

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GENE MINETTI,	)	
	)	
Complainant,	)	CASE NO. 6745-U-87-1352
	)	
vs.	)	DECISION 2661-A - PECB
	)	
PORT OF SEATTLE,	)	
	)	
Respondent.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND ORDER
_____		

Gene Minetti, appeared pro se.

Bogle and Gates, by Peter M. Anderson,  
Attorney at Law, appeared on behalf of the  
respondent.

On January 26, 1987, Gene Minetti (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Port of Seattle (employer) had violated RCW 41.59.140(1)(d)<sup>1</sup> by discrimination in reprisal for the complainant's previous filing of unfair labor practice charges with the Commission and the National Labor Relations Board. On April 7, 1987, the Executive Director issued a preliminary ruling pursuant to WAC 391-45-110, notifying the complainant that the complaint, as filed, failed to state a cause of action. The complainant was

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<sup>1</sup> The statute cited is a provision of the Educational Employment Relations Act, Chapter 41.59 RCW, which is applicable only to certificated employees of school districts.

allowed a period of fourteen (14) days in which to amend the complaint to avoid dismissal for failure to state a cause of action.<sup>2</sup> The complainant amended the complaint in a timely manner, detailing additional facts in support of the allegation that the respondent had retaliated against the complainant for filing other unfair labor practice complaints with the Public Employment Relations Commission. A hearing was conducted before Kenneth J. Latsch, Examiner, on October 20, 1987, in Seattle, Washington. The parties submitted post-hearing briefs.

#### BACKGROUND

The Port of Seattle operates a number of facilities in the greater King County area for the transshipment of seaborne cargo. The employer and International Longshoremen's and Warehousemen's Union, Local 9, have a collective bargaining relationship concerning certain employees working in the port's warehouse and dock facilities.

Among other features of the collective bargaining relationship, the employer obtains its employees through a union-operated "hiring hall" which dispatches employees when notified that work is available. According to "dispatching" procedures set forth in the collective bargaining agreement between the employer and Local 9, seniority plays an important role in selecting employees for work, as well as in establishing how

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<sup>2</sup> Decision 2661 (PECB, 1986). The preliminary ruling noted the obvious error of statutory citation in the complaint form, and indicated that the Commission would assume that the complainant intended to claim a violation of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, applicable to port districts and other units of local government.

layoffs are to be carried out. If a senior employee is to be laid off, all junior employees must also be laid off at the same time. In essence, seniority acts as an insulator, and the employer must be willing to lay off as many junior employees as are necessary to "reach" a senior employee for layoff.

The events leading to the instant unfair labor practice case began with a dispatch of temporary employees, including the complainant.<sup>3</sup> The complainant is not certain as to the precise date, but the record indicates that the disputed events took place during the month of August, 1986. The complainant was dispatched from the union hiring hall to work the night shift with a group of "casual" employees. The complainant was the most senior among the employees dispatched on that occasion. The complainant and the other employees in the "dispatch group" were assigned to one of the employer's warehouses.

Chief Foreman, Dalton Lawson observed the complainant during the course of the shift, although there is a conflict in testimony as to details. Lawson testified that he saw the complainant talking, rather than working, and that he advised the complainant that his work performance was not acceptable. The complainant testified that Lawson only saw him during breaks, and that all employees working at the facility had a certain amount of free time during their shifts.

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<sup>3</sup> The instant unfair labor practice case was filed in the context of several other unfair labor practice cases filed by the complainant against the Port of Seattle and International Longshoremen's and Warehousemen's Union, Local 9. While providing a context for the instant case, the facts and merits of the other cases shall not be considered in the factual background or in the legal analysis in this matter.

At the end of the shift, Lawson decided to lay Minetti off. Following contractual procedures, Lawson informed junior employees that they were laid off, even though there was work available for the next shift. To the extent that junior employees asked why they were being laid off, Lawson told them it was because a more senior employee had not done his job properly. Lawson testified that the employer never provided any guidelines for the imposition of layoff because of poor work performance, but that he routinely followed the same practice regarding layoffs. The record indicates that Lawson had some general knowledge of the complainant's ongoing difficulties with the employer and the union, but there is no indication that Lawson acted in response to the other unfair labor practice cases that had been filed.

At some unspecified time after the August layoff, the complainant was approached by some of the junior employees, who expressed their displeasure with the recent turn of events. Again there is some conflict in the testimony. Minetti testified that the affected employees threatened him, but several other witnesses called by the complainant disagreed with that assertion. While the other witnesses testified that Minetti's actions were discussed at the union hall, none of the witnesses could remember any threats or arguments taking place in their presence.

Under the dispatch procedures of the collective bargaining agreement and relationship, Lawson could have asked that Minetti no longer be dispatched from the union hall, but did not do so. The record indicates that Minetti worked for the Port of Seattle at least seven more times in 1986, after the August incident at issue in this proceeding.

POSITIONS OF THE PARTIES

The complainant argues that the respondent laid him off and incited fellow workers against him, in retaliation for the unfair labor practice complaints he had previously filed. The complainant maintains that the foreman's actions can bind the employer, and that they were improper in this case. The complainant claims that, even if the layoff was proper, the foreman should not have told junior employees about the complainant's alleged poor work performance, so that the foreman's actions rise to the level of retaliation against him.

The respondent argues that it did not commit an unfair labor practice. It maintains that the complainant has not met his burden of proof, and that the factual setting presented clearly demonstrates that the foreman was following normal procedure when the complainant was laid off. The respondent contends that the layoff was not related to the complainant's earlier unfair labor practice complaints, and notes that the complainant worked for the port on several occasions after the layoff took place.

