

King County has more than 10,000 employees working in a governmental structure that may be more complex than the state governments of Idaho and Wyoming combined. Ron Sims is the county executive; Lynette Baugh is the manager of the Building Services Division within the King County Department of Development and Environmental Services (DDES), where these cases arose. The county seat is at Seattle, but employees involved in these cases work in county offices located in Renton and Bellevue.

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[1] Several affidavits of witnesses, as well as exhibits, were attached to the employer's answer. Such materials do not thereby become part of the evidentiary record.

[2] The motion for summary judgment was denied on October 7, 1999.

[3] The Examiner initially set the hearing for April 21, 1999. That date was postponed, based upon representations from the parties that they were working on a settlement which would lead to withdrawal of all claims. *See infra* note 22.

The union represents several bargaining units of King County employees, touching several departments. Most of the employees represented by Local 17 perform technical and engineering functions. During the period relevant to these cases, Ray Goforth was the union business agent with responsibility for those bargaining units.

This case involves the employment of Sherilyn McKee. Special accommodations are generally required for McKee, while at work, because she has an ongoing medical disability. Additionally, McKee was absent from work from April of 1998 to at least June 11, 1998, due to new injuries she received in an automobile accident.

In a letter prepared June 9 and sent to McKee on June 11, 1998, Baugh stated that the employer had concerns about getting a response from McKee:

> This letter serves to notify you that your Family and Medical Leave entitlement began on April 21, 1998. The 12-month period is from April 21, 1998 through April 20, 1999.
>
> Please ask your medical practitioner to complete the enclosed FMLA Medical Certification form and return it to Kathy Graves in the Administrative Services Division of this department no later than June 26, 1998.
>
> Communication during this time is important.

Exhibit 14.

Thus, a period of 15 days was established for McKee to respond.

Baugh made repeated telephone calls to McKee's home, but there was no answer. It is now apparent that McKee was physically unable to access her United States Mail during the June 11 to June 30 period, and hence did not respond to the June 11 letter. It is also apparent that the union received a copy of the June 11 letter, and

that union representative Goforth voiced displeasure, both with the management in general and with Baugh in particular. Goforth also filed a complaint with the United States Department of Labor, concerning McKee's rights under the FMLA.

In a letter sent to McKee on June 30, 1998, the employer called attention to the deadline that had passed without word from McKee:

> On <u>July 11, 1998</u>, [sic] you were provided a Family and Medical Leave Medical Certification form from my office. You were instructed to complete the form and return it to Kathy Graves no later than Friday June 26, 1998. In spite of those instructions, the completed form has not been received to date.
>
> Please be reminded that King County is empowered to direct you to complete the form and return it to Kathy Graves, as instructed, no later than July 7, 1998. I have enclosed an additional FMLA medical certification form for your medical practitioner to complete.
>
> Failure to complete the form and return it in a timely fashion, as directed above, will place you in violation of a lawful directive by a Division Manager. Your absence will also be considered unauthorized at that point.

[Emphasis added.]

Thus, a period of less than 14 days was provided for a response to that followup letter.

According to employer official Michael Frawley,[4] the June 30 letter was hastily drafted in an effort to elicit a response from McKee as soon as possible. While Frawley stated that an inappropriate

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4 Frawley has been an administrative services manager with the employer for many years. It appears his contacts with Goforth on this case were always on behalf of other employer officials.

deadline was imposed upon McKee,[5] he indicated that no disciplinary action was actually contemplated or commenced against McKee. Baugh talked to McKee on July 6, 1998, and gave assurances that a copy of her letter would be sent to Goforth. Independently, Goforth requested a copy of the letter by leaving a voice-mail message for Baugh.[6]

Employer official Bob Derrick responded for King County on July 9, 1998, with a telephone message and follow-up letter to Goforth. (TR 162, Ex. 14.) Derrick assured Goforth that no discipline or adverse action had been or was planned in regard to McKee. Goforth seemed reassured. (TR 164, 177-78.)

Goforth actually received two copies of Baugh's letter within three days following his demand that the employer produce important documents. Goforth noted the mistaken date in the June 30 letter,[7] and he also asked for a telefacsimile version of Baugh's letter.

Baugh delegated Frawley to contact Goforth. When Frawley talked to Goforth the next day, Goforth indicated that he had received the requested letter(s).[8]

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[5] Frawley testified the last day of hearing.

[6] The Examiner has no basis on which to verify that "voice-mail" messages were properly transmitted to or received by the intended recipient(s). Consequently, voice-mail messages are one of the rankest examples of hearsay in an unfair labor practice record.

[7] It should have been obvious that reference to July 11, 1998, in the past tense in a letter dated June 30, 1998, was erroneous, and that the reference was to the letter sent on June 11, 1998.

[8] Business representatives usually request meeting dates, bargaining proposals and related information from Bob Railton, the employer's senior labor negotiator. No such request was ever made of Railton.

The employer did not hold McKee to the "July 7" deadline set in the June 30 letter. Instead, the employer processed the FMLA claim in a timely fashion thereafter. McKee was not disciplined, and she was on sick leave and FMLA leave while she recuperated from the injuries she received in the auto accident.

In a letter dated July 9, 1998, Baugh promised prompt action on any workplace accommodations that McKee might require upon her return to work.[9] Baugh also commented that "third parties were disseminating wrong information" about her claim.

Derrick and McKee discussed whether working at home for four to five weeks might resolve problems for McKee. The workplace accommodations made available to McKee included a large machine to lift heavy maps, and alteration of her lunch hour to accommodate her difficulty in walking and standing.

The only face-to-face meetings between the parties on this controversy may have been during conciliation conducted by the U.S. Department of Labor on the federal complaint. The record in this proceeding is unclear even on that point.[10]

POSITIONS OF PARTIES

The union, on behalf of McKee and other employees of the bargaining unit, contends the employer interfered with employee rights by refusing to make documents available to a union representative in a timely manner. The union further contends that the employer

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[9] The federal Americans with Disabilities Act (ADA) was cited as a basis for such accommodations.

[10] The Department of Labor closed the federal complaint following the conciliation process.

discriminated against McKee, a union shop steward, by punishing her for filing a claim under the FMLA, and that the employer changed its policy regarding the FMLA for employees beginning a long-term absence from work. The union also asserts that another shop steward was given a foreshortened period to document a request for FMLA leave, and that the employer sought to silence another employee, Wendy Pegelow, for spreading information about McKee's FMLA request. Morever, the union asserts that the employer conditioned McKee's FMLA leave on her silence and that of the union representatives who assisted her. The union thus urges the Commission to also find "interference" violations for altering FMLA reporting requirements to the detriment of employees in the bargaining unit.

The employer asks the Commission to decide that the union was not entitled to the requested information, but also asserts that it complied with the union's request and provided the requested documents within five work days. The employer argues that there is no proof of union activity on the part of McKee or other employees in the unit, so that no case of discrimination or retaliation was made out. In any event, the employer argues that there was no discipline or detrimental impact on McKee, or any other employee, by its administration of FMLA leave in the department involved. In general, the employer argues that it complied in its obligations under the collective bargaining law, and did not interfere with or discriminate against employees in the bargaining unit represented by Local 17.

DISCUSSION

Matters *Not Before the Examiner* in this Case

The union's brief seeks to outline five issues in this case.[11] Among those, the fourth and fifth items go beyond the preliminary ruling issued. The jurisdiction of the Public Employment Relations Commission in this matter arises from state law, and is limited to the interpretation and enforcement of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

The Commission has no jurisdiction whatever over the federal FMLA, which was enacted in 1993 and is administered by an agency of the federal government. The union admitted as much, by its action of filing and pursuing a claim with the United States Department of Labor.

The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). Although an examination of such a contract is sometimes necessary, where there are allegations of interference in the grievance process, the enforcement of such contracts is for an arbitrator or the courts.

Political agendas, and the employer's "management culture" are not for the Examiner to evaluate. Personal attitudes, tone of voice, and strategies affecting employees in the bargaining unit(s) represented by the union are only relevant here if they demonstrate or directly result from anti-union animus, or if they conflict with the obligations of good faith collective bargaining. The protections of the collective bargaining statute cannot extend to

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[11] Union's brief at page 1.

political stunts designed to embarrass a manager or supervisor, and may be regarded as above the law. *METRO,* Decision 2358 (PECB, 1986).[12] Any request to reform a "management culture" or a "bunker mentality" within the King County DDES is an exercise in futility, at least in a proceeding before the Public Employment Relations Commission, and is also an exercise above the law.[13] Thus, any personal animosities which have existed or now exist between Baugh and Goforth are not subject to resolution in this proceeding.

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12 The Examiner feels obliged to comment on Goforth's opening statement at the hearing, where he stated:

> Well, the charges that bring us here today stem from a bunker mentality and a dysfunctional management culture at the [DDES]. This management culture approaches all problems with the assumption that DDES can do no wrong, and then seeks to martial facts to support this assumption. . . .

TR 20-21.

None of this had anything to do with RCW 41.56.140, with McKee's employment, or, for that matter, with collective bargaining. The very existence of a "management culture" may be questionable in the public sector, because the management is a part of (not separate from) the civic culture. Additionally, management or administrative styles are not themselves the business of unions, who are only empowered to negotiate the "wages, hours, and working conditions" of employees, as per RCW 41.56.030-(3). If the polemic of the quoted statement was designed to inflame, distort, and editorialize, none of those are tactics which the public expects the Commission to indulge. Finally, if the quoted statement was a prediction of this union's future approach to representing its members, it is a change from the prior (successful) approach and may be headed for disaster.

13 This case seemed to feature more stunts than a Barnum and Bailey Circus. The Examiner observes that even the late, great Karl Wallenda, king of the high-wire aerialists, went up once too often for his own well-being.

Federal precedents interpreting the National Labor Relations Act (NLRA) can be, and are, considered when interpreting the similar provisions of Chapter 41.56 RCW, but the state law and precedents are the primary authority in such matters. Since the definition of collective bargaining and the duty to bargain in good faith are set forth in RCW 41.56.030, and there have been numerous Commission and Washington court decisions interpreting the state statute, there is a reduced need for further research into the underpinnings of definitions contained in the NLRA. Thus, the union's attempt to re-cast the issues of this case in terms of private sector labor law is largely misspent effort. In particular, the Examiner rejects the notion that information requests by unions are "presumptively relevant" as is suggested by *Northwest Publications, Inc.* 211 NLRB 464 (1974) or *Albertson's, Inc*, 310 NLRB 1176 (1993).

The Allegations Which *Are* at Issue in This Case

The issues in this case revolve around events that occurred within 30 days between June 11 and July 11 of 1998. The union has the burden of proof. WAC 391-45-270(1)(a). To prevail on its claims under RCW 41.56.140(1), the union must prove that the employer discriminated against one or more of its employees, in relation to its actions after several employees filed claims under the FMLA and the employer's own regulations regarding absences. To prevail on its claims under RCW 41.56.140(4), the union must prove that it identified a potential contract violation, that it made an appropriate request for documents related to its processing of a grievance, and that the employer failed to provide the requested information.

