

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, CHAUFFEURS,)	
WAREHOUSEMEN AND HELPERS,)	
LOCAL UNION NO. 252,)	
Complainant,)	CASE NO. 1416-U-78-176
vs.)	DECISION NO. 459-PECB
CITY OF MORTON,)	FINDINGS OF FACT,
WASHINGTON,)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
_____)

APPEARANCES:

RODGER GUSTAFSON, Attorney-at-law, appearing for and upon behalf of the complainant.

WILLIAM C. BOEHM, Attorney-at-law, appearing for and upon behalf of the respondent.

Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 252, hereinafter called the "complainant", or the "union", filed a complaint charging unfair labor practices with the Public Employment Relations Commission on February 27, 1978. The complaint alleges that the City of Morton, Washington, hereinafter referred to as the "respondent" or the "city", has committed certain unfair labor practices in violation of RCW 41.56.040 and RCW 41.56.140(1) as follows:

BASIS FOR COMPLAINT

"On November 23, 1977 in the city hall of the City of Morton, Elmer Jastad, mayor of the City of Morton stated to Lee Green, chief of police of the City of Morton, that if the policemen of the police department organized and joined the union, the mayor would lay off one of the policemen. Approximately one week later at the home of the mayor, Elmer Jastad, he again stated to Lee Green, chief of police, that if the policemen went union, the mayor would lay off one of the policemen.

The Teamsters Union, Local 252, was certified as the bargaining representative under PERC case number 1224-E-77-239, decision number 336, PECB, December 29, 1977. Following the certification of the bargaining

representative, Robert Henricksen, policeman of the City of Morton, was fired by Elmer Jastad, mayor of the City of Morton, on January 16, 1978, effective February 1, 1978.

The termination of employment of Robert Henricksen was because he and the other policemen of the City of Morton had exercised their rights to organize and designate representatives of their own choosing for the purpose of collective bargaining."

The union seeks relief, as follows:

"Reinstatement of Robert Henricksen to his position as policeman of the City of Morton, with full back pay and benefits, seniority, and an injunction against the City of Morton restraining it from interfering or coercing public employees in the exercise of their rights guaranteed under RCW Chapter 41.56."

The Executive Director designated Willard G. Olson to act as Hearing Examiner and to make and issue findings of fact, conclusions of law and order. A hearing was conducted before the Examiner on March 22, 1978 at the city hall, Centralia, Washington.

BACKGROUND

In early November, 1977 employees of the police department of the City of Morton, consisting of the chief and three officers, found that the city was proposing a \$60 per month increase in salary rather than the \$100 per month they had been led to believe they were to receive. The three officers then contacted the union seeking to be represented in negotiations with the city and signed bargaining authorization cards on November 14, 1977. A petition was filed with PERC and the union was certified as the exclusive bargaining representative on December 29, 1977.

On November 23, 1977, Mayor Jastad met with Police Chief Lee Green in the council chambers and told him that if the police officers joined the teamsters union he would lay one of them off. The mayor categorically denies having said this. Chief Green relayed this alleged threat to the officers. Green testified the mayor told him the same thing again approximately one week later at the mayor's home. The mayor does not deny that the two conversations took place but claims what he told Green was to the effect that if the union was to get all that it demanded, that the city would have to lay off one officer.

The budget for 1978 for the City of Morton had its final reading and was passed on December 5, 1977. The budget provided police department funds for one chief and three officers.

The first negotiating session between the union and the city was held on January 11, 1978 with the mayor and city council present. The city's reaction to the union proposals was negative, with the mayor stating that the budget was set and could not be changed. The union subsequently filed unfair labor practice charges based upon the city's failure to bargain. Those charges were withdrawn subsequent to the hearing in this matter after a collective bargaining agreement was consummated between the parties.

