King County, Decision 7108 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	)	
DIANE REEDER, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 586, Respondent.	)	CASE 14415-U-99-3571 DECISION 7108 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Diane Reeder, appeared *pro se*.

Mary E. Roberts, Attorney at Law, appeared on behalf of the union.

On February 24, 1999, Diane Reeder filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Amalgamated Transit Union, Local 587 (union), had violated RCW 41.56.150(1) and (3) in connection with Reeder's employment by King County.[1] The Executive Director issued a preliminary ruling on June 15, 1999, finding a cause of action to exist on allegations of:

> Union interference with employee rights by the union's refusal to agree to the employer's

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[1] The employer's name appears in the caption, because the Commission's docket and citation procedures require identification of the employer in each case processed by the agency. The employer was not named as a respondent, and it did not answer or participate in the hearing.

> reclassification of complainant's current classification of Unit Repair Intermediate Clerk to Administrative Specialist II, resulting in the inclusion of complainant's work duties in an inappropriate bargaining unit.

A hearing was held on September 29, 1999, at Kirkland, Washington, before Examiner Mark S. Downing. The parties filed briefs.

On the basis of the evidence presented at the hearing, and the record as a whole, the Examiner concludes that Reeder has not met her burden of proof that the union has discriminated against her or interfered with her statutory rights in violation of Chapter 41.56 RCW. The complaint is dismissed.

BACKGROUND

King County is a "public employer" within the meaning of RCW 41.56.030(1). In addition to the customary range of county services, King County operates public passenger transportation services through the King County Department of Transportation.[2]

Local 587, Amalgamated Transit Union, AFL-CIO (union), is a bargaining representative within the meaning of RCW 41.56.030(3). The union is the exclusive bargaining representative of certain employees working in the public passenger transportation division of the King County Department of Transportation.

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[2] Along with certain other governmental functions, the public passenger transportation system was formerly operated by the Municipality of Metropolitan Seattle (METRO). The sequence of events by which King County took over the METRO operations has been detailed in past decisions such as King County, Decision 6696 (PECB, 1999). Some of the evidence in this record still refers to the employer as "METRO".

Diane Reeder has been employed in the subject public passenger transportation operation for approximately 17 years. She is assigned to the Component Supply Center (formerly known as Unit Repair) in the Vehicle Maintenance Section, in a position represented by the union. Two other employees working on component control tasks are members of a different bargaining unit represented by Local 17, International Federation of Professional and Technical Employees, AFL-CIO.

In 1994, the employer commenced a classification and compensation study. The classification/compensation process included a procedure by which dissatisfied employees could "appeal" their classification and pay allocation.

In the summer of 1997, after the employer's study was concluded, the employer notified Reeder that her position would be reclassified to "Technical Information Processing Specialist II". The employer's letter included:

> Your position's allocation will not be effective until a new compensation system is developed, approved and implemented. **Salaries for represented positions will be negotiated with the unions**, and non-represented positions will follow an approved implementation plan. ... Keep in mind that a classification is general rather than specific, and may cover several positions with similar kinks [sic] of work and levels of responsibilities.

[Emphasis by **bold** supplied]

Employees and the union had until December of 1997 to seek further review of the initial decision resulting from the classification and compensation study. Reeder was not satisfied with the classification proposed by the employer, and she appealed within the established time frame.

After further review of Reeder's position, the employer notified Reeder, on November 6, 1998, that her position would be reclassified to "Administrative Specialist II". The union did not voice any opposition to that reclassification.

The employer and Local 587 were involved, during 1998, in negotiations for a successor collective bargaining agreement. In the course of those negotiations, the employer and union agreed to change the title of Reeder's position to "component supply center intermediate clerk". They agreed on a pay range for that classification which was greater than Reeder had received in the past, but not as high as Reeder's co-workers represented by Local 17.

On December 10, 1998, Reeder sent a letter to the union in which she asked the union to "transfer" her position to the bargaining unit represented by Local 17. The union rejected that request.[3]

POSITIONS OF THE PARTIES

Reeder contends that the union interfered with her rights by refusing to agree to the employer's reclassification of her position to "administrative specialist II", and that the continued inclusion of her position in the bargaining unit represented by Local 587 is inappropriate. Reeder asserts that she has suffered a monetary loss because of the union's refusal to allow the reclassification of her position and its removal from the bargaining unit it represents.

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[3] On December 17, 1998, Reeder sent a letter to Local 17, in which she asked that organization to initiate a proceeding before the Commission, to effect a transfer of her position to the bargaining unit represented by Local 17. There is no indication that Local 17 replied.

The union contends that it did not interfere with Reeder's rights in regard to her classification, and that Reeder failed to prove that her position belongs in another bargaining unit. The union asserts that Reeder's position is properly included in the bargaining unit it represents, based on the recognition section of the applicable collective bargaining agreement.