Standards for Discrimination Allegations -

Chapter 41.56 RCW is a remedial statute, and hence insures that employers and employees have avenues and processes for the settlement - not litigation - of disputes. Like the NLRA, the

state statute secures the right of employees to organize and bargain, in RCW 41.56.040, and prohibits discrimination against employees who exercise their collective bargaining rights, in RCW 41.56.040 and 41.56.140(1), taken together. The legal standard to be applied here is a "substantial factor" test:

- The union must first make out a prima facie case of discrimination, by showing: that the employee(s) involved exercised rights protected by Chapter 41.56 RCW or communicated an intent to do so; that the employer discriminatorily deprived the employee(s) of some ascertainable right, status or benefit; and that there was a causal connection between the exercise of rights and the discriminatory action.
- If the union makes out a prima facie case, the employer must undertake a burden of production, to set forth lawful reasons for its actions.
- The union retains the burden of proof at all times, but may satisfy that burden by showing that the reasons advanced by the employer were pretextual and/or that protected union activity was nevertheless a substantial motivating factor underlying the employer's actions.

This is one of the many areas in which state law differs from NLRA precedent, and is based upon the decisions of the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).

<u>Application of Discrimination Standard</u> -
On the record made here, the union failed to make a prima facie case of discrimination with regard to McKee's leave status. Hence, there is no need to examine whether McKee's union activity was a substantial motivating factor. *Grant County*, Decision 6673-A (PECB, 1999); *Bethel School District*, Decision 6731 (PECB, 1999).

The fact that McKee was a union steward is an identifiable involvement in union activity, but it is the only such fact in this record. It certainly doesn't hurt the union's case, but certainly does not compel a conclusion that any and all actions taken by the employer concerning McKee's employment are related to her holding a union office.

The characterization of the employer's letters as disciplinary is consistent throughout the union's brief, but a self-serving declaration doesn't make it so regardless of how often repeated. Employer witnesses credibly testified that their focus was on eliciting a response from McKee, rather than on punishing her. The June 11 and June 30 letters sent to McKee were not, in and of themselves, any form of punishment. There is no evidence whatever of any steps taken by the employer to discuss or implement the perceived threat of discipline. Nor was any discipline ever imposed upon McKee. Even where employees allege a refusal to permit union representation under the substantially easier test for "interference" claims,[14] they must be able to present objective evidence that they reasonably suspected that their discipline was impending.[15] The union has not established that McKee was deprived of any ascertainable right, status or benefit.

The absence of a proven causal connection is clear in this case. The evidence provided by the union was marginal, at best. There is no evidence that McKee had antagonized Baugh (or any other

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[14] A party alleging only an "interference" allegation has no burden to show actual intent, and can prevail if it demonstrates that employees reasonably perceived the disputed action as a threat of reprisal or force or promise of benefit associated with their union activity.

[15] See *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and conforming Commission precedents such as *Okanogan County*, Decision 2252-A (PECB, 1986).

administrators) with grievances, griping, or any other concerted activity on behalf of the union or her fellow employees.[16] In fact, it is doubtful that Baugh, Railton, and/or Frawley (and even Paul) knew of McKee's union office when the letters of June 11 and June 30 were sent out. Even if the employer officials knew that McKee was a union steward, that fact certainly did not weigh heavily in their thinking. The evidence clearly indicates their focus was on getting McKee to communicate promptly with the employer.

There were a number of telephone calls, voice-mail messages, faxes and other communications, but none of those establish (or even provide any basis to infer) a causal connection. Accepting that one or more of the deadlines set by the employer violated some FMLA requirement, that is clearly attributable to lack of knowledge of the FMLA,[17] and was not coercive. Additionally, that claimed error was not challenged by Goforth at the time it occurred. McKee assured Paul, in a telephone conversation without any coercion, that she was trying to obtain the physicians' statements needed for FMLA leave, but also stated that she would be back at work soon.

The Examiner does not credit the union's arguments, in its brief, that either Baugh's anger and "tone of voice," or her alleged

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[16] Such actions are recognized as being of a type which may elicit a negative reaction from an employer. See *King County*, Decision 3178-A (PECB, 1989), where the employee involved had spoken out against management at the bargaining table, and had filed several successful grievances. See also *Oroville School District*, Decision 6209-A (PECB, 1998), where an Examiner was suspicious because the employee involved had recently been president of the local union and had called for action against the superintendent.

