

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RAY REAMER,)	
and)	CASE NO. 5135-U-84-903
PUBLIC SCHOOL EMPLOYEES OF)	
WASHOUGAL, AN AFFILIATE OF PUBLIC)	DECISION NO. 2055-A - PECB
SCHOOL EMPLOYEES OF WASHINGTON,)	
Complainant,)	
vs.)	
WASHOUGAL SCHOOL DISTRICT,)	DECISION OF THE COMMISSION
Respondent.)	

Gail S. Fujita, Attorney at Law, appeared on behalf of the complainant.

Gallup, Duggan, Tubbs and Heurlin by Dennis R. Duggan, Attorney at Law, appeared on behalf of the respondent.

By a complaint charging unfair labor practices filed with the Public Employment Relations Commission on February 29, 1984, the above-named complainant alleged that he was transferred by the Washougal School District in violation of RCW 41.56.140(1) and (3), in reprisal for successful prosecution of a grievance against the district. A hearing was held on June 14, 1984, by William A. Lang, Examiner. Post-hearing briefs were filed August 10, 1984. The Examiner issued a decision on October 4, 1984, dismissing the complaint. On October 23, 1984, complainant filed a petition for review. On October 31, 1984, respondent filed a response to the association's petition for review and cross-petition for review to be acted on if the Commission should reverse the Examiner's decision.

REVISED STATEMENT OF FACTS

Ray Reamer was employed as a custodian by the Washougal School District (district) commencing February 10, 1980. He was terminated on February 16, 1983 for an alleged assault on his supervisor, Mrs. Hosman, the principal of the Cape Horn-Skye School. A grievance was filed under the collective bargaining agreement and processed to the school board, which upheld the termination. Since the contract did not provide for grievance arbitration as the final grievance step, Reamer appealed the adverse decision of the board

to the superior court. The superior court heard the matter de novo on September 14, 1983. The court reinstated Reamer to his former position, with back pay, effective October 3, 1983. Negotiations were then initiated on the issue of back pay.

There was a change in school administration with the 1983-84 school year. Dr. Jack McKay was appointed as superintendent and Roger Sitko was appointed as the new principal of the Cape Horn-Skye School. Prior to Reamer's reinstatement, Sitko spoke to a newspaper reporter regarding his new role as principal. The resulting article, which appeared in the Camas Post-Record on October 4, 1983, contained references to the Reamer lawsuit. Sitko is quoted as saying that staff morale had improved and that he had helped to alleviate some of the stress and tension. Sitko is reported to have foreseen no major problems from the litigation.

McKay testified he disagreed with the judge's decision to return Reamer to his former position but would make the best of it. He also admitted friendship with the former principal, whose husband was superintendent of a neighboring school district.

Either on the first day following his return or shortly thereafter, Reamer was given a copy of an evaluation form and was told he would be evaluated under the new policy initiated by the recently appointed superintendent. This policy limited evaluations to custodial employees.

On October 12, 1983, Reamer requested assistance because two additional classrooms were open and evening activities were increased from one evening to five. Sitko discussed the request with McKay, who turned it down. Since the school was the smallest in the district, the superintendent thought one custodian should be able to handle it. Also around this time, McKay expressed concerns to the union's business agent about Reamer's "flaunting his victory at court" and on keeping him at the Cape Horn-Skye School.

On October 28, 1983, Reamer received authorization for clean-up work on a Sunday following a Booster Club fund raising Halloween party. After Reamer had completed three and one-half hours of work, he was informed by Sitko that he would only be paid for two hours and he could bill the Boosters directly or be paid by the district who would then be reimbursed by the Boosters. Because the Boosters did not raise much money, Reamer decided to donate his service.

In early November, 1983, Reamer was cautioned about wet-mopping when children were in the area because of safety considerations, and about sweeping up their articles, e.g., scissors and crayons. Reamer thought the criticism unwarranted, because he had always mopped in that manner and was conscious of the hazards.

On November 15, 1983, Reamer was notified by letter that his shift hours were being changed. Although Reamer maintained at the hearing that he did not agree to the change, he did sign the letter of notification and began the new hours on November 28, 1983.

On November 17, 1983, Reamer was evaluated by Sitko and Head Custodian Steve Thompson. Reamer was rated at the top in quality of work, punctuality and attendance; highly in job knowledge, quality of work and dependability; average in initiative; below average in adaptability and safety; and the bottom in cooperation. Sitko and Thompson noted the excellent job of cleaning done by Reamer and also the anxiety between Reamer and other staff members. Reamer acknowledged the anxiety and also noted the increased work load.

