

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MUNICIPALITY OF METROPOLITAN SEATTLE (METRO),)	
)	
Employer)	
-----)	
JOHN ZAFIROPOULOS,)	
)	
Complainant,)	CASE 6929-U-87-1406
)	
vs.)	DECISION 2746-C - PECB
)	
AMALGAMATED TRANSIT UNION, LOCAL 587,)	
)	
Respondent.)	
)	
MUNICIPALITY OF METROPOLITAN SEATTLE (METRO),)	
)	
Complainant,)	CASE 6988-U-87-1421
)	
vs.)	DECISION 3151-B - PECB
)	
AMALGAMATED TRANSIT UNION, LOCAL 587,)	
)	
Respondent.)	ORDER DETERMINING COMPLIANCE DISPUTE
)	

John Zafirooulos, appeared pro se.

Frank and Rosen, by Jon H. Rosen, Attorney at Law, appeared for Amalgamated Transit Union, Local 587.

This case comes before the Commission for the determination of a dispute concerning compliance with a remedial order previously issued by this Commission in these consolidated cases.¹ A hearing on the compliance dispute was conducted by Hearing Officer Walter M. Stuteville on June 12, 1990.

¹ Municipality of Metropolitan Seattle, Decisions 2746-B and 3151-A (PECB, 1990).

BACKGROUND

The Municipality of Metropolitan Seattle (METRO) operates public transportation services in King County, Washington. Amalgamated Transit Union, Local 587 (ATU) is the exclusive bargaining representative of bus drivers employed by METRO in its public transportation activity. John Zafiropoulos is a bus driver employed by METRO in the bargaining unit represented by the ATU.

Examiner Katrina I. Boedecker issued a decision on March 6, 1989, ruling that ATU had committed unfair labor practices in violation of RCW 41.56.150(4) and (1).² The Examiner held that Zafiropoulos had been discriminated against when the union denied him the right to choose certain bus routes, by deleting those routes from the list of work assignments available to him. The Examiner held that Zafiropoulos had a viable claim with respect to any of the stricken routes that were ultimately assigned to drivers with less seniority, and stated:

[T]o the extent that Zafiropoulos can prove that he would have driven more hours in the 1987 spring shake-up, had he been awarded an evening assignment based on his seniority, the union must reimburse him at his appropriate hourly rate. This requirement applies to any of the shake-ups since spring 1987. The respondent union must pay interest on any monies owing in accordance with WAC 391-45-410(3).

Local 587 filed a timely petition for Commission review of the Examiner's decision.

In reviewing the Examiner's decision, the Commission amended one finding of fact but affirmed the Examiner's conclusions of law and order. Thus, the Commission affirmed the Examiner's conclusion

² Municipality of Metropolitan Seattle, Decisions 2746-A and 3151 (PECB, 1989).

that Zafiropoulos is entitled to the difference between the hours he actually worked after the May, 1987 shakeup and the hours he would have worked if he had driven one of the assignments at issue.

The parties were unable to agree as to the amount of back pay, if any, owed to Zafiropoulos. This compliance proceeding followed.

POSITIONS OF THE PARTIES

Zafiropoulos claims that he had wanted to bid on a route designated as "Route 71/57 T", which had a duration of 4 hours and 38 minutes. The union deleted "Route 71/57 T" from the list of routes available to him, and he actually bid for and received "Route 355/05 T", which had a duration of 3 hours and 23 minutes. The situation continued for 59 days. At \$13.84 per hour, Zafiropoulos calculated that he lost \$1,024.84, plus interest at 12%.

The union argues that Zafiropoulos failed to prove that he would have successfully bid his preferred route. It contended that other, more senior, employees could have bid that route away from Zafiropoulos. Further, the union contends that Zafiropoulos failed to mitigate his damages, by not bidding any of a number of other routes that, in the union's view, could have approximated his preferred route. If responsible for any back wages, the union contends that its responsibility should be for no more than 20 minutes of pay for the 59 days, plus the applicable interest.

DISCUSSION

The union notes certain contingencies which could have prevented Zafiropoulos from obtaining the route he preferred. It is impossible to know from the record, however, whether any of those contingencies would actually have occurred. So long as the record

indicates a possibility that Zafiropoulos could have obtained the route at issue, the remedy he seeks is appropriate.

The union's assertion that Zafiropoulos could have chosen a more lucrative route ignores the fact that the dispatching function was supposed to provide the employees a freedom of choice as to the routes that they would drive, presumably based upon any criteria important to the individual employee. Acceptance of the union's argument here would preclude Zafiropoulos (or any other employee adversely affected by the union's misconduct) from applying any personal selection criteria other than the length of the route. Put another way, the union attempts here to limit Zafiropoulos' ability to choose routes, by assuming that "hours" was the criteria he used to choose "Route 71/57 T" in the first place, and then applying only that criteria to the other routes that were available to Zafiropoulos.

The fact remains that it was the union's unlawful deletion of the route from the choices available to Zafiropoulos that constituted the unfair labor practice. Zafiropoulos filed and successfully prosecuted unfair labor practice charges against the union. He is entitled to be put in the same position that he would have enjoyed had the unfair labor practice not been committed. So far as it appears from the record before us, Zafiropoulos should not have been forced to choose another route in the first place. He did mitigate his damages by choosing another route. The fact that the union might have made a different choice is not a basis upon which to reduce the union's liability.

NOW, THEREFORE, it is

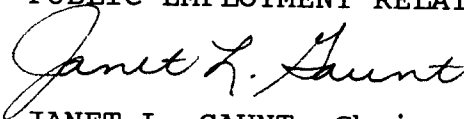
ORDERED

Amalgamated Transit Union, Local 587, shall pay John Zafiropoulos \$1,024.84, plus interest at 12% computed from the date of the violation to the date of payment made pursuant to this order,

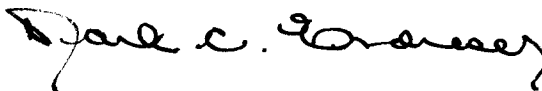
representing the full difference between what Zafiropoulos would have received as compensation for work on his preferred assignment, "Route 71/57 T", and the route which he actually worked.

Issued at Olympia, Washington, this 17th day of October, 1990.

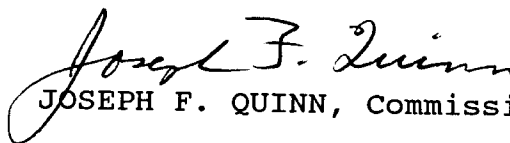
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner