

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DOUGLAS R. McCOY,	)	CASE NO. 5210-U-84-921
Complainant,	)	
vs.	)	DECISION NO. 1962-A - PECB
CITY OF BONNEY LAKE,	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW
	)	AND ORDER

---

Geoffrey C. Cross, Attorney at Law, appeared on behalf of complainant.

George S. Kelly, City Attorney, appeared on behalf of respondent.

Douglas R. McCoy (hereinafter complainant) filed a complaint with the Public Employment Relations Commission on April 20, 1984, wherein he alleged the City of Bonney Lake (hereinafter respondent) committed unfair labor practices within the meaning of RCW 41.56.140(1) and (3) and RCW 41.56.150(1), (3) and (4).

Under date of June 4, 1984, the Executive Director issued a preliminary ruling, Decision 1962 (PECB), dismissing the complaint with the exception of paragraph "G" of the complaint, as follows:

With Mr. Whisler's prior experience of union activities and being a union member on his own job with the Boeing Company as well as a neighbor for many years I fully believe that the accident was a tool which he used to put forth his personal feelings for my union activities regarding the 1972-73 dispute involving Mr. Rhinevault and Mr. Whisler.

Paragraph "G" was referred to Ronald L. Meeker of the Commission staff for further proceedings and to make and issue findings of fact, conclusions of law and order. A hearing was held on August 1, 1984, in Bonney Lake.

BACKGROUND

The City of Bonney Lake is a small municipality located in the eastern part of Pierce County. The city's approximately 4900 residents receive

municipal services through several city departments. Personnel and labor relations matters concerning these departments are presently under the control of an elected mayor (Carle R. Whisler). In the era of 1972-1973, the city operated with a council/manager form of government, with the city manager in charge of personnel and labor relations matters. The council elected one of its own members to the position of mayor. During that era, the mayor's main responsibility was to chair the council meetings.

Complainant McCoy was hired by the city on January 29, 1971. He was injured in an on-the-job accident on July 6, 1983. He is receiving compensation from Washington State Industrial Insurance. This compensation was augmented with sick leave payments from the city while complainant had accumulated leave rights on the books.

Complainant was "terminated" by a letter from city attorney, as of December 1, 1983. A grievance was filed by complainant under the terms of the labor agreement between the city and the Washington State Council of County and City Employees. The union processed the complaint through the regular channels and, on January 11, 1984, Mayor Whisler issued a decision wherein the letter of termination dated December 2, 1983 was rescinded. The city thereupon started sick leave benefits. The city was to continue payment of premiums providing insurance coverage for complainant and his family, and complainant was placed on a six (6) month leave of absence.

This decision of the mayor was appealed to the city council and, under date of February 17, 1984, the council issued the following decision:

DECISION RE: GRIEVANCE OF DOUG MCCOY

Pursuant to Article X, Step 3 of a Working Agreement between the City of Bonney Lake and its employees belonging to the American Federation of State, County and Municipal Employees Union, said agreement effective January 1, 1982 through December 31, 1983, and

The City Council of the City of Bonney Lake having considered the written grievance of employee Doug McCoy and Mayor Carle Whisler's response thereto, and having discussed the matter with Doug McCoy and Mary Brown, representing the aforementioned union, and further being advised by City Attorney, George S. Kelley and City Clerk, Diane Jenks, and being fully advised in the premises, hereby determines as follows:

The termination of Douglas R. McCoy as per a letter dated December 2, 1983 from City Attorney, George S. Kelley to Attorney Robert C. Van Siclen is hereby rescinded.

Commencing January 1, 1984, Douglas R. McCoy, as a condition of continued employment with the City of Bonney Lake, will commence to use his accumulated sick leave and thereafter his accumulated vacation time to supplement the benefits he is presently receiving from the Department of Labor and Industries.

During the time said sick leave or vacation credits are being used the City will continue to pay said employee's medical and dental fringe benefits.

At the time said sick leave and vacation credits are exhausted the City will cease payment of said fringe benefits to be effective the first full month following exhaustion of said sick leave and vacation credits.

Douglas R. McCoy is hereby placed on leave of absence for one (1) year commencing January 1, 1984.

If during the period of said leave of absence said employee is physically able to return to work as per his own request or as determined by the Department of Labor and Industries or by a physician of the City's choosing, then employment will be made available to said employee.

If during the leave of absence the position which said employee held is either abolished or is filled by a permanent employee then the City will in good faith endeavor to place Douglas R. McCoy into a job commensurate with his prior position with the City.

Attached hereto and incorporated by reference herein is a calculation of sick leave and vacation credits available to Douglas R. McCoy as of January 1, 1984.

The provision of this agreement shall in no way become part of or be considered in the present negotiations of the new union contract for City employees. However, if said contract takes effect prior to expiration of one (1) year mentioned in paragraph IV, then the terms of said contract insofar as they are inconsistent with those terms set forth herein shall control.

DATED this 17 day of February, 1984.

/s/  
DIANE JENKS, CITY CLERK

Complainant refused to accept the council decision, although it was recommended by his union. Failing in his attempt to have the union pursue the case to arbitration, complainant filed the instant complaint.