Also around the middle of November, McKay was invited to a staff meeting at the school. McKay was surprised that the teachers made sure Reamer was not within hearing distance while they talked. McKay testified, "They were fearful, they were scared, they did not want to get back to Ray what they were saying to me because of the reprisals that could possibly happen or harm them." The record does not disclose whether the superintendent followed up on this information with any corrective actions.

On December 13, 1983, Reamer was admonished by Sitko that he was disturbing the teachers with his loud, annoying humming, noisy vacumming and bumping the furniture and leaving smelly custodial items in the hallways. The next day he was again orally reprimanded for his loud humming and bad attitude. Reamer admits to the humming but denies it was loud or annoying. Sitko thought he should get some help, which Reamer took as a suggestion to get medical attention. These admonishments were repeated on December 19, 1983 at a meeting with the union's business agent.

Prior to his reinstatement, Reamer had been advised by his attorney to keep a "low profile" when he returned to work. Reamer interpreted this to mean, "not to be friendly." During the three months Reamer worked at the Cape Horn-Skye school, several teachers and other staff reported that he spoke to them initially but got progressively distant and non-communicative. They confirm the loud humming, noisy vacumming and sullen glares which they felt not only deliberate but calculated to be intimidating.

Reamer's attorney concluded back pay negotiations with the district's attorney in mid-December, 1983. On January 3, 1984, Reamer received payment and signed a release.

On January 6, 1984, Superintendent McKay hand-delivered a letter which gave Reamer notice that he was being transferred to the 11:00 PM to 7:30 AM shift at Washougal High School and Jemtegaard Middle School. McKay initially declined to give any reasons for the transfer. Several weeks later, McKay met with Reamer and told him he was being transferred to reduce tension and fear, because no other custodian could work with him, and that there was insufficient reason to terminate him.

Even though Reamer received the same pay, worked the same number of hours and had the same job responsibilities, he felt that the new assignment was less desirable because he went from a day shift assignment to a graveyard shift split between two schools. As a result of this transfer this complaint was filed.

Sitko and some teachers testified that subsequent to the transfer, Reamer gave them "the finger" and followed them in his truck for no apparent good reason.

POSITIONS OF THE PARTIES ON REVIEW

The complainant argues that the district has produced no good reasons for transferring Reamer and that past conduct cannot be considered in justifying the transfer. The complainant asks for a reversal of the decision.

The school district maintains that complainant failed to show that the transfer involved protected activity, that the district had the unqualified right to transfer Reamer under the collective bargaining agreement, and that the examiner's decision be upheld. Alternatively, the district requests that a cross-petition be granted dismissing the unfair labor practice charge if the Commission reverses the examiner's decision.

DISCUSSION

The relevant sections of the collective bargaining agreement between Washougal School District No. 112-6 and Public School Employees of Washougal read as follows:

RIGHTS OF THE EMPLOYER

Section 2.1. It is agreed that the customary and usual rights, powers, functions, and authority of management are vested in management officials of the District. Included in these rights in accordance with and subject to applicable laws, regulations, and the provisions of this Agreement, is the right to direct the work force,

the right to hire, promote, retain, transfer, evaluate, and assign employees in positions; the right to suspend, discharge, demote, or take other disciplinary action against the employees; and the right to release employees from duties because of lack of work or for other legitimate reasons. The District shall retain the right to maintain efficiency of the District operation by determining the methods, the means, and the personnel by which operations undertaken by the employees in the unit are to be conducted.

HOURS OF WORK AND OVERTIME

Section 7.2. Each employee shall be assigned to a definite and regular shift, place of work, workweek, with a designated time of beginning and ending which shall not be changed without prior notice to the employee of two (2) calendar weeks, unless mutually agreed upon by the employee and the supervisor or in cases of emergency. Such notice and agreements shall be in writing.

SENIORITY

Section 15.2. The employee with the earliest hire date shall have preferential rights regarding promotions, shift selection, assignment to new or open jobs or positions, and layoffs when ability and performance are substantially equal with those individuals junior to him. If the District determines that seniority rights should not govern because a junior employee possesses ability and performance substantially greater than a senior employee or senior employees, the District shall set forth in writing to the employee or employees and the organization's grievance committee chairman its reasons why the senior employee or employees have been bypassed.

RCW 41.56.140(1) and (3) read as follows:

RCW 41.56.140. Unfair labor practices for public employees enumerated. It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.

* * *

(3) To discriminate against a public employee who has filed an unfair labor practice charge.

