

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CAROL J. KAISER,

Complainant,

vs.

CLOVER PARK SCHOOL DISTRICT
NO. 400,

Respondent.

CASE NO. 3948-U-82-615

DECISION NO. 1601 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Ivan D. Johnson, Attorney at Law, appeared on behalf of the complainant.

Kane, Vandeberg, Hartinger & Walker, by Elvin J. Vandeberg, Attorney at Law, appeared on behalf of the respondent. Clifford D. Foster, Attorney at Law, submitted the closing brief.

On January 29, 1982, complainant Carol J. Kaiser filed a complaint charging unfair labor practices against the Clover Park School District No. 400, respondent. A hearing was held on April 15, 1982 in Tacoma, Washington before Jack T. Cowan. The parties submitted post-hearing briefs.

BACKGROUND

Complainant Carol J. Kaiser was initially employed by respondent Clover Park School District on July 17, 1972. The complainant served as both vice-president and president of the Clover Park Association of Educational Office Personnel, the association which was, for a time, recognized by the district as exclusive bargaining representative for secretarial, clerical and teacher aide classifications in the district. In the course of negotiations which took place between the district and association in September, 1979, the district offered the association certain promises if the association would agree to abandon its position as the exclusive bargaining representative of the bargaining unit. The matter was put to the membership for a vote, and the membership voted to abandon its role as bargaining agent. Kaiser later actively campaigned to re-establish recognition of the association as an organized union. She served as head of the organizing committee and her name appeared on handouts distributed throughout the district as the association began its attempt to affiliate with a union.

Early in April, 1981, the complainant was called to a meeting with Ms. Flinchbaugh, vocational personnel director, and Ms. Reid, business services supervisor. At that time, the complainant was advised that, because of reduced federal and state funding, her position as federal projects accountant on the normal "day" shift was being phased out. Kaiser was to be transferred to an evening shift secretary position at the vocational school. Both positions were in the Secretary IV classification. Kaiser stated her displeasure with the transfer in a letter to Mr. Storaasli, who was district personnel manager at that time, but she did not file a grievance.

On April 27, 1981, the complainant transferred to the evening school secretary position. Her working hours in her new position were from 1:00 p.m. until 10:00 p.m. Since she was a single parent and was attending evening classes on Monday and Wednesday evenings from 6:30 until 9:00 p.m., the transfer created a hardship for her. She requested special consideration to accomodate her schooling and family circumstances. In that regard, she contacted Flinchbaugh and asked that her hours be changed to 10:00 a.m. to 6:30 p.m., but her request was denied.

Kaiser voluntarily resigned her employment on June 30, 1981. Following her resignation, the complainant became aware that two or more persons had been hired to do work in the federal projects office, including accounting and project management functions for which she had sole responsibility prior to her transfer. The evidence in the instant case indicates that three persons were hired or assigned to work in the federal projects office following the claimant's transfer.

Ilba Smith was hired on November 23, 1981, but quit on December 4, 1981 to accept a permanent job elsewhere.

Rick Yee performed the same function from August 17, 1981 through November 23, 1981. Yee started as a work study student while he was in one of the work training programs. He later came to work as extra help (hourly) in December, 1981. In that position he worked with Mr. John Wilson, Supervisor of Federal and State Projects at the Clover Park Vocational Technical Institute. Yee helped to track some of the records for the projects office, doing a small part of the reporting and investigating into records. Mr. Yee's activities were not something Ms. Kaiser would have done as part of her regular duties. Yee's employment terminated on March 26, 1982.

When Ms. Kaiser's position was phased out, Wanda Schultz (a Bookkeeper II in the business office) was assigned to assist with the work in the federal and special projects department. Schultz took a leave of absence, and Frank Owens was hired on August 18, 1981 as a temporary substitute. When hired, Owens' title was CETA Coordinator Liaison Specialist and his activities, at least in part, included duties formerly performed by Kaiser while she worked in the federal projects office. Owens was still employed as of April 15,

1982 in that capacity, and was attempting to document records for possible future audits of federal programs. Upon her return from leave, Schultz returned to the business office.