#### POSITIONS OF THE PARTIES

Complainant contends he was terminated by the city because of an anti-union grudge carried over by Mayor Whisler from the 1972-1973 era. Complainant contends he was active in the union during this era and is, therefore, in a protected class. He argues that once discrimination is found to exist, it then becomes the burden of the employer to refute allegations that its actions were bona fide. Complainant further contends that in 1983, with Mayor Whisler in charge of personnel and labor relations, Whisler is now in a position to retaliate against complainant's participation in the

1972-1973 era matters. The mayor has further shown his anti-union feelings, according to complainant, by hiring a professional negotiator to negotiate the latest labor agreement and by hiring non-union employees.

Respondent contends there was no discrimination by Mayor Whisler in the 1972-1973 era, as Tom Rhinevault was the city manager at that time and was in charge of personnel and labor relations. It contends that any anti-union activities were undertaken by Rhinevault. Respondent further contends complainant was not fired by the city, and is on a one-year leave of absence.

#### DISCUSSION

Under the rules set forth in Chapter 391-45 WAC, the complainant initially has the burden of proof in unfair labor practice proceedings.

Although complainant contends he was fired by the city, the record shows that his firing was contested under the terms of the labor agreement and that his termination was rescinded by action of the city council. The council further ruled the city would continue to pay the premium providing medical/dental coverage for complainant during the period complainant was receiving sick leave payments and/or accumulated vacation pay. Complainant's own testimony shows he was provided this insurance coverage up through May of 1984, and that he also received a check from the city paying his accumulated vacation.

Complainant has failed to show that Mayor Whisler was responsible for the unfair labor practices in the 1972-1973 era or was directly involved in those proceedings. Whisler was at that time a member of the city council which asked for and received the resignation of Rhinevault immediately following those unfair labor practice proceedings.

Complainant contends that Mayor Whisler was discriminating against the union when he hired a professional to negotiate the latest labor agreement. Mayor Whisler's uncontroverted testimony shows he recommended to the city's finance committee that a professional be hired, as he felt that since he was a working union member it would be in the best interest of the city to hire a professional.

Concerning complainant's contention that the city did not complete the negotiations until sometime in July of 1984, the record shows that the previous labor agreement expired on December 31, 1983 and negotiations started a little prior to November of 1983. The new contract was signed on the 26th of July, 1984. The previous agreement remained in effect until the new one was signed and the new one was retroactive to January 1, 1984. Fred Hacker, who is employed in the Public Works Department, testified that this was not unusual, as there were some changes in the labor agreement that consumed considerable time. Hacker is a member of the bargaining unit.

Concerning complainant's contention that Mayor Whisler was hiring non-union help and, therefore, was discriminating against union members, the testimony of Thomas E. Stringfield (a six-year employee of the city) and the labor agreement both show that the city can hire part-time employees for up to six months, and these employees do not have to join the union. It was this type of employee the city hired as extra help during certain periods.

From the above-testimony and the record as a whole, complainant has failed to meet his burden of proof that respondent has discriminated against complainant during the 1983 period for his union activities in the 1972-1973 era or for any recent protected activity engaged in by the complainant.

#### FINDINGS OF FACT

1. The City of Bonney Lake is a public employer within the meaning of RCW 41.56.030(1). Carle R. Whisler, the present mayor, has responsibility to handle personnel matters and labor relations.
2. Douglas R. McCoy is an employee of the City of Bonney Lake and a public employee within the meaning of RCW 41.56.030(2).
3. In the 1972-1973 era, Tom Rhinevault was the city manager charged with the responsibility of handling personnel matters and labor relations. The city was found guilty of unfair labor practices in violation of RCW 41.56 in connection with actions of Rhinevault. Carle Whisler was a city council member during this period.
4. McCoy has been unable to work since July, 1983 because of an on-the-job injury. McCoy was terminated from employment with the city by letter from City Attorney George S. Kelley on December 2, 1983.
5. In response to a grievance, the mayor and city council of Bonney Lake rescinded the letter of termination on February 17, 1984, and placed McCoy on a leave of absence of one year from January 1, 1984 to January 1, 1985.
6. There is no evidence that by its actions in 1983 and 1984, the city has discriminated against McCoy directly or indirectly in reprisal for activity by McCoy in or on behalf of the union.

#### CONCLUSIONS OF LAW

1. Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.

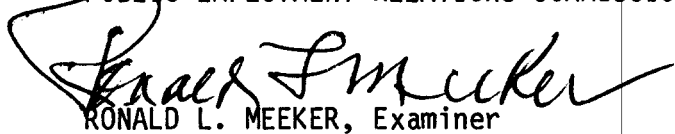
2. Complainant has failed to sustain his burden of proof that the City of Bonney Lake or its Mayor, Carle Whisler, discriminated against complainant in violation of RCW 41.56.140(1), in connection with its personnel actions and grant of leave during the period of complainant's disability caused by an on-the-job accident.

ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED.

DATED at Olympia, Washington, this 4th day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



RONALD L. MEEKER, Examiner

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