Port of Longview (International Longshore and Warehouse Union, Local 21), Decision 9394-A (PECB, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF LONGVIEW, Employer.	)	
TIMOTHY MILLIGAN, Complainant, vs. INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 21, Respondent.	)	CASE 20379-U-06-5190 DECISION 9394-A - PECB ORDER OF DISMISSAL

Timothy Milligan, an employee, appeared on his own behalf.

Leonard Carder, LLP, by *Jacob F. Rukeyser*, Attorney at Law, for the union.

On May 8, 2006, Timothy Milligan (Milligan) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the International Longshore and Warehouse Union, Local 21 (union) as the respondent. Milligan was employed by the Port of Longview (employer).[1] A hearing was held in Longview, Washington on October 24 and 25, 2006 before Examiner Sally B. Carpenter.

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[1] In a separate case, Milligan filed an unfair labor practice charge on the same date against the employer. See Case 20378-U-06-5189. The two related cases were consolidated for hearing. The complaint against the employer was dismissed at the close of Milligan's case-in-chief. *Port of Longview*, Decision 9393 (PECB, 2006).

ISSUES PRESENTED

1. Did the union induce the employer to commit an unfair labor practice by the union's return of Timothy Milligan to the hiring hall and removal of Milligan from some Port of Longview operations, in reprisal for protected union activities?

2. Did the union's return of Timothy Milligan to the hiring hall and removal of Milligan from some Port of Longview operations interfere with protected employee rights?

The Examiner finds that the union did not induce the employer to commit an unfair labor practice in violation of RCW 41.56.150(2), nor did the union interfere with protected employee rights in violation of RCW 41.56.150(1). The charges against the union are dismissed.

APPLICABLE LAW

Chapter 41.56 RCW prohibits unions from interfering with or discriminating against a public employee who exercises rights secured by the statute:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE BARGAINING 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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> . . . .
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> RCW 41.56.150 UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVE ENUMERATED. It shall be an unfair labor practice for a bargaining representative:

> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> (2) To induce the public employer to commit an unfair labor practice;
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> . . . .

The Commission determines and remedies unfair labor practice complaints under RCW 41.56.160. The provisions of Chapter 41.56 RCW apply to port districts and their employees through RCW 53.18.015: "Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter."

Union Inducing an Employer to Commit an Unfair Labor Practice

If a union requests an employer to take some action that is an unfair labor practice, the union violates RCW 41.56.150(2). "A union may induce an employer to commit any unfair labor practice: interference, assistance of union, discrimination, or refusal to bargain." *City of Issaquah (Issaquah Police Services Association)*, Decision 9255 (PECB, 2006).

Union Interference With Employee Rights

While unfair labor practice complaints involving employer conduct may occur with more frequency, either a union or employer can commit an interference violation. The test for interference is whether a typical employee, in the same circumstances, could reasonably perceive the union's actions as discouraging his or her protected union activities. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). In order to demonstrate an interference with collective bargaining rights, the employee is not required to show an intention or motivation to interfere on the part of the respondent. *City of Tacoma,* Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was

actually coerced. *King County*, Decision 6994-B (PECB, 2002). The complainant bears the burden of demonstrating that the complained-of conduct resulted in harm to protected employee rights. *King County*, Decision 8630-A (PECB, 2005).

ANALYSIS

Union Inducing an Employer to Commit an Unfair Labor Practice

In his case against the employer, Milligan presented no facts supporting his belief that the employer discriminated against him. The case against the employer was dismissed. *Port of Longview*, Decision 9393. Milligan's case against the union is based on similar belief. When the union moved to dismiss the inducement charge at the end of Milligan's case-in-chief, Milligan responded:

> My whole argument was pretty much based on the interference of employee rights. There's really nothing in testimony that has a preponderance of evidence that there was collusion on the part of the union officers with the port to get the port to act as they did. Most of the evidence does show that the union acted, you know, and I have no way of proving what I feel and what I think happened at this time. I know there was inducement but I have no way to prove that.
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> I will argue over interference with employee rights though.

Upon the union's motion at the close of Milligan's case, the inducement charge against the union was dismissed. This Order of Dismissal confirms dismissal of the inducement charge against the union.

Milligan had complained to the union about two pay disputes. One concerned a claimed underpayment for steady bulk lead operators, involving Milligan and another employee named Davis. Milligan

asserted this complaint in the summer of 2005. In December 2005, the union obtained a significant pay raise for Milligan and Davis, albeit under another theory advanced by the union. The second complaint concerned an alleged contractual underpayment of 13 cents per hour for all steady employees. The union also settled this pay claim with the employer, and obtained back pay for all affected employees.

During the processing of the two pay complaints, Milligan was upset with the time taken to adjust the disputes. He had a long history of difficult relationships both at the job site and with the union. He accused the union leadership of failing to promptly pursue the pay complaints.

Another issue raised by Milligan is that in November 2005, the employer asked for a meeting with the union to formally request the union to call Milligan back to the union hall.[2] The employer's request was based on a long series of events involving Milligan's failure to follow work rules and Milligan's behavior toward other individuals on the job site, including other union members, contractors, and the employer's staff. Union officers met with the employer, and reached a compromise where Milligan was permitted to keep his steady position under a one-year probationary "last chance" agreement. The probation was conditioned on harmonious relationships with other individuals at the employer's facility. No facts were submitted to show the union directly or indirectly asked the employer to treat Milligan any differently than other employees. Taking all the evidence in the light most favorable to Milligan, there were no facts which would support a finding of a

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[2] Under the union contract, the union decides whether a steady employee's position with the employer should be terminated. The employer and union meet to discuss the reasons for the employer's request to the union.

union inducement of the employer to commit an unfair labor practice.