On January 16, 1978 police officer Robert Henricksen, who had been hired on May 5, 1976, was notified of his termination to be effective February 1, 1978:

"NOTICE OF TERMINATION OF EMPLOYMENT

TO: Robert A. Henricksen
Morton, Washington

Dear Mr. Henricksen:

In accordance with the rules and regulations adopted by the Civil Service Commission for the City of Morton, you are hereby given notice that due to circumstances beyond the City's control you are laid-off from your employment with the City of Morton. Said lay-off will be effective as of February 1, 1978.

MAYOR: ELMER JASTAD"

Henricksen thereafter requested a hearing before the Morton civil service commission. On January 31, 1978, he received a confirmation of a hearing date which also included an explanation and reasons for the lay-off:

"Mr. Robert Henricksen
Morton, Washington 98356

Re: Lay-off with City of Morton
Police

Dear Mr. Henricksen:

This is to confirm the date of February 7, 1978 at 7:00 p.m. for the Civil Service Commission hearing you have requested. The meeting will be held at the Morton City Hall.

The necessity of your lay-off was prompted by the city's shortage of funds caused by the following:

- 1) Waring Davies settlement
- 2) Flood damage - headworks, Backstrom Park, and the sewer project
- 3) Loss of revenue from the sales tax on food.

Due to the above financial hardships the City was required to look for possible areas to cut back on spending. In checking with the Association of Washington Cities they recommended one police officer for every 500 citizens. Since Morton has a population of approximately 1,400 citizens, the City felt that only three officers were necessary rather than four.

Your name will be placed on the City's eligibility list for first consideration if and when the City hires a police officer.

Mayor of Morton
Elmer Jastad"

POSITIONS OF THE PARTIES

The union alleges that Henricksen was laid off because he joined the union. The union claims that the mayor, on two occasions a week apart, threatened to lay off a man in the police department if they went union. Further, the union alleges that the mayor followed through on his threat by the termination letter of January 16, 1978 to Henricksen.

The union contends that the city, after the lay-off of Henricksen, has attempted to justify this action on economic grounds. But the economic reasons given for the lay-off, the union argues, were known to the city prior to the adoption of the budget which included funds for three officers and the chief and thus did not propose a reduction in the police force.

The city flatly denies that the mayor made the statement that he was going to cut a man from the force if the police officers unionized. The city claims the decision to lay off Henricksen was made because a series of uncontrollable events, occurring after the budget was adopted, had an adverse financial impact, as stated in the mayor's January 31, 1978 letter.

The city also states that the mayor had no other place in the budget, except the police department, where he could make cuts. The mayor, in January, 1978, compiled statistics which showed that the ratio of police to population in Morton was higher than comparable cities and therefore the city could do with one less officer. The city maintains that the lay-off was for purely economic reasons.

DISCUSSION

The Public Employees' Collective Bargaining Act provides the employees with the right to choose a collective bargaining representative and

protects them from certain acts by the employer:

"41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer: (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; (2) To control, dominate or interfere with a bargaining representative; (3) To discriminate against a public employee who has filed an unfair labor practice charge; (4) To refuse to engage in collective bargaining.

The union alleges that the employer has violated RCW 41.56.140(1) above. This section of the statute has been taken almost word-for-word from Section 8 (a) (1) of the National Labor Relations Act.^{1/} Under the NLRA there are numerous board and court decisions which relate to the alleged interference and coercion complained of here. It is well settled that a threat to close a plant ^{2/} or to discharge an employee ^{3/} as a method of discouraging union organization constitutes interference and coercion.

In the instant case the Examiner must consider all the circumstances, the evidence and the conflicting testimony to determine whether or not threats were made and whether or not Henricksen was discharged because of the union's organizational activities. The Public Employment Relations Commission has previously ruled that a discriminatory discharge is unlawful. (Town of Fircrest, Dec. No. 248-A-PECB). While the mayor does not deny that the two conversations with the police chief took place, there is a sharp conflict in the testimony as to what was said. The mayor's version, while not stated in specific terms, is to the effect that if the officers went union and were to receive all they would be asking for he would have to lay off one of them. (Tr. p. 50). Chief Green testified that the mayor said "If the officers go union, that he was going to cut a man" and that he did not qualify

^{1/} Unfair labor practices. Sec. 8. (a). It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

^{2/} Textile Workers Union v. Darlington Mfg. Co., 380 US 263, 58 LRRM 2657 (1965).

