

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RONALD E. MOOK,	)	
	)	
Complainant,	)	CASE NO. 2677-U-80-390
	)	
vs.	)	DECISION NO. 1179 - PECB
	)	
WEST VALLEY SCHOOL DISTRICT	)	FINDINGS OF FACT,
NO. 208,	)	CONCLUSIONS OF LAW,
	)	AND ORDER
Respondent.	)	
	)	
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Reed Pell, Attorney at Law, appeared on behalf of the complainant.

Lonny R. Suko, Attorney at Law, appeared on behalf of the respondent.

The West Valley Education Association filed a complaint with the Public Employment Relations Commission on March 18, 1980, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140(1). The above-named complainant moved to intervene, and that motion was granted by the Examiner on September 15, 1980. The West Valley Education Association withdrew from the proceedings, by stipulation of the parties on March 2, 1981. Rex L. Lacy of the Commission staff was designated as Examiner to make and issue Findings of Fact, Conclusions of Law, and Order. Pursuant to notice issued by the Examiner, hearing on the matter was held on March 2 and 3, 1981 at Yakima, Washington. The respondent submitted a post-hearing brief, the complainant did not.

BACKGROUND:

West Valley School District No. 208 employees approximately 19 school bus drivers. Ronald Mook was employed as a part-time school bus driver on September 6, 1972. He became a full-time employee in September, 1975.

In August, 1979, Robert Knight was employed as Director of Transportation by the district. He had previously held the position of Manager of Public Transportation for the City of Yakima. Knight drafted several operational changes for the transportation department that related to record keeping, reports, safety inspections and route schedules. The changes were required by the State of Washington for transportation reimbursement to the district.

In September, 1979, the district's certificated employees, represented by the West Valley Education Association, engaged in a nine day work stoppage. The district operated with replacement teachers until the strike ended on September 14, 1979. The district's school bus drivers, represented by Public School Employees of Washington, elected not to withhold their services in support of the strike. The bus drivers, including Mook, transported students throughout the work stoppage.

During the strike, Mook and two other bus drivers were elected by the PSE membership to serve on a committee to contact other labor organizations to explore the possibilities of changing bargaining representatives. Mook discussed the topic with Roger Cantaloube, Classified Personnel Employees Association representative, and thereafter solicited fellow employees to join CPEA.

After the strike by certificated employees ended on September 14, 1979, Knight implemented the new operational procedures for the bus drivers. Mook did not follow the procedures for filling out daily log sheets; did not start and end the bus runs as scheduled by Knight, and did not submit daily inspection sheets as required. Knight verbally, and in writing reprimanded Mook for his failure to follow the operational procedures. On October 31, 1979, Knight discharged Mook for insubordination. PSE filed a grievance challenging the termination of Mook and processed the grievance in accordance with the procedure set forth in the collective bargaining agreement. The grievance was denied at each step of the procedure, and Mook's discharge was upheld.

On March 18, 1980, the West Valley Education Association filed a complaint of unfair labor practices with PERC alleging that:

"On or about October 31, 1979, the above-named employer discriminated against employee Ron Mook by discharging him because of his support for and activities on behalf of the West Valley Education Association and because he was attempting to organize the classified employees of the West Valley School District to join the Classified Public Employees Association, a labor organization affiliated with the Washington Education Association.

By the aforesaid acts the employer has violated RCW 41.56.140(1)."

POSITION OF THE PARTIES:

The complainant contends that the employer discharged Mook for his union activities on behalf of the Classified Personnel Employees Association.

The respondent contends that Ronald Mook was discharged for insubordination; that the employer was unaware of Mook's activities on behalf of Classified

Personnel Employees Association; and that the unfair labor practices should be dismissed.

DISCUSSION:

Insubordination, if proven, may be a dischargeable offense. Mook, and PSE, appealed the discharge through all the steps of the grievance procedure in the collective bargaining agreement between PSE and the district. The discharge was upheld by the district Board of Directors at the final step of the grievance process. Deferral to arbitration is not possible, in this instance, because of the absence of a final and binding arbitration step in the grievance procedure of the collective bargaining agreement.

The NLRB has adopted the following causation test for dual motive discharges:

"In all cases alleging violations of Section 8(a)(3) of LMRA or violations of Section 8(a)(1) turning on employer motivation, NLRB will employ the following "causation test". (1) General Counsel must make prima facie showing sufficient to support inference that protected conduct was a "motivating factor" in employer's decision; (2) once this is established, employer has burden of demonstrating that same action would have taken place even in absence of protected conduct. NLRB is abandoning use of term "in part," which it previously used in determining relationship, if any, between employer action and protected employee conduct."

Wright Lines Inc., 251 NLRB 150 (1980).

Testimony of witnesses at the hearing, including Mook, clearly established that the district was unaware of Mook's soliciting of other bus drivers to change bargaining representatives. Without knowledge of Mook's organizing activities, the district could not have made Mook's protected activities a motivating factor in his discharge. The Examiner thus concludes that the complainant has failed to make a prima facie showing that Mook's protected activities, on behalf of CPEA, were a motivating factor in the employer's decision to discharge Mook. Since the complainant has failed to meet its responsibilities in establishing the first part of the test, there is no reason to shift to the second part of the dual motivation causation test under Wright Lines Inc., supra.

FINDINGS OF FACT

1. West Valley School District No. 208 is a public employer within the meaning of RCW 41.56.030(1).
2. Ronald E. Mook is a public employee within the meaning of RCW 41.56.030(2).

3. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(3).
4. Classified Public Employees Association is a bargaining representative within the meaning of RCW 41.56.030(3) which is affiliated with the Washington Education Association.
5. West Valley Education Association is an employee organization within the meaning of RCW 41.59.020(1) and a bargaining representative within the meaning of RCW 41.56.030(3) which is affiliated with the Washington Education Association.
6. Ronald E. Mook was employed by West Valley School District No. 208 on September 6, 1972 as a part-time bus driver. He became a full-time bus driver in September, 1975.
7. Public School Employees of Washington is the recognized exclusive bargaining representative of a bargaining unit that included school bus drivers and maintenance personnel.
8. The certificated educational employees of West Valley School District No. 208, who are represented by West Valley Education Association, participated in a nine (9) day strike in September, 1979. The strike ended on September 14, 1979.
9. Bus drivers, represented by Public School Employees of Washington, did not participate in the strike.
10. During the strike, and thereafter, Mook solicited fellow employees to join Classified Public Employees Association.
11. Ronald E. Mook was discharged by his supervisor, Robert Knight, on October 31, 1979 for insubordination. The employer was not advised of Mook's soliciting fellow employees and unaware of his activities on behalf of CPEA. There is not sufficient evidence to base a finding that Mook's protected activity was a motivating factor in the employer's decision to discharge.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under RCW 41.56.
2. The employer did not violate RCW 41.56.140(1) when it discharged Ron Mook on October 31, 1979.

ORDER

The complaint is hereby dismissed.

DATED at Olympia, Washington this 9th day of June, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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REX L. LACY, Examiner