

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES,

Complainant,

vs.

CITY OF ASOTIN,

Respondent.

CASE NO. 4374-U-82-699

DECISION NO. 1978 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

Barry E. Ryan, Attorney at Law, appeared on behalf of  
the complainant.

Jay R. Jones, Attorney at Law, appeared on behalf of the  
respondent.

On December 6, 1982, the above-named complainant filed a complaint charging unfair labor practices with the Public Employment Relations Commission, claiming that the above-named respondent violated RCW 41.56.040 by discharging Richard Wolters for his exercise of rights guaranteed by the statute. George G. Miller was designated to make and issue Findings of Fact, Conclusions of Law, and Order. Pursuant to notice issued by the Examiner, hearing on the complaint was held on April 6, 1983, at Clarkston, Washington. The parties submitted post-hearing briefs.

BACKGROUND

The City of Asotin has approximately 1,000 residents. Respondent provides municipal services to its residents through several city departments. An elected mayor and city council retain general supervisory authority over the departments, and the city council is divided into committees which monitor specific department operations. At all times pertinent to these proceedings, Charles Foltz was the Mayor of Asotin, and City Councilmen Stan Ausman and Dale Brannan served on the council's water and sewer committee. Events leading to this unfair labor practice complaint originated in the city's sewage treatment plant.

The treatment facility was built in 1976. The plant receives waste water from the city and, through a series of procedures, purifies it before the water is returned to the Snake River system. Richard Wolters became plant

operator in April, 1977. Wolters was responsible for maintaining plant equipment and facility grounds, and he had to run a number of tests to insure that the treatment plant operated within state specifications. Wes Maier, a state inspector, found that the Asotin treatment facility ran efficiently, and that Wolters did a commendable job as plant operator. The record indicates that the treatment facility always passed state inspections.

The sewage plant's physical condition is disputed. Foltz testified that he and several council members had serious concerns about the plant's general appearance. Foltz testified that he was particularly upset about the lack of grounds maintenance around fences and sidewalks, and that he spoke to Wolters about the problem "several times". Wolters testified that neither Foltz nor any council member warned him that the plant was improperly maintained. Wolters' first recollection of any comment concerning the plant's appearance was a conversation he had with Foltz in April, 1982. At that time, and in a second conversation held one month later, Foltz told Wolters that weeds were a problem, but only offered "suggestions" about improving the situation. The record indicates that Wolters did not receive any official reprimand or warning about the plant maintenance issue.

In a related matter, the sewage plant's operating condition is disputed. One of the facility's "screw pumps" deteriorated and needed a major overhaul. Foltz testified that the pump broke down because Wolters did a poor job of maintenance. Wolters testified that he noticed the problem in the pump and told Foltz about it in the early part of 1981. Before work could begin, bids were requested. The work to be bid involved removal of the pump, refinishing the pump with a new coat of epoxy resin, inspection of joints and fittings, and re-installation.

Foltz testified that he received one bid on the project, from a local firm offering to do the work for \$7,000. Council members Brannan and Ausman also testified that respondent only received one bid on the project. Wolters testified that he secured a second bid for \$3,300, and submitted it to the city clerk. Gene Gehrke, a local contractor, spoke to Foltz about the situation, and, during the course of the conversation, Foltz told Gehrke that the bid submitted through Wolters was improper, and that the contractor and a paint company were "in cahoots" to inflate the price. The contract was awarded to the \$7,000 bidder, and work on the pump began in September, 1982.

In Fall, 1982, city employees became interested in being represented by a union for purposes of collective bargaining. At that time, the city had seven employees. Wolters was in favor of union representation, and, while he was not a primary "mover" behind the unionization effort, he never hid his support for the union. As the effort continued, Foltz and Brannan asked at

least four employees how they were going to vote in the union election. City employees John Broughman and Frank Cook testified that the contact affected the way they were going to vote. The record indicates that Wolters was not contacted by any member of the city council or by the mayor.

On November 30, 1982, respondent discharged Wolters.<sup>1/</sup> Foltz and Brannan testified that the dismissal was the result of a long series of deficiencies in the operation of the sewage treatment plant. Wolters testified that he did not receive any prior notification of his termination, nor was he warned that his performance as sewage plant operator was inadequate. At least one employee, Bob Wilsey, was contacted by Brannan after Wolters' dismissal, and the discharge was discussed in the context of the upcoming election.

On December 6, 1982, complainant filed an unfair labor practice charge, alleging that Wolters had been improperly discharged. On the same date, complainant filed a petition for investigation of a question concerning representation arising among employees of the City of Asotin. On February 28, 1983, the Public Employment Relations Commission conducted an election to allow city employees to express their desires on being represented by Washington State Council of County and City Employees. Complainant won the election, and on March 8, 1983, was certified to represent a bargaining unit described as:

INCLUDED: All full-time and regular part-time employees in the following departments in the City of Asotin: Water, Sewer, Parks, Police and City Hall.

