

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, AFSCME, LOCAL 1504,)	CASE NO. 3881-U-81-601
Complainant,)	DECISION NO. 1552 - PECB
vs.)	
MASON COUNTY,)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.)	

Pamela G. Cipolla, Attorney at Law, appeared on behalf of the complainant.

Byron E. McClanahan, Prosecuting Attorney, by L. Frank Johnson, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On December 16, 1981, the Washington State Council of County and City Employees, Local 1504, AFSCME (complainant) filed a complaint charging unfair labor practices alleging that Mason County (respondent) violated RCW 41.56.010, 41.56.040, and 41.56.140(1) by unilaterally removing a union member from participation in union activities and cancelling his dues deduction authorization. A hearing was held on the matter on April 28, 1982, before Martha M. Nicoloff, Examiner. The parties submitted post-hearing briefs.

FACTS:

The Washington State Council of County and City Employees represents certain employees of Mason County, Washington, in a bargaining unit described as:

"All employees in the auditor's office, clerk of superior court office, treasurer's office, maintenance, emergency services, district court, board of equalization, parks department, election department, weed control, and assessor's office of Mason County, excluding elected officials, appointed officials, confidential employees, supervisors, appraisers, and all other employees of the county."

The maintenance department in Mason County consists of a maintenance supervisor, maintenance mechanic, maintenance mechanic helper, and

housekeeper, who are responsible for buildings and grounds maintenance at the courthouse and two other county buildings.

Prior to the spring of 1981, Jim Ede was employed as the maintenance mechanic. That position was included in the above-referenced bargaining unit. Ede was a member of Local 1504, and had authorized deduction of his union dues from his paycheck. In approximately April or May of 1981, Ede became the acting maintenance supervisor. Sometime thereafter, he and other candidates participated in an application and interview process for appointment to the maintenance supervisor position. As a result of that process, Ede was appointed maintenance supervisor. The parties differ as to whether that appointment was permanent. Ede testified that he received a letter after the interview which announced his appointment as "acting" supervisor. It was his understanding that a period of "a year or more; indefinite" had to elapse before he could move from acting supervisor into a permanent capacity in that position. Respondent's witness, Commissioner Ed Johnston, asserted that Ede became the permanent maintenance supervisor some time prior to October 1981, although he could not specifically recall notifying Ede as such. Johnston testified that there is no "acting" or probationary period for department heads, but that they serve at the pleasure of the commissioners and can be removed at any time.

As maintenance supervisor, Ede is responsible for overseeing the buildings and grounds maintenance functions, and, in addition, performs "hands-on" maintenance mechanic work on a limited basis. He develops the preliminary department budget for submission to the county commissioners, and is consulted on budgetary matters relating to his department, as well as on matters in which his expertise in maintenance and mechanics is needed. He has the authority to recommend actions on personnel matters to the commissioners. The position of maintenance supervisor was originally, and continues to be, excluded from the bargaining unit as a supervisory position.

Mason County holds monthly meetings of department heads, which are attended by the county commissioners, elected officials, and the budget director. The meetings regularly include discussion of matters such as budget preparation, bidding procedures, and cost control methodologies. Personnel policy matters, such as interdepartmental transfers and procedures to be used in promotions, are also discussed at these meetings. The department heads are given an opportunity to report on matters of particular importance to their departments. The budget director periodically reports on the progress of negotiations at these meetings, and testified that the meetings are used to obtain proposals from department heads which might be included in the county's bargaining positions, as well as to apprise them of the current status of negotiations. Although the meetings are open to Ede, he has attended only three or four since he became acting supervisor. He could

recall only one negotiations report in the course of those meetings, and that involved the deputy sheriffs' bargaining unit. Ede has not been present at the bargaining table, and, according to his testimony, has not been asked for input into subjects of negotiation other than preparing his departmental budget. The budget director briefs the commissioners and elected officials on the status of negotiations in weekly executive sessions.

