

172  
Lipold

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                  |   |                        |
|----------------------------------|---|------------------------|
| INTERNATIONAL UNION OF OPERATING | ) |                        |
| ENGINEERS, LOCAL UNION NO. 280   | ) |                        |
| AND MR. RICHARD SABO,            | ) |                        |
|                                  | ) | CASE NO. 1346-U-78-167 |
| Complainants                     | ) |                        |
|                                  | ) | DECISION NO. 702-PECB  |
| vs.                              | ) |                        |
|                                  | ) | FINDINGS OF FACT,      |
| CITY OF PASCO HOUSING AUTHORITY  | ) | CONCLUSIONS OF LAW     |
|                                  | ) | AND ORDER              |
| Respondent                       | ) |                        |
|                                  | ) |                        |
|                                  | ) |                        |

APPEARANCES:

WILLIAM LEFEVRE, appearing for and on behalf of the complainant.

DENNIS SWEENEY, Attorney-at-Law, appearing for and on behalf of the respondent.

International Union of Operating Engineers, Local Union No. 280 and Richard Sabo, hereinafter called the "complainants", filed a complaint charging unfair labor practices with the Public Employment Relations Commission on January 19, 1978. The complaint alleges that the City of Pasco Housing Authority, Pasco, Washington, hereinafter referred to as the "respondent", has committed certain unfair labor practices in violation of RCW 41.56.040 as follows:

BASIS FOR COMPLAINT

"On Wednesday, January 11, 1978, Mr. Lippold (Executive Director, City of Pasco Housing Authority) was notified by Mr. Claude M. Thompson, Business Manager of Local No. 280, that Mr. Richard Sabo and the majority of the employees had petitioned the State for Union representation.

On Friday, January 13, 1978, at approximately 3:00 p.m., Mr. Lippold asked Mr. Sabo to come into his office at which time he said, 'I have the authority and I am letting you go.'

The Union charges that due to the circumstances in this case Mr. Sabo was fired and had no other reason to be fired except due to his efforts in obtaining Union representation."

The Union seeks relief, as follows:

"Re-employment without any loss in salary during his unemployment and no loss in any other benefits."

The Executive Director designated George G. Miller 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 April 3, 1978 at the Kennewick District Office, Department of Labor and Industries.

BACKGROUND

In August of 1977, Mr. Richard Sabo had a discussion with Mr. Jack Lippold concerning his (Sabo's) wages. Sabo stated to Lippold that he felt he was entitled to more money than he was receiving and asked for a raise. Lippold replied that money for a raise wasn't in the budget thus his hands were tied. At this point in time, Sabo had worked for the Housing Authority approximately 10 months. He had, on occasion, been complimented on his job performance, and it appears he was an average to better-than-average employee. Lippold stated under oath that a further discussion regarding a wage increase occurred in October of 1977, however Sabo denies such an event. Lippold further stated that during the month of November 1977, he had occasion to discuss the condition of the maintenance in the high-rise apartment building which was Sabo's responsibility. Sabo's testimony reflects that such a discussion did not take place in November 1977, however, he states that Lippold did talk to him during the week before Christmas 1977 regarding "stripping and rewaxing" floor areas in the high-rise apartment building. During the closing days of 1977, Sabo took several days off for which he was not paid since he had no accrued sick or annual leave time. (His wife had recently had a baby girl.)

On Wednesday, January 11, 1978, Lippold was advised by Claude Thompson, Business Manager, Local 280, IUOE, that Sabo and a majority of the Housing Authority employees had opted for Union representation. In the conversation that followed Thompson warned against any action that would jeopardize the employees' jobs because of their Union activity.

At an employee meeting subsequent to Thompson's visit, Lippold stated that HUD would only allow so much money for maintenance and if "you

force me it may come that instead of having five employees, I would have to have four."

About two p.m. on January 13, 1978, Lippold observed Sabo's official vehicle parked in the shop area. Upon entering the shop Lippold asked Sabo what he was doing in the shop area. Sabo replied that he was taking his coffee break. (Lippold testified that at an employee meeting during the evening of January 11, 1977 coffee break procedure was changed to: a) men who worked in the family area would take their coffee breaks at the shop and b) men who worked in the high-rise-elderly, would take their coffee breaks in the high-rise office). Lippold told Sabo to return the truck to the high-rise and come to his office. When Sabo reported to Lippold as directed, Lippold stated "I don't have any choice but to let you go at this time."

#### POSITIONS OF THE PARTIES

The Union alleges that Sabo was terminated because he joined the Union. The Union claims that Lippold had, on many occasions, complimented Sabo on his work and had never given him any type of reprimand or warning that his continued employment with the Housing Authority was in jeopardy.

The Employer maintains that Sabo's discharge was the culmination of Housing Authority overall dis-satisfaction with his job performance and that the fact that he was involved in Union activity played no part in the decision.

#### 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. <sup>1/</sup>

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 discharge an employee <sup>2/</sup> or reduce the work force 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 Sabo 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 and City of Morton, Dec. No. 456-A-PECB).