[17] It strains credulity to believe that the employer would knowingly violate a federal law in an attempt to discriminate against an employee for union activity. Such a tactic would shout out "pretext."

assertion that third-parties were spreading misinformation, are sufficient, taken alone, to prove a pretextual treatment of McKee. There is no corroborating evidence, save speculation by Goforth that such a motivation existed. Indeed, there is no evidence as to the motivation of Paul, Railton or Frawley, whose duty it was to implement the FMLA procedure. Nor is there any corroborating evidence that other employees subject to an FMLA or Workers' Compensation claim, had different standards applied to them.[18]

Baugh's mention of "third party dissemination" of wrong information is not, on the whole, subject to an anti-union animus interpretation. Rather, it sounds like her genuine opinion that people other than Sheri McKee and the union were adding to the confusion and miscommunications. The union fails to state a "disparagement" violation on this comment, at least in isolation. At any rate, McKee's eventual conversations with Mr. Derrick seemed to resolve things fairly well.

The Examiner can understand the union's impatience with managers who, at one point, required collaboration of four people to draft a letter. But impatience does not excuse a counter-attack and personalization of the type that occurred here. Union representatives may choose a strategy of zealous confrontation on behalf of their members, but tactics meant to anger, inflame, and divide often escalate labor-management disputes.[19] While a flame-out occurred between these parties, the Examiner does not find a basis

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[18] See *Town of Steilacoom*, Decision 6213 (PECB, 1998), dismissing a discrimination claim of an employee who filed a workers' compensation claim where no union animus was shown. The employee in that case was visible as a In contrast, McKee was little known to the employer as a union adherent, and she left the presentation of her concerns to her union representative.

[19] Such actions may even be indicative of bad faith. RCW 41.56.030(4); 41.56.150(4).

to conclude that a motive of unlawful discrimination was interwoven with the employer's legitimate request for contact from McKee.

The "Refusal to Bargain" Allegation -
The union's allegations may fall short of the pleading standards used in courts, but parties are given some benefit of doubt in administrative adjudication before the Commission. Goforth checked the box on the complaint form to allege a violation of RCW 41.56.140(4).[20] The preliminary ruling framed the issues as:

> Failure or refusal of employer officials to supply information requested by the union in connection with its representation of a disabled employee seeking return to work; [and]
>
> . . .
>
> Failure or refusal of employer officials to respond to union telephone messages and/or requests for meetings. . .

The employer answered those allegations in regard to its alleged failure to provide the union with the two letters and other FMLA documents regarding McKee. The employer's answer, and the record made, properly bring the issue before the Examiner for decision.

Under *Valley General Hospital*, Decision 1195 (PECB, 1981) and numerous other precedents, parties to a collective bargaining relationship have a duty to provide one another with information requested in connection with either the negotiation or administration of a collective bargaining agreement. It is clear no contract negotiations were involved in this dispute, so the analysis of the "refusal to bargain" allegation turns on whether information was requested and either refused or furnished in connection with the

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[20] The union used the complaint form promulgated by the Commission (Form U-1) in its filing of July 21, 1998.

processing of a contractual grievance. On the record made here, the allegations under RCW 41.56.140(4) are dismissed.

No occasion to invoke the duty to provide information is shown in this case. Neither the request for leave under the FMLA nor the imposition of an improper deadline formed the basis for a grievance, because those issues concerned McKee's rights under the federal law rather than any rights secured by the collective bargaining agreement. An unfair labor practice complaint was dismissed in *Highland School District*, Decision 2684 (PECB, 1987) based on a conclusion that a union's request for information related to legal proceedings outside of the collective bargaining process. It follows that the union was not entitled to use the duty to provide information under Chapter 41.56 RCW as a vehicle to obtain documents or other information in support of the complaint it filed with the United States Department of Labor. Because there is no evidence that McKee or any other applicant for leave under the FMLA was disciplined or otherwise deprived of their rights under the parties' collective bargaining agreement,[21] the union has failed to establish the occurrence of any event(s) for which a grievance could have been filed under the contract.