EXCLUDED: Volunteer Fire Department, City Clerk, and all other employees of the City of Asotin.

See: City of Asotin, Decision No. 1594 (PECB, 1983).

#### POSITIONS OF THE PARTIES

Complainant argues that Richard Wolters was discharged for the exercise of rights guaranteed in Chapter 41.56 RCW. Complainant contends that respondent actively questioned employees about their union sympathies, and, in this coercive atmosphere, terminated Wolters without regard to a good employment history with the City of Asotin.

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<sup>1/</sup> On the same date, respondent discharged Ronald Knepper. That discharge was the subject of City of Asotin, Decision No. 1909 (PECB, 1984).

Respondent argues that it discharged Wolters because he failed to perform adequately as sewage treatment plant operator. Respondent maintains that Wolters' union activities played no part in its decision to discharge Wolters.

#### DISCUSSION

A public employer cannot interfere with employee attempts to organize for purposes of collective bargaining. The employees' freedom of choice in such matters is set forth in RCW 41.56.040 which provides:

No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of employees in the free exercise of their right to organize and designate representative of their own choosing for the purpose of collective bargaining, or any other right under this chapter.

The complainant has the burden of proof. To succeed, complainant must show that he was engaged in protected activity and that respondent had knowledge of the activities. See: Port of Seattle, Decision No. 1624 (PECB, 1983) and Whatcom County, Decision 1886 (PECB, 1984).

The record in this case clearly indicates that respondent knew of the union organizing effort. When subjected to adverse examination, where only a "yes" or "no" answer was required, Foltz volunteered that he (unlawfully) interrogated other bargaining unit employees about their union sympathies. The Examiner carefully observed the demeanor of this witness, as well as his words, and those observations confirm that Foltz harbored and aggressively pursued an anti-union animus. When the union came on the scene, the mayor slipped into a "with me or against me" posture.

Wolters was one of those who supported unionization of the city's workforce, a unit which included only seven (7) employees. One of the other employees was discharged, and that discharge was sustained as for cause in separate proceedings before this Examiner. City of Asotin (Ronald Knepper), Decision No. 1909 (PECB, 1984). However, each case must be decided on its own record and its own merits. By his own admission in testimony in this case, Foltz interrogated a majority of the remaining employees concerning their union sympathies. If this were a larger unit, the scope of that unlawful interrogation would be of lesser significance, but here it enabled, by process of elimination, a virtually infallible educated guess as to the union sympathies of each and every employee in the bargaining unit.

The classic discriminatory discharge case occurs where the employer discharges the "prime mover" in support of the union. However, the protections of Chapter 41.56 RCW extend to all public employees, not just to those who are identified as leaders of the organizational movement. The motivation of an employer in effecting an unlawful, discriminatory discharge is to dissuade other employees from exercising their statutorily protected rights to engage in union activity. Here, the evidence is not strong of pre-discharge statements or actions of the employer which demonstrate a discriminatory motivation, but the evidence of the employer's post-discharge use of the discharge as an example to other employees is compelling. During the period immediately preceding the election, while the mayor and other city officials were having their unlawful conversations with other bargaining unit employees, the respondent's agent made clear reference back to Wolters' discharge, thus holding Wolters up to the other employees as an example of what could happen to them. The record may not be a textbook example of a prima facie case, but the Examiner is satisfied that the record is sufficient to shift the burden to the employer under City of Olympia, Decision No. 1208-A (PECB, 1982).

When the analysis turns to respondent's assertions that it had "just cause", and that it discharged Wolters for valid business reasons unrelated to his union activity, the employer's case falls to pieces. Wolters had a five-year employment history with this employer. He had been a good employee, working with little or no direct supervision. There had been no warnings or reprimands. In all of these respects, Wolters' employment record is distinguished from that of the other employee discharged at the same time, Knepper, who had a short and troubled employment history.

The city's troubles with certain "screw pumps" had begun with their installation, and were not traceable to the work performed by Wolters. In fact, the record amply establishes that the sewer treatment plant had always passed state inspections while under Wolters' care, or that Wolters had readily corrected any minor deficiencies that were noted. Against this background, respondent's claim that "outside" maintenance had been neglected takes on a sour note. There is no indication that the city ever gave Wolters more than a passing suggestion that he should improve his maintenance of the building or grounds. This is in stark contrast to the city's actions vis-a-vis Knepper, where, as noted in the decision in that case, the city made extensive efforts to "work with" the employee, even to the extent of allowing a demotion (without reduction in pay) and providing close supervision from a member of the city council.

Respondent's claim that Wolters failed to forward a bid is contradicted by the credible testimony of other witnesses as well as by the testimony of

Wolters himself. Foltz's actions resulted in expense to the city more than twice the amount of the disputed bid. The Prosecuting Attorney, rather than the Public Employment Relations Commission, would need to look into whether there were any actionable improprieties in the mayor's handling of that bid. The Examiner concludes that the bid incident was no more than an additional convenient circumstance to cover, along with the lawful discharge of Knepper, the mayor's unlawful discharge of Wolters.