DISCUSSION

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, confers certain rights upon King County employees:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. 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.
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> [1967 ex.s. c 108 § 4.]

The Legislature has delegated the Public Employment Relations Commission authority to determine and remedy unfair labor practices involving public employees. RCW 41.56.150 enumerates unfair labor practice for unions:

> RCW 41.56.150 UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVE ENUMERATED. It shall be an unfair labor practice for a bargaining representative:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

> (2) To induce the public employer to commit an unfair labor practice;
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> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
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> (4) To refuse to engage in collective bargaining.
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> [1969 ex.s. c 215 § 2.]

Procedures for adjudication of unfair labor practice claims are set forth in RCW 41.56.160; the Commission has adopted Chapter 391-45 WAC to regulate the processing of unfair labor practice complaints. The Commission maintains an "impartial" posture in such cases, consistent with RCW 41.58.005, and the complaining party has the burden of proof. WAC 391-45-270.

The Legislature has also delegated the Commission authority to determine and modify appropriate bargaining units. RCW 41.56.060. Unit determination is not a subject for bargaining in the usual "mandatory/permissive/illegal" sense. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Although employers and unions can agree on "unit" issues, their agreements are not binding upon the Commission.

Implementing a distinction created by the Legislature in regard to eligibility for interest arbitration,[4] the Commission's rules preclude mixing employees who are eligible for interest arbitration with employees who are not eligible for interest arbitration. WAC 391-35-310.

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[4] The Legislature has imposed interest arbitration to resolve collective bargaining disputes involving certain classes of public employees. RCW 41.56.430. In 1993, the Legislature expanded the class of employees covered by interest arbitration to include employees of public passenger transportation systems. RCW 41.56.492.

Questions concerning representation involving employees covered by Chapter 41.56 RCW are resolved on the basis of the majority rule among the employees in an appropriate bargaining unit. RCW 41.56.080. While individual employees have voice and vote in a representation election or cross-check conducted by the Commission under RCW 41.56.060 and 41.56.070, they do not have a right, as individuals, to dictate or veto their unit placement. Thus, individual employees only have legal standing to file "decertification" petitions for their entire bargaining unit under Chapter 391-25 WAC,[5] and individual employees have no standing to file unit clarification petitions under Chapter 391-35 WAC.

Union Rights Regarding Work Jurisdiction -
A union that has been recognized or certified as exclusive bargaining representative of an appropriate bargaining unit has the right to protect the work jurisdiction of that bargaining unit. In numerous decisions dating back to South Kitsap School District, Decision 472 (PECB, 1978), employers have been found guilty of unfair labor practices for unilateral "skimming" or "contracting out" of work historically performed in a bargaining unit.

Standards for "Discrimination" and "Interference" -
To establish a "discrimination" violation, a complainant must prove that he or she: (1) Exercised a statutorily protected right, or communicated an intent to do so; (2) was deprived of some ascertainable right, status or benefit; and that (3) a causal connection

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[5] Long-standing and consistent Commission precedents call for dismissal of representation petitions in which employees seek to decertify their incumbent exclusive bargaining representative for only part of the existing bargaining unit (a "severance-decertification"). For example, City of Seattle, Decision 2640 (PECB, 1987); Riverside School District, Decision 3751 (PECB, 1991); Thurston County, Decision 6806 (PECB, 1999).

exists between the exercise of the legal right and the discriminatory action. If that burden is met, the respondent is called upon to articulate non-discriminatory reasons for its actions. The burden of proof remains on the complainant, who may prevail by showing that either: (4) The reasons asserted by the respondent were pretextual; or (5) animus against the exercise of protected rights was nevertheless a "substantial motivating factor" behind the disputed action. Educational Service District 114, Decision 4361-A (PECB, 1994).[6]

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[6] In Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991) and Allison v. Seattle Housing Authority, 118 Wn.2d 79 (1991), the Supreme Court of the State of Washington adopted the "substantial motivating factor" test for determination of discrimination claims. The Court wrote in Allison:

> On balance, the [state statute] supports a more liberal standard of causation than the "but for" standard .... Washington's law against discrimination contains a sweeping policy statement strongly condemning many forms of discrimination. RCW 49.60.010. It also requires that "this chapter shall be construed liberally for the accomplishment of the purposes thereof". RCW 49.60.020. This language suggests that a rigorous "but for" causation requirement is too harsh a burden to place upon a plaintiff in a retaliation case.
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> ...
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> Rejecting both the "to any degree" and the "but for" standard of causation, **this court instead requires plaintiff to prove that retaliation was a substantial factor behind the decision.**

[Emphasis by **bold** supplied.]

In doing so, the Court rejected further reliance upon Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977), which formed the basis for Wright Line, 251 NLRB 1083 (1980) and Commission precedents such as City of Olympia, Decision 1208-A (PECB, 1982).

To establish "interference" with protected rights, a complainant need only prove that a party engaged in conduct which employees reasonably perceived as a threat of reprisal or force or promise of benefit associated with their union activity. The actual intent is not a factor or defense. City of Seattle, Decision 3066 (PECB, 1988), affirmed Decision 3066-A (PECB, 1989).

Application of Standard - The Prima Facie Case

The discrimination and interference allegations in this complaint flow from Reeder's claims that (1) the union refused to allow her reclassification to "administrative specialist II", and/or (2) that the union refused to allow her transfer to the bargaining unit represented by Local 17. Reeder did not furnish any witnesses to substantiate her claim. Instead, the presentation of her case was limited to several letters and e-mail messages exchanged between herself and the other persons involved.

The Classification and Wage Rate -
The evidence establishes that the employer instituted the classification and compensation project, evaluated the work performed by each of its employees, issued its initial decision, and considered appeals filed by employees who disagreed with the initial placement of their positions. In recognition of its statutory obligation to bargain any changes of the wages, hours or working conditions of its union-represented employees, the employer's letter announcing its initial decision on Reeder's classification included a statement that the actual wage rate was subject to negotiations with the union.

Reeder exercised an appeal right unilaterally created by the employer. Just as nothing in Chapter 41.56 RCW gave the employer any right to establish wages unilaterally, nothing in the collec-

tive bargaining law gave Reeder any right to appeal the employer's initial decision concerning the classification of her position. The results of the "appeal" process conducted unilaterally by the employer were subject to negotiations under Chapter 41.56 RCW, the same as the initial decision. If Reeder assumed that the results of the employer's classification and compensation study were to be automatic or "final", that was in error and does not constitute a "reasonable belief" under the standard for interference cases.

Although the evidence provides basis for Reeder's claim that she could have had a higher pay rate, it falls short of establishing that she was deprived of an ascertainable right. The employer's appeal decision putting Reeder's position in the "administrative specialist II" classification was, at most, its opening position in the collective bargaining process. The union's brief points out that "administrative specialist II" is an umbrella classification used for positions in the bargaining unit represented by Local 17 and for non-represented positions throughout the employer's workforce, but has not been used for positions in the bargaining unit represented by this union. That being the case, the union could have agreed to the reclassification of Reeder's position coupled with adding the classification to its contract with the employer. The union also had a right to weigh the benefits and problems associated with acceptance of the employer's proposed classification of Reeder's position. Just as an employer is not obligated to accept the first proposal advanced by a union in bargaining, the union was not obligated to accept the results of the appeal process.

The employer's system-wide study of classifications came soon after the merger of METRO operations and traditional King County operations was set in motion. The employer's approach vested the exclusive bargaining representatives of various bargaining units

with a veto power over classification and compensation decisions that came from outside of the collective bargaining process.[7] By assuming decisionmaking authority with regard to implementation of the classification and compensation study, the union assumed legal and financial responsibility for its decisions. A union owes a duty of "fair representation" to all of the employees it represents,[8] which means that it cannot align itself in interest against bargaining unit members for reasons which are arbitrary, discriminatory or in bad faith. Given the opportunity to make a decision which would individually benefit Reeder, one of its long-time members, the union chose to exercise its new authority in a negative manner. What is lacking here is evidence as to why the union took that approach. Reeder has not sustained her burden of proof to establish an unlawful motivation on the part of the union.[9] The simple fact that Reeder could have had more is not enough.

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[7] Employers often take a aggressive role in the implementation of classification and compensation projects, but this employer did not do so. Instead it appears to have taken a more passive role and turned over much of its authority to the unions.

[8] The duty of fair representation arises from the union's status as "exclusive bargaining representative" of all bargaining unit employees under RCW 41.56.090. The standard set forth by the Supreme Court of the United States in Vaca v. Sipes, 386 U.S. 171 (1967), requires that the union represent the employees without hostility, or discrimination, in a reasonable nonarbitrary manner an in good faith. *Accord:* Pateros School District, Decision 3744 (1991).

[9] The transcript of the hearing in this case fills less than 30 pages. There is, for example, neither claim nor evidence that Reeder has opposed the union leadership on any other issue in the past, or that considerations such as race, sex, or national origin were a factor in this case.

The Demand for a Change of Bargaining Units -

In her quest for wages comparable to those of certain of her co-workers, Reeder asked the union to "transfer" her position to another bargaining unit. From the nature of her request and the language she used, an inference is available that Reeder was unfamiliar with the statutes and case precedents which control her bargaining unit placement. In fact, Reeder's unit placement was not a matter for this union to decide. Taking a more expansive view of the situation, the Examiner finds basis to infer Reeder's request would have perpetuated (rather than corrected) an anomaly.