Union Interference With Employee Rights

Milligan worked as a bulk lead operator at the shipping facility of the Port of Longview for six and one-half years. Railroad cars loaded with bulk product arrive at the Port. Union members dump the railroad cars at the bulk facility, and then handle the flow of product to the belts that take the cargo to a ship. Milligan sat in a job shack overlooking the work, making computer entries, and controlling much of the work flow.

Milligan's case of union interference seems to hinge on his belief that the union called him back to the union hall (thus terminating his steady employment at the Port) as retaliation for his pay complaints. In 2005, Milligan complained that he and Davis should be paid more for their position as bulk lead operator, and that the employer was underpaying wages by 13 cents per hour for all steady employees. Milligan believes the union would not have acted on these complaints had he not been very insistent. The union processed both pay issues to a successful conclusion, albeit not in the time limits desired by Milligan. The favorable resolution of the pay complaint for Milligan and Davis was made in December 2005, after his November 2, 2005, last-chance agreement and before his termination on January 16, 2006.

In a joint labor-management meeting on November 2, 2005, the employer notified the union that it requested Milligan's termination (sent back to the union hiring hall) because of his on-the-job behavior. Jointly-signed minutes of that meeting indicate that the union and the employer had each held separate meetings with Milligan regarding his on-the-job conduct. However, the minutes

state, "The union disagreed with Mr. Milligan being sent back to the hiring hall since this was his first written complaint". Acceding to union negotiations, the employer agreed with the union to place Milligan on a one-year probation for "inharmonious work relationship." Milligan was called into the meeting for an explanation of the outcome, and stated that he understood the terms of the probation. On January 16, 2006, the union advised Milligan he was "returned to the hiring hall" (removed from his steady job) for inharmonious relations, breaking the probationary condition. The evidence indicated that there was a January 2006 incident involving verbal baiting of another union member/port employee. The initial removal on January 16 was from all employer operations; within a few weeks, it was modified to exclude Milligan only from Berth 5, his former work place.

Details of Milligan's "inharmonious relationships" were lengthy and specific, covering several years of conduct. One consistent issue was between Milligan and other union members. Union members agreed to a certain start and stop time for these complex operations, to promote smooth operations and the safety of all involved. Union witnesses testified to a continuing stream of incidents where Milligan refused to follow the agreed work rules. For example, Milligan was accused of repeatedly dumping rail cars early, and of refusing to begin dumping cars on a day when his accustomed parking place was used by another employee. The union held a meeting to discuss these infractions with Milligan. It appears that Milligan was unwilling to fully accept and abide by union work rules.

The employer also had chronic issues with Milligan's intimidation and hostility to other union members, to contractors charged with inspection duties, and to Port staff. Complaints of Milligan's workplace conduct came from many sources.

Under the test for interference, the question is whether a typical employee could reasonably perceive the union's actions as discouraging Milligan's protected union activities. In this case, Milligan's union activity was to complain vociferously to his union about pay issues, and to complain that the union acted too slowly. There is no showing of any link between Milligan's pay complaints and his recall to the hiring hall. The evidence indicates an entirely independent reason for his recall. The union's effort to save Milligan's job in November 2005, could lead a typical employee to perceive the union as being completely even-handed in its representation of members. A typical employee could not reasonably perceive the union's conduct in complying with the last-chance agreement as a threat of reprisal or coercion for Milligan's pay complaints. The call back to the union hall was clearly caused by workplace misconduct, not by union interference. No harm to protected employee rights was shown.

FINDINGS OF FACT

1. The Port of Longview is a public employer within the meaning of RCW 41.56.030(1).

2. Timothy Milligan was a public employee within the meaning of RCW 41.56.030(2), and a member of the International Longshore and Warehouse Union, Local 21, at the time of the facts giving rise to this charge. Milligan was employed in a steady position as a bulk lead operator.

3. The International Longshore and Warehouse Union, Local 21, is a bargaining representative within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative

of a bargaining unit with members in part assigned to the Port of Longview.

4. Milligan engaged in protected union activities by complaining to the union about two pay disputes.

5. In November 2005, the employer and union agreed that Milligan could keep his steady position under a one-year probationary "last chance" agreement.

6. On January 16, 2006, Milligan was called back to the union hiring hall for violation of the last chance agreement based on his workplace conduct, thus removing him from his steady position.

7. A typical employee could not reasonably perceive the union's actions against Milligan as related to Milligan's protected union activities.

8. A typical employee could not reasonably perceive the union's actions against Milligan as a threat of reprisal or force related to Milligan's protected union activities.

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. As described in Findings of Fact 4 through 6, International Longshore and Warehouse Union, Local 21, did not induce the employer to commit an unfair labor practice or violate RCW 41.56.150(2).

3. As described in Findings of Fact 4 through 6, International Longshore and Warehouse Union, Local 21, did not interfere with protected employee rights or violate RCW 41.56.150(1).

NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 29th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Sally B Carpenter

SALLY B. CARPENTER, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	20379-U-06-05190	FILED:	05/08/2006	FILED BY:	PARTY 2
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DETAILS:	Terminal Operations Union				
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