Lippold did testify that after being approached by the Union Business Manager on January 11, 1978, who advised him that the Maintenance employees had signed bargaining authorization cards and cautioned him not to take any action that might jeopardize the employees jobs, did say "I'm not going to do anything about them joining the Union." In response to Thompson's (Union Business Manager) statement "I think they (Unions) have done an awful lot of good things in the United States", Lippold replied "I think they have done a lot to screw up the United States. (TR. PP. 64-65).

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<sup>1/</sup> 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 their rights guaranteed in Section 7.

<sup>2/</sup> NLRB v. Neuhoff Bros. Packers, 375 F2d 372, 64 LRRM 2673

On January 11, 1978, at an evening meeting with the Maintenance employees, Lippold did state that "they (HUD) told me they won't give me more money for maintenance people, so I said if they're not going to give me more money, and you force me, and I don't know what, and I said what the alternatives would be. I don't know. I said 'It may come that instead of having five employees, I would have to have four, but that -- I didn't threaten them' saying 'I'm going to fire somebody if you get a higher wage' or anything like that." (TR. PP. 70-71).

The employer's use of the coffee break incident as the catalyst that precipitated Sabo's discharge appears to be a thinly veiled attempt to disguise the real reason for the discharge as Lippold testified that he hadn't really intended to terminate Sabo over the coffee break affair. (TR. P. 58).

This examiner is convinced by the record as a whole that Sabo's real employment problem commenced on January 11, 1978, after he was identified as being one of the employees who had opted for Union representation. The employer's attempts to characterize Sabo as a less-than-average employee are found to be after-the-fact attempts as justification for its actions. The supreme court has said that "Employer 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 LLRM 2418 (1954). For further cases involving discharge for Union organizational activity see NLRB v. Murray Ohio Mfg Co., 326 F2d 509, 55 LLRM 2181 (CA6, 1964) and NLRB v. Burnup and Sims Inc., 379 US 21, 57 LLRM 2385 (1964).

Based on the foregoing the Examiner finds that the true reason for the discharge of Richard Lee Sabo was to discourage Union organizational activities and was precipitated by the anti-union animus of the employer. Having considered the evidence, testimony and arguments the Examiner now makes the following

FINDINGS OF FACT

I

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

II

International Union of Operating Engineers Local Union No. 280 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 January 11, 1978, Mr. Claude Thompson, Business Manager, of the Union identified in Findings of Fact II, supra, informed the Employer Representative (Executive Director of the Pasco Housing Authority) that a majority of the Housing Authority maintenance employees had opted for Union representation.

IV

On January 11, 1978, the employer representative showed definite anti-union animus by statements made to the Union Business Manager.

V

On January 11, 1978, the employer representative stated at an employee meeting that a reduction in the work force could occur if a higher than budgeted wage settlement was forced upon the Housing Authority.

VI

The true reason for the Sabo discharge was Union activity and anti-union animus rather than his work record.

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 Pasco Housing Authority, 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 Pasco Housing Authority, 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 Richard Lee Sabo immediate and full reinstatement to his former position, without prejudice to his seniority rights and other privileges.
  - b. Make Richard Lee Sabo 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 (such payment to bear 8% interest), 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 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 receipt of this Order, as to the steps taken to comply herewith.

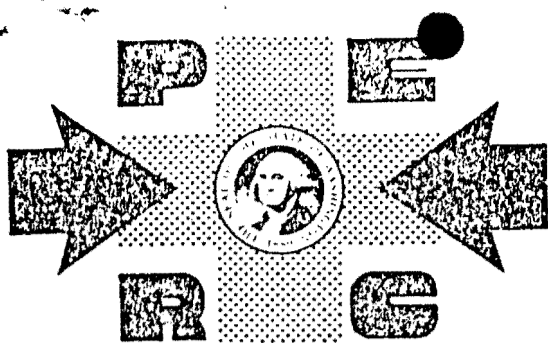
1346-U-78-167

DATED at Spokane, Washington this 14<sup>th</sup> day of August, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

George Miller  
GEORGE G. MILLER Hearing Examiner





PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56., WE HEREBY NOTIFY OUR EMPLOYEES THAT:

1. WE WILL offer to Richard Lee Sabo full reinstatement to his former position, without prejudice to his seniority, rights or privileges previously enjoyed by him and make him whole for any loss he has suffered.
2. WE WILL NOT discharge, or threaten employees with discharge in any effort to discourage membership in International Union of Operating Engineers, Local No. 230, AFL-CIO or any other labor organization.
3. WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Union of Operating Engineers, Local No. 230, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection.

All our employees are free to become, remain, or refrain from becoming members of International Union of Operating Engineers, Local No. 230, AFL-CIO, or any other labor organization.

CITY OF PASCO HOUSING AUTHORITY

By \_\_\_\_\_

By \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

THIS NOTICE MUST BE POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.