On September 28, 1981, the county commissioners wrote to Richard Bever, business agent for Local 1504, and requested Ede's "immediate removal ... from the bargaining unit", stating that Ede's continued membership in the union was contrary to his management responsibilities. Bever responded to that request on October 1, 1981, stating that he believed the commissioners were interfering with Ede's statutory rights to be a union member. On October 6, 1981, the commissioners notified Bever that "we are removing Mr. Jim Ede from the bargaining unit. Also, by copy of this letter, we are hereby removing Mr. Ede from union participation." The commissioners also cancelled Ede's dues deduction authorization. On October 7, 1981, Ede withdrew from participating membership in Local 1504 "pursuant to the request of Mason County Commissioners."

POSITIONS OF THE PARTIES:

Complainant argues that Ede, even though in a position outside the bargaining unit, is a public employee. It claims that Ede's duties as maintenance supervisor do not meet the Supreme Court's test for exclusion from the coverage of the statute as a "confidential" employee. It argues that respondent interfered with Ede's exercise of his statutory rights when it requested his resignation from the union. Finally, it argues that respondent is not prohibited from honoring a dues deduction authorization from Ede, and that reimbursement of Ede's dues to the union is an appropriate remedy.

Respondent argues that its actions do not constitute unfair labor practices in that the statute only prohibits interference with the right to organize for collective bargaining, and says nothing about the right to be a union member. It claims that the union and the bargaining unit are one and the same, and if Ede is outside the unit, it is improper for him to be a member of the union. Further, it argues that Ede's duties make him confidential, and therefore not a public employee, and that the employer is without authority to deduct dues from an individual who is neither a public employee nor within the bargaining unit.

DISCUSSION:Confidential Status

RCW 41.56.030(2) provides:

"'Public employee' means any employee of a public employer except any person ... (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit ..."

In considering the "public employee" status of an individual, the Public Employment Relations Commission is guided not only by a long series of its own decisions, but also by the approval of its standard by the Supreme Court. In Firefighters v. City of Yakima, 91 Wn.2d 101 (1978), the court held:

"... in order for an employee to come within the exception of RCW 41.56.030(2) the duties which imply the confidential relationship must flow from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy. General supervisory responsibility is insufficient to place an employee within the exception."

The facts herein do not support the claimed confidentiality and exemption from "public employee" status. Participation in general discussions of policy questions, or giving opinions about formulation of bargaining positions, falls short of evidence that the employee in question is privy to the type of labor relations information necessary to qualify for a confidential exemption. City of Seattle, Decision 689-A (PECB, 1979). Whatcom County, Decision 1483 (PECB, 1982). Being consulted on the impact of a proposal made during the course of negotiations does not fall into the area requiring exemption. Central Kitsap School District, Decision 1296 (PECB, 1982). Serving at the pleasure of the head of a bargaining unit does not imply confidential status, either. City of Seattle, supra. Indeed, there is no indication that Ede has in fact ever supplied such opinions, been asked about policy matters, or been privy to policy discussions relating to the unit herein involved. Preparation of a preliminary budget cannot be said to qualify as an indicator of labor policy-making authority.

Ede's Bargaining Unit Status

There can be no question about the bargaining unit status of either the maintenance mechanic or maintenance supervisor positions. The parties have

stipulated that Ede occupied a bargaining unit position as maintenance mechanic, and that the maintenance supervisor position has been excluded, as supervisory, from the bargaining unit. However, the question remains whether Ede is temporarily occupying a position outside the bargaining unit, or whether he is no longer a bargaining unit employee.

The examiner is convinced that Ede is the permanent occupant of the maintenance supervisor position. The parties are in concurrence on all the facts leading up to the letter of appointment; the only question is whether at the conclusion of the interview process Ede became the permanent or remained the acting maintenance supervisor. The record supports a conclusion that Ede became the permanent maintenance supervisor at that time, and that he misinterpreted the fact of serving at the pleasure of the commissioners as being ongoing "acting" status.

Ede's Rights as a Public Employee

Contrary to respondent's claim that RCW 41.56 enumerates only collective bargaining rights, the right of a public employee to join a labor organization is clearly enumerated in RCW 41.56.010.