#### FINDINGS OF FACT

1. The City of Asotin is a municipality of the State of Washington, 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).
3. Richard Wolters went to work for the city as a sewage treatment plant operator in April, 1977. Wolters did a commendable job with the plant operations, and the treatment facility always passed state tests and inspections.
4. Mayor Charles Foltz spoke to Wolters about the general exterior appearance of the treatment plant, offering suggestions for improvement, but did not warn Wolters of possible disciplinary action if the grounds were not better maintained. Wolters and Foltz spoke about the maintenance issue twice, with both conversations occurring in Spring of 1982.
5. One of the facility's "screw pumps" deteriorated. Experts traced the problem to the pump's original installation in 1976. Wolters told Foltz of the problem in Winter, 1981, but action was not taken to correct the problem until September, 1982, when the pump was removed for repairs.
6. Before repairs could begin, bids were requested. Foltz received one bid, which cost substantially more than what the city wanted to pay. Wolters received a second bid from a local company and submitted it to the mayor and the city council for their consideration. The bid submitted through Wolters was rejected by the Mayor.
7. In Fall, 1982, city employees became interested in being represented by a union. An organization effort began on behalf of Washington State Council of County and City Employees. Wolters supported the organizational effort.

8. During the course of the organization drive, Mayor Foltz and Councilman Dale Brannan interrogated employees about their union sympathies. By the date of election, they spoke to four out of seven potential voters.
9. On November 30, 1982, the city discharged Wolters, claiming that he performed poorly as sewage treatment plant operator. After his dismissal, city officials used the discharge as an example of what could happen when they spoke to employees about the election.
10. On February 28, 1983, the election was held, and the union won.
11. The City of Asotin discharged Wolters for the exercise of rights guaranteed in Chapter 41.56 RCW, and did not have a legitimate business reason.

#### 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 the above Findings of Fact, the City of Asotin violated RCW 41.56.140(1) by discharging Richard Wolters for the exercise of rights guaranteed by the statute.

#### ORDER

Based on the foregoing and the record as a whole, it is ORDERED that the City of Asotin, its officers and agents, shall immediately:

1. CEASE AND DESIST from:
  - a. Discharging or otherwise discriminating against any employee because of the exercise of the right to organize and designate representatives for the purpose of collective bargaining.
  - b. In any other manner interfering with, restraining or coercing employees in the exercise of their right to organize and designate representatives for the purposes of collective bargaining.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION which the Examiner finds will effectuate the policies of the Public Employees Collective Bargaining Act, Chapter 41.56. RCW.

- a. Offer Richard Wolters immediate and full reinstatement to his former position or a substantially equivalent position, without prejudice to his seniority and other rights and benefits.
- b. Make its employee, Richard Wolters, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge, by payment of the amount he would have earned as an employee, from the date of the discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order. Deducted from the amount due shall be the amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis. Also deducted shall be an amount equal to any unemployment compensation benefits such employee may have received during the period of violation, and respondent shall provide evidence to the Commission that such amount has been repaid to the Washington State Department of Employment Security as a credit to the benefit record of the employee. The amount due shall be subject to interest at the rate of 14.98 percent calculated quarterly from the date of the violation to the date of the payment.
- c. 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 the City Supervisor of the City of Asotin be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Asotin to ensure that said notices are not removed, altered, defaced or covered by other materials.
- d. Notify 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 a signed copy of the notice required by the preceding paragraph.

DATED at Spokane, Washington, this 22nd day of June, 1984.

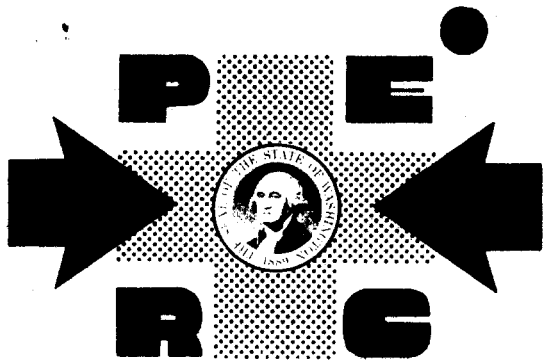
PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
GEORGE G. MILLER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION



# NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, CITY OF ASOTIN HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT discharge or otherwise discriminate against any employee for seeking to organize and designate representatives for the purposes of collective bargaining.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining.

WE WILL offer our employee, Richard Wolters, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges.

WE WILL make our employee, Richard Wolters, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge by payment of the amount he would have earned as an employee, from the date of the discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order.

DATED: \_\_\_\_\_

CITY OF ASOTIN

By: \_\_\_\_\_  
 AUTHORIZED REPRESENTATIVE

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

This notice must remain posted for sixty (60) 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.