Documents were, in fact, provided to the union in this case. From the record made, Goforth received multiple copies of relevant documents from the employer even before he filed the complaint to initiate this proceeding.

21 In her testimony before the Examiner, McKee stated that she was unable to work for this employer either part-time or full-time, but she was still a King County employee.

<u>The General "Interference" Allegations</u> -
In the second of these cases,[22] the union alleges that the employer's requests for FMLA documentation from employees other than McKee also violated a FMLA timeframe requirement. It cites the employer's requests that Terry Hammond provide a response within eight days in June of 1998, and that Terry Hammond respond within 12 days in October of 1998.

Although DDES used a "couple of weeks" and a 14-day standard, the FMLA's 15-day rule seems plain enough:

> Section 825.305 . . . (b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request, unless it is not practicable. . . .)

A similar 15-day requirement exists in cases where the employee is asked for re-certification based on a doctor's recommendation. *See* Section 825.308(d).

The union points out that five of 11 FMLA certification requests made during 1998 were issued to members of Local 17, and it points out that the three requests made to Hammond and McKee allowed less than the statutory 15-day period. The union characterizes these facts as "abusive," and argues that this is a "pattern of misapplication" towards union activists. The Examiner rules it is neither.

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[22] The filing of these new allegations, some eight months after the filing of Case 14042-U-98-3471, led to the postponement of a hearing set for April of 1999.

The record indicates that the employer had only been requesting FMLA "certifications" since February of 1998. The parties' 1998-2000 collective bargaining agreement is silent on the issue, although donated sick leave hours are addressed. The employer's actions might well have been in error, but a finding of an abusive misapplication of the 15-day rule would seem to require evidence of some attempt by the employer to mislead or entrap both McKee and Hammond into forfeiture of their rights under the federal law. But the record is clear that both employees provided statements from their physicians, and both remained eligible for leave under the FMLA. The union representative may have perceived some ghosts or shadows in these limited facts, but the Examiner is unable to conclude that McKee, Hammond or any other employee reasonably perceived the employer's admitted error in its handling of FMLA claims as an attack on their collective bargaining rights.[23]

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).

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[23] The Examiner has not personally witnessed the use of a "deny and attack" strategy which the union alleges was used by this employer. There is certainly nothing of that type in the employer's answers or defenses in these cases. The Examiner rejects the union's suggestion that a party to a proceeding before the Commission should be punished for following the Commission's rules.

Indeed, if there is an "attack strategy" going on, it may more readily be seen in Goforth's January 23, 1999, letter to negotiator Bob Railton, wherein he alleged the facts brought forth in 14454-U-99-3581, and then attached a draft of the unfair labor practice, threatening the county as leverage to settle the prior, 14042-U-99-3471 unfair labor practice, both of which are now at bar. This type of abuse of Public Employment Relations Commission processes as well as RCW 41.56.140 is on the verge of an unfair labor practice itself. *See City of Tukwila*, Decision 2434 (PECB, 1986).

2. International Federation of Professional and Technical Engineers, Local 17, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of several bargaining units of employees of King County. During the period relevant to these proceedings, Raymond Goforth was the union representative responsible for those bargaining units.

3. Prior to April of 1998, Sherilyn McKee was a King County employee working in a bargaining unit represented by Local 17. McKee held office as a shop steward for Local 17, but the record contains no other evidence of union activity on her part.

4. In April of 1998, McKee was injured in an automobile accident and was unable to work. Her absence qualified for leave under the federal Family Medical Leave Act (FMLA). The employer asked McKee for documentation to support her FMLA leave, and information as to when she might return to work.

5. Prior to June of 1998, Terry Hammond was a King County employee working in a bargaining unit represented by Local 17.

6. On June 11, 1998, the employer sent a letter to McKee. The employer asked for a statement from McKee's physician(s) as to her condition and the likelihood of her returning to work with the employer. Although that letter was definite in tone and purported to set a deadline for reply, it did not constitute a disciplinary action as defined in the collective bargaining agreement between the employer and Local 17.

