

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMOTHY M. WEST,)	
)	
Complainant,)	CASE NO. 3212-U-80-462
)	
vs.)	DECISION NO. 1208-A - PECB
)	
CITY OF OLYMPIA,)	
)	
Respondent.)	DECISION OF COMMISSION
)	

Hafer, Cassidy and Price, by John Burns, Attorney at Law, appeared on behalf of the complainant.

John Sherman, Assistant City Supervisor, appeared on behalf of the respondent in the proceedings before the Examiner. Petition for review and supporting brief filed by Carmody, Syrdal, Danelo and Klein, P.S., by Otto G. Klein III, Attorney at Law.

Executive Director Marvin L. Schurke, acting as Examiner pursuant to WAC 391-45-130, issued his findings of fact, conclusions of law and order in the captioned matter on July 24, 1981. The City of Olympia seeks review of the Executive Director's ruling that it discharged Timothy West because of West's organizational activities, in violation of RCW 41.56.140(1).

The issue in this case is primarily factual, with counsel for both parties quite ably arguing an interpretation favorable to his client's position. The Executive Director set forth a good summary of the facts in his opinion, and most of the Executive Director's factual statement is not disputed. We agree with the employer that there is evidence, some disputed and some undisputed, which, viewed most favorable to the employer, lends some credence to its claim that West was discharged because of his "bad attitude". Most of that evidence concerns West's on-the-job conduct, which was not always above reproach. Nevertheless, we agree with the Executive Director that West made a prima facie case showing a discriminatory discharge, and that the city did not sustain its burden of persuasion to show proper grounds for the discharge. See, Wright Lines, 251 NLRB No. 150, 105 LRRM 1169 (1980).

The cumulative effect of the evidence favorable to West convinces us that West was discharged primarily because of his union activities. There is substantial evidence that West's job performance and attitude were fairly good to the very end. Three facts stand out that cause us to reject the employer's defenses: First, West was discharged one day after the results of the representation election were certified. While we agree with the employer that union organizational activity does not give a participating employee immunity from discharge for cause during or following an election period, the discharge of the principal union activist on the heels of an unsuccessful election certainly raises suspicion of wrongful discharge. When the employer's stated reason is highly judgmental or subjective, (e.g., "bad attitude"), the suspicion is reinforced. Second, we find it very significant that West's supervisors reinstated him to "full time" status only six weeks prior to the discharge without ever giving any indication that West's previous conduct or attitude might be cause for discharge. West was technically "laid off" (reduced from "full time" status to "part-time" status) on October 1, 1980. West's supervisor, Frare, testified as to his option (but not his obligation) to reinstate West to "full-time" status without interviewing outside applicants. West's reinstatement to full-time status on November 1, 1980 occurred during the period the city now claims West was exhibiting his "bad attitude" (but during which it also claimed that it had no knowledge of West's union activities). Third, the evidence fully supports the Executive Director's finding that the city's personnel processes are ambiguous and their application to West and others uneven, so that they do not provide any persuasive defense.

Although it will often be impossible for an employee to bring forth direct uncontradicted evidence of management's retaliatory motive for his discharge, after evaluating the evidence and inferences therefrom favorable to the city against those favorable to West, we find that the scales weigh heavily in West's favor.

NOW, THEREFORE, it is

ORDERED


1. The findings of fact, conclusions of law and order of the Examiner are affirmed.

2. The City of Olympia shall notify the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply with the order issued by the Examiner, and at the same time shall provide the Commission with a signed copy of the notice required by said Order.

The order of the Executive Director is affirmed.

DATED this 18th day of January, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



ROBERT J. WILLIAMS, Commissioner



MARK C. ENDRESEN, Commissioner