^{3/} NLRB v. Neuhoff Bros. Packers, 375 F2d 372, 64 LRRM 2673.

the statement in any way. (Tr. p. 92, li. 9-17). When asked how he could remember so clearly what was said, Green replied that he had written the statement down. (Tr. p. 93, li. 2). Though Henricksen did not learn that it was to be him who was to be laid off until January, the threat of a cut was relayed to the officers when they first met with the union around the 29th of November. (Tr. p. 33, li. 3-14).

The union states that it encountered difficulties getting a negotiation meeting with the city. The mayor maintains he was not adverse to the employees joining the union or negotiating. The first negotiating session with the mayor and the city council was held on January 11, 1978, with the union presenting its first proposal and requesting a counter-proposal. The union business agent and the three police officers all testified as to the negative and anti-union attitude of the city. The union was told that bargaining would be a waste of time and that "it wouldn't do any good to bargain." (Tr. p. 91, li. 11-12).

One of the city councilmen asked "Why didn't the men have guts enough to come and talk to us personally?" (Tr. p. 13, li. 7-8). When questioned about the "guts" statement, the mayor admitted that "somebody might have said it." (Tr. p. 51, li. 19). The union was asked if "no" would be a counter-proposal and when answered in the negative the party stated "God, I thought this was a free country." It is the unrefuted testimony of the union business agent that the mayor stated ". . . we and our fancy agreements have no place in the City of Morton. That we're up there trying to take the taxpayers hard-earned dollars; and as far as he was concerned, we weren't going to meet again." (Tr. p. 10, li. 10-14).

Much evidence and testimony was received regarding the financial condition of the city. The first of the financial reasons given for Henricksen's discharge in the January 31, 1978 letter from the mayor was a civil service commission award of \$4200 in back pay to Warren Davies. The mayor testified that he knew of this liability back in October of 1977. (Tr. p. 57, li. 21).

The second reason given was the 1977 flood damage. The mayor was evasive and stated he "didn't know" whether the flood occurred before or after the final passage of the budget on December 5, 1977. (Tr. p. 56, li. 20-24). Since the record is unclear as to the date, notice is taken of the records of the Washington State Department of Transportation which confirm that the flood occurred on December 2, 1977.

Further, there is testimony that federal disaster funds replaced the bridge that was damaged. (Tr. p. 25, li. 7-11).

The third reason given in the January 31 letter of dismissal was the loss of revenue from the sales tax on food. The proposition to repeal the tax on food was passed at the November 7, 1977 election, to become effective July 1, 1978.

Contrary to the arguments of the city in its post-hearing brief, it is clear from the record that all three of the financial liabilities cited in the January 31 termination letter occurred prior to the final passage of the 1978 budget. Further, as late as the January 11, 1978 negotiating session the mayor was contending that he could not alter the budget, which included funds for a chief and three officers.

At the hearing, the mayor testified that he had the city clerk call several cities of comparable size regarding the ratio of police officers to population and found that Morton could do with one less officer. The record isn't clear on the date of this "survey", except to indicate that it was during the month of January. The evidence does not prove that the survey took place prior to the January 16, 1978 termination letter to Henricksen.

This Examiner is convinced by the record as a whole, that the mayor did make the threat of a layoff, and thereafter followed through on the threat by discharging Henricksen, because of the organizational activities of the union. The city's attempts to show a legitimate business motive are found to be after-the-fact attempts at justification for its actions. The Supreme Court of the United States has ruled that "Employer conduct that is inherently discriminatory or destructive of employee rights under LMRA is not automatically excused upon showing that it was motivated by business exigencies." NLRB v. Erie Resistor Corp., 373 US 221, 53 LRRM 2121 (1963).

