

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PARAPROFESSIONAL FIREFIGHTERS ASSOCIATION OF MERCER ISLAND, LOCAL 1762, IAFF,)	CASE NO. 3967-U-82-617
Complainant,)	DECISION NO. 1580 - PECB
vs.)	
CITY OF MERCER ISLAND,)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.)	

Alan E. Provost, President, IAFF Local 1762, appeared on behalf of the complainant.

Ronald C. Dickinson, City Attorney, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on February 17, 1982, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. Rex L. Lacy was designated to act as Examiner and 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 June 2, 1982 at Mercer Island, Washington. The parties filed post-hearing briefs.

The material allegations of the complaint are as follows:

"A member of Local 1762, IAFF has received a memo from Public Safety Director Jan Deveny, which in several areas, attempts to interfere with and coerce this member in the exercising of his rights under RCW 41.56.140 Subsections 1 and 3.

The memo infers the member's continued employment is in jeopardy if he continues to file unfair labor practices and/or grievances. The memo also attacks other areas of this employee's performance and directs that he shall be 'watched closely' and treated differently than other employees. While the memo does not specifically state that these actions are because of this employee's filing of unfair labor practices and grievances, we feel we can provide, beyond a reasonable doubt, that this is the reason for these actions toward this employee.

A copy of Director Deveny's memo to FF Hiltner, and the Union response to it, are enclosed to further demonstrate our objection to this action by the City."

BACKGROUND

The City of Mercer Island operates a Department of Public Safety which provides police and fire protection services. The department is supervised by Jan Deveny, Director of Public Safety. Deputy Chief John Schwartz is involved with fire operations. Two other deputy chiefs are involved with police operations.

Professional Firefighters Association, Local 1762, IAFF, is the recognized exclusive bargaining representative of all uniformed firefighters below the rank of deputy chief. Alan Provost is president of Local 1762.

Peter Hiltner, the affected employee in this matter, was hired as a firefighter in December, 1974. His record was satisfactory and without incident until he was injured in an off-duty accident in the autumn of 1979. Hiltner was placed on an extended disability leave by the Mercer Island Disability Board. While on leave, Hiltner traveled throughout Europe without keeping the employer notified of his whereabouts. Upon his return to active status, Hiltner received an oral reprimand for failing to provide the employer with a current address while on leave.

In January, 1980 Hiltner was again injured while off-duty. He was placed on disability leave status until July, 1980. Hiltner again traveled throughout Europe without providing a current address to the employer or disability board. Additionally, Hiltner missed a physical examination scheduled for June 1, 1980. Deveny disciplined Hiltner for his failure to provide the employer with a current address and for missing the physical examination. Hiltner thereupon requested that Local 1762 file a grievance to challenge Deveny's disciplinary actions. The union refused to file a grievance, and Hiltner then attempted to lodge an appeal of the discipline with the Mercer Island Civil Service Commission. The Civil Service Commission refused Hiltner's appeal on jurisdictional grounds. Hiltner thereafter filed a grievance under the City of Mercer Island general employees grievance procedure. The city manager and Hiltner negotiated a settlement of the grievance which negated the discipline meted out by Deveny.

In March, 1981, Hiltner filed a grievance involving vacation, longevity pay and holiday shift accruals for the period while he was on disability leave. Deveny denied Hiltner's grievance at Step 1 of the collective bargaining agreement grievance procedure. The union thereafter filed and processed Hiltner's grievance. All the issues except Hiltner's longevity pay were eventually submitted to arbitration. The arbitrator ruled in Hiltner's favor.

In July, 1981, Hiltner complained to Acting Deputy Chief Parsons about his shift assignment. Parsons directed Hiltner to file his complaint in writing,

along with a request in accordance with the departmental procedure for transfer to another shift. Hiltner responded by submitting his grievance and transfer request directly to the city manager. Parsons thereupon gave Hiltner a written reprimand for failure to follow the departmental chain of command in filing his grievance and transfer request.

In July, 1981, Hiltner was placed on his third disability leave. This time the reasons given were job stress and mental problems. He returned to work in a light-duty status in October, 1981 and was assigned to full-duty status on January 19, 1982.

On January 22, 1982 Deveny presented Hiltner with a "letter of memorandum" which stated:

"Now that you have returned to work, it is time to bring some matters to your attention so you know where you stand and what is expected of you.

The first thing you should know is that your working relationship with the City has not been satisfactory. You have not been a dependable employee; you have had frequent and prolonged absences from work. In 1980, you did not work from January 19 through September 4. In 1981, you did not work from June 8 through 15. You also did not work from July 23 through the end of the year and including January 13, 1982. During this same two year period, you have also used sick leave.