"The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers." (emphasis supplied)

Absent a finding of confidential status, Ede is a public employee, and the fact of his being outside the bargaining unit does nothing to alter that.

The statute also provides:

"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 under this chapter. RCW 41.56.040

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 ... RCW 41.56.140"

Demanding or even soliciting an employee's withdrawal from union activities or membership is an unfair labor practice. Hoover, Inc., 240 NLRB No. 83 (1979). Gal Construction, Inc., 239 NLRB No. 38 (1978). Smith's Complete Market of Tulare County, Inc., 237 NLRB No. 45 (1978).

Dues Deduction

RCW 41.56.110 mandates dues deduction by the employer upon the written authorization of any public employee within the bargaining unit, after certification or recognition of the bargaining representative. It neither expressly authorizes nor prohibits the employer in deducting dues from public employees outside a bargaining unit who may authorize such deduction.

There is no date certain in this record as to when Ede became maintenance supervisor on a permanent basis, and thereby clearly stepped outside of the bargaining unit represented by Local 1504. Testimony that he became permanent prior to October 1981 was uncontroverted, and he may have been permanent considerably prior to that. In any event, by the time the commissioners cancelled Ede's dues deduction authorization, claimed by complainant to be on or about October 7, 1981, he was no longer a public employee in the bargaining unit. The employer was no longer mandated to deduct dues from his check.

FINDINGS OF FACT

1. Mason County is a "public employer" within the meaning of RCW 41.56.030(1). The county organization includes a maintenance department. A board of commissioners is the county policy making authority.
2. Washington State Council of County and City Employees, Local 1504, AFSCME, AFL-CIO, is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents rank and file employees in several departments of Mason County, including maintenance.
3. Jim Ede was employed in the bargaining unit position of maintenance mechanic. He had authorized Mason County to deduct Local 1504 union dues from his paycheck.
4. In the spring of 1981, Ede became acting maintenance supervisor, and, sometime prior to October 1981, was permanently appointed to that position. Ede is responsible for developing a preliminary department budget, and has the authority to recommend on personnel actions to the commissioners. He does not sit at the bargaining table nor has he been asked for input on matters of negotiation. The maintenance supervisor position is not included in any bargaining unit.
5. On September 28, 1981, the board of commissioners notified Local 1504 that it wished to have Ede removed from union membership. On October 6, 1981, the board notified the union that Ede was being removed from union participation. On October 7, 1981, Ede withdrew his membership in Local 1504 as a result of the commissioners' request.

6. On approximately October 7, 1981, Ede found that the county had cancelled his dues deduction authorization.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. Jim Ede is a public employee within the meaning of RCW 41.56.030(2).
3. By the events described in Finding of Fact 5, the employer violated RCW 41.56.010, 41.56.040, and 41.56.140(1).
4. By the event described in Finding of Fact 6, the employer did not violate the statute.

ORDER

IT IS ORDERED THAT respondent Mason County, its officers and agents, shall immediately:

1. CEASE AND DESIST FROM:

Interfering with, restraining, or coercing public employees in the free exercise of their right to join labor organizations of their own choosing.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(a) 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". Such notices shall, after being duly signed by an authorized representative of Mason County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Mason County to ensure that said notices are not removed, altered, defaced or covered by other material.

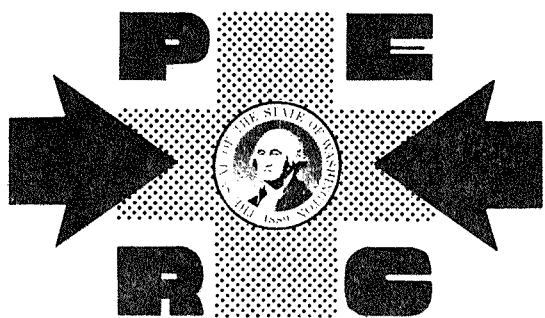
(b) Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 11th day of January, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARTHA M. NICOLOFF, 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:

WE WILL NOT interfere with, restrain, or coerce our employees in the free exercise of their right to join labor organizations of their own choosing.

Dated: _____

MASON COUNTY

By: _____
Authorized Representative

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.