7. McKee did not promptly receive the letter described in paragraph 6 of these Findings of Fact, due to disabilities which prevented her from accessing her U.S. Mail.

8. During or about June of 1998, Terry Hammond was unable to work due to illness or injury. Her absence qualified for leave under the federal Family Medical Leave Act (FMLA). The employer asked Hammond for documentation to support her FMLA leave, and imposed a deadline for reply.

9. On June 30, 1998, the employer sent another letter to McKee, again requesting documentation in support of her FMLA leave. A reference in that letter to a previous letter issued on "July 11, 1998," was clearly erroneous, and there is no reasonable basis for concluding it had any impact upon subsequent events. Although this letter was also definite in tone and purported to set a deadline for reply, it did not constitute a disciplinary action as defined in the collective bargaining agreement between the employer and Local 17.

10. Because of error or unfamiliarity with FMLA procedures, the deadlines for response established by the employer for McKee and Hammond, as described in paragraphs 6, 8 and 9 of these Findings of Fact arguably contravened the provisions of the FMLA.

11. Employer officials neither discussed nor implemented any form of disciplinary action against McKee.

12. Although perhaps inconvenienced by the errors and/or inaccurate deadlines imposed by the employer, as described in paragraphs 6, 8 and 9 of these Findings of Fact, neither McKee nor Hammond were adversely affected by the employer. McKee continued to hold status as a King County employee on leave under the FMLA. No occasion for the filing of a grievance arose under the collective bargaining agreement between the employer and Local 17, and no grievance was filed.

13. In an effort to point out the incorrect date in the letter described in paragraph 9 of these Findings of Fact and/or to point out the employer's alleged contravention of the FMLA, Goforth sent letters, e-mail messages and faxes to a number of employer officials. Goforth knew or should have known that most of the individuals addressed were without authority to act in the matter, inasmuch as Lynette Baugh, Michael Frawley, Pamela Paul and Robert Derrick had all deferred to the employer's senior labor negotiator, Robert Railton, and Railton had instructed Goforth to contact him in the event that he and the union needed more information regarding grievances or bargaining matters.

14. On various dates, McKee and/or Goforth requested that Goforth be provided with documents regarding McKee's FMLA leave.

15. King County voluntarily provided Goforth with a copy of the letter issued to McKee on June 30, 1998, and with any other documents requested.

16. The union has failed to establish any causal connection between McKee's status as a union steward and the events described in these Findings of Fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under RCW 41.56.140 and Chapter 391-45 WAC.

2. International Federation of Professional and Technical Engineers, Local 17, has failed to establish a prima facie case that the employer discriminated against Sherilyn McKee in violation of RCW 41.56.040 and 41.56.140(1).

3. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that King County was under any duty to provide it with information concerning leaves under the federal Family Medical Leave Act, and has failed to prove that King County has failed or refused to provide any information to which the union was entitled.

4. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that Terry Hammond or any other employee represented by Local 17 reasonably perceived the employer actions described in the foregoing Findings of Fact as threats of reprisal or force or promises of benefit associated with their exercise of rights under Chapter 41.56 RCW.

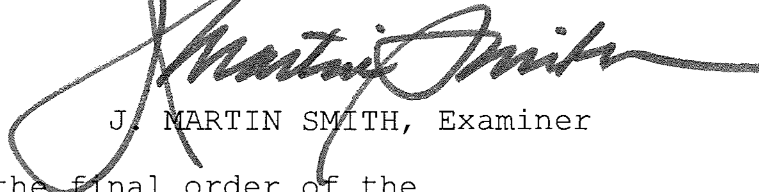
5. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that King County has committed, or is committing, any unfair labor practices in violation of RCW 41.56.140.

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED on their merits.

Issued at Olympia, Washington, on the 10th day of January, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, 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.