Your frequent and prolonged absences from work cause numerous problems.

1. You are not dependable; you miss work more often than you show up. In 1980, you worked about four months; in 1981, you worked about five months.
2. Your absences cause additional expense to the City to pay other firefighters to cover your shifts. This is paid either as overtime or as salary to a temporary firefighter.
3. Because of your absences, you miss numerous firefighting drills and training sessions. Your skills must surely suffer.
4. Because of your absences, you miss numerous training sessions in emergency medical procedures. Again, your skill level must suffer.
5. Because of your absences, you miss numerous opportunities for actual hands-on experiences to maintain skills.
6. You have accrued an unusually high number of vacation and holiday shifts. When these are paid off, you again cause additional and excessive costs to the City. In 1980, you were paid for 103 ½ hours of vacation and 170 hours of holiday time; total 273 ½. In 1981, you were paid off for 319 ½ hours of vacation and 86 ½ hours of holiday time; total 406 hours. This is far more than any other firefighter.

In addition to the above, you have frequently been in conflict with the management of the Department. While a certain amount of this is normal and to be expected, your conflicts are high both in number and in time spent to deal with them. In the past two years, more time has been spent dealing with your conflicts than those of all other firefighters combined. The conflicts involving you have been harmful to the morale and good order of the Fire Division.

Through all these things, you have made yourself an unsatisfactory and undesirable employee. Your continued employment as a firefighter is in jeopardy. Unless you can improve your performance and behavior, you will be terminated. I advise you to take this warning seriously.

In order to improve these deficiencies, the following steps are required:

- A. You must improve your attendance record.
- B. Your firefighting skills must be returned to a level acceptable to Deputy Chief John Schwartz.
- C. Your emergency medical skills must be returned to a level acceptable to Deputy Chief John Schwartz.
- D. You must discontinue causing the City excessive expense.
- E. You must find ways to work more in harmony within the organization.

Because of the numerous concerns I have about you as an employee, your supervisor will be directed to prepare monthly performance reports on you until further notice. In addition, you will not be assigned as an acting officer until Deputy Chief Schwartz is satisfied you have the ability to perform in that important role. Be assured your performance will be watched closely.

You have performed satisfactorily at times in the past. I know of no reason why you cannot again. It is up to you." (emphasis added)

On February 2, 1982 Provost met with Deveny to discuss the January 22, 1982 memorandum. During their conversation Deveny informed Provost that some of the additional expenses caused by Hiltner included the cost of processing grievances, the arbitration of the longevity pay issue, and a related unfair labor practice case.^{1/} Provost and Deveny did not reach any agreement or understanding regarding Hiltner's situation.

On February 9, 1982 the union formally protested the January 22 memorandum and expressed the union's concern about several statements and directives contained therein. Additionally, the union alleged that Hiltner was being harassed and disciplined because of his union activities. The union also indicated that these unfair labor practice charges would be filed.

^{1/} See: City of Mercer Island, Decision No. 1460 (PECB, 1982) aff. Decision No. 1460-A (PECB, 1982).

On February 11, 1982 Hiltner was given a fourth extended disability leave by the Mercer Island Disability Board. Thereafter, on August 11, 1982, Hiltner was given a disability retirement.

POSITION OF THE PARTIES

The union contends that the January 22, 1982 memorandum from Deveny to Hiltner violated RCW 41.56.140(1) and (3); that the purpose of the memorandum was to discourage Hiltner from exercising his statutory rights to file and process grievances and unfair labor practices; and that the "conflict" alleged in the memorandum was caused by the City, not Hiltner.

The employer contends that the July 22, 1982 memorandum was not designed, or used, to deprive Hiltner from exercising his statutory rights; that the memorandum was designed to inform Hiltner of the employer's expectations regarding Hiltner's work performance; and that Hiltner's conflicts with the employer have been detrimental to departmental morale.

DISCUSSION

The Public Employment Relations Commission has determined that filing and processing grievances are protected activities under RCW 41.56.140(1). Valley General Hospital, Decision No. 1195 (PECB, 1981) aff. Decision No. 1195-A (PECB, 1981); Peninsula School District, Decision No. 1477 (EDUC, 1982); Clallam County, Decision 1405-A (PECB, 1982). RCW 41.56.140(3) specifies that discrimination against public employees involved in filing unfair labor practices is an unfair labor practice.^{2/}

Hiltner had a long history of filing grievances, individually and through the union. He had used every available process to air his complaints. Hiltner has been the central figure in two unfair labor practice cases before the Commission. Hiltner was successful in limiting or eliminating the discipline meted out by Deveny. Deveny's vexation with Hiltner's complaints, along with questions about Hiltner's performance on the job, led to the January 22 memorandum. That memorandum and the subsequent explanation, were clearly subject to reasonable interpretation by Hiltner and other bargaining unit employees as threats designed to deprive Hiltner of his statutory right to file unfair labor practices and his contractual right to file grievances contesting employer actions and discipline.

^{2/} 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.

There was no actual discrimination against Hiltner in furtherance of the January 22, 1982 memorandum, and therefore no violation of RCW 41.56.140(3). A finding of employer intent to interfere is not necessary to finding a violation of RCW 41.56.140(1). It is sufficient that there was a threat which was reasonably perceived by the employee(s) as an attempt to interfere with the rights conferred by RCW 41.56.

FINDINGS OF FACT

1. The City of Mercer Island, Washington is a public employer within the meaning of RCW 41.56. The city operates a Department of Public Safety which provides police and fire protection services to the community. Jan P. Deveny is director of Public Safety.
2. Professional Firefighters Association of Mercer Island, Local 1762, IAFF, is a bargaining representative within the meaning of RCW 41.56.030(3) and is the recognized collective bargaining representative of all uniformed firefighters below the rank of deputy chief. Alan Provost is president of Local 1762.
3. Peter Hiltner was hired as a firefighter in December, 1974. Hiltner was placed on permanent disability retirement status in August, 1982. During his employment, Hiltner was granted four disability leaves by the Mercer Island Disability Board.
4. During his employment Hiltner was disciplined by Deveny. Hiltner filed grievances contesting the disciplinary actions and also contesting the employer's interpretation of the collective bargaining agreement provisions regarding sick leave, vacation, holiday shifts, longevity pay, and shift transfers. Additionally, Hiltner was the affected employee in an unfair labor practice complaint processed by Local 1762 before the Public Employment Relations Commission.
5. On January 22, 1982, Deveny issued a memorandum to firefighter Hiltner which contained a threat against Hiltner's continued employment, unless Hiltner ceased causing the employer excessive expenses. In subsequent explanations to the union, the excessive expenses reference was given interpretation by Deveny as including the employer's cost to litigate Hiltner's grievances and unfair labor practice complaint.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.

2. By threatening an employee with loss of employment to discourage the filing and processing of unfair labor practices under Chapter 41.56 RCW and grievances under the collective bargaining agreement, the City of Mercer Island, Washington has committed unfair labor practices within the meaning of RCW 41.56.140(1).

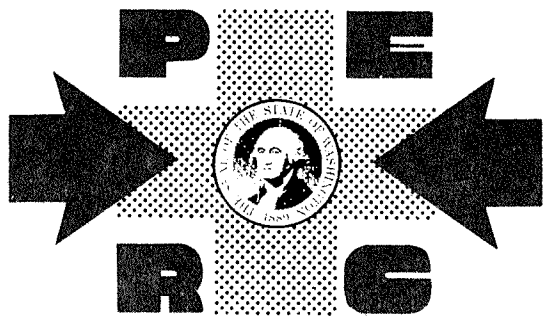
ORDER

1. Cease and desist from:
 - (a) Threatening employees represented by Professional Firefighters Association of Mercer Island, Local 1762, IAFF, with loss of employment or loss of wages, hours or other terms or conditions of employment in connection with the exercise of their rights to file and process grievances under the collective bargaining agreement, and unfair labor practice complaints under Chapter 41.56 RCW.
2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:
 - (a) Remove the memorandum issued on January 27, 1982 by Jan Deveny, Director of Public Safety, along with any other references thereto, from Peter Hiltner's personnel file.
 - (b) Post in conspicuous places on the employer's premises where notices to all employees are usually posted copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the City of Mercer Island, Washington, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Mercer Island, Washington, to insure that said notices are not removed, altered, defaced, or covered by other materials.
 - (c) Notify the Executive Director of the Public Employment Relations Commission in writing within twenty (20) days following the date of this order as to what steps have been taken to comply herewith and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 14th day of February, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT, THE CITY OF MERCER ISLAND, WASHINGTON, HEREBY NOTIFIES ITS EMPLOYEES THAT:

WE WILL NOT threaten employees represented by Professional Firefighters Association of Mercer Island, Local 1762, IAFF, with loss of employment, pay or benefits in connection with the exercise of their rights to file and process contractual grievances and unfair labor practice complaints pursuant to Chapter 41.56 RCW.

WE WILL remove from Peter Hiltner's personnel file the memorandum issued to firefighter Peter Hiltner on January 22, 1982, and all references thereto.

DATED: _____

CITY OF MERCER ISLAND

BY: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.