The city contends that it had no purpose of dampening, if not devastating, a union organizing drive. The supreme court has said that "Employer's protestation that he did not intend to encourage or discourage membership in a labor organization must be unavailing in proceeding under Section 8 (a)(3) of the Act where a natural consequence of his action was such encouragement or discouragement." Radio Officers' Union v. NLRB, 347 US 17, 33 LRRM 2418 (1954). For further cases involving discharge for union organizational activity see NLRB v. Murray Ohio Mfg. Co., 326 F2d 509, 55 LRRM 2181 (CA 6, 1964) and NLRB v. Burnup and Sims, Inc., 379 US 21, 57 LRRM 2385 (1964).

Based upon the foregoing the Examiner finds that the true reason for the discharge or lay-off of Robert Henricksen was to discourage union organizational activities and was precipitated by the anti-union animus of the city. Having considered the evidence, testimony, arguments and post-hearing briefs, the Examiner now makes the following

FINDINGS OF FACT

I

The City of Morton, Washington is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

II

Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 252 is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3).

III

On two occasions, November 23, 1977 and on or about November 30, 1977, the mayor of Morton threatened to "cut" the police force of the City if the employees joined the Union.

IV

The 1978 budget for the City of Morton, adopted on December 5, 1977, provided funds for a full contingent of a chief and three police officers.

V

Teamsters Union Local 252 was certified as the exclusive bargaining representative of the Morton police officers on December 29, 1977.

VI

The City of Morton showed a definite anti-union animus at a negotiations session on January 11, 1978.

VII

The mayor of Morton sent a termination letter to Robert Henricksen on January 16, 1978, to be effective January 31, 1978. The notice of termination did not contain any specific reasons therefor.

VIII

A second termination letter dated January 31, 1978 stated Henricksen's discharge was for economic reasons: 1) Waring Davies settlement, 2) flood damage, and 3) loss of revenue from sales tax on food.

IX

The true reason for the Henricksen discharge was that it was a follow-up of the threats made in No. III above and resulted from the anti-union animus of the city rather than its financial condition.

CONCLUSIONS OF LAW

I

The Public Employment Relations Commission has jurisdiction over this matter by virtue of Chapter 41.56 RCW.

II

The respondent City of Morton has interfered with, restrained and coerced employees in the exercise of their rights guaranteed by RCW 41.56.040 and has engaged in unfair labor practices within the meaning of RCW 41.56.140(1).

From the foregoing, findings of fact and conclusions of law, the Hearing Examiner now makes the following

ORDER

IT IS ORDERED that the respondent, City of Morton, its officers and agents, shall immediately:

1. Cease and desist from:
 - a. Interfering with the exercise of the rights of employees to engage in protected and concerted activities as detailed in RCW 41.56.040.
2. Take the following affirmative action:
 - a. Offer Robert Henricksen immediate and full reinstatement to his former position, without prejudice to his seniority rights and other privileges. 4/

4/ The city's post-hearing brief indicated Henricksen was re-hired on March 23, 1978 to fill a vacancy. The conditions of the re-hire, however, are not known to the Examiner.

- b. Make Robert Henricksen whole for any loss in pay and benefits he may have suffered by reason of his discharge, by payment to him of the sum of money equal to that which he would normally have earned or received as an employee, from the date of his termination to the date of the reinstatement made pursuant to this Order, less any earnings he may have received during said period, and less the amount of unemployment compensation, if any, received by him during said period, and, in the event that he received unemployment compensation benefits, reimburse the Employment Security Department of the State of Washington in such amount.
- c. Post the accompanying notice for a period of sixty (60) days on bulletin boards where notice to employees of the respondent are usually posted.
- d. Inform the Public Employment Relations Commission, in writing, within twenty (20) days from the date of this Order, as to the steps taken to comply herewith.

DATED at Olympia, Washington this 26th day of June, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Willard G. Olson
WILLARD G. OLSON, Hearing Examiner