DISCUSSION

Throughout the hearing and in his post-hearing brief, the complainant has correctly argued that a public employer can be held to have committed an unfair labor practice on the basis of the actions of a supervisor. As an agent directing operations on behalf of an employer, a supervisor exercises "apparent authority" in his or her dealings with the employer's workforce. Simply put, non-supervisory employees can reasonably believe that a supervisor acts with the employer's knowledge and approval. Because of this relationship, the supervisor's

unlawful acts can bind a public employer as surely as if the unlawful activity was committed by the employer's chief executive officer. See, City of Tacoma, Decision 1342 (PECB, 1982). Mere allegations against a supervisor are, however, not sufficient.

The complaining party in an unfair labor practice has the burden of proving that the acts complained of actually took place. Through the production of testimony and documents, the complainant is expected to provide a factual foundation upon which legal analysis of the issue may proceed. If the complainant cannot provide the requisite factual support, the burden of proof has not been met, and the complaint must be dismissed. See, for example, Lyle School District, Decision 2736 (PECB, 1987), where a collection of bits and pieces of evidence were not found sufficient to support an inference of anti-union animus.

Turning to the instant unfair labor practice complaint, it is evident that the complainant feels that the employer, through the acts of a supervisor, treated him unfairly. The question is not "fairness", however, but whether the employer's actions rise to the level of an "interference with exercise of protected rights" or "discrimination for filing charges" unfair labor practice within the meaning of Chapter 41.56 RCW.

While the supervisor testified that he was generally aware of the complainant's other litigation pending before the Commission, knowledge does not necessarily translate into action. There is no suggestion in the evidence that the supervisor's actions were motivated by the earlier complaints. The record clearly demonstrates that the supervisor dismissed the complainant because of the complainant's work performance. The supervisor did not treat the complainant in a manner

different from that given other employees who did not meet job expectations, and the fact that the supervisor refrained from imposing harsher penalties against the complainant undermines any inference based on knowledge alone. The complainant has failed to prove that the employer's actions were motivated by some intent to discriminate or to retaliate against him because of other litigation pending before the Commission.

At best, the record suggests an unfortunate series of circumstances leading to the temporary suspension of an employee for not performing assigned duties. Under the controlling seniority procedures, it was necessary for the employer to lay off several junior employees to rid itself of the unsatisfactory employee. In turn, those employees were entitled to ask, and the employer was entitled to answer, the question of why they were being laid off. The complaint must be dismissed.

#### FINDINGS OF FACT

1. The Port of Seattle is a municipal corporation of the State of Washington organized and operated pursuant to Title 53 RCW and is a public employer within the meaning of Chapter 53.18 and RCW 41.56.030(1). The employer operates a number of warehouse facilities in King County, Washington.
2. International Longshoremen's and Warehousemen's Union, Local 9, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of Port of Seattle employees working in various warehouse and loading facilities.

3. The employer and the union are parties to a collective bargaining agreement which provides, among other things, for the employer to obtain employees through a hiring hall operated by the union and for seniority rights for employees. Under the seniority procedure, the employer is required when laying off an employee to lay off all junior employees then working.
4. Gene Minetti has, from time to time, been employed by the Port of Seattle in the bargaining unit represented by International Longshoremen's and Warehousemen's Union, Local 9, and is a "public employee" within the meaning of RCW 41.56.030(2).
5. During the latter part of August, 1986, Minetti was dispatched from the union's hiring hall for work in a temporary position at one of the employer's warehouses.
6. During the course of the work shift, Chief Foreman Dalton Lawson observed Minetti's conduct, and concluded that Minetti was not performing his assigned duties in a satisfactory manner. At the conclusion of the work shift, Lawson informed Minetti that he was laid off. Following the procedures set forth in the applicable collective bargaining, Lawson also laid off all employees junior to Minetti when Minetti was laid off.
7. Minetti was not precluded from further work assignments with the Port of Seattle, and was informed that he would have to return to the union's list of temporary employees for future assignment. Minetti was subsequently referred by the union and hired by the Port of Seattle on several occasions.



8. In response to their inquiries, Lawson informed junior employees that the reason for their layoff was the unsatisfactory performance of a more senior employee. Shortly thereafter, several affected employees discussed the situation with Minetti. There is no evidence that the employees made threats against the complainant at any time pertinent to these proceedings or that, if made, any such threats were condoned by or could be attributed to the Port of Seattle.

#### CONCLUSIONS OF LAW

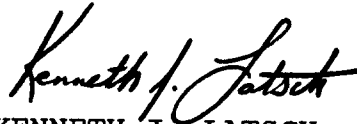
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 53.18 RCW.
2. The complainant has failed to sustain his burden of proof in support of his allegation that the employer's actions, as described in paragraphs 4 through 8 of the foregoing Findings of Fact, were reasonably taken as interfering with the exercise of rights secured by RCW 41.56.040 or in reprisal for the filing of unfair labor practice charges under RCW 41.56.140 or 41.56.150.
3. The Port of Seattle did not commit unfair labor practices within the meaning of RCW 41.56.140(1) or (3) by its actions described herein.

ORDER

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

DATED at Olympia, Washington, this 1st day of March, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Kenneth J. Latsch".

KENNETH J. LATSCH, Examiner

This order may be appealed by  
filing a petition for review  
as set forth in WAC 391-45-350.