Our review of the relevant contract sections leaves open the question of whether the school district had the unqualified right to transfer Reamer to a position held by a less senior employee. While Section 2.1 appears to grant the district almost unlimited rights to direct the workforce, many other sections of the agreement limit these rights. Section 15.2 refers to

seniority rights, but does not make clear to what extent, if any seniority rights are involved in a transfer. The district may reasonably claim the right to transfer Reamer and Reamer may reasonably contest that alleged right, but that discussion belongs in the grievance procedure or in court on a contract claim.

Turning to the basis for the complaint, employees have a protected right under Chapter 41.56 RCW, the Public Employees Collective Bargaining Act, to pursue grievances. Valley General Hospital, Decision 1194-A (PECB, 1981). The standard for determining whether the employer's conduct was an unfair labor practice was set forth by the Commission in City of Olympia, Decision 1208-A (PECB, 1982). In that case the Commission adopted the Wright Line Inc., 251 NLRB 150 (1980) "causation test" which requires the complainant to make a prima facie showing sufficient to support an inference that the protected conduct was a motivating factor in the employer's decision. Once this is shown the employer must come forward with credible evidence to demonstrate that the same action would have taken place even in the absence of protected conduct.

The Commission is convinced that the school district transferred Reamer for prudent reasons that stand apart from his successful grievance filing. This finding acknowledges that the district placed some roadblocks in Reamer's way upon his return. Ultimately, however, it is Reamer's effect on the staff through his negative behavior, that absolves the district.

The district is faulted for the suspicious timing in initiating the evaluation of custodians; for a cursory and insensitive response to Reamer's request for assistance; for authorization and the subsequent non-payment for the time Reamer spent cleaning up for the Booster club; for changing Reamer's shift hours after he had been back for just over one month; for not discussing Reamer's effect on the staff in ways designed to remedy the situation; and for transferring Reamer to a less desirable shift (previously occupied by a less senior worker) virtually as soon as Reamer released the district from further financial liabilities associated with his grievance. While some, or perhaps none, of these would be sustainable contractual grievances in light of Reamer's actions, they demonstrate very poor management of human resources.

As for Reamer's actions that overcome the district's faults and justify a transfer, the Commission depends heavily on the testimony at the hearing. The major impression is of staff members who try to be polite, are gradually rebuffed and, for some, intimidated. The complaints of noisy vacuuming, unpleasant humming, making faces, sweeping up children's items, rude comments, and lack of social conversation are annoying or discomforting, but

cannot be classified as serious. Behavior that was serious, and is decisive, involved Reamer standing and staring, or glaring, without talking as staff arrived and left. This unusual behavior caused staff members to be afraid of him and to devise a system whereby no one would be left alone in the building with him. The district has persuasively argued that, by transferring Reamer, it placed the interests of the staff ahead of Reamer's for reasons brought about by Reamer.

On the separate and open question of whether the school district properly transferred Reamer in line with the terms of the collective bargaining agreement, the Commission views that as another matter to be heard in another forum and makes no comment or ruling.

AMENDED FINDINGS OF FACT

1. Washougal School District is a school district organized and operated under Title 28A RCW and is a public employer within the meaning of RCW 41.56.030(1).
2. The Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(5), is the exclusive bargaining representative of custodial maintenance employees of Washougal School District.
3. Raymond Reamer is a public employee within the meaning of RCW 41.56.030(2). He was hired by the school district as a full-time custodian on February 10, 1980, terminated on February 16, 1983, and reinstated in his former position at Cape Horn-Skye School on October 3, 1983 by court action. He was transferred from the day shift to a night shift split between two other schools on January 6, 1984.
4. The transfer of Reamer was implemented three days following the final resolution of procedures commenced by Reamer under the grievance procedure of the collective bargaining agreement between the district and union to challenge the district's discharge of Reamer on or about February 16, 1983.
5. The school district's actions were justified by Reamer's course of conduct which harassed and intimidated the teaching and classified staff.

AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under Chapter 41.56 RCW.

- 2. Washougal School District has established that its transfer of Ray Reamer was actually based on legitimate business reasons of the employer, including Reamer's misconduct following his reinstatement and, by such transfer, has not committed unfair labor practices within the meaning of RCW 41.56.140(1).

ORDER

The complaint charging an unfair labor practice against Washougal School District is dismissed.

DATED at Olympia, Washington, this 24th day of January, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane Wilkinson

 JANE WILKINSON, Chairman

Mark Endresen

 MARK ENDRESEN, Commissioner

Mary Ellen Krug

 MARY ELLEN KRUG, Commissioner