Part of the accounting for the state and federal grants program was being performed at the time of the hearing in this matter by Wilson and Reid, in addition to those duties being performed by Mr. Owens. Wilson's participation in the accounting activity is necessitated by the limited staff, and there was testimony that the staff could not keep current without his help on all the accounting required by audit requirements. Additionally, the district received an unanticipated CETA contract, effective approximately October 1, 1981, which created still more accounting activity.

A CETA contract operates on a reimbursement basis such that the expenditure must have been incurred and bills or other substantiation must be submitted before reimbursement can be received. During the course of the hearing, testimony was offered as to the complainant's inability to perform her former accounting functions in an adequate manner, which purportedly triggered an audit problem and subsequent audit response activity. Wilson indicated the auditors performed an audit on the STIP program (CETA) while Ms. Kaiser was employed in the accounting office and that the auditors were not satisfied with the response prepared by Kaiser. The dissatisfaction stemmed from a lack of documentation. According to CETA personnel at Pierce County Manpower, many of the claims which had been submitted "were apparently based on the budget rather than the paper that shows there was an expenditure". The claims had been submitted by Ms. Kaiser.

POSITIONS OF THE PARTIES

The complainant alleges that the employer has violated RCW 41.56.140(1) and has committed an unfair labor practice, by making the petitioner a target of harassment by the employer because of her activity in support of a bargaining representative; that selection of the petitioner's position in the federal projects office for elimination was a subterfuge; and that her transfer to the evening school position was an arbitrary and capricious act without a reasonable basis. The complainant suggests that she was driven from employment with the district, or constructively discharged, in reprisal for her union activities.

The respondent employer denies the allegation that an unfair labor practice has occurred. It contends that the transfer of the complainant was not motivated by her union activities; also, that her transfer would have occurred even absent her union activities.

DISCUSSION

Much of the evidence in this record relates to the quality of Kaiser's work while she was employed in the federal projects office. Nevertheless, the central issue in this case is whether she was transferred (and/or constructively discharged) in reprisal for her union activities protected by Chapter 41.56 RCW. The quality of her work and other "just cause" concerns come into these proceedings as part of the employer's defense to the unfair labor practice complaint. The burdens of proof and persuasion may shift between the parties in a case of this nature. See: City of Olympia, Decision 1208, 1208-A (PECB, 1981).

From a review of all of the evidence, it is the Examiner's conclusion that the complainant has failed to make a prima facie showing that her protected union organizing and leadership activities were a motivating factor in the employer's decision to transfer her. There has been no showing to indicate that the employer found Kaiser's union activities to be reprehensible or intolerable. There were no threats or inconsistencies. See: Warden School District, Decision 1062 (EDUC, 1981). There was no evidence of employer objections to Kaiser's participation in the labor organization. See: Clallam County, Decision 1405-A (PECB, 1982). Testimony by her co-workers and supervisors alike as to her union activities was either encouraging or complimentary, and no anti-union attitude can be reasonably inferred from their comments. It is not sufficient to raise a prima facie case that the employer was merely aware of her involvement in organizing activity. In the absence of a prima facie showing, no violation of RCW 41.56.140(1) can be found in this case, and the complaint is therefore dismissed.

Had the complainant made a prima facie case showing employer discrimination in reprisal for her union activities, the burden would have shifted to the employer to substantiate its "business motivation" defense. Since there is relatively little experience with application of the standards enunciated by the Public Employment Relations Commission in City of Olympia, supra, the Examiner deems it appropriate to detail his observations on the evidence presented by the employer in its defense.

The collective bargaining agreement which covered Kaiser's employment for the period from July 1, 1977 through August 31, 1979 provided the following language concerning involuntary transfer:

When, in the judgment of the Employer, the best interest of the District will be served by a transfer of an employee, the transfer will be made only after meeting with a Personnel Office representative and the employer involved.

Similar language appears in 1980-81 edition of the Employer/Employee Handbook. That language permitted the employer to transfer Ms. Kaiser from

her federal projects office position to the vacancy in the evening school office created by the retirement of another employee. Nothing is cited or found which would allow the employee an opportunity to effectively object or block the district from taking such discretionary action.

The district elected to transfer Kaiser because of a reasonable anticipation of a reduced workload in the federal projects office. That expectation was based upon the best information then available. Kaiser held and was paid at the Secretary IV in both locations. She incurred no downgrade, no loss of pay or benefits. Her position with the evening school was never in jeopardy. The work conditions in the evening position were no different for her than they were for either her predecessor or successor.

At the time of Kaiser's transfer, there was no inference whatever that her work had been anything less than satisfactory. There had been no complaint concerning her work performance. No warnings had been issued and no counseling had occurred. Her supervisor testified that her work had been satisfactory. Only later, during the audit process, was any question raised regarding the totality of her work effort. The after-the-fact nature of that audit report precluded consideration of that information in the subject transfer.

Kaiser believed herself to be adversely impacted by the transfer because of the evening hours and its related effects upon her home life and family. She acted appropriately however, in accepting the evening school position and later attempting a subsequent change in the working hours. Her termination occurred after she failed to accomplish her objective. Whether the transfer and its accompanying working hours can be ascribed as the sole reason for her termination appears questionable. Kaiser had been taking training as a legal secretary. That training and its conflict with her new hours of work was a part of the matter at hand. Since utilization of legal secretarial skills would not readily apply to her position with the evening school, it might reasonably be inferred that there was additional motivation for the termination. The transfer may have merely accelerated a plan of action intended to move the complainant from an existing position with a perceived limited future to a position offering new challenge and perspective. She moved immediately following her termination from employment with the district to a position as legal secretary where she could utilize her newly acquired skills. The Examiner would thus be inclined to credit the business reasons asserted by the employer in its own defense.

FINDINGS OF FACT

1. Clover Park School District No. 400 is an "employer" within the meaning of RCW 41.56.030.

2. Carol J. Kaiser was an employee of Clover Park School District No. 400. from 1972 to June 30, 1981.
3. Kaiser served as an officer in the Clover Park Association of Educational Office Personnel, a bargaining representative operating under Chapter 41.56 RCW, and actively campaigned to achieve recognition of the association as an organized union.
4. In April, 1981, Kaiser was advised that her Secretary IV position in the federal projects office was being phased out and that she was to be transferred to another position.
5. On April 27, 1981, Kaiser transferred to the position of evening school secretary, changing her working hours from the normal day shift which she had worked in her prior position to an evening shift of 1:00 p.m. to 10:00 p.m.
6. Kaiser thereafter requested that her working hours be changed to the hours between 10:00 a.m. and 6:30 p.m. so as not to interfere with evening classes in which she was taking a legal secretary training course. Her request was denied.
7. Kaiser voluntarily resigned her position with the district in June, 1981.
8. The evidence does not establish that the employer's actions as described in paragraphs 4 and 5 of these findings of fact were motivated, either in whole or in part, in reprisal for Kaiser's activities as described in paragraph 3 of these findings of fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The complainant has not sustained a burden of proof establishing that the respondent, by its actions to eliminate her former position, to transfer the complainant or to deny her request for a change of work hours, was motivated in reprisal for her exercise of rights protected by Chapter 41.56 RCW or in any other manner committed unfair labor practices in violation of RCW 41.56.140.

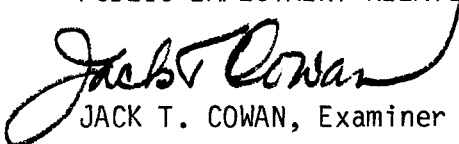
Based on the above and foregoing findings of fact and conclusions of law, the Examiner enters the following

ORDER

The complaint charging unfair labor practices in this matter is hereby dismissed.

DATED at Olympia, Washington, this 24th day of March, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JACK T. COWAN, Examiner