STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID MONK, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	CASE NO. 4069-U-82-641
DAVID MONK, Complainant, vs. CITY OF RENTON, Respondent.	CASE NO. 4070-U-82-642 DECISION NO. 1825 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Edna Niemela Verzani, Attorney at Law, appeared on behalf of the complainant.

Pamela Bradburn, Attorney at Law, appeared on behalf of the respondent-union.

Syrdal, Danelo, Klein & Myre, by Otto G. Klein III, Attorney at Law, appeared on behalf of the respondent-employer.

On May 3, 1982, David Monk (complainant) filed a complaint charging unfair labor practices against Washington State Council of County and City Employees (respondent-union), alleging that respondent-union violated RCW 41.56.150(1), (3), and (4) by failing to secure "enforceable" seniority rights in a collective bargaining agreement, by failing to safeguard bargaining unit employees' freedom of speech, by failing to respond to telephone calls, and by failing to supply adequate representation for complainant at a grievance hearing. On the same date, complainant filed a complaint charging unfair labor practices against tht City of Renton (respondent-employer), alleging that respondent-city violated RCW 41.56.140(1) and (3) by a series of threats to complainant, by isolating complainant from the rest of the bargaining unit, by refusing complainant "light duty" status and by removing favorable evaluations from complainant's personnel file. The two complaints were consolidated, and a hearing was conducted on March 24, April 27 and 8, 1983. The parties submitted post-hearing briefs.

BACKGROUND

The City of Renton is a municipal corporation located on the southern shore of Lake Washington in King County. Services for city residents are provided through a number of departments under the general policy direction of an elected city council. The city has collective bargaining relationships with a number of employee organizations including the Washington State Council of County and City Employees. The union represents employees in seven departments. A majority of unit employees works in the park department and the public works department.

Events leading to these unfair labor practice cases arose in the parks department. Park and Recreation Director John Webley retains general supervisory authority over the department, and superintendents direct the department's three divisions: recreation, maintenance, and building. Foremen direct the daily activities of work crews within each division. At the time of the hearing, the department had 56 employees.

Complainant, David Monk, was hired in the parks department as a maintenance worker on April 1, 1968. Given the nature of the allegations in these cases, a detailed explanation of complainant's employment history is necessary. Through the mid-1970's, complainant had a satisfactory work record. In 1974, he was reprimanded for going to a liquor store during work hours in a city vehicle, and complainant received an attendance warning letter in 1977. In 1978, complainant became involved in several confrontations with supervisory employees, and allegations were made that Monk tried to intimidate and physically threaten several foremen. However, complainant was not disciplined for these incidents.

In 1979, complainant was involved in a dispute concerning the application of seniority rights set forth in the collective bargaining agreement between the city and the union. Monk testified that Al Dieckman and Larry Sleeth, fellow maintenance employees, approached him with a scheme to "bust" seniority for future promotions. According to complainant, the scheme would permit Dieckman and Sleeth to be promoted before more senior employees. However, Monk could not give specifics on how the scheme would operate, and Sleeth and Dieckman testified that they never approached Monk with such an idea. The record indicates that the existing seniority system operated without challenge. While complainant points to this incident as an indication of a lack of union concern, the record indicates that Monk did not bring the seniority issue to the union's attention in 1979.

In mid-1980, the seniority issue arose again. In approximately June, 1980, the city created a new foreman position in the parks department, and seven department employees, including Monk, applied for the job. Larry Sleeth was

selected, and this decision led to a grievance on the application of seniority in the selection process. Fourteen employees, including complainant, signed the grievance alleging that the new position was not given to "the most senior, qualified" employee as required by the collective bargaining agreement. Monk testified that at approximately the same time the grievance was filed, Sleeth approached him during a work day, stating that "management was out to get anything they could" to discharge him. Sleeth disputed Monk's account of the incident. While acknowledging that he had several conversations with complainant in that time period, he never made any threats.

In August, 1980, complainant filed a grievance arising from a reprimand he received from Maintenance Supervisor Dennis Frink. At the second step of the grievance procedure, the matter was routinely reviewed by the union's grievance committee. The seniority issue was finally submitted to arbitration before Arbitrator Carol Teather, and a hearing was conducted on September 15 and October 10, 1980. The record indicates that Monk attended the hearing.

On December 2, 1980, the committee met with Monk and Frink to discuss the situation. On December 8, 1980, the committee informed complainant that it did not find merit in the grievance and would not pursue the matter further. Complainant did not challenge the committee's determination or attempt to pursue the grievance on his own.

In January, 1981, complainant was selected to be a shop steward. Shortly after his selection, Monk was transferred to work in Highland Park. Complainant would report to work at the department's central shop and then go to the park for his regular shift. Monk did not have a telephone at Highland Park. Complainant testified that his assignment to the park was designed by the city to frustrate his efforts as shop steward. However, respondent presented evidence that other shop stewards regularly worked in areas without telephones, and Monk had access to a telephone in a nearby water department facility. Monk used the telephone so often that he was restricted by water department personnel.

On January 28, 1981, Arbitrator Teather issued her award on the "foreman selection" issue, ruling that the city had the right to choose a junior employee with superior qualification, but finding that the selection procedure was improper. At an unspecified time after the award was issued, the union retained attorney Sally Carpenter to review the arbitration award because of confusion over the award's application.

Shortly after he went to work at Highland Park, complainant became active in an effort to recall the local union officers. Monk went to one employee's

house during work hours to present the recall petition, and he approached other employees at their work stations to obtain signatures. His efforts led to oral warnings about disturbing other employees during work hours, and on February 4, 1981, Maintenance Superintendent Ron Heiret posted a memorandum to all maintenance personnel prohibiting discussion of any union related matters during the work shift. Violation of the new work rule would lead to disciplinary action. Monk contacted John Malgarini, union business representative, to protest the new policy. Malgarini contacted city officials, and the memorandum was removed. On March 3, 1981, a new policy was posted stating that local union officers could pursue union matters during work hours.

In the early part of April, 1981, complainant injured his shoulder while at work, and had to take sick leave. He did not return to work until June, 1981.

On April 9, 1981, the union received Carptenter's analysis of Arbitrator Teather's award. Carpenter reasoned that the position of foreman should be awarded to the most senior qualified employee without retesting. Since Carpenter's opinion differed from the award, the union had to decide on a course of action. On April 16, 1981, the union's executive board met, and the arbitration award was discussed. Twenty bargaining unit employees, including Monk, attended the meeting. The board decided to request the city to hire the most senior applicant. If the city refused, the board desired to resubmit the issue to Arbitrator Teather for clarification. On April 29, 1981, local union officers met with city officials, but found that the city was unwilling to arbitrate the issue a second time. However, the city did offer to retest for the position. On May 5, 1981, the union's executive board met again to discuss the situation. It decided to accept the city's offer of retesting with certain qualifications to guarantee impartiality in the testing procedure. Monk attended the meeting and stated that he would not take any tests for the position. Monk testified that the union refused to pursue an appeal of the award strictly because of the cost of an appeal, and he believed that this act demonstrated the union's lack of proper representation since the principle of seniority was eroded. Malgarini and local union president Gloria Minnick testified that cost was a consideration, but the final decision to retest was made because it was the only remedy that could have been inferred from the arbitration award. Retesting was conducted, and Sleeth retained the position.

In August, 1981, complainant had to undergo surgery for his shoulder injury, and he went on an extended leave of absence. He came back to work in November, 1981, but because of recurring difficulty, Monk requested "light duty" status. The record indicates that he was allowed to work with weight restrictions to help his shoulder heal.

In January, 1982, Monk re-injured his shoulder and had to take another leave of absence. He returned to work in February but difficulties soon arose. In March, 1982, Monk was warned to follow department policy concerning acquisition of equipment needed at a work site. Monk was also admonished for attendance and abuse of rest periods. On April 28, 1982, complainant received a written reprimand concerning his work habits from Park Superintendent Ron Heiret. On April 29, 1982, Monk was informed to be at the park department office the next day. Monk telephoned the union, attempting to get representation at the meeting. Malgarini could not attend because of a prior commitment in Spokane. The record indicates that Minnick could not attend either, but it was decided that Ed Healy, another shop steward, should accompany complainant. Healy and Monk met with Heiret, Sleeth and Frink. Complainant characterized the meeting as a "grievance hearing." During the course of the meeting Healy did not take an active role, and Monk discussed the reprimand directly with Heiret, Frink and Sleeth. The matter was not resolved at the meeting. On May 3, 1982, complainant filed the unfair labor practice cases which are before the examiner for determination. On May 22, 1982, Monk filed a grievance arising from the April 30, 1982 meeting. The grievance was later resolved.

In October, 1982, Monk contacted John McFarland, City Personnel Director, to inquire about his "light duty" status request. Monk testified that McFarland indicated that the entire question of his employment rested with the outcome of the unfair labor practices. McFarland testified that the unfair labor practice hearing was mentioned but made it clear that light duty work depended solely on the availability of such activities in the department and, at that time, light duty work was not available. On November 15, 1982, complainant reviewed his personnel file. Monk testified that several favorable evaluations from the 1980-81 period were not in the file. However, respondent presented testimony that evaluations made in that time frame were part of a pilot program and were not permanently kept in any employee's file.

POSITIONS OF THE PARTIES

Complainant argues that Washington State Council of County and City Employees failed to provide him adequate representation at a grievance hearing on April 30, 1982. Complainant further contends that the union failed to protect employees' freedom of speech, failed to appeal an adverse arbitration award, failed to secure enforceable seniority rights, and refused to answer his telephone calls or otherwise contact him. Complainant maintains that the City of Renton, its agents and representatives, threatened him with dismissal if he exercised rights guaranteed in RCW 41.56. Complainant contends that the city isolated him so he could not perform his function as a shop steward, restrained his freedom of speech, removed favorable evaluations from his personnel file, and implied that he could not return to work if he prevailed in his unfair labor practice case.

The union contends that it fully protected complainant's rights guaranteed in Chapter 41.56 RCW. The union argues that it processed complainant's grievances fairly, and that it never refused to offer complainant necessary assistance and advice. The union also maintains that it never acted in cooperation with the city to deny complainant his statutory rights.

The city maintains that it never violated RCW 41.56 in its treatment of complainant. The city argues that complainant was not a model employee and had a number of disciplinary problems arising from his refusal to accept direction by superiors. The city notes that other shop stewards have worked in similar settings to those worked in by complainant, and the other stewards felt they could adequately discharge their responsibilities. In its closing brief, the city requests that it should be awarded reasonable attorneys' fees for defending complainant's charge since the complaint is without merit.

DISCUSSION

Allegations Against the Union

Complainant's numerous allegations against his union, taken together, clearly indicate complainant's dissatisfaction with the level and skill of representation given to him. However, an individual's personal feelings about a union do not form the basis for a cause of action unless the complaining party can prove that the union violated rights guaranteed in RCW 41.56. The complaining party has the burden of proof and must demonstrate that the acts complained of were done willfully, discriminatorily or in bad faith. See: Lewis County, Decision No. 464 (PECB, 1978), and City of Redmond, Decision No. 886 (PECB, 1980). As was noted in Redmond, the exclusive bargaining representative must be given a rather wide range of latitude to carry out its representation function. This duty is qualified by a general standard requiring good faith and non-discrimination. See: Ford Motor Company v. Huffman, 345 U.S. 330 (1953).

Turning to the facts presented in this case, it appears that complainant did not understand what duties were owed to him by the union. Monk demanded immediate action to correct a series of problems that he was having with the city, and if the union did not gain redress, complainant believed he was being singled out for disciminatory treatment. In fact, the record indicates that the union processed complainant's grievances and responded to his concerns just as it would for any other bargaining unit employee. While Monk had some difficulty contacting John Malgarini, the record indicates that lack of communication was not a deliberate attempt to avoid complainant. The facts presented by complainant demonstrate his deep mistrust of his union officers, but the evidence does not support his allegation that the union either interfered with his right to process grievances or to serve as a shop

steward. In fact, Monk caused one of the problems he claims to have been caused by the union. In 1981, Monk took an aggressive role in a recall campaign directed to remove the local union officers. His efforts took him to at least one employee's home during work hours, and he approached other employees at their work stations. In response to this disruption, the city posted a restrictive policy against discussions of union business. When Monk notified the union of this policy, the memorandum was rescinded. It was later replaced with a second memorandum which adequately protected the employees' right of free speech.

With respect to the April 30, 1982 incident, Monk did not understand the nature or consequences of the situation. An employer commits an unfair labor practice by denying an employee's request to have union representation at an investigatory meeting which the employee reasonably believes might result in disciplinary action. See: NLRB v. Weingarten, 420 US 251; 95 S. Ct. 959; 43 L. Ed. 2d 171 (1975). The right does not attach if the meeting is intended to review discipline already imposed. See: City of Mercer Island, Decision No. 1460-A (PECB, 1950). In this instance, the city did not interfere in any way with complainant's right to have a union representative accompany him to the meeting. In addition, the record indicates that the meeting was designed to review the reprimand and was not investigatory in nature. Analysis must shift to the type of representation provided by the union. If complainant could prove that the union purposely ignored its obligation to represent him because of Monk's participation in the recall campaign, complainant would prevail. Such a result cannot be established from the record, however. The evidence indicates that complainant did have a union representative with him. While the matter was not resolved, additional discipline was not imposed. The union could have done a more thorough job of informing complainant of its intentions, but it did not violate complainant's rights. Given these circumstances, complainant has not sustained his burden of proof that the union violated RCW 41.56.150(1), (3) and (4).

Allegations Against the City

As in the case of the charges made against the union, complainant has the burden of proof with respect to allegations made against the City of Renton. Complainant argues that he has been subjected to a systematic plan to intimidate and coerce him. However, the city presented credible evidence and testimony to cast doubt on complainant's charges. In essence, the Examiner is confronted with a credibility question. It is clear that complainant believes that the City of Renton has tried to infringe upon the rights guaranteed to him in RCW 41.56. At the same time, the record indicates that complainant has had a rather long history of confrontations with his

supervisors. Given this background, it is easy to understand how certain statements could be taken out of context or could be given uncalled for significance. Since the facts remain substantially in dispute, the complainant has not sustained his burden of proof. In such a situation, the unfair labor practice complaint must be dismissed. See: City of Tacoma, Decision No. 1342 (PECB, 1982).

FINDINGS OF FACT

1. The City of Renton is a municipal corporation and is a "public employer" within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees is a "bargaining representative" within the meaning of RCW 41.56.030(3) which represents a bargaining unit of certain employees of the City of Renton.

3. David Monk, a bargaining unit employee was hired to work in the city's parks department in 1968. From 1968 through 1980, Monk had a satisfactory work record, but was subjected to some discipline for attendance and for using a city truck to conduct personal business on work time.

4. In mid-1980, the city decided to create a new "foreman" position. Fourteen employees, including complainant, filed a grievance alleging that the position should have been awarded to a more senior employee. The dispute was submitted to arbitration.

5. At approximately the same time that the grievance was in process complainant had a confrontation with Larry Sleeth, the employee who was given the foreman position. Complainant claims that Sleeth threatened him with termination if he contested the selection process. Sleeth disputes complainant's version of the incident, stating that the conversation dealt only with work performance.

6. In August, 1980, complainant filed a grievance against a supervisor, Dennis Frink. The dispute was reviewed by the union grievance committee which decided against further proceedings. Complainant did not appeal the committee's decision.

7. In January, 1981, complainant was selected to be a shop steward and was assigned to work in Highland Park. The park had no telephone. The evidence does not establish that Monk's assignment was designed to isolate him from the rest of the bargaining unit. Complainant used a

telephone at a nearby water department facility so often that he was restricted by water department personnel. Other shop stewards routinely work in areas with telephones and they have not felt isolated or discriminated against.

8. Shortly after he went to work at Highland Park, complainant became involved in a recall drive to replace union officers. Complainant went to an employee's house during the work day and approached other employees at their work stations during their work shift. On February 4, 1981, the employer posted a memorandum forbidding all discussion of union business during work hours. Complainant contacted union representatives who, in turn, brought the matter before city officials. The memorandum was rescinded and was later replaced with a second memorandum which permitted discussion of union business.

9. On January 29, 1981, the arbitration award was issued. The union retained an attorney to review the award, and on the basis of the attorney's recommendations, the union approached the city to see if the most senior applicant could be given the foreman position on April 16, 1981. The union executive board discussed the matter, and complainant attended the meeting. On May 5, 1981, the board met again and decided to resolve the grievance by retesting for the foreman position. Complainant refused to take the test.

10. In August, 1981, complainant had to undergo surgery to correct an injury sustained in January. Complainant returned to work in November, 1981 on a "light duty" status.

11. In March, 1982, complainant received a verbal warning to follow work rules. On April 28, 1982, complainant received a written reprimand. He was instructed to come to a meeting at the parks department office. The meeting was held on April 30th. Monk was accompanied to the meeting by Ed Healy, another shop steward. The dispute was not resolved and complainant filed a grievance on May 22, 1982.

12. In October, 1982, complainant contacted the city's personnel director, John McFarland, to discuss light duty status. The complainant maintains that McFarland implied that complainant could not return to any work with the city if he prevailed in the unfair labor practice case. McFarland recalls the conversation, it states that the amount of available light duty work was very limited, and he could not find a position for complainant immediately.

13. In November, 1982, complainant reviewed his personnel file and discovered that several favorable evaluations were missing. The evaluations were part of a "pilot" program and were removed from all employees' files before November.

CONCLUSIONS OF LAW

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

2. By events described in Findings of Fact 4, 5, 8, 9, and 11, Washington State Council of County and City Employees did not violate RCW 41.56.150(1), (3) and (4).

3. By events described in Findings of Fact 5, 7, 8, 11, 12 and 13, the City of Renton did not violate RCW 41.56.140(1) and (3).

ORDER

The complaints charging unfair labor practices are hereby dismissed.

DATED at Olympia, Washington, this 3rd day of February, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Kenneth J. Latsch

KENNETH J. LATSCH, Examiner