There is indication in this record that the employees in what is now called the "base chief" classification have historically been excluded from the bargaining unit represented by this union. There is also indication that the employees who provided clerical support to the base chiefs were included in the bargaining unit represented by this union until about "10 to 15 years ago", when they were excluded from that bargaining unit by agreement of the employer and union.[10] As noted above, Reeder lacks legal standing to pursue a unit clarification as to either the exclusion of the base chief's secretary from the bargaining unit or the inclusion of her own position in the bargaining unit.[11]

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[10] The term "confidential" was used in the testimony in this case, but the fact that they are now included in another bargaining unit represented by Local 17 provides basis for an inference that they were not, and are not, "confidential employees" excluded from the coverage of Chapter 41.56 RCW under RCW 41.56.030(2) and the "labor nexus" test set forth in IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978).

[11] WAC 391-35-010 states:

> A petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive bargaining representative, or their agents, or by the parties jointly.

The union desired to retain Reeder's position in the bargaining unit which it represents. As noted above, it had a statutory right to protect the work jurisdiction of the bargaining unit which has historically included Reeder's position. If Reeder assumed that she had some right to demand and obtain the "transfer" she requested, that was in error and does not constitute a "reasonable belief" under the standard for interference cases. Reeder has not met her burden of proof that the union discriminated against her because it did not accede to her request for transfer to another bargaining unit.[12]

FINDINGS OF FACT

1. King County is a political subdivision of the state of Washington, and is a "public employer" under RCW 41.56.030(1). The employer operates and maintains a public passenger transportation system through its Department of Transportation.

2. Amalgamated Transit Union, Local 587, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of employees working in the public passenger transportation system operated by King County. That bargaining unit includes employees performing office-clerical and technical functions, excluding (by agreement of the union and a predecessor

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[12] The employer and Local 17 would each have had legal standing to file and pursue a unit clarification petition, but either of them would have needed to show changed circumstances warranting a change of the unit status of Reeder's position. City of Richland, supra. Neither the employer nor Local 17 has been named as a respondent in this case, so the legality of their actions (or inactions) is not before the Examiner.

employer) employees serving as base chiefs and as secretaries to base chiefs.

3. Diane Reeder is employed by King County and is a "public employee" within the meaning of RCW 41.56.030(2). She performs office-clerical work in the public passenger transportation system operated by King County, in a position which has historically been included in the bargaining unit represented by Local 587.

4. International Federation of Professional and Technical Employees, Local 17, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of King County, including some employees in the "administrative specialist II" classification. Some employees in the "administrative specialist II" classification work in close proximity to Reeder.

5. In 1994, the employer initiated a classification and compensation study.

6. In 1997, the employer proposed to reallocate the position held by Reeder into the "component supply center intermediate clerk" classification, and notified Reeder that her wage rate was subject to collective bargaining negotiations between the employer and Local 587. The study plan provided an appeal process for employees who disagreed with the employer's initial decision on their classification. Reeder appealed the employer's initial decision on her classification.

7. In November of 1998, the employer issued a decision on Reeder's appeal, proposing to allocate her position to the "administrative specialist II" classification. The employer

reiterated that the reallocation would not be effective until compensation was "determined, approved and implemented".

8. Local 587 and the employer eventually agreed to retain Reeder's position in the "component supply center intermediate clerk" classification. There is no evidence in this record that the union therein acted in a manner which was arbitrary, discriminatory or in bad faith.

9. On December 10, 1998, Reeder requested "transfer" of her position to the bargaining unit represented by Local 17. Local 587 declined that request.

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. Diane Reeder has not met her burden of proof to establish that she reasonably perceived the union's actions in regard to her pay and classification to constitute an interference with her rights under RCW 41.56.040, so that no interference in violation of RCW 41.56.150(1) has been established in this case.

3. Diane Reeder has not met her burden of proof to establish that she engaged in any activity protected by Chapter 41.56 RCW or communicated any intent to do so, that she was deprived of any ascertainable right, status or benefit, or that there was any causal connection between the union's actions in regard to her pay and classification and her exercise of rights under RCW 41.56.040, so that no discrimination in violation of RCW 41.56.150(1) or (3) has been established in this case.

4. As an individual employee, Diane Reeder had no right or legal standing to demand transfer of her position out of the bargaining unit represented by Local 587, and Local 587 had a right to protect the work jurisdiction of the bargaining unit which has historically included Reeder's position, so that no discrimination in violation of RCW 41.56.150(1) or (3) has been established in this case.

ORDER

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

Issued at Olympia, Washington, this 30th of June, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, 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.